

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Kevin Christopher Newsom

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

United States Court of Appeals Judge for the Eleventh Circuit

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

Office: Bradley Arant Boult Cummings LLP  
One Federal Place  
1819 Fifth Avenue North  
Birmingham, Alabama 35203

Residence: Vestavia Hills, Alabama

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

1972; Birmingham, Alabama

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.

1994 – 1997, Harvard Law School; J.D. (*magna cum laude*), 1997

1991 – 1994, Samford University; B.A. (*summa cum laude*), 1994

1990 – 1991, Vanderbilt University; no degree (transferred)

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  
Bradley Arant Boult Cummings LLP  
One Federal Place  
1819 Fifth Avenue North  
Birmingham, Alabama 35203  
Partner

Spring 2009; Spring 2010; Summer 2011  
Cumberland School of Law  
Samford University  
800 Lakeshore Drive  
Birmingham, Alabama 35229  
Adjunct Professor of Law

Spring 2011  
Vanderbilt University Law School  
131 21st Avenue South  
Nashville, Tennessee 37203  
Adjunct Professor of Law

2003 – 2007  
Office of the Attorney General  
State of Alabama  
501 Washington Avenue  
Montgomery, Alabama 36104  
Solicitor General

1998 – 2000; 2001 – 2003  
Covington & Burling LLP  
One CityCenter  
850 Tenth Street, N.W.  
Washington, District of Columbia 20001  
Associate

Spring 2002  
Georgetown University Law Center  
600 New Jersey Avenue, N.W.  
Washington, District of Columbia 20001  
Adjunct Professor of Law

2000 – 2001  
Supreme Court of the United States  
One First Street, N.E.  
Washington, District of Columbia 20543  
Law Clerk to Hon. David H. Souter

1997 – 1998  
United States Court of Appeals for the Ninth Circuit  
Pioneer Courthouse  
700 S.W. Sixth Avenue  
Portland, Oregon 97204  
Law Clerk to Hon. Diarmuid F. O'Scannlain

Summer 1996; Summer 1995  
Farris, Warfield & Kanaday  
[NOTE: Firm now part of Stites & Harbison PLLC]  
401 Commerce Street, Suite 800  
Nashville, Tennessee 37219  
Summer Associate

Summer 1996  
Walston, Wells, Stabler, Anderson & Bains  
[NOTE: Firm now part of Jones Walker LLP]  
One Federal Place  
Suite 1100  
1819 Fifth Avenue North  
Birmingham, Alabama 35203  
Summer Associate

Summer 1996  
Sutherland, Asbill & Brennan LLP  
[NOTE: Firm now Eversheds Sutherland (US) LLP]  
999 Peachtree Street, N.E.  
Suite 2300  
Atlanta, Georgia 30309  
Summer Associate

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

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

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

American Academy of Appellate Lawyers – Fellow (2016 – present).

*The American Lawyer Magazine* – “Fab Fifty: Litigation’s Rising Stars”; named one of the top 50 litigators in the United States under age 45 (2007).

Law360 – “Rising Star”; named one of the top 10 appellate lawyers in the United States under age 40 (2010).

*Chambers USA* – Ranked in “Band 1” for Appellate (2016 – present).

*The Best Lawyers in America* – Recognized for Appellate Law (2009 – present).

*Benchmark Litigation* – Recognized as “Litigation Star” (2011 – present).

LMG Life Sciences – Recognized as “Life Sciences Star” (2013 – present).

Client Choice USA & Canada – Sole Alabama recipient (2014); one of two Alabama recipients (2013).

National Association of Attorneys General – awarded “Best Brief” awards for U.S. Supreme Court written advocacy (2004, 2005, 2007).

Super Lawyers – Alabama Rising Stars (2011 – 2012), Alabama Super Lawyers (2013 – 2015), Mid-South Super Lawyers (2016).

*Birmingham Magazine* – Recognized as “Top Attorney” (2014 – present).

*Birmingham Business Journal* – “Top 40 Under 40”; recognized as one of the top 40 professionals under age 40 (2010).

*B-Metro Magazine* – “Top Lawyers” (2016 – present).

*BHM Biz Magazine* – “Top Lawyers” (2016 – present).

Distinguished Alumni Award – Federalist Society, Harvard Law School (2005).

Harvard Law School – Graduated *magna cum laude* (1997); member (1995 – 1997) and articles editor (1996 – 1997) of the *Harvard Law Review*.

Samford University – Graduated *summa cum laude*; received President’s Cup for highest GPA (4.00) in graduating class; Phi Kappa Phi graduate fellowship recipient (1994).

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 Academy of Appellate Lawyers – Fellow (2016 – present).

Advisory Committee on Appellate Rules, U.S. Judicial Conference (2011 – present).

Eleventh Circuit Historical Society (2008 – present).

American Bar Association (2007 – present).

Judicial Division Appellate Judges Conference (2007 – present).

AJC Council of Appellate Lawyers (member since 2007, executive committee member 2009 – 2015).

Litigation Section (2007 – present).

Litigation Section's Appellate Practice Committee (2009 – 2013).

Chair of Appellate Judges Education Institute's CLE Summit (2010).

Birmingham Bar Association (2007 – present).

Edward Coke Appellate Inn of Court (2001 – 2003).

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.

Georgia, 1997

District of Columbia, 1998

Alabama, 2005

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, 2001

United States Court of Appeals for the First Circuit, 2007

United States Court of Appeals for the Second Circuit, 2004

United States Court of Appeals for the Third Circuit, 2000

United States Court of Appeals for the Fourth Circuit, 1999

United States Court of Appeals for the Fifth Circuit, 2007

United States Court of Appeals for the Sixth Circuit, 2007

United States Court of Appeals for the Seventh Circuit, 2001

United States Court of Appeals for the Eighth Circuit, 2007

United States Court of Appeals for the Ninth Circuit, 2007

United States Court of Appeals for the Tenth Circuit, 2007

United States Court of Appeals for the Eleventh Circuit, 2004

United States Court of Appeals for the D.C. Circuit, 2000

United States Court of Appeals for the Federal Circuit, 2000

United States District Court for the Northern District of Alabama, 2007

United States District Court for the Middle District of Alabama, 2009

United States District Court for the Southern District of Alabama, 2009  
Supreme Court of Alabama, 2005  
District of Columbia Court of Appeals, 1998

My membership in the bar of the United States Court of Appeals for the Second Circuit lapsed through nonuse. I was readmitted in 2017.

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.

To my recollection:

American Law Institute (2006 – present).

Federalist Society for Law and Public Policy Studies (1999 – present).

Executive Committee, Federalism and Separation of Powers (2007 – present).

President, Birmingham Lawyers Chapter (2012 – 2015).

Samford University Board of Overseers (2013 – present).

U.S. Chamber Litigation Center (2014 – present).

State Litigation Committee (2014 – present).

Alabama State Advisory Committee to the U.S. Commission on Civil Rights (2011 – 2013; 2014 – 2016).

- 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 in response to 11a 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.

With Anna Manasco, *Brown v. Electrolux Home Prods., Inc.*, ON THE MERITS (Wash. Legal Found., Wash., D.C.), Sept. 11, 2015. Copy supplied.

*U.S. Supreme Court Clarifies Timing for Appeal of Individual Case Dismissed Within Consolidated Multidistrict Litigation Proceeding*, MONDAQ BUS. BRIEFING, Jan. 31, 2015. Copy supplied.

*The State Solicitor General Boom*, 32 App. Prac. J. & Upd. 6 (2013). Copy supplied.

With Jack Wilson, *Commentary: The Court on Class Arbitration*, NAT'L LAW J., Oct. 18, 2010. Copy supplied.

With Anna Manasco, *Commentary: Practice Trumps Theory in McDonald v. City of Chicago*, NAT'L LAW J., July 21, 2010. Copy supplied.

With J. Thomas Richie, *Amicus Update: Supreme Court Decision Spells Increased Difficulty for Defendants in Securities Laws Claims* (DRI: The Voice of the Defense Bar, Chicago, IL), Apr. 29, 2010. I have sought but been unable to obtain a copy of this article.

With Marc James Ayers, *A Brave New World of Judicial Recusal?: The United States Supreme Court Enters the Fray*, 70 ALA. LAW. 368 (Sept. 2009). Copy supplied.

*The State Solicitor General Boom*, CERTWORTHY (DRI: The Voice of the Defense Bar, Chicago, IL), Winter 2009. Copy supplied.

*Discrimination, Retaliation and Implied Private Rights of Action*, 6 ENGAGE: J. FEDERALIST SOC'Y PRAC. GROUPS 50 (May 1, 2005). Copy supplied.

Letter to the Editor, BIRMINGHAM NEWS, Apr. 18, 2005, at 6A. Copy supplied.

Letter to the Editor, MONTGOMERY ADVERTISER, Apr. 17, 2005, at A9. Copy supplied.

*Setting Incorporationism Straight: A Reinterpretation of the Slaughter-House Cases*, 109 YALE L.J. 643 (2000). Copy supplied.

*The Supreme Court, 1995 Term—Leading Cases*, 110 HARV. L. REV. 277 (1996). Copy supplied.

*Recent Case*, *Vernonia School District 47J v. Acton*, 115 S. Ct. 2386 (1995), 19 HARV. J.L. & PUB. POL'Y 209 (1995–96). Copy supplied.

*Recent Case*, *Metzl v. Leininger*, 57 F.3d 618 (7th Cir. 1995), 109 HARV. L. REV. 693 (1995). 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.

Advisory Committee on Appellate Rules, *Report of Advisory Committee on Appellate Rules*, May 18, 2016. Copy supplied.

Advisory Committee on Appellate Rules, *Report of Advisory Committee on Appellate Rules*, Dec. 15, 2014. Copy supplied.

Advisory Committee on Appellate Rules, *Report of Advisory Committee on Appellate Rules*, May 8, 2014. Copy supplied.

Advisory Committee on Appellate Rules, *Report of Advisory Committee on Appellate Rules*, Dec. 16, 2013. Copy supplied.

Advisory Committee on Appellate Rules, *Report of Advisory Committee on Appellate Rules*, May 8, 2013. Copy supplied.

Advisory Committee on Appellate Rules, *Report of Advisory Committee on Appellate Rules*, Dec. 5, 2012. Copy supplied.

Advisory Committee on Appellate Rules, *Report of Advisory Committee on Appellate Rules*, Dec. 7, 2011. Copy supplied.

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

*Draft Minutes of Spring 2016 Meeting of Advisory Committee on Appellate Rules* (Apr. 5–6, 2016) (statements made as member of Committee). Copy supplied.



*Draft Minutes of Fall 2015 Meeting of Advisory Committee on Appellate Rules* (Oct. 29–30, 2015) (statements made as member of Committee). Copy supplied.

*Minutes of Spring 2015 Meeting of Advisory Committee on Appellate Rules* (Apr. 23–24, 2015) (statements made as member of Committee). Copy supplied.

*Minutes of Fall 2014 Meeting of Advisory Committee on Appellate Rules* (Oct. 20, 2014) (statements made as member of Committee). Copy supplied.

*Minutes of Spring 2014 Meeting of Advisory Committee on Appellate Rules* (Apr. 28–29, 2014) (statements made as member of Committee). Copy supplied.

*Minutes of Spring 2013 Meeting of Advisory Committee on Appellate Rules* (Apr. 22–23, 2013) (statements made as member of Committee). Copy supplied.

*Minutes of Fall 2012 Meeting of Advisory Committee on Appellate Rules* (Sept. 27, 2012) (statements made as member of Committee). Copy supplied.

*Minutes of Spring 2012 Meeting of Advisory Committee on Appellate Rules* (Apr. 12, 2012) (statements made as member of Committee). Copy supplied.

*Minutes of Fall 2011 Meeting of Advisory Committee on Appellate Rules* (Oct. 13–14, 2011) (statements made as member of Committee). 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, 2017: Panelist, “An Update on Recent Appellate Cases Affecting the Financial Services Industry,” Bradley Financial Services Summit, Nashville, Tennessee. Notes supplied.

December 5, 2016: Panelist, “Preemption of Design-Defect and Warning Claims in Pharmaceutical Cases: A Cheat Sheet for Recent Developments in the Lower Courts,” American Conference Institute, 22nd Annual Conference on Drug & Medical Device Litigation, New York, New York. Slides supplied.

October 21, 2016: Panelist, “Trolling for Cases in the Twenty-first Century: The Plaintiffs’ Bar Goes Digital,” DRI – The Voice of the Defense Bar, Annual Meeting, Boston, Massachusetts. Slides supplied.

October 20, 2016: Presenter, "U.S. Supreme Court Review/Preview," Southeastern Business Law Institute, Birmingham, Alabama. I discussed key decisions and statistics from the Supreme Court's 2015 Term and previewed significant business-related cases on the Court's 2016 Term docket. I have no notes, transcript, or recording. The program was sponsored by Cumberland School of Law, Samford University, 800 Lakeshore Drive, Birmingham, Alabama 35229.

March 24, 2016: Panelist, "Effective and Persuasive Brief Writing," Practising Law Institute, Appellate Advocacy 2016, New York, New York. Recording supplied.

March 17, 2016: Panelist, Alabama State Bar, ASB Leadership Forum, Montgomery, Alabama. The Leadership Forum is designed to teach young lawyers leadership skills that they can deploy to develop a successful law practice. I participated on a panel about leadership in the context of complex and mass litigation. I have no notes, transcript, or recording. The address of the Alabama State Bar is 415 Dexter Avenue, Montgomery, Alabama 36104.

March 8, 2016: Presenter, Vestavia Hills Elementary Central, Birmingham, Alabama. I spoke to my son's fourth grade class about the Constitution and the U.S. Supreme Court, and my experience as an appellate lawyer. Slides supplied.

December 2-3, 2015: Panelist, "FDA's Generic Drug Labeling Proposed Rule: Best Practices for Generic, Innovator, and Biosimilar Manufacturers to Combat Anticipated Plaintiffs' Tactics," American Conference Institute, 21st Annual Conference on Drug & Medical Device Litigation, New York, New York. I addressed the issue of "innovator liability." Slides supplied.

November 12, 2015: Moderator, "The Rise and (Pit) Falls of the Modern Amicus," Appellate Judges Education Institute 2015 Summit, Washington, District of Columbia. Newsletter summary supplied.

October 7, 2015: Moderator, Council of Chief Judges of the State Courts of Appeal, Annual Conference, East Rutherford, New Jersey. I moderated a panel about media coverage of the courts. I have no notes, transcript, or recording. The Council can be reached c/o National Center for State Courts, 300 Newport Avenue, Williamsburg, Virginia 23185.

September 18, 2015: Presenter, Louis Pizitz Middle School, Vestavia Hills, Alabama. I spoke to my son's seventh grade class about the Constitution, the U.S. Supreme Court, and my experience as an appellate lawyer. Slides supplied as slides from March 8, 2016 event.

June 2, 2015: Panelist, "Preparing for and Delivering Oral Argument," Practising

Law Institute, Appellate Advocacy 2015, New York, New York. Panel questions and recording supplied.

November 14, 2014: Panelist, “Reading and Writing Advanced E-Briefs: What Works and What Doesn’t,” Appellate Judges Education Institute 2014 Summit, Dallas, Texas. Copy of the moderator’s “learning objectives” supplied.

November 6, 2014: Presenter, Southeastern Business Law Institute, Birmingham, Alabama. I reviewed the Supreme Court’s 2013 Term and previewed its 2014 Term. Notes supplied.

September 24, 2014: Panelist, Federalist Society, Atlanta Lawyers Chapter, Atlanta, Georgia. I participated on a panel reviewing the Supreme Court’s 2013 Term and previewing the Court’s 2014 Term. Notes supplied as notes from November 6, 2014 event.

August 21, 2014: Panelist, “Preparing for and Delivering an Effective Oral Argument,” Eleventh Circuit Appellate Practice Institute, Montgomery, Alabama. I have no notes, transcript, or recording. The Eleventh Circuit Appellate Practice Institute is co-sponsored by the Appellate Practice Sections of the Alabama, Florida, and Georgia State Bars. The address of the Alabama State Bar is 415 Dexter Avenue, Montgomery, Alabama 36104.

June 20, 2014: Presenter, “Appellate Practice in the Eleventh Circuit—Nuts and Bolts,” ABICLE, Tuscaloosa, Alabama. Notes supplied.

May 8, 2014: Panelist, “Preparing for and Delivering Oral Argument,” Practising Law Institute, Appellate Advocacy 2014, New York, New York. Recording supplied.

Spring 2014: Presenter, Vestavia Hills Elementary Central, Birmingham, Alabama. I spoke to my son’s fifth grade class about the Constitution and the U.S. Supreme Court, and my experience as an appellate lawyer. Slides supplied as slides from March 8, 2016 event.

November 15, 2013: Moderator, “Honing the Knife: Editing Effectively To Improve Legal Writing,” Appellate Judges Education Institute 2013 Summit, San Diego, California. Notes and newsletter summary supplied.

November 4, 2013: Panelist, “A Conversation With Former State Solicitors General,” Columbia Law School, Federalist Society, New York, New York. I have no notes, transcript, or recording. The address of the Federalist Society at Columbia Law School is 435 West 116th Street, New York, New York 10027.

October 24, 2013: Presenter, Southeastern Business Law Institute, Birmingham, Alabama. I gave a presentation reviewing the Supreme Court’s 2012 Term and

previewing its 2013 Term. Notes supplied.

September 27–28, 2013: Panelist, Supreme Court Preview, William & Mary Law School, Williamsburg, Virginia. I served on two panels, each previewing upcoming Supreme Court cases on a particular topic—“Civil Rights” and “Criminal.” I have no notes, transcript, or recording. The program was sponsored by the Institute of Bill of Rights Law at William & Mary Law School, 613 South Henry Street, Williamsburg, Virginia 23185.

September 17, 2013: Panelist, Federalist Society, Atlanta Lawyers Chapter, Atlanta, Georgia. I reviewed the Supreme Court’s 2012 Term and previewed the Court’s 2013 Term. Notes supplied as notes from October 24, 2013 event.

July 24, 2013: Presenter, Federalist Society, Birmingham Lawyers Chapter, Birmingham, Alabama. I reviewed the Supreme Court’s 2012 Term and previewed the Court’s 2013 Term. Notes supplied as notes from October 24, 2013 event.

June 12, 2013: Moderator, “A Conversation With Judge Bill Pryor,” Federalist Society, Birmingham Lawyers Chapter, Birmingham, Alabama. I have no notes, transcript, or recording. The address of the Federalist Society is 1776 I Street N.W., Suite 300, Washington, District of Columbia 20006.

March 20, 2013: Panelist, “Preparing for and Delivering Oral Argument,” Practising Law Institute, Appellate Advocacy 2013, New York, New York. Recording supplied.

February 7, 2013: Panelist, “Practice Tips from the Solicitors General,” Eleventh Circuit Appellate Practice Institute, Miami, Florida. I have no notes, transcript, or recording. The Eleventh Circuit Appellate Practice Institute is co-sponsored by the Appellate Practice Sections of the Alabama, Florida, and Georgia State Bars. The address of the Alabama State Bar is 415 Dexter Avenue, Montgomery, Alabama 36104.

November 15, 2012: Moderator, “The Presidential Election’s Impact on the Courts,” Appellate Judges Education Institute 2012 Summit, New Orleans, Louisiana. Notes and newsletter summary supplied.

October 25, 2012: Presenter, Southeastern Business Law Institute, Birmingham, Alabama. I reviewed the Supreme Court’s 2011 Term and previewed its 2012 Term. Notes supplied.

September 18, 2012: Presenter, Federalist Society, Birmingham Lawyers Chapter, Birmingham, Alabama. I reviewed the Supreme Court’s 2011 Term and previewed the Court’s 2012 Term. Notes supplied as notes from October 25, 2012 event.

May 4, 2012: Panelist, “Appellate Advocacy in Employment Cases,” DRI—The Voice of the Defense Bar, Employment and Labor Law Seminar, Chicago, Illinois. Notes and program materials supplied.

November 10, 2011: Moderator, “A Conversation with Justice Sotomayor,” Appellate Judges Education Institute 2011 Summit, Washington, District of Columbia. Notes supplied.

October 27, 2011: Presenter, Southeastern Business Law Institute, Birmingham, Alabama. I reviewed the Supreme Court’s 2010 Term and previewed its 2011 Term. Notes supplied.

September 28, 2011: Presenter, Federalist Society, Nashville Lawyers Chapter, Nashville, Tennessee. I reviewed the Supreme Court’s 2010 Term and previewed the Court’s 2011 Term. Notes supplied as notes from October 27, 2011 event.

August 24, 2011: Presenter, Federalist Society, Atlanta Lawyers Chapter, Atlanta, Georgia. I reviewed the Supreme Court’s 2010 Term and previewed the Court’s 2011 Term. Notes supplied as notes from October 27, 2011 event.

August 5, 2011: Moderator, “Twenty-Five Years and Counting: A Look at Justice Scalia’s Tenure on the Supreme Court,” American Bar Association, Annual Meeting, Toronto, Canada. Notes supplied.

July 28, 2011: Presenter, Federalist Society, Birmingham Lawyers Chapter, Birmingham, Alabama. I reviewed the Supreme Court’s 2010 Term and previewed the Court’s 2011 Term. Notes supplied as notes from October 27, 2011 event.

February 11, 2011: Moderator, “Techniques for Effective Oral Argument,” American Bar Association, Midyear Meeting, Atlanta, Georgia. Notes supplied.

November 19–20, 2010: Moderator, Appellate Judges Education Institute 2010 Summit, Dallas, Texas. I moderated two panels at this event—one about oral argument technique and one about media coverage of the Supreme Court. Notes and newsletter summary supplied.

October 28, 2010: Presenter, Southeastern Business Law Institute, Birmingham, Alabama. I reviewed the Supreme Court’s 2009 Term and previewed its 2010 Term. Notes supplied.

October 14, 2010: Moderator, Eleventh Circuit Appellate Practice Institute, Atlanta, Georgia. I moderated a discussion with Beth Brinkmann, then head of the Appellate Section of the Civil Division of the Department of Justice. Notes supplied.

September 7, 2010: Panelist, Federalist Society, University of Alabama Student Chapter, Tuscaloosa, Alabama. I do not specifically recall the topic of this presentation, but my faint recollection is that Mr. John Smyth (of Maynard Cooper & Gale LLP) conducted a “get to know you” event at the law school’s student chapter. I have no notes, transcript, or recording. The Student Chapter can be reached at the University of Alabama School of Law, 101 Paul W. Bryant Drive, East, Tuscaloosa, Alabama 35487.

September 27, 2010: Presenter, Federalist Society, Nashville Lawyers Chapter, Nashville, Tennessee. I reviewed the Supreme Court’s 2009 Term and previewed the Court’s 2010 Term. Notes supplied.

August 2010: Presenter, Federalist Society, Atlanta Lawyers Chapter, Atlanta, Georgia. I have been unable to find the date for this panel, but I reviewed the Supreme Court’s 2009 Term and previewed the Court’s 2010 Term. Notes supplied as notes from September 27, 2010 event.

May 3, 2010: Presenter, “The Supreme Court’s Decision in *Citizens United v. FEC*,” Gathering of Alabama Judges, Montgomery, Alabama. I addressed a group of Eleventh Circuit, federal district court, state supreme court, and state appellate judges. Notes supplied.

January 21, 2010: Presenter, Gathering of Alabama State Judges, Birmingham, Alabama. I provided a general overview of the Supreme Court, my experience clerking there, and practice before the Court. Notes supplied.

October 8–9, 2009: Panelist, “The Supreme Court’s Decision in *Caperton v. A.T. Massey Coal Co.*,” American Academy of Appellate Lawyers, Philadelphia, Pennsylvania. I have no notes, transcript or recording. The program was sponsored by the American Academy of Appellate Lawyers, 9707 Key West Avenue, Suite 100, Rockville, Maryland 20850.

October 2, 2009: Moot Court Presenter, “Supreme Court Preview: *Graham v. Florida*,” William & Mary Law School, Williamsburg, Virginia. Recording supplied.

July 31, 2009: Moderator, “The Cutting Edge of Federal-State Preemption: The Advocates’ Strategy and the Supreme Court’s Decisions in the 2008 Term,” American Bar Association Annual Meeting, Chicago, Illinois. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

July 18–19, 2009: Panelist, “Appellate Advocacy,” Alabama State Bar Annual Meeting, Point Clear, Alabama. I have no notes, transcript, or recording. The address of the Alabama State Bar is 415 Dexter Avenue, Montgomery, Alabama

36104.

July 23, 2009: Panelist, "*Caperton v. A.T. Massey Coal Co.*," Federalist Society, Birmingham Lawyers Chapter, Birmingham, Alabama. I have no notes, transcript, or recording. The address of the Federalist Society is 1776 I Street, N.W., Suite 300, Washington, District of Columbia 20006.

April 30, 2009: Panelist, "The Legacy of U.S. Supreme Court Justice David Souter," Eleventh Circuit Judicial Conference, Birmingham, Alabama. I have no notes, transcript, or recording. The address of the U.S. Court of Appeals for the Eleventh Circuit is 56 Forsyth Street, N.W., Atlanta, Georgia 30303.

January 21–22, 2009: Panelist, "Stories from the Battlefield," University of Texas School of Law Review of Litigation, Austin, Texas. Edited transcript supplied.

2009: Presenter, "Supreme Court and Appellate Practice," Mississippi College School of Law, Jackson, Mississippi. I have been unable to locate a precise date for this presentation, and I have no notes, transcript, or recording. The address of the Mississippi College School of Law is 151 East Griffith Street, Jackson, Mississippi 39201.

July 30, 2008: Presenter, Federalist Society, Montgomery Lawyers Chapter, Montgomery, Alabama. I reviewed the Supreme Court's 2007 Term and previewed the Court's 2008 Term. Notes supplied.

April 1, 2008: Presenter, Federalist Society, SCOTUScast 4-1-08. This telecast briefly recaps the issues and arguments in *Riley v. Kennedy*. Recording supplied.

Summer 2007: Presenter, Federalist Society, Birmingham Lawyers Chapter, Birmingham, Alabama. I reviewed the Supreme Court's 2006 Term and previewed the Court's 2007 Term. Notes supplied.

Sept. 21, 2005: Presenter, "The Supreme Court, Past and Prologue: A Look at the October 2004 and October 2005 Terms," CATO Institute's Center for Constitutional Studies, Washington, District of Columbia. CATO summary supplied.

September 19, 2005: Presenter, "The Rehnquist Legacy," Samford University, Montevallo, Alabama. I have no notes, transcript, or recording. The address of Samford University is 800 Lakeshore Drive, Birmingham, Alabama 35229.

September 30, 2004: "Age and the Death Penalty," Federalist Society's Criminal Law & Procedure Practice Group and the Bar Association of Metropolitan St. Louis Criminal Law Section and Individual Rights & Responsibilities Committee, St. Louis, Missouri. I have no notes, transcript, or recording. The address of the Federalist Society's Criminal Law & Procedure Practice Group is 1776 I Street,

N.W., Suite 300, Washington, District of Columbia 20006. Press coverage supplied.

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

Tim Steere, *Bradley Attorneys Overturn Death Penalty Conviction in Florida*, BIRMINGHAM BUS. J., Oct. 28, 2016. Copy supplied.

Press Release, Innocence Project, Former Death Penalty Prosecutors Urge Florida Supreme Court to Reverse Conviction of Man on Death Row Based on DNA Evidence Pointing to Alternate Suspect (July 17, 2014). Copy supplied (reprinted in multiple outlets).

Alyson M. Palmer, *Speakers Predict the Next Big Supreme Court Cases*, DAILY REPORT, Sept. 19, 2013, at 1. Copy supplied.

Clay Chandler, *Alabama Court Ruling Could Boost Mississippi's Business Recruitment*, MISS. BUS. J., March 22, 2013. Copy supplied.

Joe Palazzolo, *Generic-Drugs Ruling Stirs Backlash*, WALL ST. J., Feb. 24, 2013. Copy supplied.

Katie Thomas, *Man Taking Generic Drug Can Sue Branded Maker*, N.Y. TIMES, Jan. 11, 2013. Copy supplied.

John Ryan, *Lawyer Limelight: Kevin Newsom*, LAWDRAGON, Jan. 5, 2012. Copy supplied.

Marcia Coyle, *Brief of the Week: Troxel's Messy Wake*, NAT'L LAW J., Oct. 12, 2011. Copy supplied (reprinted in multiple outlets).

*Lawyers to Supreme Court: Hear These Cases*, LAW360.COM, Sept. 28, 2011. Copy supplied.

Tony Mauro, *Courtside: Studying the Language of Briefs*, NAT'L LAW J., Jan. 10, 2011. Copy supplied.

Tony Mauro and Marcia Coyle, *To Get on the Argument Docket, It Helps To Have Friends*, NAT'L LAW J., July 28, 2010. Copy supplied.

Abigail Rubenstein, *4th Circ. Kills \$1B Emissions Control Order Against TVA*, LAW360.COM, July 27, 2010. Copy supplied.



Samuel Howard, *Rising Star: Bradley Arant's Kevin Newsom*, LAW360.COM, Apr. 15, 2010. Copy supplied.

Barney Tumey, *High Court Refuses to Reconsider Ruling for Companies on Medicaid Drug Pricing*, BLOOMBERG BNA, Jan. 27, 2010. Copy supplied (reprinted in multiple outlets).

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Tony Mauro, *The Road to Montgomery*, LEGAL TIMES, Nov. 24, 2003. 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 judicial office.

- 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 judicial office.

- 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 never been a candidate for or held an elective public office. Since law school, I have held the following appointed positions:

Solicitor General, State of Alabama, 2003 – 2007. Appointed in December 2003 by then-Alabama Attorney General (now Judge) William H. Pryor Jr.

Law Clerk, Hon. David H. Souter, Supreme Court of the United States (2000 – 2001). Appointed by Justice Souter.

Law Clerk, Hon. Diarmuid F. O'Scannlain, United States Court of Appeals for the Ninth Circuit (1997 – 1998). Appointed by Judge O'Scannlain.

- 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.

Alabama Co-Chair, Lawyers for Romney, Birmingham, Alabama (2012).

**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 1997 to 1998, I served as a law clerk to the Honorable Diarmuid F. O'Scannlain, Circuit Judge of the United States Court of Appeals for the Ninth Circuit. From 2000 to 2001, I served as a law clerk to the Honorable David H. Souter, Associate Justice of the Supreme Court of the United States.

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

I have never practiced 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.

Summer 1995; Summer 1996  
Farris, Warfield & Kanaday  
[NOTE: Firm now part of Stites & Harbison PLLC]  
401 Commerce Street, Suite 800  
Nashville, Tennessee 37219  
Summer Associate

Summer 1996  
Sutherland, Asbill & Brennan LLP  
[NOTE: Firm now Eversheds Sutherland (US) LLP]  
999 Peachtree Street, N.E.  
Suite 2300  
Atlanta, Georgia 30309  
Summer Associate

Summer 1996  
Walston, Wells, Stabler, Anderson & Bains  
[NOTE: Firm now part of Jones Walker LLP]  
One Federal Place  
1819 Fifth Avenue North  
Birmingham, Alabama 35203

Summer Associate  
1998 – 2000; 2001 – 2003  
Covington & Burling LLP  
One CityCenter  
850 Tenth Street, N.W.  
Washington, District of Columbia 20001

Associate

2003 – 2007  
Office of the Attorney General  
State of Alabama  
501 Washington Avenue  
Montgomery, Alabama 36104  
Solicitor General

2007 – present  
Bradley Arant Boult Cummings LLP  
One Federal Place  
1819 Fifth Avenue North  
Birmingham, Alabama 35203  
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 not served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

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

I have always had an appellate practice—or perhaps more accurately an “issues and appeals” practice, in that it sometimes involves legal writing and oral advocacy in trial courts. I have argued four cases in the Supreme Court of the United States and at least 35 others in the United States Courts of Appeals for the Second, Third, Fourth, Fifth, Sixth, Seventh, Tenth, Eleventh, and D.C. Circuits, as well as in state supreme and appellate courts. I have also argued motions in both federal and state trial courts, as well in the Judicial Panel for Multidistrict Litigation. I have been involved in one capacity or another—from briefing to consulting to moot-courting—in countless additional cases. As explained in more detail below, I have practiced in both federal and state courts; I have represented business entities, governments, and individuals; and I have handled a variety of different kinds of cases (both civil and criminal).

After graduating from law school in 1997, I spent a year serving as a law clerk to Judge Diarmuid O’Scannlain of the United States Court of Appeals for the Ninth Circuit. In that capacity, I drafted bench memoranda, helped to prepare Judge O’Scannlain for oral argument, and

assisted in the preparation of draft opinions.

From 2000 to 2001, I spent a year serving as a law clerk to Justice David Souter of the Supreme Court of the United States. I wrote bench memoranda, assisted Justice Souter in preparing for and disposing of merits cases, and reviewed petitions for certiorari and made recommendations to the full Court.

Both between and following my clerkships—from 1998 to 2000, and then again from 2001 to 2003—I practiced as an associate at Covington & Burling LLP in Washington, DC. At Covington, I worked almost exclusively on appellate matters. I would estimate that approximately 85% of my cases were in the federal courts—either the Supreme Court of the United States or the federal appellate courts. The remaining 15% were in state appellate courts. My cases covered an array of subjects—telecommunications, admiralty, energy, patent, ERISA, education, civil rights, immigration, election law, and insurance. My clients were often business entities, but also included governments and individuals. While at Covington, I handled several *pro bono* appeals—two in the Third Circuit (civil rights and immigration) and one in the Seventh Circuit (education/civil rights).

In December 2003, I was hired by then-Attorney General William H. Pryor Jr. to be the Solicitor General of Alabama (my home state). In that role, I directed and coordinated the State's litigation—both civil and criminal—in the Supreme Court of the United States, the United States Courts of Appeals, and the Alabama Supreme Court. The cases for which I was principally responsible concerned, among other topics, constitutional law, election law, criminal law and procedure, habeas corpus law, securities law, and employment law.

In July 2007, I joined Bradley Arant Boult Cummings LLP as a partner. I am currently the chair of the firm's 20-member (or so) appellate group. Since joining Bradley Arant, I have handled cases spanning a variety of topical areas—product liability, general commercial, construction, securities, financial services, environmental, bankruptcy, admiralty, and civil rights. Although I have principally represented business entities in civil matters while at Bradley, I have also handled CJA/*pro bono* representations of individuals in both civil (constitutional) and criminal (death penalty and sentencing) matters.

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

I have always resisted the urge, prevalent among lawyers today, to specialize in a particular subject area. As explained immediately above,



during the course of my career, my cases have run the substantive gamut and have involved both civil and criminal matters.

While at Covington & Burling LLP from 1998 to 2000 and from 2001 to 2003, my clients were primarily business entities (energy companies, telecommunications companies, etc.) and governments. In the course of my *pro bono* work, I represented several indigent individual litigants.

While Alabama's Solicitor General from 2003 to 2007, my sole client was the State of Alabama. My caseload during that time was split roughly evenly between civil and criminal matters.

Since I joined Bradley Arant Boult Cummings LLP in 2007, my paying clients have typically been business entities (pharmaceutical and medical-device companies, automotive companies, health care companies, etc.) involved in civil litigation. I have also represented public officials and governments in civil matters. On the *pro bono* side, I have represented several individual litigants both in civil cases and in direct and collateral review of criminal proceedings.

- 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 law practice—both private and government—has always involved litigation. Over the years, I have appeared in court frequently.

- i. Indicate the percentage of your practice in:

- |                             |                              |
|-----------------------------|------------------------------|
| 1. federal courts:          | approx. 84%                  |
| 2. state courts of record:  | approx. 15%                  |
| 3. other courts:            | approx. 1% (Native American) |
| 4. administrative agencies: | 0%                           |

- ii. Indicate the percentage of your practice in:

- |                          |     |
|--------------------------|-----|
| 1. civil proceedings:    | 70% |
| 2. criminal proceedings: | 30% |

- 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 my practice has involved appellate rather than trial litigation, I have not tried cases to verdict. I have provided legal and "pre-appeal" support to trial teams in both jury and arbitral proceedings.

- i. What percentage of these trials were:
1. jury: \_\_\_\_\_%
  2. non-jury: \_\_\_\_\_%

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

I have represented businesses, individuals, state governments, governmental officials, and trade/professional associations before the Supreme Court of the United States. To the best of my recollection and searches of the public record:

I have argued four cases in the Supreme Court—three in my capacity as Solicitor General of the State of Alabama, and one since returning to private practice at Bradley Arant Boult Cummings LLP:

*Riley v. Kennedy*, 553 U.S. 406 (2008)  
*Jackson v. Birmingham Board of Education*, 544 U.S. 167 (2005)  
*Nelson v. Campbell*, 541 U.S. 637 (2004)  
*Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369 (2004)

I have obtained one summary reversal from the Supreme Court without separate merits briefing and argument:

*Allen v. Siebert*, 552 U.S. 3 (2007)

I have been counsel of record for *amici curiae* in 16 additional merits cases:

*Gelboim v. Bank of America Corp.*, 135 S. Ct. 897 (2015)  
*AT&T Mobility, LLC v. Concepcion*, 563 U.S. 333 (2011)  
*Merck & Co., Inc. v. Reynolds*, 559 U.S. 633 (2010)  
*Yeager v. United States*, 557 U.S. 110 (2009)  
*Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009)  
*United States v. Williams*, 553 U.S. 285 (2008)  
*Environmental Defense Fund v. Duke Energy Corp.*, 549 U.S. 561 (2007)  
*Hill v. McDonough*, 547 U.S. 573 (2006)  
*Scheidler v. National Organization for Women, Inc.*, 547 U.S. 9 (2006)  
*Arbaugh v. Y&H Corp.*, 546 U.S. 500 (2006)  
*Oregon v. Guzek*, 546 U.S. 517 (2006)  
*Domino's Pizza v. McDonald*, 546 U.S. 470 (2006)  
*City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113 (2005)  
*Gonzales v. Raich*, 545 U.S. 1 (2005)  
*Wilkinson v. Dotson*, 544 U.S. 74 (2005)  
*Roper v. Simmons*, 543 U.S. 551 (2005)

I have also filed briefs as lead counsel on behalf of either a party or *amicus curiae* in 15 cases at the certiorari stage in the Supreme Court:

*Dow Chemical Co. v. Cook*, No. 15-791 (Jan. 19, 2016)  
*E.R.G. v. E.H.G.*, No. 11-311 (Sept. 7, 2011)  
*Alabama v. Pope*, No. 08-345 (Sept. 15, 2008)  
*Shelby v. United States*, No. 08-58 (Aug. 8, 2008)  
*Hirko v. United States*, No. 08-40 (Aug. 8, 2008)  
*United American Ins. Co. v. Merrill*, No. 07-793 (Dec. 12, 2007)  
*Barbour v. Allen*, No. 06-10605 (May 10, 2007)  
*Mich. High School Athletic Ass'n, Inc. v. Communities for Equity*, No. 06-1038 (Feb. 28, 2007)  
*Siebert v. Allen*, No. 06-8808 (Feb. 12, 2007)  
*Grayson v. King*, No. 06-709 (Dec. 1, 2006)  
*Alabama v. Collins*, No. 05-1378 (Apr. 27, 2006)  
*Tomlin v. Alabama*, No. 04-10612 (Nov. 14, 2005)  
*Gregory v. Lee*, No. 05-344 (Oct. 17, 2005)  
*Givens v. Alabama Dep't of Corrections*, No. 04-1238 (May 3, 2005)  
*Lee v. Alabama*, No. 03-1520 (July 12, 2004)

Finally, I have been supporting counsel (not counsel of record) in an additional 26 matters before the Supreme Court—for both parties and *amici*, and at both the certiorari and merits stages:

*KB Home Raleigh-Durham, Inc. v. Elliott*, No. 14-423 (Oct. 9, 2014)  
*Alabama v. Georgia*, No. 11-1006 (Feb. 10, 2012)  
*Philip Morris USA v. Jackson*, No. 10-735 (Jan. 3, 2011)  
*VFJ Ventures, Inc. v. Surtees*, No. 08-916 (Jan. 21, 2009)  
*Georgia v. Florida*, No. 08-199 (Dec. 5, 2008)  
*Arthur v. Allen*, No. 06-954 (Mar. 13, 2007)  
*United Air Regulatory Group v. New York*, No. 06-750 (Dec. 18, 2006)  
*EPA v. New York*, No. 06-736 (Dec. 18, 2006)  
*Jones v. Campbell*, No. 06-114 (Oct. 10, 2006)  
*Lawrence v. Florida*, No. 05-8820 (Aug. 30, 2006)  
*Sophocleus v. Alabama Dep't of Transp.*, No. 04-1113 (June 15, 2005)  
*Alabama v. U.S. Army Corps of Engineers*, No. 05-1138 (May 22, 2006)  
*Montana v. Anyan*, No. 04-1318 (May 2, 2005)  
*Maples v. Alabama*, No. 04-765 (Jan. 5, 2005)  
*Snyder v. Alabama*, No. 04-7033 (Dec. 17, 2004)  
*McCreary Cnty., Ky. v. ACLU*, No. 03-1693 (Dec. 8, 2004)  
*Key v. Alabama*, No. 04-6042 (Oct. 27, 2004)  
*McNabb v. Alabama*, No. 04-6039 (Oct. 27, 2004)  
*Henderson v. Campbell*, No. 03-1527 (July 9, 2004)  
*Crum v. Flowers*, No. 03-1398 (May 7, 2004)  
*Rasul v. Bush*, No. 03-334 (Mar. 3, 2004)  
*Blakely v. Washington*, No. 02-1632 (Jan. 23, 2004)

*Kodak Retirement Income Plan v. Burke*, No. 03-565 (Oct. 14, 2003)  
*Harris Trust and Savings Bank v. Salomon Smith Barney Inc.*, 530 U.S.  
238 (2000)  
*Mobil Oil Exploration and Producing Southeast, Inc. v. United States*, 530  
U.S. 604 (2000)

I have supplied copies of all of the briefs on which I appeared in the merits cases listed above, along with the transcripts of my four oral arguments. I have also supplied copies of the briefs on which I appeared in the certiorari-stage cases listed above, with the exception of those filed in *Synder v. Alabama*, No. 04-7033; *Key v. Alabama*, No. 04-6042; and *McNabb v. Alabama*, No. 04-6039. I have sought, but been unable to obtain those briefs from my files, Westlaw, Lexis, the Supreme Court, the Alabama Attorney General's Office, the Library of Congress, and the National Archives.

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) *Riley v. Kennedy*, 553 U.S. 406 (2008)

This case arose under § 5 of the Voting Rights Act of 1965, which at that time required Alabama to obtain preclearance from the federal government before implementing "changes" to voting practices or procedures. At issue in the case were two decisions of the Alabama Supreme Court invalidating and then refusing to revive a previously precleared state statute (requiring special elections rather than appointments to fill vacancies on certain county commissions) on race-neutral state constitutional grounds. The question presented before the Supreme Court of the United States was whether those decisions were § 5 "changes" that required federal-government preclearance before becoming effective.

I represented the State of Alabama (and former Governor Bob Riley) in the Supreme Court. In its briefs and again at oral argument, the State contended (1) that § 5 should not be construed to require preclearance of a state supreme court's ordinary exercise of judicial review to interpret state law and (2) in any event, the

state statute that the state supreme court had invalidated was never “in force or effect” within the meaning of § 5, so as to trigger preclearance requirements.

The Supreme Court agreed with the second point (without reaching the first) by a 7–2 vote, with Justice Ginsburg writing for the majority. Chief Justice Roberts and Justices Scalia, Kennedy, Thomas, Breyer, and Alito joined that opinion. Justice Stevens filed a dissenting opinion in which Justice Souter joined.

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Bethesda, Maryland 20814  
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Counsel for the United States, supporting appellees:

Kannon K. Shanmugam  
[Then Assistant U.S. Solicitor General]  
Williams & Connolly LLP  
725 Twelfth Street, N.W.  
Washington, District of Columbia 20005  
(202) 434-5050

Eric D. Miller  
[Then Assistant U.S. Solicitor General]  
Perkins Coie LLP  
1201 Third Avenue, Suite 4900  
Seattle, Washington 98101  
(206) 359-3773

- (2) *Jackson v. Birmingham Board of Education*, 544 U.S. 167 (2005)

This case presented the question whether there is an implied private right of action in Title IX of the Education Amendments Act of 1972, 20 U.S.C. §§ 1681 *et seq.*, to redress alleged retaliation for complaints about unlawful sex discrimination, in addition to the underlying discrimination itself.

In my capacity as Alabama’s Solicitor General, I represented the State of Alabama as *amicus curiae* in support of the defendant-respondent Birmingham Board of Education. Alabama’s brief—joined by Delaware, Hawaii, Nevada, Oregon, South Dakota, Tennessee, and Virginia—contended that a party advocating the recognition of an implied private right of action bears the burden of demonstrating clear evidence of congressional intent and that neither Title IX’s text, history, nor structure evinced such an intent to provide a private remedy—in addition to agency enforcement—for alleged retaliation, separate and apart from discrimination.

The Supreme Court rejected that position in a 5–4 decision authored by Justice O’Connor. Justices Stevens, Souter, Ginsburg, and Breyer joined the majority opinion. Justice Thomas filed a dissenting opinion, in which Chief Justice Rehnquist and Justices Scalia and Kennedy joined.

Counsel for petitioners:

Walter E. Dellinger III  
O’Melveny & Myers LLP  
1625 Eye Street, N.W.

Washington, District of Columbia 20006  
(202) 383-5300

Counsel for respondents:

Kenneth L. Thomas  
[Then at Thomas, Means, Gillis & Seay P.C.]  
Alabama State University  
Office of General Counsel  
915 South Jackson Street  
Montgomery, Alabama 36104  
(334) 229-1465

- (3) *Grayson v. King*, 460 F.3d 1328 (11th Cir. 2006)

This case presented the question whether a death-sentenced inmate who has exhausted post-conviction and habeas corpus remedies has a federal constitutional right to gain access to biological evidence presented at trial in order to subject that evidence to new DNA testing.

In my capacity as Alabama's Solicitor General, I represented the State, contending that in the circumstances presented—namely, where (1) the petitioning inmate had never affirmatively asserted his actual innocence, (2) the record evidence of his guilt was overwhelming, (3) the testing sought could not conclusively prove his innocence in any event, and (4) he had waited, without explanation, until the eleventh hour to seek testing—the Constitution did not guarantee a right to access the evidence for testing. The State's brief emphasized that a number of state legislatures had begun to address the post-conviction-DNA issue and that courts should allow the democratic process to play out.

In a unanimous opinion authored by Judge Hull and joined by Judges Anderson and Birch, the U.S. Court of Appeals for the Eleventh Circuit agreed. The court held that, "under the particular circumstances of this case," the inmate did not have a right to conduct new DNA testing under either *Brady v. Maryland* or procedural- or substantive-due-process principles. The Supreme Court of the United States subsequently came to the same conclusion in *District Attorney's Office for the Third Judicial District v. Osborne*, 557 U.S. 52 (2009).

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- (4) *Aguirre-Jarquin v. State*, 202 So. 3d 785 (Fla. 2016)

This case presented the question whether, under Florida law, a death sentenced inmate was entitled to a new trial based on “newly discovered evidence”—in particular, (1) new DNA evidence revealing a third party’s blood in key areas of the crime scene and (2) post-conviction statements in which the same third party had arguably confessed to the crime.

At the request of the Innocence Project in New York City, I agreed—along with another lawyer in my firm, Lindsey Boney—to represent the inmate, Mr. Aguirre-Jarquin, on a *pro bono* basis. Through briefs and oral argument, Mr. Aguirre-Jarquin contended that the cumulative effect of the newly discovered evidence—the third party’s DNA at the crime scene and subsequent confessions—required that he be granted a new trial.

In a unanimous opinion, the Florida Supreme Court [Chief Justice Labarga and Justices Pariente, Lewis, Quince, Canady, Polston, and Perry] agreed with that position, vacated Mr. Aguirre-Jarquin’s conviction, and remanded the case for a new trial.

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- (5) *Guarino v. Wyeth LLC*, 719 F.3d 1245 (11th Cir. 2013) [and related cases]

This case—along with a number of other similar matters that I have handled—presented the question whether a brand-name pharmaceutical manufacturer can be held liable (in *Guarino*, under Georgia law) to a plaintiff who never used its product but, instead, used a generic-equivalent product made and sold by another company. Among similar cases that I have argued are *Metz v. Wyeth LLC*, 525 Fed. Appx. 893 (11th Cir. 2013) (Florida law), *Lashley v. Pfizer, Inc.*, 750 F.3d 470 (5th Cir. 2014) (Mississippi and Texas law), *Franzman v. Wyeth, Inc.*, 451 S.W.3d 676 (Mo. Ct. App. 2014) (Kentucky law), and *Wyeth, Inc. v. Weeks*, 159 So. 3d 649 (Ala. 2013) (Alabama law).

I represented Wyeth and, in each instance, contended (1) that the plaintiff's personal-injury claim, however framed, was a product-liability claim that requires proof that the plaintiff used the defendant's product, and (2) that in any event, a brand-name manufacturer does not have an enforceable tort "duty" to a consumer who never used its product.

In *Guarino*, the Eleventh Circuit agreed (in a unanimous opinion authored by Judge Wilson and joined by Judge Hull and Ninth Circuit Judge Farris, sitting by designation) and rejected the plaintiff's "innovator liability" theory. On behalf of Wyeth, I have prevailed in a number of similar cases around the country, including in *Metz*, *Lashley*, and *Franzman*. In *Weeks*, the Alabama Supreme Court disagreed with Wyeth's position and embraced innovator liability.

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- (6) *Badger v. Southern Farm Bureau Life Ins. Co.*, 612 F.3d 1334 (11th Cir. 2010)

This case, on appeal from a \$31.7 million verdict, presented the question whether in the context of an arm's-length securities transaction, SEC Rule 10b-5 requires the buying party to make disclosures directly to the selling party's shareholders.

I represented Southern Farm Bureau Life Insurance Company and contended (1) that Southern Farm's negotiator's statement that he believed that an independent professional's \$3.3 million valuation of the debenture at issue represented a "fair price" was not a statement of fact that could give rise to "half-truth" liability under Rule 10b-5, and (2) that even if it could, the trial court had erroneously instructed the jury that Southern Farm had a duty to disclose directly to the selling party's shareholders that it would be willing to pay more.

In a unanimous opinion authored by Judge Anderson and joined by Judges Edmondson and Ed Carnes, the Eleventh Circuit agreed with my client's position and reversed the verdict and resulting judgment.

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- (7) *HealthSouth Corp. v. Ernst & Young, LLP*, AAA Case No. 30-107-Y-567-06  
(AAA Dec. 12, 2012)

I represented HealthSouth Corporation in this case arising out of a massive \$2.6 billion accounting fraud perpetrated on HealthSouth and its shareholders by the company's former Chairman and CEO, Richard Scrushy. After the FBI uncovered the wrongdoing, the company—under new management—sued Ernst & Young, LLP, which had been its independent auditor throughout the duration of the fraud. The suit proceeded to arbitration and, at the close of HealthSouth's case in chief, E&Y moved for judgment as a matter of law on the ground that the fraudsters' wrongdoing should be "imputed" to HealthSouth, thereby rendering the company "*in pari delicto*" and barring its claim for recovery.

HealthSouth contended (1) that E&Y's contractual promise to test for management fraud should preclude its effort to impute that same fraud to the company itself, (2) that applicable agency-law principles foreclosed E&Y's imputation argument, and (3) that E&Y's imputation-based defenses rendered its audit contract illusory and effectively immunized auditors from malpractice liability. An arbitration panel made up of Arbitrators Sternberg, Bassler, and

Farber disagreed with HealthSouth's position and granted a judgment in favor of E&Y.

HealthSouth moved to vacate the arbitral award, but that motion was denied, and the denial was affirmed by the Alabama Supreme Court. *See Tucker v. Ernst & Young, LLP*, 159 So. 3d 1263 (Ala. 2014).

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- (8) *SmithKlineBeecham Corp. d/b/a GlaxoSmithKline v. State of Alabama*, 41 So. 3d 15 (Ala. 2009)

I represented GlaxoSmithKline in this case, in which the State of Alabama sued 73 major pharmaceutical companies alleging that, through the use of “average wholesale price” and “wholesale acquisition cost” benchmarks, they had fraudulently inflated the prices of their prescription drugs for Medicaid-reimbursement purposes. A jury in Montgomery County, Alabama entered judgments against GlaxoSmithKline and two other companies (Astrazeneca and Novartis) totaling more than \$300 million.

The Alabama Supreme Court [Chief Justice Cobb and Justices Lyons, Woodall, Stuart, Parker, Smith, Bolin, Shaw, and Murdock] reversed the verdicts and rendered judgment in the companies’ favor. The Court held that the State had long known—and certainly should have known—that the AWP and WAC measures were, in effect, “sticker” prices that did not reflect discounts and rebates, and that in the light of such knowledge the State could not prove that the companies had engaged in fraud. The case was (to my recollection) the first among many AWP/WAC cases around the country to be considered by a state supreme court.

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- (9) *Williams v. Morgan*, 478 F.3d 1316 (11th Cir. 2007)

This case presented the question whether an Alabama statute that prohibited the commercial sale (but not the private use) of recreational “sex toys” violated the

Due Process Cause—and, in particular, whether the statute survived “rational basis” scrutiny.

In my role as Alabama’s Solicitor General, I defended the statute’s constitutionality. The State contended that the statute was rationally related to at least three legitimate state interests: (1) preserving and promoting “public morality”; (2) avoiding harmful “secondary effects” (e.g., declining property values); and (3) protecting children and others from unwelcome exposure.

In a unanimous opinion authored by Judge Wilson and joined by Judges Dubina and Hodges, the Eleventh Circuit held that “the State’s interest in preserving and promoting public morality provide[d] a rational basis for the challenged statute.” The court held that to the extent *Lawrence v. Texas*, 539 U.S. 558 (2003), rejected public morality as a legitimate government interest, it did so only with respect to laws that, unlike Alabama’s statute, target private, non-commercial activity.

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(10) *Ogbudimpka v. Ashcroft*, 342 F.3d 207 (3d Cir. 2003)

I represented a Nigerian citizen, Christopher Ogbudimpka, in this *pro bono* appeal to the Third Circuit. My client, who had been ordered removed to Nigeria, contended that the district court erroneously dismissed his habeas corpus petition under 28 U.S.C. § 2241 alleging a claim under the U.N. Convention Against Torture. He argued that Congress had not spoken with sufficient clarity to deny federal courts jurisdiction to consider CAT-based habeas petitions and that the CAT’s status as a non-self-executing treaty did not alter the jurisdictional analysis.

In a unanimous opinion authored by Judge Ambro and joined by Judge Sloviter

and Eastern District of Pennsylvania Judge Tucker, sitting by designation, the Third Circuit agreed and held that federal district courts had habeas jurisdiction to consider CAT-based claims. (In the REAL ID Act, Congress later expressly eliminated almost all habeas jurisdiction over CAT claims. *See* 8 U.S.C. § 1252(a)(4).)

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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.)

Since 2011, I have been a member of the Advisory Committee on Appellate Rules, which studies and recommends amendments and improvements to the Federal Rules of Appellate Procedure. I was appointed to the 10-member Committee in 2011 by Chief Justice John Roberts and re-appointed in 2014.

I have taught several law-school courses on an adjunct basis. In particular, I have taught constitutional law seminars focused on the Fourteenth Amendment (Georgetown University Law Center), U.S. Supreme Court practice (Vanderbilt Law School), U.S. Supreme Court decisionmaking (Cumberland School of Law), and comparative constitutional systems (Cumberland School of Law (study abroad)).

I have never acted or registered as 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.

In spring 2002, I taught a Fourteenth Amendment seminar at Georgetown University Law Center. The class covered various topics related to the Fourteenth Amendment, including (as I recall) the legislative history of the 39th Congress, the *Slaughter-House Cases*, the Supreme Court's other early interpretations of the Amendment, and the debate over the incorporation of the Bill of Rights. I have been unable to obtain the syllabus for this course, but have supplied the official course description from Georgetown University Law Center.

In the spring 2009 and 2010 semesters, I co-taught a U.S. Supreme Court seminar at Cumberland School of Law. Students read the principal briefs and oral argument transcripts in cases actually pending before the Supreme Court and then prepared short "opinions" resolving those cases. We then discussed the cases and the students' views in class. Syllabi supplied.

In spring 2011, I taught a U.S. Supreme Court Litigation "short course" at Vanderbilt University Law School. The class covered various aspects of U.S. Supreme Court practice, including jurisdiction, certiorari petitions, merits briefs, *amicus* briefs, oral argument, and the U.S. Solicitor General's office. Syllabus supplied.

In summer 2011, I co-taught a seminar on Comparative Constitutional systems in conjunction with Cumberland School of Law's "study abroad" program at Cambridge University in England. The class compared the constitutional structures, systems, courts, and procedures in several countries, including the United States, the United Kingdom, Canada, Australia, Israel, and Brazil. Syllabus supplied.

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, at some point within two years of my separation from Bradley Arant Boult Cummings LLP, I will be entitled to the return of the capital that I have "paid into" the firm. My capital account is presently approximately \$350,000.

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 hope that I will be able to continue to teach a law school course on an adjunct basis once a year. I have no commitments or agreements to do so, and no other plans for outside activities.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

If confirmed, I will recuse in any litigation where I have ever played a role. For a period of time, I anticipate recusing in all cases where my current firm, Bradley Arant Boult Cummings LLP, represents a party. I will evaluate any other real or potential conflict, or relationship that could give rise to appearance of conflict, on a case by case basis and determine appropriate action with the advice of parties and their counsel including recusal where necessary.

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

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

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

Most recently, I have been a member of a team representing a Florida death-row inmate

in his effort to secure a new trial following the discovery of new DNA evidence and third-party confessions suggesting his innocence. A younger lawyer in my firm has been lead counsel; I have consulted with the team on strategy, reviewed and edited briefs, and helped to prepare for oral argument. We recently won a unanimous victory in the Florida Supreme Court. *See Aguirre-Jarquin v. State*, 202 So. 3d 785 (Fla. 2016).

In addition, as lead or arguing counsel, I have handled five *pro bono* appeals, as follows:

(1) *Mitchell v. Horn*, 318 F.3d 523 (3d Cir. 2003) (successfully arguing that district court improperly dismissed inmate's civil rights claim).

(2) *Ogbudimkpa v. Ashcroft*, 342 F.3d 207 (3d Cir. 2003) (successfully arguing that alien could pursue claim in federal court under U.N. Convention Against Torture).

(3) *T.D. v. LaGrange School District No. 102*, 349 F.3d 469 (7th Cir. 2003) (unsuccessfully arguing that favorable settlement with school district made child's parents "prevailing parties" within meaning of Individuals With Disabilities Act's attorneys' fees provision).

(4) *United States v. Hamaker*, 303 Fed. Appx. 855 (11th Cir. 2008) (successfully arguing that 18-month prison sentence for bank fraud was appropriate and did not require enhancement). Note: This was a CJA case for which the firm was partially reimbursed.

(5) *E.R.G. v. E.H.G.*, No. 11-311 (U.S. Supreme Court Sept. 7, 2011) (unsuccessfully seeking certiorari review of Alabama Supreme Court decision invalidating grandparent-visitation statute on Fourteenth Amendment grounds).

## 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.

On Monday, January 30, 2017, I received a telephone call from Katie Boyd Britt, chief of staff to Senator Richard Shelby, about the vacancy on the Eleventh Circuit. After a brief conversation, she asked if I could come to Washington to visit with the Senator. During that visit, which took place the next day—January 31, 2017—I met with both Senator Shelby and then-Senator Jeff Sessions. Either later that week or early the following week, both Senators called to tell me that they had recommended me to the White House for the vacancy.

Since March 1, 2017, I have been in contact with officials from the White House Counsel's Office. On Tuesday, March 7, 2017, I interviewed with attorneys from the White House Counsel's Office and the Office of Legal Policy at the Department of Justice in Washington, District of Columbia.

- 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.