I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

John Alden Woodcock, Jr.

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

Residence:

Hampden, ME

Office Address:

P.O. Box 1127
136 Broadway
Bangor, ME 04402-1127

3. Date and place of birth.

July 6, 1950

Bangor, ME

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

Married

Beverly Ann Newcombe Woodcock

Substitute Teacher
M.S.A.D. # 22
Main Road
Hampden, ME 04444

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

University of Maine School of Law
246 Deering Avenue
Portland, ME 04102
September, 1973 to May 1976
Juris Doctorate: May 29, 1976

University of London (London School of Economics)
Aldwych
London, England.
September 1972 - September 1973
Master of Arts: December 18, 1973

Bowdoin College
Brunswick, ME 04011
September 1968 - June 1972
Bachelor of Arts: June 3, 1972

Drew University
36 Madison Avenue
Madison, N.J. 07940
January, 1971 - June 1971: (Semester abroad: London, England)

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.

I. Employment:

Weatherbee, Woodcock, Burlock & Woodcock, P.A.
Director and Employee
136 Broadway
Bangor, ME 04402-1127
March 1991 to date

Mitchell & Stearns, P.A.
Director and Employee
99 Franklin Street
Bangor, ME 04401
January 1, 1980 - March 1991

Stearns, Finnegan & Needham, P.A.
Director and Employee
One Merchants Plaza
Bangor, ME 04401
August, 1976 to January 1, 1980

State of Maine
Office of the District Attorney
Part Time Employee: Assistant District Attorney
97 Hammond Street
Bangor, ME 04401
March 1977 - February 1978

Skelton, Taintor & Abbott
Employee: Summer Law Clerk
95 Main Street
Auburn, ME 04212
June 1975 - August 1975

Maine Municipal Association
Employee: Summer Intern
60 Community Drive
Augusta, ME 04330
June 1974 - August 1974

Eastern Maine Builders
Employee: Laborer
171 Riverside Drive
Eddington, ME 04428
July 1972 - August 1972

II. Business Affiliations:

WWBW Realty, Inc.
136 Broadway
Bangor, ME 04401

Shareholder: 1/3rd interest in the building in which the law firm is located from March 1991 to date.

WTW Associates
136 Broadway
Bangor, ME 04401
1/3rd interest in a joint venture from 1988 to 2000, which owned two apartment buildings in Bangor.

III. Trusteeships in Charitable or Educational Organizations.

A. Current Trusteeships:

Eastern Maine Healthcare Systems
Current Director
October 4, 2000 to date
489 State Street
Bangor, ME 04401

Eastern Maine Healthcare
Current Director (Vice Chair)
January 25, 1983 to date
489 State Street
Bangor, ME 04401

Eastern Maine Medical Center
Current Trustee (Chair)
January 16, 1980 to date
489 State Street
Bangor, ME 04401

Bowdoin College
Current Trustee
October 1996 to date
Brunswick, ME 04011

University of Maine School of Law
Member: Board of Visitors
2002 to date
246 Deering Avenue
Portland, ME 04102

B. Past Trusteeships:

Rosscare
Former Trustee
April 26, 1990 through March 13, 2002
489 State Street
Bangor, ME 04401

Eastern Maine Charities
Former Trustee
April 26, 1990 through March 13, 2002
489 State Street
Bangor, ME 04401

M.S.A.D. # 22
Former Director
1988-1989 (est)
Main Road
Hampden, ME 04444

Maine State Commission on Arts and Humanities
Former Commissioner
1982-83 (est)
Augusta, ME 04330

Bangor Symphony Orchestra
Former Trustee
1978-82 (est)
44 Central Street
Bangor, ME 04401

Good Samaritan Agency
Former Trustee
1978-1980 (est)
100 Ridgewood Drive
Bangor, ME 04401

Bangor Children's Home
Former Member of the Board of Managers
1977-2001 (est)
218 Ohio Street
Bangor, ME 04401

Bowdoin College Alumni Council
Former Member (President)
1992-1996
Brunswick, ME 04011

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.

Bowdoin College:

Maine Scholar: 1968-69
Cum Laude Graduate: 1972
Magna Cum Laude In History: 1972

University of Maine School of Law

Managing Editor: Maine Law Review: 1975-76

Barrister: John Waldo Ballou Inn of Court

Fellow: Maine Bar Foundation

Distinguished Service Award: 2003
Eastern Maine Healthcare

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: Penobscot County, Maine State and American Bar Associations

Member: Defense Research Institute

Member: Advisory Committee on Professional Responsibility Maine Supreme Judicial Court

Co-Chair: Federal Practice Section of the Maine State Bar Association

Member: Local Rules Committee, United States District Court for the District of Maine

Member: Federal Bench-Bar Liaison Committee, United States District Court for the District of Maine

Member: Maine Trial Lawyers Association

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.

Member: Maine Trial Lawyers Association.

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.

United States Court of Appeals
First Circuit
January 31, 2000

United States District Court for the District of Maine
December 6, 1976

Maine Supreme Judicial Court
September 29, 1976

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.

I have participated as a speaker periodically in seminars and continuing legal education programs; however, none of these presentations has been reduced to writing.

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

My health is excellent. My last physical examination was on January 23, 2003.

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.

None.

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.

A. Appointive Positions:

1) Commissioner: 1982-83 (est)

Maine State Commission on Arts and Humanities

2) Director: 1988-89 (est)
M.S.A.D. # 22
Hampden, ME

B. Elective Positions:

1) Moderator: 1998
District Wide Budget Meeting
M.S.A.D. # 22

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;

No.

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

No.

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;

March 1991 to date
Weatherbee, Woodcock, Burlock & Woodcock, P.A.
136 Broadway
Bangor, ME 04402-1127
Director and Employee

January 1980 to March 1991
Mitchell & Stearns
99 Franklin Street

Bangor, ME 04401
Director and Employee

August 1976 to January 1980
Stearns, Finnegan & Needham, P.A.
One Merchants Plaza
Bangor, ME 04401
Director and Employee

March 1977 to February 1978
State of Maine
Office of the District Attorney
97 Hammond Street
Bangor, ME 04401
Part Time Employee: Assistant District Attorney

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?

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

1976-80: Stearns, Finnegan & Needham

After law school, I joined the small law firm of Stearns, Finnegan & Needham in Bangor, Maine. Stearns Finnegan had a general practice with expertise in business law, estate planning, utility law, real estate law, divorce law, and general litigation. As an associate, I assisted with all areas of the firm's practice, gradually devoting more time to litigation.

From March 1977 to February 1978, I worked part-time as an Assistant District Attorney for Penobscot and Piscataquis Counties. I had the opportunity to learn trial law under then Deputy District Attorney Eugene Beaulieu, who later became a United States Magistrate Judge. During that time, I handled all criminal appeals from both counties to the Maine Supreme

Judicial Court. I also prosecuted innumerable trials at the District and Superior Court levels. Shortly after I started with the District Attorney's Office, I was assigned a "jury day" each week and participated as lead prosecutor in approximately twenty criminal jury trials during my tenure.

1980-1991: Mitchell & Stearns

In 1980, Stearns, Finnegan & Needham merged with Mitchell, Ballou & Keith to form the firm of Mitchell & Stearns. Mitchell, Ballou & Keith had an extensive insurance defense practice. Two of my new partners, John Ballou and Edward Keith, were leading lights of the Maine Bar. After his death, the local Inn of Court was named in Mr. Ballou's honor. Mr. Keith was the part-time and later full-time U.S. Magistrate Judge. Since 1980, the majority of my practice has reflected the clientele of Mitchell & Stearns, representing insurance companies or their insureds the defense of a variety of civil actions.

In 1983, I began to represent Great Northern Paper Company before the Maine Workers' Compensation Commission in the defense of its workers' compensation claims. Great Northern has been self-insured and I have worked closely with management to minimize its workers' compensation exposure. As with many northern paper mills, the Great Northern mills have been bought and sold over the last 20 years. I have continued to represent the mills through serial owners: Great Northern Nekoosa, Georgia-Pacific Corporation, Bowater, Incorporated, and now Great Northern Paper, Inc.

In the mid-1980's, Maine had an extremely litigious workers' compensation system. I represented Great Northern in literally hundreds of matters before the Workers' Compensation Commission. My representation of Great Northern resulted in my participation in a number of appeals to the Maine Supreme Judicial Court. From 1976 to the present, I have been involved in 23 separate appeals to the Maine Supreme Judicial Court involving workers' compensation issues. During this

time, I maintained a trial practice in state and federal courts, acting as lead counsel in the prosecution and defense of products liability cases, personal injury cases, municipal law cases, and other similar litigation.

1991 to present: Weatherbee, Woodcock, Burlock & Woodcock

In 1991, I left the firm of Mitchell & Stearns to form the smaller law firm of Weatherbee, Woodcock, Burlock & Woodcock, specializing in litigation. From 1991 to date, I have continued to maintain an active litigation practice, primarily representing insurers and their insureds in a wide range of legal matters. Early on, my practice was more heavily concentrated in the workers' compensation field; however, with the McKernan Reforms in 1993, the workers' compensation portion of my practice diminished and the general litigation portion of my practice correspondingly grew.

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 been engaged in the active practice of trial law ever since I joined the District Attorney's Office in 1977. For example, this winter I had four cases pending in the United States District Court for the District of Maine: 1) a products liability case in which I represented a ladder manufacturer; 2) a life insurance case in which I represented the Personal Representative of an Estate against an insurance company; 3) an insurance coverage case; and, 4) a bailment case. My last trial was a jury waived in state court in February 25-26, 2003. On February 24, 2003, I received a decision from the Maine Law Court on the case of *University of Maine Foundation v. Fleet*, 2003 ME 20. I currently have one appeal pending before the Maine Supreme Judicial Court.

I have been involved in 47 separate appeals to the Maine Supreme Judicial Court on issues ranging from criminal law to trust law. With rare exceptions, each case I argued before the Maine Supreme Judicial Court represents a case I tried as lead counsel to judgment at the trial court level.

2. What percentage of these appearances was in:
   (a) federal courts;
   (b) state courts of record;
   (c) other courts.

A) 20% Federal

B) 60% State

C) 20% Other

3. What percentage of your litigation was:
   (a) civil;
   (b) criminal.

Over the past decade, I have not engaged often in the practice of criminal law. While I was an Assistant District Attorney in the late 1970s, I prosecuted extensively. This estimate is for the last ten years:

A) 99% civil

B) 1% criminal

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.

I have not kept a record of the cases I have tried to completion and I know of no way that an accurate figure could be established. In state and federal courts, I am certain that I have tried over 250 civil cases to judgment. I have handled no fewer than 1,000 workers' compensation matters to decree through the administrative law process. With the exception of two

or three of those cases, I have been the lead and sole trial counsel for my client.

5. What percentage of these trials was:
(a) jury;
(b) non jury.

Over the last five years, I estimate that 50% of cases tried to judgment were jury cases and 50% were court trials. My guess, however, is that I have tried more judge trials than jury trials over the course of 26 years of practice.

16. 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.

1) *University of Maine Foundation v. Fleet Bank: Trust Law.*

The Maine Supreme Judicial Court decided this case on February 24, 2003. It was on appeal from a decision of the Hancock County Probate Court. Judge Patterson was the Probate Judge. I was the lead and sole counsel for Fleet Bank. Charles E. Gilbert, III of Gilbert & Greif, P.A., 82 Columbia Street, Bangor, ME 04401 (207) 947-2223, represented the University of Maine Foundation.

A) *University of Maine Foundation v. Fleet Bank*, 2003 ME 20.

B) The issue before the Maine Supreme Judicial Court was one of trust law. Since 1953, Fleet Bank has been the trustee of a testamentary trust created by the Will of Charles E. Gilbert, the great uncle of the Foundation's lawyer. The Gilbert Trust provided (among other things) for specific annual distributions to certain individuals during their lives. Any excess income after payment to those individual beneficiaries was to be paid over to the University of Maine Foundation to fund a scholarship fund and a loan fund. The trust was to terminate upon the death of the last income beneficiary. The principal of the Trust now exceeds $7,000,000.00.

In 2000, the Foundation approached Fleet and presented it with signed waiver forms from the three remaining life income beneficiaries. The Foundation demanded that Fleet agree to a premature termination of the Trust. Fleet refused, citing the express language in the Will that the Trust was not to terminate until the death of the last life income beneficiary. The Foundation initiated an action in the Probate Court to force Fleet to terminate the Gilbert Trust and to turn the principal over to the Foundation.

By decision dated July 23, 2002, Judge Patterson of the Probate Court ordered a partial termination of the Trust. He ordered that Fleet retain sufficient money to pay the life income beneficiaries and turn the remainder over to the Foundation immediately. Both Fleet and the Foundation appealed this decision to the Maine Supreme Judicial Court.

The legal issue, one of first impression in the State of Maine, was whether a trust can be terminated with the consent of all the beneficiaries, if the termination contravenes the express intent of the settlor. The Maine Supreme Court decided that the Probate Court had the authority to order a partial premature termination of the trust.

C) I represented Fleet Bank, the trustee of the Charles E. Gilbert Trust.

D) I handled all aspects of this case from the original demand for termination by the Foundation to the Brief on appeal. No other lawyer within the firm has performed any work on the case.

2) *James Tweedie, et ux. v. David Witham, et al.: Slander of Title and Tortious Interference With An Advantageous Business Relationship.*

This case has just been decided, but we have not as yet received a copy of the decision. The case was tried for three days in August and September, 2002 before Justice Jeffrey Hjelm. Attorney Peter Roy of Roy, Beardsley, Williams & Granger, 6 Water Street, Ellsworth, ME 04605-0723 (207) 667-7121 represents the Plaintiffs. Two of the co-defendants, Robert Macomber and Robert DeSimone, are pro se.

A) *James Tweedie, et ux. v. David Witham, et al.* Hancock County Superior Court, Civil Action Docket No. CV-99-38.

B) This law suit arises out of the failed sale of a motel located on Mount Desert Island, Maine. The disputed property, called the Park Entrance Motel, is located directly on the shore of Frenchman Bay directly across from the main entrance to Acadia National Park. It is a property of substantial potential value and, in fact, ultimately sold for $5,300,000.00.

This case is a manifestation of an inordinately complex set of business dealings among the parties, which have already found their way on three occasions to the Maine Supreme Judicial Court. *Key Bank v. Park Entrance Motel*, 640 A.2d 211 (Me. 1994); *Union Trust v. MacQuinn-Tweedie*, 2001 ME 43, 767 A.2d 289; *Macomber v. MacQuinn-Tweedie*, Law Court Docket No. HAN-02-212. The essence of the litigation involves a Purchase and Sale Agreement entered into between my client, David Witham, and James and Lisa Tweedie, the then owners of the motel property. Having executed an Agreement and having received a $10,000.00 deposit, the Tweedies reneged on the Purchase and Sale Agreement. The co-

defendants, Robert Macomber and Robert DeSimone, who are alleged to have been business partners of Mr. Witham, filed a *lis pendens* in the Hancock County Registry of Deeds, alerting potential purchasers of the motel that there was a pending binding arbitration regarding the Park Entrance Motel.

The Tweedies' claims against David Witham include a slander of title count and a tortious interference with an advantageous business relationship count. The Tweedies' law suit asserts that in filing the *lis pendens*, Messrs. Macomber and DeSimone were acting in furtherance of a joint venture or partnership with Mr. Witham, that the statements in the *lis pendens* were false, and that the *lis pendens* prevented the sale of the motel to a third party by affecting vendible title. The Tweedies have demanded damages in excess of $1,275,000 plus the imposition of punitive damages against Mr. Witham.

The Clerk of the Superior Court has informed me that Justice Hjelm, in a twenty-one page decision, has granted judgment in favor of Mr. Witham, but I have not as yet received a copy of the decision.

C) David Witham

D) I have been sole and lead counsel for Mr. Witham in this matter.

3) *Robert Hogan v. Great Northern Paper, Inc.: Workers' Compensation.*

The Robert Hogan case presented two issues: one major and the other minor. The Maine Supreme Judicial Court issued an opinion in the case of *Bernard v. Mead*, 2001 ME 576, 765 A.2d 576, which interpreted a statutory provision in the Maine Workers' Compensation Act to restrict an inflation escalator in the calculation of weekly disability benefits for injured workers. Following *Bernard*, the Maine Legislature enacted legislation that overturned the Maine Supreme Court's interpretation of the statute. The *Hogan* case raised

questions about retroactive application of economic legislation and separation of powers in Maine. There was also a less significant issue involving the calculation of partial disability benefits when an employee had been receiving other disability benefits from a source other than the employer.

The case was initially decided by the Maine Workers' Compensation Board in favor of the employee. Frederick F. Costlow, Richardson, Whitman, Large & Badger, One Merchants Plaza, Bangor, ME 04402-2429 (207) 945-5900 represented the employee. I represented Great Northern Paper, Inc. as insured by OneBeacon Insurance Company. Except for one hearing, which was covered by my partner, I was the sole lead counsel throughout the litigation. Great Northern was the Appellant.

A) *Hogan v. Great Northern Paper, Inc.*, 2001 ME 162, 784 A.2d 1083.

B) In its *Hogan* decision, the Maine Law Court did not reach the separation of powers issue, finding it had not been preserved below. The Court had the opportunity to reach these issues in a case that had been consolidated for argument with *Hogan*. *Bernier v. Data General Corp.*, 2002 ME 2, 787 A.2d 144. The Court ruled in favor of Great Northern on the second issue on the proper treatment of outside disability payments to the employee.

C) I represented Great Northern Paper, Inc. as insured by OneBeacon Insurance Company.

D) With the exception of one hearing that was covered by my partner, I participated in this litigation as the sole lead counsel from trial through appeal.

4) *Bowie v. Delta Airlines: Workers' Compensation.*

In 1993, the Maine Legislature enacted a wholesale revision of Maine's Workers' Compensation Act, known as the McKernan Reforms after then Governor of the State of Maine, John R. McKernan. Litigation ensued,

challenging the applicability of the new law. One of those challenges was the *Bowie* case. I represented three Maine employers as *amici curiae* in the appeal. The employee was represented by Peter Bickerman, Verrill & Dana, 45 Memorial Circle, Augusta, ME 04332-5307 (207) 623-3889; the employer / insurer were represented by Jane Skelton, 209 State Street, Bangor, ME 04401, (207) 947-6500.

A) *Bowie v. Delta Airlines, Inc.*, 661 A.2d 1129 (Me. 1995).

B) The McKernan Reforms established a presumption that, if an employee voluntarily retired from active employment, he or she would not be entitled to wage replacement benefits. This case addressed the question of how this provision would be applied. In the *Bowie* case, the Maine Supreme Judicial Court ruled in favor of the employer and applied the new legislation to a retired employee.

C) Great Northern Paper, Inc.
Champion International Paper
Eastern Maine Medical Center

D) I participated only on behalf of the Amici Curiae. I filed a Brief on appeal, but under the rules of Court, did not participate in oral argument.

5. *Vernley Cyr v. Arthur Hurd, et ux.: Personal Injury.*

This was a difficult personal injury case. I represented the owners of an apartment building in Lincoln, Maine. In the early morning hours of April 28, 1983, Mr. Cyr, a man in his early twenties, had climbed an exterior staircase leading to the top floor apartment. Mr. Cyr had been drinking alcohol earlier that evening. When he found the door at the top of the stairs locked and no one at home, he turned to descend the stairs, slipped, tumbled over the handrail, and landed on the ground, breaking his neck. He was rendered quadriplegic. The case was tried over the course of about five days before a Superior Court Jury in Penobscot County. After long deliberation, the Jury

concluded that the Defendants were negligent, that Mr. Cyr himself was negligent, but that his negligence exceeded the negligence of the Defendants. Under Maine law, a judgment was entered for the Defendants and against Mr. Cyr. The jury verdict was appealed to the Maine Supreme Court, which affirmed the verdict.

Mr. Cyr was represented by Paul W. Chaiken, Rudman & Winchell, 84 Harlow Street, Bangor, ME 04402-1401, (207) 947-4501. I represented Mr. and Mrs. Hurd as lead counsel. I was assisted by Angela Farrell, Farrell, Rosenblatt & Russell, 61 Main Street, Bangor, ME (207) 990-3314.

A) *Cyr v. Hurd*, 554 A.2d 345 (Me. 1989).

B) This case was especially hard fought. The Plaintiff, a young man, made an extremely sympathetic appearance. He was represented by an excellent trial lawyer. The trial involved numerous motions in limine, the presentation of a "day in a life" video, and many contentious evidentiary rulings. Given the potential size of any verdict, the decision to take the matter to trial was particularly difficult.

C) Arthur and Carole Hurd.

D) I acted as lead counsel throughout the trial and was assisted by Attorney Farrell. With her assistance, I also briefed the case on appeal. I argued the case before the Maine Supreme Judicial Court.

6. *Lindsay v. Great Northern Paper, Inc.: Employment Discrimination & Workers' Compensation.*

In the early 1980s, Great Northern Paper adopted a "no fault" absenteeism policy. After granting an employee a certain number of excused absences, this policy counted all other absences from work against the employee, regardless of the reason for the absence. The no-fault absenteeism policy was adopted to avoid the paternalistic practice of evaluating the legitimacy of the employee's excuse for an absence from work.

Frederick Lindsay, a Great Northern employee, missed work a total of 14 times in a 12 month interval. Mr. Lindsay sustained a work-related back injury on November 10, 1982 and was absent from work the 15th time. Applying its no-fault absenteeism policy, Great Northern disciplined Mr. Lindsay for the total of fifteen absences, placing him out of work without pay for two weeks. Mr. Lindsay petitioned the Workers' Compensation Commission, claiming that Great Northern had discriminated against him because his assertion of a work-related injury had occasioned the discipline. The Commission ruled in favor of Mr. Lindsay; Great Northern appealed.

The employee's lawyer was Jonathan S.R. Beal, Fontaine & Beal, 482 Congress Street, Portland, ME 04112-7590 (207) 879-1879. I was the lead and sole counsel for Great Northern.

A) *Lindsay v. Great Northern Paper Co.*, 532 A.2d 151 (Me. 1987).

B) The Maine Supreme Judicial Court ordered two oral arguments in the *Lindsay* case before issuing a decision affirming the Commission. The Maine Law Court split 4-3 on the decision. The *Lindsay* decision was extremely controversial in Maine. The ruling raised concerns about whether employers could apply neutral policies to work-injured employees without discriminating against them.

C) Great Northern Paper Company

D) I was sole lead counsel in the case, both at trial and through the appellate process.

7) *Product Liability Case.*

In the 1980s, I represented a national manufacturer in a product liability case. The case was settled on appeal with strict provisions about confidentiality. I am unable, therefore, to be specific about the case.

The case involved a house fire at night in which a little girl died. The mother, who was home at the time of the fire, thought she had gotten all the children out of the house and, after counting, realized one was missing. Due to the flames, she failed in her attempt to climb the stairs to rescue her daughter. The trial of the case took approximately one week before a Jury. The evidence was both highly emotional and highly technical. In effect, the Defendant presented expert testimony from which the Jury could have concluded that the fire did not originate with its product. The Plaintiffs presented expert testimony from which the Jury could have concluded that the fire not only originated from the product, but resulted from a defect in the design of the product. The Jury returned a substantial verdict in favor of the Plaintiffs. The case was settled on appeal. I acted as lead counsel at trial, during appeal, and at settlement discussions.

I have listed this case because it was such a difficult case to try. I represented a national manufacturer against a local, sympathetic couple, who had clearly suffered an enormous tragedy. The testimony of the mother, who described the death of her child, was heart wrenching. On the other hand, the expert testimony, both for the Plaintiffs and for the Defendant, was complex, requiring knowledge of fire investigative techniques and electrical engineering. The presiding Justice later informed me that I had convinced her that the product had not caused the fire. I did not, however, convince the Jury.

The second reason I listed this case is to make the point that we often gain more from losing than we do from winning. In preparing and trying this case, I learned that from an advocate's viewpoint, it is vital in evaluating a client's exposure to consider seriously the power of sympathy, the limits of science, and the essential humanity of our justice system.

8) *Dunton v. Eastern Fine Paper Company: Workers' Compensation.*

The *Dunton* case addressed *inter alia* the issue of the proper role of an appellate court in reviewing administrative findings. Prior to *Dunton*, the Maine Supreme Judicial Court had issued two decisions that implied it would perform an independent analysis of the evidence, if the administrative body itself had reviewed a written record and had not received testimony from live witnesses. In *Dunton,* the Maine Law Court reaffirmed its more limited appellate role, holding that it was required to give deference to the factual findings of administrative tribunals, which acquire specialized expertise in narrow fields.

I represented the employee in this appeal. The two employers / insurers were represented by Michael P. Friedman, Rudman & Winchell, 84 Harlow Street, Bangor, ME 04402-1401 (207) 947-4501 and Stephen Hessert, 415 Congress Street, Portland, ME 04112-4600 (207) 774-7000.

A) *Dunton v. Eastern Fine Paper Co.*, 423 A.2d 512 (Me. 1980)

B) The *Dunton* case is a seminal Maine case. It has been cited over sixty times by the Maine Supreme Judicial Court for its holding on the proper standard for appellate review of administrative factual findings. In issuing its ruling, my client, Rodney Dunton, prevailed on appeal.

C) Rodney Dunton

D) I represented Mr. Dunton at the Commission level and wrote the Brief on appeal. Due to a scheduling conflict, the oral argument was made by one of my partners.

9) *Tibbetts v. Tibbetts: Divorce Law.*

In 1970, the Maine Legislature enacted a version of the Uniform Marriage and Divorce Act, which required the Divorce Court to separate marital property from non-marital property. By the mid-1970s, however, there was

still considerable confusion in Maine how to address non-marital property used during the marriage to purchase jointly held marital property. In *Tibbetts,* the Law Court set the standards for the treatment of non-marital property used to purchase marital assets. I represented David Tibbetts; Errol Paine, now deceased, represented Donna Tibbetts.

A) *Tibbetts v. Tibbetts,* 406 A.2d 70 (Me. 1979).

B) The *Tibbetts* opinion compared a marriage to a partnership and mandated that any non-marital contributions to the marital estate be set aside to the contributing spouse. It also required that the trial court consider appreciation on the non-marital contribution. An important case in Maine divorce law, the *Tibbetts* opinion has been cited 34 times in subsequent decisions by the Maine Supreme Judicial Court. The result of the case for my client was that the initial property division by the Court was reassessed to reflect the then current value of his ex-wife's $5,000.00 contribution of non-marital property toward the purchase of a jointly-owned homestead.

C) David R. Tibbetts

D) I handled only the appeal of this case. The trial at the District Court was handled by my partner.

10) *State v. Boucher: Criminal Law.*

As Assistant District Attorney, I briefed and argued the Alphonse Boucher appeal. Mr. Boucher was represented by Attorney John F. Logan, Gross, Minsky & Mogul, 23 Water Street, Bangor, ME 04401, (207) 942-4644. Mr. Boucher had been convicted of assault with intent to rape. There were two issues on appeal. The first was the admissibility of the results of a police line up and the second was the admissibility of photographs of the victim, depicting injuries she had sustained during the assault.

A) *State v. Boucher,* 376 A.2d 478 (Me. 1977).

B) The significance of the *Boucher* case was two-fold. First, contrary to the Appellant's contention, the Maine Law Court found the line up procedure used by the Bangor Police Department to be "exemplary" and the opinion described the procedure in detail. The police procedure became the template for other line ups throughout the State of Maine, since it had gained the imprimatur of Maine's highest court. The second significant point of law was the ruling on the admissibility of the photograph of the injuries sustained by the victim at the time of the assault. The *Boucher* Court's rationale for the admission of the photographs was that they corroborated the victim's description of the assault, a ruling that was subsequently used as a proper basis for the admission of similar photographs in subsequent cases. The *Boucher* opinion has been cited not only by the Maine Supreme Judicial Court, but has also been cited in subsequent ALR articles.

C) I represented the State of Maine.

D) I did not participate in the trial of this case. I handled only the 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.)

I have participated as a member of the Maine Supreme Judicial Court's Advisory Committee on Professional Responsibility for a number of years. In 2000, the Maine Supreme Judicial Court referred the question of lawyer advertising to the Committee for its review. Reflecting a national debate, lawyer advertising had become a controversial topic in Maine. One television advertisement in particular, depicting lawyers striking their palms with baseball bats and promising to fight for their clients,

provoked much public and professional discussion and was one of the catalysts for the Court's reference to the Committee.

Maine already had a general prohibition against false and misleading lawyer advertising, but the question was whether Maine should adopt a more specific set of restrictions. The Committee reviewed extensive submissions, held a public hearing at the annual meeting of the Maine State Bar Association, reviewed ABA Model Rules, analyzed applicable caselaw, and debated the issues internally. The discussions centered around the need to avoid restricting free speech rights under the First Amendment, while at the same time protecting the public from overly provocative and misleading messages.

Ultimately, the Committee recommended the adoption of a series of "aspirational goals" for lawyer advertising. The Committee came to the conclusion that an additional set of more specific restrictions, forming the basis for discipline, would likely run afoul of First Amendment protections. On the other hand, the Committee felt obligated to respond to the pleas from the Bar to give guidance to lawyers who elect to advertise. The "aspirational goals" were intended to guide, not punish, lawyers and at the same time respect their right to free speech.

The Maine Supreme Judicial Court currently has this recommendation under advisement.

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.

The law firm in which I am a Director and Shareholder intends to dissolve formally, if I am confirmed by the United States Senate. The law firm is a professional corporation. At the dissolution date, the assets of the law firm will be appraised and distributed among the then existing shareholders. While all the details of the dissolution have not been set, it is anticipated that the firm's accounts receivable and work in progress will be distributed, as received, in accordance with the percentage of stock ownership. The realty company that owns the building where the law firm is located intends to dissolve as well and the assets of the realty company, which consist only of the building itself, will be distributed upon sale.

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.

If confirmed, I will recuse myself in accordance with the Rules of Judicial Conduct from any case in which I have a potential conflict of interest. I currently serve as Chair of the Board of the Trustees of the Eastern Maine Medical Center, as Vice Chair of its parent board, Eastern Maine Healthcare, and as a Director of its superparent, Eastern Maine Healthcare Systems. I have informed the Administration and Boards that I intend to resign from those positions if confirmed. I also serve as a member of the

Board of Trustees of Bowdoin College and a member of the Board of Visitors of the University of Maine School of Law. If possible, I will remain on those educational boards, but will comply with any restrictions on my activities on those boards.

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 attached Financial Disclosure Report.

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

See attached Net Worth Schedule.

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.

Yes.

In 2002, my brother and law partner, Timothy Woodcock, ran for the Republican nomination for United States Congress in the Second District of Maine. His primary run was unsuccessful. I was intimately involved in his campaign from the exploratory committee to the steering committee. I did not, however, have a title in the campaign.

III. GENERAL INQUIRY

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.

   I have occasionally taken cases upon referral by Maine's Volunteer Lawyers Project. I have found, however, that very often the VPL referrals in Maine require expertise in certain legal sub-specialties, such as divorce law, landlord-tenant law, child and protective custody, areas of law in which I commonly do not practice. Therefore, I have devoted a significant amount of volunteer time and energy to service on a substantial number of community boards. Such work has included participation as a board member for the local hospital and health care system, my college, and law school, and as Attorney-Coach for a high school Mock Trial Team.

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 belong to any organization that discriminates on the basis of race, sex, or religion. I have never belonged to any organization that discriminates on the basis of race or religion. While I was an undergraduate at Bowdoin College, I belonged to a fraternity, Psi Upsilon, the national organization of which did not allow the admission of women. Bowdoin was an all-male institution when I joined Psi U and membership in the local chapter was restricted to

Bowdoin students. While in college, I served as a student representative to a College Committee that successfully recommended to the Governing Boards that Bowdoin become co-educational.

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).

Yes. The recommendation of the Selection Committee was confidential and not revealed to the candidates.

The judicial selection process began with a request for an expression of interest by potential candidates. Each candidate submitted a resume to Senator Snowe's office. The candidates were then asked to complete an extensive questionnaire, detailing their education, professional experience, and other relevant information.

The Selection Committee, which consisted of 12 individuals from throughout the State of Maine, conducted interviews in Bangor on November 23, 2002. Following this interview, I was separately interviewed on November 25, 2002 by the Committee Chair, Derek Langhauser. I was subsequently notified by Senator Olympia Snowe and Senator Susan Collins that they would recommend my name for nomination to the President.

Following the Senators' recommendation, on December 10, 2002, I was interviewed in Washington, D.C. by Judge Alberto R. Gonzales, Counsel to the President. I have also been interviewed by the Department of Justice and the Federal Bureau of Investigation.

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.

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.

To respond to this question, I start with the premise that the United States of America is a constitutional democracy. In creating three branches of government, the Constitution contemplates a division of responsibility, directing the elected representatives of the people to create and administer the law and leaving to the judicial branch the duty to interpret the law. The balance among the three branches works

properly only when each branch remains true to its constitutional framework. The Judiciary exceeds its constitutional limitation when it acts as a legislature, creating law under the guise of interpretation, and when it acts as an executive, administering law under the guise of enforcement.

The Judiciary is not designed to develop and implement public policy. Though nominated and confirmed by the elected representatives of the people, the federal Judiciary is neither initially selected nor subject to direct removal by the people themselves. Institutionally, a trial is not a mechanism for analysis of public policy. Bound by rules of evidence, subject to the limitations of advocacy, required to follow the law as interpreted by higher courts, the trial court Judge is well qualified to bring justice to the parties before the court, but distinctly unqualified to make the policy decisions the Constitution leaves to the other two branches of government.

Limited by its constitutional duty to address only cases presented to it, properly viewed, the role of the United States District Court is restrained. The holdings of the United States Supreme Court and the Courts of Appeals are conclusively binding on the judgments of the trial court. Further, the trial court must presume the constitutionality of every duly enacted law and can reach a constitutional question only if it is essential to do so to decide the case before it.

In brief, it is the duty of the federal trial court Judge to apply the policy decisions of Congress and the President as interpreted by higher courts to the parties who come to the court for justice. To do otherwise would be to substitute the judgment of an individual in place of the will of the people and would violate not only the Constitution, but also the Judge's oath of office.