

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Jeffrey Lynn Viken

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

United States District Judge for the District of South Dakota

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

Federal Public Defender
703 Main Street, 2nd Floor
Rapid City, SD 57701

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

1952; Huron, South Dakota

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1974 to 1977, University of South Dakota School of Law; Juris Doctor, May 1977

1970 to 1974, University of South Dakota; Bachelor of Arts, May 1974

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

Employment:

2003 to present:
Administrative Office of the United States Courts
Office of the Federal Public Defender

703 Main Street, 2nd Floor
Rapid City, SD 57701

I was appointed Federal Public Defender for the District of South Dakota by the United States Court of Appeals for the 8th Circuit in 2003. In 2005, the Court of Appeals appointed me the Federal Public Defender for the District of North Dakota to lead a combined-district organization for both North Dakota and South Dakota.

1992 to 2003:

Viken, Viken, Pechota, Leach & Dewell, LLP
1617 Sheridan Lake Road
Rapid City, SD 57702

I was a partner in this law firm.

1992 to 2003:

Lawyers for the People, Inc.
1617 Sheridan Lake Road
Rapid City, SD 57702

I was the Vice President of the Board of Directors of this corporation which owned and managed my law firm's interest in the office park and building which housed Viken, Viken, Pechota, Leach & Dewell, LLP.

1981 to 1992:

Finch, Viken, Viken & Pechota
304 Main Street
Rapid City, SD 57701

I was a partner in this law firm.

1981 to 1982:

Finch, Viken & Viken
304 Main Street
Rapid City, SD 57701

I was a partner in this law firm.

1977 to 1981:

United States Department of Justice
Office of the United States Attorney for the District of South Dakota
515 9th Street
Rapid City, SD 57701

I was an Assistant United States Attorney following graduation from law school in 1977. I served as First Assistant United States Attorney and, in 1981, as Acting United States Attorney for the District of South Dakota.

1975 to 1976

Legislative Research Council
Intern

1975
Pennington County State's Attorney
Intern

Other Affiliations:

2001 to 2003
Red Cloud Indian School, Inc.
100 Mission Drive
Pine Ridge, SD 57770
Volunteer member of the Board of Directors

2001 to 2003
Wildlife Experiences, Inc.
P.O. Box 9663
Rapid City, SD 57709
Volunteer member of the Board of Directors

1989 to 2000
Museum Alliance of Rapid City, Inc., d/b/a The Journey Museum
222 New York Street
Rapid City, SD 57701
I was a volunteer member of the Board of Directors, Secretary/Treasurer, and Vice President of this nonprofit corporation.

1984 to 1986
Rapid City Arts Council
Board of Directors; I served on the Exhibit Committee for many years.

1982 to 1984
William Edward Recovery Center
Board of Directors

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

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

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

During my undergraduate studies at the University of South Dakota 1970 to 1974, I was selected to participate in the Honors Program, was inducted into Phi Beta Kappa, and

earned a Bachelor of Arts Degree Magna Cum Laude with the designation University Scholar.

During my studies at the University of South Dakota School of Law 1974 to 1977, my moot court team won several "best brief" awards in regional competition, I received "best speaker" recognitions, and our three person team was selected to participate in the National Moot Court Competition in New York City in 1975.

The Martindale-Hubbell Law Directory has listed me as an AV rated attorney since 1996, the highest ranking for an attorney's legal ability and ethical standards in this national peer review system.

I have been selected as a Great Plains Super Lawyer in the practice of criminal defense in the biannual ratings for 2007 and 2009 by the publication *Minnesota Law and Politics*.

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

State Bar of South Dakota: I have been a member in good standing of the State Bar since graduation from law school in 1977. I have served on the following State Bar committees: Indian Law Committee; Model Rules of Professional Conduct Committee; Public Relations Committee; South Dakota Supreme Court/State Bar Committee on TV Cameras in the Courtroom; and the Criminal Law Committee.

South Dakota Trial Lawyers Association (SDTLA): I have been a member of SDTLA since 1977. I served two terms as an elected member of the Board of Governors and served on the Legislative Recruitment Committee and the Legislation and Public Affairs Committee. I was a member of the Association of Trial Lawyers of America from 1977 until 2003.

Defender Services Advisory Group (DSAG): I was elected by my Federal Defender colleagues to represent the 6th, 7th and 8th Circuits on this advisory group which serves as a consultative body for the Office of Defender Services, Administrative Office of the United States Courts. I was first elected to DSAG in 2005 and in 2008 was elected to chair DSAG beginning in 2009. I resigned my DSAG position effective April 1, 2009, following my recommendation for appointment to the federal bench.

Member, Federal Practice Committee for the United States District Court for the District of South Dakota, 2003 to present.

Ex Officio Member, Federal Practice Committee for the United States District Court for the District of North Dakota, 2005 to present.

Chair, Merit Selection Panel, appointed by the United States District Court for performance review of the incumbent United States Magistrate Judge for the District of South Dakota, Western Division, 2000; Merit Selection Panel Member, 2004 and 2006. Pennington County Bar Association: I have been a member of our local county bar association since 1977. I was elected to serve as its Secretary/Treasurer in 1991, Vice-President in 1992, and President in 1993.

Black Hills Legal Services, Inc.: I served on the Board of Directors of this legal services organization beginning in 1987 and chaired the Board from 1988 to 1992.

Black Hills Criminal Defense Bar Association: I have been a member of this local bar group since 1985. I was elected Vice-President in 1985, 1986 and 1987. I served as President in 1988.

1985 to 2003; National Diocesan Attorneys Association

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

State Bar of South Dakota, admitted May 1977. There have been no lapses in membership.

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

Bar of the South Dakota Supreme Court, 1977

United States District Court for the District of South Dakota, 1977

United States Court of Appeals for the Eighth Circuit, 1977

Supreme Court of the United States, 1980

Bar of the Oglala Sioux Tribal Court, 1981, inactive since 2003 appointment as Federal Public Defender

United States Court of Federal Claims, 1990

United States Court of Appeals for the Federal Circuit, 1995

United States District Court for the District of North Dakota, 2005

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

2001 to 2003; Red Cloud Indian School, Inc.

I was a volunteer member of the Board of Directors for this nonprofit corporation which operates a preschool program, two K-through-8 grade schools and a college-preparatory high school on Pine Ridge Indian Reservation in South Dakota.

2001 to 2003; Wildlife Experiences, Inc.

I was a volunteer member of the Board of Directors of this nonprofit organization.

1989 to 2000; Museum Alliance of Rapid City, Inc., d/b/a The Journey Museum

I was a volunteer member of the Board of Directors, Secretary/Treasurer, and Vice President of this nonprofit corporation.

1984 to 1986; I was a member of the Board of Directors for the Rapid City Arts Council, a local nonprofit organization which promotes the visual and performing arts. I served on the Exhibit Committee of the Arts Council for many years.

1982 to 1984; I served on the Board of Directors for the William Edward Recovery Center, a chemical dependency treatment project for children and adolescents. This organization is no longer in existence.

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

I have never been a member of any organization which currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin.

12. **Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor,

editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Quick Bear v. Leupp, Amalgamation of Church and State on the Rosebud.
Published, South Dakota Historical Collections, Volume 38, 1976. Four copies supplied.

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

None

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

None

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

I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. I have located the following:

Criminal Justice Act panel attorney training programs for the District of North Dakota with presentations in Fargo, Grand Forks, Minot and Bismarck, North Dakota, June 1 to 5, 2009.

State Bar of South Dakota Continuing Legal Education program, Sioux Falls, South Dakota, April 17, 2009. I was the program chair for a seminar entitled Criminal Defense Artistry: Proficiencies & Perspectives. I emceed the program and introduced all speakers but did not substantively present on any topic.

September 19, 2008 – The University of South Dakota Law School held a forum on the Sixth Amendment. I participated as a panel member at the forum, which focused on the right to assistance from counsel.

United States Sentencing Commission Symposium On Alternatives To Incarceration, Washington, DC, July 2008. Panel speaker on the topic *Treatment for Special Needs of Native Americans*. Four copies of the transcript supplied.

In addition, I made speeches in connection with my duties with the South Dakota Democratic Party, including speeches at State Conventions.

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

I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. I have located the following articles in which I was quoted:

February 29, 2008; “Prosecutors won't seek death penalty against former fugitive”; BYLINE: By Dave Kolpack, Associated Press Writer.

The Associated Press State & Local Wire; July 5, 2005, “Federal public defender system being developed in North Dakota.”

Argus Leader; January 13, 2005; “Justices give judges leeway in sentencing.”

The Associated Press State & Local Wire; October 25, 2002; “Johnson quiet, but has great sense of humor.”

Lincoln Journal Star (Nebraska); November 26, 2001; “For Native children, refuge.”

Argus Leader (Sioux Falls, SD); April 8, 2001; “Few thought Aberdeen native could climb so far.”

Rocky Mountain News (Denver, CO); September 22, 1997; “Archbishop no stranger to abuse cases - South Dakota suit came during Chaput's tenure.”

Rocky Mountain News (Denver, CO); February 23, 1997; “Marching orders from God - New archbishop Chaput plunges into spiritual issues with both energy and personal warmth.”

Hartford Courant (Connecticut); August 30, 1996; “Democrats Of Two Minds: He's Great, Or He'll Do.”

Business Wire; January 12, 1996; "Race For The Presidency" to feature Gramm, Buchanan and Taylor on Jan. 18 show.

The Hotline; February 24, 1992; South Dakota Primary: Battle For The Heartland

ABC News; February 23, 1992; World News Sunday

The Boston Globe; February 21, 1992; "Prairie shootout - South Dakota may winnow the field."

United Press International; October 6, 1981; "Federal, AIM lawyers agree on procedure in camp suit."

The Associated Press; September 9, 1981; "Government Files Suit to Stop Occupation."

United Press International; September 8, 1981; "Indians abandon protest campsite."

The Associated Press; September 1, 1981; "Indians In Court Over The Black Hills -- As Defendants."

The Associated Press; August 31, 1981; "Forest Service Files Suit To Evict Sioux From Campsite."

The Associated Press; June 2, 1981; "Indian Lawyer Says Ruling Threatens Rights Of All Americans."

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held a judicial office.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____
- i. Of these, approximately what percent were:
- jury trials? ___%; bench trials ___% [total 100%]
- civil proceedings? ___%; criminal proceedings? ___% [total 100%]

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

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

I have not served as a judge.

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

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

Appointed Acting United States Attorney for the District of South Dakota, 1981. During the interim between the resignation of President Carter's appointed U.S. Attorney in 1981 and the installation of President Reagan's choice for South Dakota's U.S. Attorney, Andrew W. Bogue, Chief Judge of the United States District Court for the District of South Dakota, appointed me Acting United States Attorney.

Appointed Federal Public Defender for the District of South Dakota, 2003 to present. I am appointed by the United States Court of Appeals for the Eighth Circuit.

Appointed Federal Public Defender for the District of North Dakota, 2005 to present. I am appointed by the United States Court of Appeals for the Eighth Circuit. With this appointment, a combined-district Federal Public Defender organization was established for both judicial districts in the Dakotas. I lead a defender organization which provides effective representation to indigent criminal defendants across a 144,000 square mile territory which encompasses thirteen Indian reservations. My headquarters office is in Rapid City, South Dakota. I manage the representation of clients through branch offices in Pierre and Sioux Falls, South Dakota, and in Fargo and Bismarck, North Dakota.

I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

Between 1982 and 2002, I volunteered for various activities in support of the South Dakota Democratic Party. I worked as a volunteer in the congressional campaigns of Tom Daschle and Tim Johnson, both of whom served South Dakota in the United States House of Representatives and in the Senate. I was elected at the county and state levels to serve as a member of the State Central Committee, the State Party Executive Board, and, from 1990 to 2000, as the Democratic National Committeeman for South Dakota. I have never held a paid position with any political campaign organization or political entity.

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

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

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

I have not served as a clerk to a judge.

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

I have never practiced law alone.

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

2003 to present:

Administrative Office of the United States Courts
Office of the Federal Public Defender
703 Main Street, 2nd Floor
Rapid City, SD 57701

I was appointed Federal Public Defender for the District of South Dakota by the United States Court of Appeals for the 8th Circuit in 2003. In 2005, the Court of Appeals appointed me the Federal Public Defender for the District of North Dakota to lead a combined-district organization for both North Dakota and South Dakota.

1992 to 2003:

Viken, Viken, Pechota, Leach & Dewell, LLP
1617 Sheridan Lake Road
Rapid City, SD 57702

I was a partner in this law firm.

1981 to 1992:
Finch, Viken, Viken & Pechota
304 Main Street
Rapid City, SD 57701
I was a partner in this law firm.

1981 to 1982:
Finch, Viken & Viken
304 Main Street
Rapid City, SD 57701
I was a partner in this law firm.

1977 to 1981:
United States Department of Justice
Office of the United States Attorney for the District of South Dakota
515 9th Street
Rapid City, SD 57701
I was an Assistant United States Attorney following graduation from law school in 1977. I served as First Assistant United States Attorney and, in 1981, as Acting United States Attorney for the District of South Dakota.

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

I have not served as a mediator or arbitrator.

b. Describe:

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

I served as an Assistant United States Attorney from the time of my law school graduation in May 1977 until commencing private practice in November 1981. While employed by the Department of Justice, I prosecuted twenty-five felony cases through jury trial and resolved a substantial number of cases by plea. I was responsible for significant grand jury investigations. As a federal prosecutor, I worked extensively with federal, state and tribal law enforcement authorities. My work also included representing the government in civil litigation under the Federal Tort Claims Act. I briefed and argued more than two dozen cases in the United States Court of Appeals for the Eighth Circuit.

I entered the private practice of law in Rapid City, South Dakota, in 1981. For twenty-one years, my practice focused on plaintiff personal injury litigation and the defense of criminal cases in federal and state courts. I

also defended civil cases for insurance companies, was legal counsel for the board of directors of a major jewelry manufacturing company, and advised small business owners. While in private practice, I tried twenty-three jury cases to conclusion in federal and state courts. A significant part of my civil and criminal client base was comprised of Indian people from the northern plains region.

Since 2003, I have served as a Federal Public Defender. During fiscal year 2008, I oversaw the representation of 842 federal defendants in the Districts of North Dakota and South Dakota. As a court unit executive for the federal judiciary, I manage an annual budget of five million dollars and supervise thirty-two judiciary employees.

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

During my twenty-one years of private practice, I represented a broad range of clients from corporate entities to members of the clergy to middle class business owners to indigent clients who sought guidance on civil and criminal issues. The focus of my civil practice was plaintiff personal injury and wrongful death work. My criminal practice was limited almost exclusively to the defense of felonies in federal and state courts.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

I estimate that 95% of my civil and criminal practice involved litigation. During all stages of my career until 2003, I appeared in court frequently. Since my appointment as Federal Public Defender, I have appeared in court infrequently. The administrative and management obligations of my present work prevent me from regularly undertaking the representation of individual clients. My daily schedule does include significant work on pretrial and trial strategy with the ten Assistant Federal Defenders in our organization. I have tried one major jury case and argued three cases at the United States Court of Appeals since becoming the Defender in 2003.

- i. Indicate the percentage of your practice in:
 - 1. federal courts: 66%
 - 2. state courts of record: 33%;
 - 3. other courts: 1% in tribal courts
 - 4. administrative agencies:
- ii. Indicate the percentage of your practice in:
 - 1. civil proceedings: 55%;
 - 2. criminal proceedings: 45%

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

I have tried 49 jury cases to conclusion and approximately 8 cases to courts without a jury. I estimate that I had co-counsel in 9 of these cases. In all other cases, I was sole counsel.

- i. What percentage of these trials were:
- | | | |
|----|-----------|------|
| 1. | jury: | 86% |
| 2. | non-jury: | 14%. |

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

I have not practiced before the Supreme Court of the United States.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *Black v. Secretary of Health and Human Services*, 93 F.3d 781 (Fed. Cir. 1996): National Vaccine Injury Compensation Act litigation. With my law partner James Leach, I represented a catastrophically injured Indian boy who was denied lifetime benefits after administrative proceedings under the Act. Because the client received medical care from the Indian Health Service for his vaccine injuries, he could not meet the statutory \$1,000 out-of-pocket expense requirement. This result excluded many poor Indian children in the country from relief under the Act, which was an outcome not intended by Congress. I helped lead an advocacy effort which resulted in Congress amending the Act so that the out-of-pocket expense requirement would not exclude other Indian families from

seeking a remedy for vaccine injuries. Representation of the minor claimant and his parents commenced in approximately 1989 and concluded in approximately 1997. The case was litigated in the United States Court of Federal Claims and in the United States Court of Appeals for the Federal Circuit. Co-counsel was James D. Leach, 1617 Sheridan Lake Road, Rapid City, SD 57702, telephone 605-341-4400. The claim was defended by a number of attorneys through the Department of Justice.

2. *Oglala Sioux Tribe of the Pine Ridge Indian Reservation v. United States, et al.*, 650 F.2d 140 (8th Cir. 1981): The Oglala Sioux Tribe brought a quiet title action seeking the return of the Black Hills and surrounding areas alleging an unconstitutional taking under the 5th Amendment. The United States District Court for the District of Nebraska, the Honorable Albert G. Schatz sitting by designation, dismissed the action for lack of jurisdiction based on a motion I filed and argued on behalf of the United States. The court concluded that the Indian Claims Commission Act was the exclusive remedy and that the Oglalas' claim had been adjudicated under that Act in *Sioux Nation of Indians v. United States*. The dismissal was affirmed by the U.S. Court of Appeals for the Eighth Circuit. I represented the United States at oral argument in the Eighth Circuit. I was lead defense counsel in this litigation. Co-defendant State of South Dakota was represented by then Attorney General Mark V. Meierhenry. Mr. Meierhenry's present address is 315 South Phillips Avenue, Sioux Falls, SD 57104, telephone 605-336-3075. Lead counsel for the plaintiff was Mario Gonzales, 522 7th Street, Ste. 202, Rapid City, SD 57701, telephone 605-716-6355.
3. United Airlines Flight 232 Disaster: I was lead counsel for the estate of Gladys Cooper, a Wyoming resident killed in Sioux City, Iowa, in the crash of United Airlines flight 232 on July 19, 1989. This case was handled under the rules governing complex civil litigation in United States District Court in Chicago. The litigation was against United Airlines, General Electric, McDonald Douglas and other parties deemed responsible for the mechanical failures which resulted in the crash of the United Airlines passenger jet. I negotiated a substantial settlement for the clients. Andrew Breffeilh of Jackson, Wyoming, was co-counsel and served as local counsel for the estate in Wyoming. Mr. Breffeilh is no longer practicing law. The numerous defendants were represented by a defendants' steering committee for the resolution of this case.
4. *United States v. Pam Holiday*: As an Assistant U.S. Attorney, I directed the lengthy federal grand jury investigation which ultimately resulted in a raid on the houses of prostitution in Deadwood, South Dakota, in 1980. Numerous federal crimes were under investigation which required the grand jury testimony of Deadwood's prostitutes as material witnesses. The focus of the federal law enforcement action was not local prostitution violations but rather homicide, gun running, gang activity and other matters which remain secret under rules governing the conduct of grand jury proceedings. The South Dakota Attorney General's Office filed the civil abatement action which closed the houses

following the federal material witness raid. I prosecuted Madam Pam Holiday for tax code violations in United States District Court at Rapid City, the Honorable Andrew W. Bogue presiding. The case ended in a guilty plea. During the investigation and subsequent litigation, the State of South Dakota was represented by Assistant Attorney General James E. McMahon. Mr. McMahon's present address is P.O. Box 2554, Sioux Falls, SD 57101, telephone 605-332-5606. Defendant Pam Holiday was represented by Rapid City attorney and later state court judge John E. Fitzgerald, deceased.

5. *Marilyn Rynders v. DuPont, et al.*, 21 F.3d 835 (8th Cir. 1994): I was lead counsel for plaintiff Marilyn Rynders on a products liability claim against DuPont, Vitek Corporation and other defendants alleging negligent manufacture of the medical product known as proplast temporal mandibular joint implants. My client suffered permanent jaw joint injuries from failure of the product. At trial in United States District Court at Rapid City, South Dakota, the Honorable Richard H. Battey presiding, the jury found in favor of the defendants. The United States Court of Appeals for the Eighth Circuit affirmed. This was one of the first products cases of its kind tried in the United States based on failed proplast implants. Evidence was developed for the Rynders case which ultimately facilitated verdicts against the defendants in other jurisdictions. The defense legal team was led by William G. Porter, deceased, of Rapid City, South Dakota.
6. *United States v. Cyril Plumman*, 409 F.3d 919 (8th Cir. 2005): I was lead counsel for the defense of Cyril Plumman on multiple charges of aggravated sexual abuse arising under the Major Crimes Act. The case was tried in United States District Court at Pierre, South Dakota, the Honorable Charles Kornmann presiding. Mr. Plumman was acquitted on one count but was convicted on other abuse counts. The District Court sentenced Mr. Plumman to multiple mandatory life sentences believing that the Federal Sentencing Guidelines required that outcome. I argued the case at the United States Court of Appeals for the Eighth Circuit on the basis that the District Court erred in treating the Sentencing Guidelines as mandatory rather than advisory in light of the Supreme Court jurisprudence post-*Booker*. The Court of Appeals affirmed the convictions but vacated the mandatory life sentences and remanded for resentencing. Mr. Plumman received a term of years with no life sentence at post-appeal proceedings in District Court. My co-counsel was Assistant Federal Public Defender Edward Albright, 124 South Euclid Avenue, Ste. 202, Pierre SD 57501, telephone 605-224-0009. The prosecutor was Randolph Seiler, Assistant United States Attorney, P.O. Box 7240, Pierre SD 57501, telephone 605-224-5402.
7. *Pattie Hinkle v. Kadoka School District*: My wife and law partner Linda Lea Viken and I represented the plaintiff in this claim for money damages on behalf of high school teacher Pattie Hinkle in United States District Court at Pierre, South Dakota, in 1982. The Honorable Donald Porter, now deceased, presided. Ms. Hinkle brought this civil rights action alleging that she was fired from her long service as an educator because of her activism in the local teacher's union. The

jury awarded our client money damages. The school district did not appeal the verdict. Co-counsel Linda Lea Viken practices law at 4200 Beach Drive, Ste. 4, Rapid City SD 57702, telephone 605-721-7230. The defendants were represented by attorney David Gerdes, P.O. Box 160, Pierre SD 57501, telephone 605-224-8803.

8. *People to Save Our Constitution, Inc. v. Cheyenne River Sioux Tribe*: My former law partner Terry Pechota and I represented the plaintiff, a group of tribal members, against the Tribe for violations of federal and tribal law in connection with elections on the Cheyenne River Reservation. We tried the case to the late Judge Donald Porter in United States District Court at Pierre, South Dakota. Our clients did not prevail but achieved some regularity in the election processes as a result of this dispute. Lead counsel for the defendant was Richard West, retired. Mr. West was subsequently Director of the National Museum of the American Indian in Washington, DC.
9. *State of South Dakota v. Dick Stoll*: My client was prosecuted by the South Dakota Attorney General's Office and the Meade County States Attorney on multiple rape allegations in South Dakota Circuit Court at Sturgis in 1983. The late Judge Robert Tschetter presided. This complex case involved a number of alleged victims who made spectacular claims of rape against my client, a well known person in the state volunteer fire department community. The case received extensive coverage in the local media for months, all of it slanted toward the guilt of my client. After a lengthy jury trial, Mr. Stoll was found not guilty on all counts. Lead counsel for the State of South Dakota was Ronald Campbell, 325 East 1st Avenue, Miller SD 57362, telephone 605-853-2456.
10. *Robert Koenig v. William Lambert and Diocese of Rapid City*, 527 N.W.2d 903 (SD 1995): This much publicized clergy sex abuse case was tried to a jury in Circuit Court for the Seventh Judicial Circuit at Rapid City before the Honorable Warren G. Johnson. I represented the Diocese of Rapid City which was the subject of allegations that the bishops of the diocese knew or should have known of Koenig's childhood sexual abuse by Catholic priest William Lambert. The jury returned an award of money damages against Lambert. The jury found the Diocese not liable because its bishops were without knowledge of Lambert's criminal activities and the claim was barred by the statute of limitations. This was one of the first clergy sex abuse cases in the country which resulted in a jury finding of no liability against a diocese. The verdict was upheld on appeal. Plaintiff's co-counsel were Rick Johnson, deceased, and Stephanie Pochop. Ms. Pochop practices law in Gregory, South Dakota. Her address is P.O. Box 149, Gregory SD 57533, telephone 605-835-8391. Counsel for defendant William Lambert was Joseph M. Butler, deceased, and Jeffrey G. Hurd. Mr. Hurd can be reached at P.O. Box 2670, Rapid City SD 57709, telephone 605-343-1040.

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

The most significant legal matter in my career not involving litigation was the establishment of the Federal Public Defender organization for the District of North Dakota. Shortly after my appointment as Federal Public Defender for the District of South Dakota in 2003, the Federal District Judges in North Dakota requested that I consider expanding defender services into that district. North Dakota was one of four remaining judicial districts in the United States without a Federal Public or Community Defender established pursuant to the Criminal Justice Act, 18 U.S.C. § 3006A. Between 2003 and the opening of our defender offices in North Dakota on November 1, 2005, I led the effort to analyze the practicality and logistics of forming a combined-district Federal Defender organization. I traveled throughout North Dakota speaking to judges, defense attorneys, prosecutors, probation staff and others involved in the federal criminal justice system. Though the Criminal Justice Act Plan for the District of North Dakota provided a competent panel of private practice attorneys available for appointment to represent indigent defendants in District Court, no support resources were available to defense counsel and trials were few in number. After my public education effort, the North Dakota State Bar conducted a survey of its membership to determine whether a combined-district defender organization was needed and supported in the district. The survey results confirmed greater than 80% support for the establishment of a Federal Public Defender organization for the District of North Dakota. The Federal District Judges and the Clerk of Court worked closely with me to achieve Circuit Court approval and authorization from the Administrative Office of the United States Courts to expand defense services into the district. With the assistance of the General Services Administration, we located and renovated professional office spaces for our staff in Fargo and Bismarck, North Dakota. Four Assistant Defenders, two professional investigators and two legal secretaries were hired from a large pool of applicants. Since opening our North Dakota offices in 2005, we have represented 976 indigent defendants vigorously and effectively. Our organization provides annual training opportunities for panel attorneys, consults with appointed counsel in complex cases, and maintains a specialized website and library resources for use by panel attorneys. The judges in the district have stated publicly that the establishment of our combined-district organization has significantly increased the quality of representation for indigent defendants in the District of North Dakota.

I have performed no lobbying activities on behalf of any client or organization.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe

briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have not taught any courses during my legal career.

20. **Deferred Income/Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have no deferred income or future benefit arrangements from prior business relationships.

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

I have no plans, commitments or agreements to pursue outside employment, with or without compensation, during my service with the court.

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

See attached Financial Disclosure Report

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

See attached Net Worth Statement

24. **Potential Conflicts of Interest:**

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

I will handle all matters involving actual or potential conflicts of interest through the careful and diligent application of Canon 3 of the Code of Conduct for United States Judges as well as other relevant Canons and statutory provisions.

My spouse, Linda Lea M. Viken, is a sole practitioner doing business under the name Viken Law Firm. She is a family law attorney whose practice is entirely within the jurisdiction of the courts of the State of South Dakota. A filing in federal court involving my spouse will be extremely rare and easily identifiable.

I have been out of private law practice for nearly six years. I have no financial interest in any law firm or with any former client, former law partner or matter pending in any law firm with which I was formerly associated.

Federal criminal and habeas corpus cases pending in the Federal Public Defender's Office at the time of my departure will present a conflict and will require recusal. Future cases in which present clients or former clients of the Federal Public Defender's Office appear as witnesses may present a conflict. Based on discussion with Chief Judge Karen Schreier, District of South Dakota, I plan to recuse myself under the circumstances noted. Chief Judge Schreier or another District Judge will be assigned to cases which require my recusal.

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

Cases involving clients or former clients represented by the Federal Public Defender's Office during my tenure as Defender are easily identifiable from the court's record of appointed counsel. I will recuse myself from cases involving such clients as well as cases arising from clients represented during my time as Federal Defender.

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

Throughout my 21 years of private practice, I regularly and frequently performed legal services at no charge or on a reduced fee basis for financially disadvantaged people. Forms of representation included drafting testamentary documents and contracts, negotiating disputes without litigation, resolving issues with insurance carriers or public benefit providers, addressing landlord-tenant issues, and undertaking representation in simple and complex criminal and civil litigation. Pro bono work was performed for clients in federal, state and tribal courts.

My commitment to seeking equal justice for indigent people was the motivation for my tenure on the Board of Directors of Black Hills Legal Services, Inc., from 1987 to 1992. As chair of the Legal Services Board from 1988 to 1992, I undertook pro bono representation and encouraged members of the local bar to offer their services free of charge to those who could not afford counsel in civil matters.

After becoming Federal Defender in 2003, I initiated annual Law Day programs in regional schools heavily populated by financially disadvantaged students. Our staff attorneys and paralegals speak to approximately 1,000 middle school and high school students each year, primarily in institutions located on Indian reservations in the Dakotas. These presentations and discussions are intended to inform students about their constitutional and statutory rights and obligations in the hope that our instruction will encourage law abiding behavior and respect for the justice system.

26. **Selection Process:**

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

The January 2009 edition of the South Dakota State Bar Newsletter carried a notice that attorneys interested in filling a Federal District Court vacancy should apply to Drey Samuelson, Chief of Staff for United States Senator Tim Johnson. I followed the instructions provided in the notice and in subsequent communications from Mr. Samuelson to those who applied for the judgeship. There is no selection commission process used in this district. I submitted an application letter and resume to Mr. Samuelson. Thereafter, I responded to a detailed set of questions submitted to applicants. On February 24, 2009, I received a call from Mr. Samuelson advising that Senator Johnson intended to recommend me to fill an upcoming vacancy on the District Court in the Western Division at Rapid City, South Dakota. I met with Senator Johnson and Mr. Samuelson while in Washington, DC, on defender business on February 27, 2009, the day Senator Johnson announced his recommendation. Since March 12, 2009, I have been in communication with pre-nomination officials at the Department of Justice for guidance on the completion of required documents and for the scheduling of an initial telephonic interview. On May 21, 2009, I was interviewed by Associate Attorney General Thomas Perrelli and staff from the Office of White House Counsel at the Department of Justice.

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

No such communications have taken place.

AFFIDAVIT

I, Jeffrey L. Vinken, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

June 17, 2009
(DATE)

[Signature]
(NAME)

[Signature]
(NOTARY)

M.C.E. 8/5/11