

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name (include any former names used.)**

Mark R. Kravitz

2. **Address: List current place of residence and office address(es).**

Residence: Guilford, CT

Office: Wiggin & Dana, LLP
One Century Tower
New Haven, CT 06508-1832

3. **Date and place of birth.**

June 21, 1950, Philadelphia, PA

4. **Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

Married to Wendy Evans Kravitz, who is not employed outside the home

5. **Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**

Georgetown University Law Center; 1972-1975; J.D., May 1975

Wesleyan University; 1968-1972; B.A., May 1972, *magna cum laude*

6. **Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

Wiggin & Dana, LLP. Partner (09/76-06/78; 09/79-present)
One Century Tower
New Haven, CT 06508-1832

University of Connecticut School of Law, Adjunct Professor of Law
(01/95-present)
55 Elizabeth St.
Hartford, CT 06105

Yale University Law School, Visiting Lecturer in Law (01/00-05/00)
127 Wall St.
New Haven, CT 06520

Law Clerk to Justice William H. Rehnquist (07/78-07/79)
Supreme Court of the United States
First St., N.E.
Washington, D.C. 20543

Law Clerk to Judge James Hunter, III (07/75-07/76)
United States Court of Appeals for the Third Circuit
22614 U.S. Courthouse
Independence Mall West
Philadelphia, PA 19106

Covington & Burling, Summer Associate (06/74-08/74)
1201 Pennsylvania Ave., N.W.
Washington, D.C. 20004

Cape Cod Sea Camps, Waterfront Director (06/73-08/73; 06/72-08/72)
East Brewster, MA 02640

American Academy of Appellate Lawyers, Unpaid Director (09/02-present)
15245 Shady Grove Rd., Suite 130
Rockville, MD 20850

Friends of the Yale Children's Hospital, Unpaid Chairman and Director
(Director and Director Emeritus, 1989 to present; Chairman, 1989-1992)
20 York St.
New Haven, CT 06504

Guilford Land Conservation Trust, Unpaid Director (1995-2001)
P.O. Box 200
Guilford, CT 06437

Board of Ethics, Town of Guilford, CT, Unpaid Member (1994-2001)
31 Park Street
Guilford, CT 06437

Connecticut Council on Environmental Quality, Unpaid Member (1991-1995)
79 Elm St., 6th floor
Hartford, CT 06106

Connecticut Foundation for Open Government, Unpaid Director (1991-2000)
P.O. 587
Danbury, CT 06813

Guilford Library Association, Unpaid Director and Treasurer (1992-2000)
67 Park St.
Guilford, CT 06437

Community Advisory Board, VA Connecticut Healthcare
System, Unpaid Director (1993-1997)
950 Campbell Ave.
West Haven, CT 06516

The Connecticut Food Bank, Unpaid Chairman and Director (1984-1986)
150 Bradley Ave.
East Haven, CT

The Children's Center, Unpaid Director (1976-1986)
1400 Whitney Ave.
Hamden, CT

The Community Nursery School, Unpaid President and Director (1984-1986)
Old Sachem's Head Rd.
Guilford, CT 06437

7. **Military Service:** Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

None

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Best Lawyers In America, 1991 to date

Fellow, American Academy of Appellate Lawyers, elected 1996

James W. Cooper Fellow, The Connecticut Bar Foundation, elected 1996

Member, The American Law Institute, elected 1992

Recipient, Deane C. Avery Award, 1995 (for "advancing the cause of freedom of information and freedom of speech in Connecticut")

Managing Editor, Georgetown Law Journal

Phi Beta Kappa, elected 1972

Wesleyan University, graduated Magna Cum Laude and with High Honors in Government

Recipient, Davenport Prize for excellence in Government, Wesleyan University, 1972

9. **Bar Associations:** List all bar associations, legal or judicial-related committees 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.

Member (appointed by Chief Justice of the United States), U.S. Judicial Conference's Standing Committee on the Rules of Practice and Procedure in the United States Courts, 2001 to date

Member (appointed by the Chief Justice of the Connecticut Supreme Court), Advisory Committee on the Appellate Rules, Supreme Court of the State of Connecticut, 1997 to date

Member (appointed by the Chief Judge of the Second Circuit), Advisory Committee on Appellate Rules, United States Court of Appeals for the Second Circuit, 1999 to date

Member (appointed by the Chief Judge of the District of Connecticut), Civil Justice Advisory Group, United States District Court for the District of Connecticut, 1996-2001

Member, Executive Committee of the Federal Practice Section, Connecticut Bar Association, 1995-2000

Fellow, American Academy of Appellate Lawyers, 1996 to date; Director, Sept. 2002 to date

Member, The American Law Institute, elected 1992 to date

James W. Cooper Fellow, The Connecticut Bar Foundation, elected 1996

Member, Subcommittee on Writs of Error, Connecticut Law Revision Commission, 2002

Chair, Local Rules Subcommittee, Federal Practice Section, Connecticut Bar Association, 1997-2000

Member, Alternative Dispute Resolution Committee, Fellows of the Connecticut Bar Foundation, 1997-2000

Member, Executive Committee, International Section, Connecticut Bar Association, 1985-1990

Member, Connecticut Bar Association Sub-Committee on Legislation Regarding International Arbitration, 1989

Member, Connecticut Bar Association Sub-Committee on Legislation for the Formation of Appellate Court, 1982

Member, American, Connecticut and New Haven County Bar Associations, 1976 to date

10. **Other Memberships:** List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

I am not a member of any organization that is active in lobbying before public bodies. Other organizations in addition to those listed above to which I currently belong are:

Friends of the Yale Children's Hospital
Guilford Land Conservation Trust
Connecticut Foundation for Open Government
Guilford Library Association
The Connecticut Food Bank
U.S. Supreme Court Historical Society
Sachem's Head Yacht Club
The Benchers

The foregoing list is limited to those civic, social and other organizations with which I am currently actively associated. I have not listed other non-profit organizations which may consider me to be a "member" by virtue of an annual contribution, but with which I have not been actively involved (e.g., The Smithsonian, the local public radio or television station, etc.).

11. **Court Admission:** List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Supreme Court of the State of Connecticut, Oct. 1975
 Supreme Court of the United States, Jan. 1989
 U.S. Court of Appeals for the Second Circuit, Dec. 1983
 U.S. District Court for the District of Connecticut, Nov. 1976
 U.S. Court of Appeals for the First Circuit, Sept. 2002
 U.S. Court of Appeals for the Third Circuit, Apr. 1976
 U.S. Court of Appeals for the Fourth Circuit, Dec. 1999
 U.S. Court of Appeals for the Eighth Circuit, Sept. 1996
 U.S. Court of Appeals for the Ninth Circuit, Dec. 1999
 U.S. Court of Appeals for the Tenth Circuit, Dec. 1999
 U.S. Court of Appeals for the Eleventh Circuit, Dec. 1996
 U.S. Court of Appeals for the D.C. Circuit, Sept. 1996
 U.S. Court of Appeals for the Federal Circuit, Oct. 1985
 U.S. Court of International Trade, Dec. 1984
 U.S. Court of Federal Claims, Mar. 1998
 U.S. Tax Court, Oct. 1990

In addition, I have been admitted *pro hac vice* in numerous federal district courts and state supreme and appellate courts. I have never had my admission to the bar of any court, whether regular admission or *pro hac vice* admission, withdrawn or interrupted for any reason.

12. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

BOOKS AND TREATISES

Author, "Survey of Connecticut Privacy and Related Claims Against The Media," in MEDIA PRIVACY AND RELATED LAW, published annually by the Media Defense Resource Center (1995-2002)

Editor, CHAMBERS PRACTICES: A GUIDE TO THE PRACTICES OF U.S. DISTRICT COURT JUDGES AND MAGISTRATE JUDGES IN CONNECTICUT, published by the Connecticut Bar Association, 2000

Contributor, EMERGING PROBLEMS UNDER THE FEDERAL RULES OF EVIDENCE (2d ed. 1991)

LAW REVIEW ARTICLES

"Key Differences Between Appeals in the Second Circuit and Connecticut's Appellate Courts, ____ CONN. BAR J. ____ (2003) (expected publication date, Spring 2003)

"Unpleasant Duties: Imposing Sanctions for Frivolous Appeals," 4 J. APP. PRAC. & PROC. 335 (Fall 2002)

"Developments in the Second Circuit: 2000-2001," 34 CONN. L. REV. 833 (2002)

"Developments in the Second Circuit: 1999-2000," 33 CONN. L. REV. 945 (2001)

"Developments in the Second Circuit: 1998-1999," 32 CONN. L. REV. 949 (2000), *reprinted in* 74 CONN. BAR J. 1 (Aug. 2000)

"Developments in the Second Circuit: 1997-1998," 73 CONN. BAR J. 143 (1999), *reprinted in* 18 QUINNIPIAC L. REV. 4 (1999)

"Developments in the Second Circuit: 1996-1997," 72 CONN. BAR J. 109 (1998), *reprinted in* 17 QUINNIPIAC L. REV. 777 (1999)

"CUTPA Liability and Professional Negligence," 9 CONNECTICUT LAWYER 4 (Dec. 1998/Jan. 1999)

"Oral Argument Before the Second Circuit," 71 CONN. BAR J. 204 (June 1997)

"Compelling Arbitration," 23 LITIGATION 34 (Fall 1996)

"Desegregation of Private Schools: Section 1981 As An Alternative To State Action," 62 GEO.L.J. 1363 (1975)

PERIODICALS

- "Mandates," *The National Law Journal*, Feb. 10, 2003, at B6
- "Charge Errors," *The National Law Journal*, Dec. 2, 2002, at B5
- "En Banc Voting," *The National Law Journal*, Oct. 7, 2002, at B7
- "Creating Finality," *The National Law Journal*, July 8, 2002, at B9
- "A New Judge," *The National Law Journal*, Apr. 22, 2002, at B9
- "Frivolous Appeals," *The National Law Journal*, Feb. 11, 2002, at B10
- "New Trials," *The National Law Journal*, Dec. 3, 2001, at B13
- "General Verdict Rule," *The National Law Journal*, Sept. 24, 2001, at B10
- "Removal remands," *The National Law Journal*, June 25, 2001, at A10
- "Stays pending appeal," *The National Law Journal*, Apr. 2, 2001, at A10
- "Deadlines," *The National Law Journal*, Jan. 22, 2001, at A14
- "Handling Remittitur," *The National Law Journal*, Nov. 6, 2000, at A18
- "Pendent Jurisdiction," *The National Law Journal*, July 3, 2000, at A15
- "'Daubert' On Appeal," *The National Law Journal*, Apr. 17, 2000, at A14
- "Preserving Error," *The National Law Journal*, Jan. 17, 2000, at A14
- "Using Certification," *The National Law Journal*, Oct. 18, 1999, at B17
- "Cross-Appeals," *The National Law Journal*, June 21, 1999, at B9
- "Settling Cases," *The National Law Journal*, Apr. 26, 1999, at B7
- "International Rules for the International Net?," 24 *Connecticut Law Tribune* 49, at A4 (Dec. 7, 1998)
- "Trends in High Places," 24 *Connecticut Law Tribune* 29, at 15 (July 13, 1998)

- "Will Internet Service Providers Remain Immune," 24 *Connecticut Law Tribune* 14, at 2A (Mar. 30, 1998)
- "BMW's Limited Relevance in Connecticut," 24 *Connecticut Law Tribune* 3, at 14 (Jan. 12, 1998)
- "Pretext Does Not Mean Bias," 23 *Connecticut Law Tribune* 43, at 17 (Oct. 27, 1997)
- "Turn out the Light: Do we really need false light invasion of privacy?," 23 *Connecticut Law Tribune* 30, at 30 (July 21, 1997)
- "A Virtual Presence – Personal Jurisdiction and the Internet," 23 *Connecticut Law Tribune* 17, at 2A (Apr. 21, 1997)
- "Abusing Abuse of Process Claims," 23 *Connecticut Law Tribune* 6, at 22 (Feb. 3, 1997)
- "The New and Improved *Santopietro*," 22 *Connecticut Law Tribune* 40, at 21 (Oct. 7, 1996)
- "Justice Rehnquist: A Personal Remembrance," *The Day*, July 20, 1986, at C3

SPEECHES, PRESENTATIONS

- Fall 2002 Speaker, ABA Appellate Practice Institute, Reno, NV
- Spring 2002 Speaker, "Winning An Appeal: The Art of Persuasion in Connecticut Appellate Practice," Connecticut Bar Association
- Spring 2002 Panelist, Appellate Practice in Connecticut, Fairfield County Bar Association, Stamford, Connecticut
- Fall 2001 Panelist, Developments in the Connecticut Supreme Court, Young Lawyer's Section of the Connecticut Bar Association
- Fall 2001 Speaker, "Oral Argument," New England 2001 Appellate Judges' Conference, Providence, RI
- Fall 2001 Panelist, Appellate Practice Before the Second Circuit, Federal Bar Council, Second Annual Fall Bench and Bar Retreat, CT
- Spring 2001 Speaker, Appellate Advocacy Seminar, Connecticut Bar Association
- Fall 2001 Chair, Second Circuit Appeals: Doing It Right, Connecticut Bar Association
- Winter 2001 Speaker, Winning on Appeal: The Art of Persuasion in Connecticut Appellate Practice, Connecticut Bar Association

- Winter 2001 Speaker, New Haven County Bar Association, "Appellate Practice: A Panel Discussion for Trial Attorneys and Appellate Practitioners"
- Fall 1998 Chair, Second Circuit Practice and Procedure ~ Doing It Right, Connecticut Bar Association
- Aug. 1997 Speaker, Recovering Damages in Civil Litigation in Federal Courts, ABA Annual Meeting, Litigation Section, San Francisco, CA
- Spring 1997 Chair, Second Circuit Appeals: Doing It Right, Connecticut Bar Association
- Spring 1996 Chair, Federal Appellate Practice and Procedure, Connecticut Bar Association
- Summer 1996 Speaker, Address to the Board of Education of the Town of Guilford on a Proposed Drug Policy for High School Athletes
- Winter 1996 Speaker, American Conference Institute, Litigation Management in the 90's, "Issues Relating to Arbitration"
- Winter 1994 Speaker, "International Law for the General Practitioner. Serving Process on Foreign Defendants; Obtaining Discovery Abroad; and, Child Abduction to a Foreign Country," International Law and World Peace Section, Connecticut Bar Association
- Spring 1992 Speaker, Address to the Connecticut Daily Newspaper Association. "Secrecy in Government: The Courts and the Press"
- Spring 1990 Panelist, ABA Annual Meeting, International Law Section, "State International Arbitration Statutes: Should Your State Have One," New York, NY

13. **Health:** What is the present state of your health? List the date of your last physical examination.

Excellent; September 2002

14. **Judicial Office:** State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have never held any judicial office

15. **Citations:** If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was

affirmed with significant criticism of your substantive or procedural rulings; and (3) 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, please provide copies of the opinions.

Not applicable

16. **Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.**

Member, Board of Ethics, Town of Guilford, CT, 1994-2001
Appointed by Board of Selectmen of the Town of Guilford

Member, Connecticut Council on Environmental Quality, 1991-1995
Appointed by Governor

No unsuccessful candidacies for elective office

17. **Legal Career:**

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

1. **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;**

Following graduation from law school in 1975, I served as a law clerk to the Honorable James Hunter, III, Circuit Judge, United States Court of Appeals for the Third Circuit between 1975 and 1976. Following that clerkship, I joined the New Haven-based law firm of Wiggin & Dana as an associate, where I remained for approximately two years until June 1978. At that time, Wiggin & Dana's offices were located at 195 Church St., New Haven, CT. I then left the firm to become a law clerk to the Honorable William H. Rehnquist, Associate Justice, Supreme Court of the United States, from June 1978 until July 1979.

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

I have never practiced alone

3. **the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;**

Following my clerkship for Justice Rehnquist, I rejoined Wiggin & Dana as an associate in 1979 and became a partner in the firm in 1981. I have remained a partner at Wiggin & Dana to this day. Wiggin & Dana today is a regional law firm of approximately 140 lawyers with four offices. My office is in the firm's New Haven office, located at One Century Tower, New Haven, CT. Beginning in approximately 1995, in addition to my full-time law practice, I began to teach law at the University of Connecticut Law School as an Adjunct Professor of Law and have continued to do so approximately one semester a year since that time though I did not teach in 2002. During the Spring semester of 2000, I was a Visiting Lecturer in Law at the Yale Law School.

- b. 1. **What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?**

My law practice is exclusively devoted to civil litigation in state and federal courts and has been since I began the private practice of law. I have appeared in state and federal courts throughout the United States and have also arbitrated cases both in the United States as well as before the Stockholm Chamber of Commerce. I have also appeared before state and federal administrative agencies. Since approximately 1995, my practice has focused extensively on appellate litigation in state and federal appellate courts throughout the United States.

2. **Describe your typical former clients, and mention the areas, if any, in which you have specialized.**

My typical clients include individuals, business organizations (both

corporations and partnerships) and non-profit organizations of many kinds, including many educational and health-care institutions.

My practice has focused exclusively on litigation with a recent emphasis on appellate litigation. Substantively, I have handled cases involving virtually every aspect of civil and administrative law, including a wide variety of common law, constitutional and statutory issues but excluding family law issues.

- c. 1. **Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.**

I have appeared frequently in numerous state and federal courts throughout the United States (both trial level and appellate courts) and have done so throughout my career.

2. **What percentage of these appearances was in:**
- (a) **federal courts:** approximately 65%
 - (b) **state courts of record:** approximately 35%
 - (c) **other courts.**

The mix of my appearances between federal and state court has varied annually depending upon the cases on which I am working at any given time. Therefore, in some years, I have appeared more or less than 65% in federal courts and in other years more or less than 35% in state court, but that approximate mix of 65%-35% is generally reflective of my court appearances over the course of my legal career. I have also appeared before state and federal administrative agencies as well as before arbitration panels, though my agency and arbitration appearances have been a smaller percentage of my overall practice than my court appearances, probably only 2-5% maximum, depending upon the year in question.

3. **What percentage of your litigation was:**
- (a) **civil:** 100%
 - (b) **criminal:** 0%

4. **State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.**

To the best of my recollection, I have tried 9 cases to judgment or verdict in court or before arbitrators. In 7 of those, I was the lead counsel though I also had assistance from others at my firm during the trial. In 2 cases, I assisted the lead trial counsel as the number two lawyer on the trial team. Several of these trials were very lengthy. For example, the duration of one trial for which I was lead counsel was over two and one-half months; another trial for which I was lead trial counsel lasted over a month and one-half. A third case, for which I was the second member of the trial team, lasted over a month. I have also handled a number of preliminary injunction hearings before state and federal courts which have proceeded to a decision on the merits and which have involved the examination and cross-examination of witnesses and the introduction of documentary evidence. I estimate that I have been lead counsel in approximately 4 such preliminary injunction hearings and have been a member of the trial team in approximately another 3-4. Finally, I have been lead counsel in more than 60 appeals in state and federal appellate courts throughout the United States

5. **What percentage of these trials was:**
 (a) jury: 30%
 (b) non-jury: 70%

18. **Litigation: Describe the ten most significant litigated matters which you personally handled. 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.**

- * Doctor's Associates, Inc. v. Casarotto, 517 U.S. 681 (1996). I worked on this case between 1995 and 1996 and was lead counsel following the principal decision by the Montana Supreme Court. Thus, I was lead counsel in the preparation of the original petition for certiorari and reply in the Supreme Court of the United States as well as the second petition for certiorari and reply following the Supreme Court's remand of the case to the Montana Supreme Court for reconsideration in light of Allied-Bruce Terminix Cos., Inc. v. Dobson, 513 U.S. 265 (1995). I was also lead counsel in the preparation of the briefs on the merits before the Supreme Court of the United States, and I argued the case before the Court on April 16, 1996, which ruled in favor of my client 8-1 in an opinion authored by Justice Ginsburg. The case involved the Supremacy Clause to the United States Constitution and the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.* ("FAA") and specifically whether a Montana statute that required disclosure of arbitration in a specified format and typeface on the front page of every contract violated the FAA and therefore the Supremacy Clause. I represented the Petitioner, Doctor's Associates, Inc. ("DAI"), which is the national franchisor for the Subway sandwich chain. Assisting me on the case were: Jeffrey Babbin from Wiggin & Dana, One Century Tower, New Haven, CT, 203-498-4366 and H. Bartow Farr, III, Farr & Taranto, 2445 M Street, N.W., Washington, D.C. 20037, 202-775-0184. Principal counsel for the Respondents was Lucinda Sikes, (also assisted by Alan Morrison), Public Citizen, 1600 20th St., N.W., Washington, D.C. 20009, 202-588-1000.
- * AT&T Corp. v. Iowa Utilities Bd., 525 U.S. 366 (1999), reversing and affirming Iowa Utilities Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997). Between 1996 and 1999, I served as lead counsel for Southern New England Telecommunications Company ("SNET") and ultimately a coalition of mid-sized local exchange carriers and the Independent Telephone & Telecommunications Alliance in this litigation before both the United States Court of Appeals for the Eighth Circuit and in the Supreme Court of the United States. I argued on behalf of these mid-sized local exchange carriers before the Eighth Circuit and filed both a cross-petition for certiorari and a merits brief in the Supreme Court, though I did not argue this case before the Supreme Court. I also represented SNET in the Eighth Circuit in briefing on its motion to stay the FCC's Local Competition Decision. Iowa Utilities Bd. v. FCC, 109 F.3d 418 (8th Cir. 1996). SNET prevailed on its stay motion and prevailed in the 8th Circuit; in the Supreme Court, SNET and the mid-sized exchange carriers prevailed on several though not all of the issues that they briefed. The case raised numerous issues relating to the interpretation and implementation of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). I was assisted by Jeffrey Babbin and Daniel Klau of Wiggin & Dana, One Century Tower, New Haven, CT, 203-498-4400. The Judges on the Eighth Circuit who decided both the stay and the appeal on the merits were Judges Wollman, Hansen and Bowman. There were hundreds of lawyers representing numerous other parties in this case. The principal lawyers for other parties included: Seth Waxman, Solicitor General, 950 Pennsylvania Ave.,

N.W., Washington, D.C. 20530, 202-514-2217, and Christopher J. Wright, General Counsel, for the F.C.C., 445 12th St., S.W., Washington, D.C. 20544, 202-514-2217; David Carpenter and Peter Keisler, Sidley & Austin, One First National Plaza, Chicago, IL, 312-853-7237 for AT&T; William P. Barr and M. Edward Whelan, GTE Service Corp., 1850 M St., Washington, D.C., 202-463-5200; Mark Evans and Michael Kellogg, Kellogg, Huber, Hansen & Evans, 1301 K St., Washington, D.C. 20005, 202-326-7900; and Maureen Mahoney, Latham & Watkins, 555 Eleventh St., NW, Washington, D.C. 20004, 202-637-2250.

- * Granite State Advertising Co. v. City of Stamford, 38 Fed. Appx. 680 (No. 01-7963, 2d Cir. June 25, 2002), affirming No. 00CV1253 (D. Conn. Aug. 17, 2001). I worked on this case from 2001-2002 as lead counsel for the City of Stamford in both the United States District Court for the District of Connecticut and the United States Court of Appeals for the Second Circuit. I argued in favor of a preliminary injunction for the City in the District Court, and I argued the appeal in the Second Circuit. The City prevailed in both the District Court and the Second Circuit. Judge Alan Nevas presided in the District Court. Chief Judge Walker and Judges Jacobs and Leval presided in the Second Circuit. The case involved the City's right to regulate the size and placement of commercial billboards in the City as well as its right to ban off-site commercial advertising from billboards entirely. The legal issues included the First Amendment, mootness, ripeness, standing and Connecticut zoning laws. I was assisted by Suzanne Wachsstock, Wiggin & Dana, 400 Atlantic St., Stamford, CT 06911, 203-363-7600. Principal counsel for Granite State Advertising were Kevin Shea, Clendenen & Shea, 400 Orange St., New Haven, CT, 203-787-1183; and Adam Webb, Dow Lohnes & Albertson, One Ravinia Dr., Atlanta, Georgia, 770-901-8800. Principal counsel for the State of Connecticut, which intervened in support of the City, was Richard Blumenthal, Attorney General, State of Connecticut, 55 Elm Street, Hartford, CT, 860-808-5318.

- * Karl Storz Endoscopy-America, Inc. v. Surgical Technologies, Inc., 285 F.3d 848 (9th Cir. 2002). I worked on this case during 2000-2002, though my role was confined to the appellate proceedings and did not include work in the District Court. I was lead counsel on appeal and briefed and argued the appeal on behalf of Karl-Storz Endoscopy of America, Inc. ("Storz"). The issue was one of first impression under the Lanham Act, 15 U.S.C. § 1121, and was whether the Lanham Act extended its protections to repairs or was limited to sales transactions only. Storz lost in the District Court but prevailed on appeal in the United States Court of Appeals for the Ninth Circuit. The Judges who presided in the Ninth Circuit were Kozinski, Thomas and Whyte (sitting by designation). I was assisted by William Speranza of Wiggin & Dana, 400 Atlantic St., Stamford, CT 06911-0325, 203-363-7600, who was trial counsel. The principal lawyer for the defendants on appeal was John Edwards, Johnson & Edwards, 402 W. Broadway, Suite 1140, San Diego, CA

92101, 619-696-6211, who argued on appeal.

- * Leydon v. Town of Greenwich, et al., 257 Conn. 318 (2001). I worked on this case in both the Connecticut Appellate Court (57 Conn. App. 712 (2000)) and in the Connecticut Supreme Court; I did not represent my client in the trial court. My client was the Lucas Point Association ("LPA"), a private landowners' association that held title to property over which the Town of Greenwich held an easement that provided the only landward access to Greenwich Point Park, a beach located on the Connecticut shore. The easement, which was very narrow and had been created in the 1940s, limited access to Town residents only. In addition, the Town, which was represented by other counsel, had enacted an ordinance (which had been in existence for decades) that restricted access to Greenwich Point Park to Greenwich residents only. The plaintiff (a resident of a neighboring town) asserted that the Town's ordinance violated the First Amendment and Connecticut's common law. The LPA intervened in the lawsuit to oppose plaintiff's prayer for relief, which sought an order allowing him to use the Town's easement to cross the LPA's property in order to gain access to Greenwich Point Park. Plaintiff sought to invalidate a term of the easement, which restricted its use to Greenwich residents only. The legal issues insofar as the Town was concerned involved the First Amendment and Connecticut's common law. Insofar as the LPA was concerned, the issues were confined to the common law as well as the Fifth Amendment's taking clause. Plaintiff prevailed against the Town of Greenwich in the Supreme Court, which invalidated Greenwich's ordinance. However, the LPA prevailed on its claims in the Supreme Court; the Supreme Court held that plaintiff had no constitutional or common law right to cross the LPA's private property to gain access to the beach. I was assisted by Suzanne Wachsstock, Wiggan & Dana, 400 Atlantic St., Stamford, CT, 203-363-7600. Principal counsel for the plaintiff was Brenden Leydon, Toohar & Wool, 1100 Summer St., Stamford, CT 06905, 203-324-6164. Principal counsel for the Town was Ralph G. Elliott, Tyler, Cooper & Alcorn, CityPlace—35th Fl., Hartford, CT 06103, 866-725-6200.
- * Doe v. Yale University, 252 Conn. 641 (2000). I represented Yale University and its School of Medicine in the post-verdict proceedings in this case and worked on the case during 1999 and 2000. I was lead counsel on appeal and argued the appeal in the Connecticut Supreme Court. Plaintiff was a former resident in the School of Medicine's internal medicine program who stuck herself with a needle while performing a procedure and developed HIV as a consequence of the needle stick injury. A jury found Yale liable and awarded plaintiff approximately \$15 million. On appeal, there were three legal issues: whether plaintiff's claims were barred by the Workers Compensation Act, since as a part of her residency program she was employed at Yale-New Haven Hospital at the time of injury and received workers compensation benefits; whether Connecticut recognized a cause of action for

educational malpractice; and whether the trial court erred in its instructions regarding expert testimony. The Supreme Court reversed the verdict and remanded for a new trial. Justices Borden, Palmer, Vertefeuille, Hennessy, Sullivan, Callahan and Leuba presided and the opinion was written by Justice Palmer. I was assisted by William Doyle from Wiggin & Dana, One Century Tower, New Haven, CT 06508, 203-498-4400, who was lead trial counsel, and Wesley Horton of Horton, Shields & Cormier, 90 Gillett Street, Hartford, CT 06105, 860-522-8338. Principal counsel for Dr. Doe were David Rosen, Rosen & Dolan, 400 Orange St., New Haven, CT 06511, 203-787-3513 and Michael Koskoff, Koskoff, Koskoff & Beider, 350 Fairfield Ave., Bridgeport, CT 06604, 203-336-4421.

- * Beverly Hills Concepts v. Schatz & Schatz, Ribicoff & Kotkin, 247 Conn. 48 (1998). I represented the Schatz & Schatz law firm in this appeal to the Connecticut Supreme Court from an approximately \$16 million damages award, the largest legal malpractice award in Connecticut at the time. The issues on appeal involved proximate causation and the standards for proof of damages and expert damage testimony under Connecticut's common law. The Connecticut Supreme Court heard the case *en banc* and, in an opinion authored by Justice Katz, the Court reversed the award and directed that judgment should enter for my client, the law firm. I was assisted on the appeal by Daniel Klau, Wiggin & Dana, One CityPlace, Hartford, CT 06103, 860-297-3700. Principal counsel for the plaintiff was Jeffrey J. Tinley, Tinley, Nastri, Renehan & Dost, LLP, 60 North Main St., 2d Fl., Waterbury, CT 06702, 203-596-9036.
- * Connecticut Hospital Association v. Weicker, 46 F.3d 211 (2d Cir. 1995), *rev'g*, 842 F. Supp. 637 (D. Conn. 1994). I worked on this case on behalf of all the acute care hospitals in Connecticut and their trade association, the Connecticut Hospital Association ("CHA"), during 1994-1996. In this lawsuit, the hospitals sought greater reimbursement for Medicaid patients under the Boren Amendment, 42 U.S.C. § 1396a(a)(13)(A). I represented my clients before the United States District Court for the District of Connecticut (Judge Warren Eginton), and argued the case in the United States Court of Appeals for the Second Circuit before Judges Jacobs, Altamari and Pratt. The case involved preliminary injunction proceedings, an associated appeal and proceedings on remand. On remand, the case was referred to mediation before Yale Law School Professor Robert Burt (203-432-4960), as a result of which the State, Federal Government and hospitals entered into a comprehensive consent decree regarding Medicaid reimbursement rates for in-patient services at acute care hospitals in Connecticut. I was assisted in the case by Alan Schwartz, Wiggin & Dana, One Century Tower, New Haven, CT 06508, 203-498-4400. Principal counsel for the State was Attorney General Richard Blumenthal and Assistant Attorney General Arnold Menchel, Office of the Attorney General, 55 Elm St., Hartford, CT, 860-808-5318. U.S. Attorney Christopher Droney and Assistant U.S. Attorney General Deirdre Martini, U.S. Attorney, District of Connecticut, U.S. Courthouse,

Bridgeport, CT 06604, 203-696-3000 were the principal counsel to the U.S. Government.

- * Connecticut Association of Child Caring Agencies v. Rose Alma Senatore, 1993 WL 392911 (Conn. Superior Court 1993). In this case, I represented every residential treatment center for disadvantaged children in the State and their trade association, the CACCA, in a lawsuit seeking greater reimbursement for the child caring agencies. The key legal and factual issue was whether the State, through its Department of Children and Youth Services and Department of Education, were properly reimbursing the agencies under state law for the services they provided to children. I was lead trial counsel for the child care agencies and CACCA and tried the case before Superior Court Judge Robert Satter in Hartford for approximately 2 ½ months. Judge Satter ruled against the child care agencies and the case was settled while on appeal by way of an agreement among the agencies and the State. The State was represented by the Attorney General's Office and in particular Ralph Urban, 55 Elm St., Hartford, CT, 860-808-5330.
- * Hammond v. United States, 764 F.2d 88 (2d Cir. 1985), aff'g, 84 F. Supp. 163 (D. Conn. 1984). I worked on this case from approximately 1984 through 1985 and was lead counsel for the Day Publishing Company and its co-publishers who filed the case. I was lead counsel in both the United States District Court for the District of Connecticut and in the United States Court of Appeals for the Second Circuit. I argued the case in both courts. Then-District Court, now Second Circuit, Judge José Cabranes presided at the trial level. The appeal was argued before Second Circuit Judges Kearse, VanGraafeiland and Pierce; Judge Kearse authored the opinion for the court. The Day's co-publishers prevailed in both the District Court and in the Second Circuit. The question presented involved the interpretation of the U.S. Tax Code, Connecticut law of trusts and trust documents. The Court held that The Day paper was the beneficiary of a trust established to hold all of its shares. D. Patrick Mullarkey from the U.S. Department of Justice in Washington, D.C. was principal counsel for the U.S. in the District Court and Robert Pomerance of the Tax Division of the United States Department of Justice was principal counsel for the U.S. on appeal.

19. **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 the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

The most significant cases I have been involved with are listed in response to Question 18. The most significant non-litigation activities with which I have been involved are my work on the various rules advisory committees on which I sit, particularly my work on the Judicial Conference's Standing Committee on the Rules of Practice and Procedure in the United States Courts.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List 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. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

Upon my withdrawal from Wiggin & Dana, LLP, I would expect to receive compensation under the Wiggin & Dana plan for retired partners in a sum certain that will be determined and paid over a specified period of time.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

I will adhere to the procedures and provisions of the Code of Conduct for United States Judges and the Ethics in Government Act and any other relevant rules of ethical conduct. I will adopt appropriate procedures to learn of and resolve potential conflicts of interest in the manner provided by the law. In addition, I expect to implement appropriate procedures with the Clerk's Office to ensure that for a period that is appropriate I do not hear matters in which my former law firm or former clients are involved.

3. **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.**

No

4. **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, patents, 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 Financial Disclosure Report

5. **Please complete the attached financial net worth statement in detail (Add schedules as called for).**

See Financial Net Worth Statement and schedules

6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

No

III. GENERAL (PUBLIC)

1. **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.**

Throughout my career I have donated my legal services. This donated legal work falls into four broad categories:

* I have been lead pro bono counsel for parties in three cases where I was appointed by the court to represent an indigent party. In one case, I filed a petition for certiorari in the Supreme Court of the United States on behalf of an indigent defendant. See State v. Colton, 516 U.S. 1140 (1995). Two of the cases were before the United States Court of Appeals for the Second Circuit, and I was appointed by that court to brief and argue the appeals. See Cuocco v. Moritsugu, No. 98-2954 (2d Cir. July 28, 2000) (unpublished opinion); Davidson v. Scully, 114 F.3d 12 (2d Cir. 1997). The total pro bono time that I personally provided for these cases was approximately 150 hours, although associates from my firm assisted me and provided additional pro bono time. In addition to these cases, for which I was the lead lawyer, I have supervised many other lawyers in the firm who have been the lead counsel in pro bono cases. It would be very difficult to estimate the amount of time that I spent supervising others in that work.

* My work as a director, officer and often founder of the many non-profit organizations listed in answer to Question 10, many of which serve the disadvantaged, has involved the provision of pro bono legal services to those organizations. For example, I prepared incorporation papers, 501(c)(3) applications and bylaws for both the Connecticut Food Bank, which provides food for those in need throughout Connecticut, and the Friends of the Yale Children's Hospital, each of which I was involved in founding. Also, in addition to my service as a director, I have provided pro bono legal advice and legal services from time to time to the other listed organizations. These services have ranged from contract review to zoning matters to dispute resolution and legal research. I also donated substantial legal services to the Games Organizing Committee of the Special Olympics, which held the World Special Olympic Games in New Haven. The approximate amount of free legal services provided to those organizations has varied year by year and is difficult to estimate with any degree of accuracy, though I would estimate that I have provided in excess of 50 hours of free legal services each year to the organizations listed in addition to the time I devoted to service as a director of those organizations.

* I have regularly donated my legal services to the Office of Attorney General for the State of Connecticut and other lawyers who are preparing for arguments in the Supreme Court of the United States or the United States Court of Appeals for the Second Circuit. These services have principally involved reviewing and commenting upon briefs and also serving on moot courts prior to arguments. For example, within the last 12 months, I have provided such donated legal services in two cases which Connecticut Attorney General Richard Blumenthal argued before the Supreme Court of the United States. See Porter v. Nussle, 122 S.Ct. 983 (2002); Connecticut Dept. of Public Safety v. Doe, 538 U.S. ____ (2003). I estimate that each of those cases involved approximately 30 hours of my time. I have also provided similar services to legal clinics at the Yale Law School.

* Finally, I have provided free legal services in connection with the work that I have done for the Bar Association, Bar Foundation and Judicial committees listed in response to Question 9. This work has ranged from helping to draft legislation to create Connecticut's Appellate Court, drafting court rules and organizing and conducting educational programs for lawyers on alternate dispute resolution and appellate practice. I have devoted a substantial amount of time to those activities over the years. For example, in 2001, I recorded over 60 hours of nonbillable time to these Bar-related legal services.

2. **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. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?**

I do not currently belong to, and have never held membership in, an organization that invidiously discriminates on the basis of race, sex or religion.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

There is no selection commission in this jurisdiction. I was interviewed for the position to which I have been nominated in November 2002 by two members of the White House Counsel's Office and a member of the Office of Legal Policy of the U.S. Department of Justice. In late December 2002, I was informed by the White House Counsel's Office that the President intended to nominate me subject to consultation with the U.S. Senators from Connecticut and an F.B.I. background check. In February 2003, I was interviewed

by an F.B.I. agent and also interviewed by an attorney in the Office of Legal Policy, and subsequently provided oral and written information to both the F.B.I. and Office of Legal Policy. On March 27, 2003, I was informed by a member of the White House Counsel's Office that the President had that day sent my nomination to the United States Senate.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.**

No one has discussed such a case, issue or question with me

5. **Please discuss your views on the following criticism involving "judicial activism."**

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
 - b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
 - c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
 - d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
 - e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.
7. A district court judge should endeavor to decide each case fairly and impartially, without imposing his or her own personal views. In so doing, a judge must consider the facts as presented by the litigants, or determined by the jury, in the particular matter before the court. Having determined the facts, the judge must next identify and apply controlling law to

resolve the dispute. Pertinent law in a given case may include the state or federal Constitutions, statutes and administrative regulations, as well as controlling opinions of the Supreme Court of the United States and the Court of Appeals for the circuit in which the district court lies. It is not the role of a judge to formulate public policy or to make judgments about the wisdom of particular policy choices reserved to other branches of government. Also, by recognizing and enforcing jurisdictional requirements and prudential limitations, including those for standing and ripeness, a district judge can ensure that the issue presented is appropriate for decision and that he or she does not reach beyond the proper bounds of his or her authority.