

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

John Melvin Gerrard

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

United States District Judge for the District of Nebraska

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.

Nebraska Supreme Court
State Capitol Building, Room 2219
P.O. Box 98910
Lincoln, Nebraska 68509

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

1953; Schuyler, Nebraska

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.

1978 – 1981, Pacific McGeorge School of Law; J.D., 1981

1976 – 1977, University of Arizona; M.P.A., 1977

1972 – 1975, Nebraska Wesleyan University; B.S., 1976

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.

1995 – present
Nebraska Supreme Court
State Capitol Building, Room 2219
P.O. Box 98910
Lincoln, Nebraska 68509
Judge

1990 – 1995
Gerrard, Stratton & Ptak, P.C.
1307 South 13th Street
Norfolk, Nebraska 68701
Senior Partner

1982 – 1990
Domina, Gerrard, Copple & Stratton, P.C.
2425 Taylor Avenue
Norfolk, Nebraska 68701
Partner

1981 – 1982
Jewell, Otte, Gatz, Collins & Domina
105 South Second Street
Norfolk, Nebraska 68701
Associate

1979 – 1981
McGeorge Institute for Administrative Justice
3200 Fifth Avenue
Sacramento, California 95817
Researcher

1977 – 1978
State of Nebraska District Probation Office
110 South 13th Street
Norfolk, Nebraska 68701
Adult and Juvenile Probation Officer

1976 – 1977
University of Arizona
1200 East University Boulevard
Tucson, Arizona 85721
Graduate Assistant/Researcher

Other Affiliations (uncompensated):

1998 – 2007

Southeast Nebraska Fellowship of Christian Athletes
1909 North First Street, Suite Two
Lincoln, Nebraska 68508
Advisory Board Member

2000 – 2005

City Impact
400 North 27th Street
Lincoln, Nebraska 68503
Board Member

1990 – 1995

Madison County Democrats
1305 South 13th Street
Norfolk, Nebraska 68701
Vice Chair (1990 – 1992)
Chairman (1992 – 1995)

1982 – 1995

City of Battle Creek
102 South Second Street
Battle Creek, Nebraska 68715
City Attorney (Law firm compensated by City)

1992 – 1994

Big Brothers/Big Sisters of Northeast Nebraska
103 South Eighth Street
Norfolk, Nebraska 68701
Chair of 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 have not served in the military. I registered for the Selective Service when I turned 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.

Nebraska State Bar Foundation, Legal Pioneer Award (for leading initiatives promoting racial and ethnic fairness), March 27, 2009.

Nebraska Judicial System, Distinguished Judge for Improvement of Judicial System Award, November 2, 2006.

Nebraska College of Law Black Law Students Association, Outstanding Community Leader Award (for contributions to legal diversity), 2005.

Nebraska Wesleyan University Alumni Achievement Award, 1999.

Nebraska State Bar Foundation, Elected Lifetime Fellow, 1996.

Elected to American Board of Trial Advocates, 1994.

Certified as a Civil Trial Advocate by The National Board of Trial Advocacy (now known as National Board of Legal Specialty Certification), 1994.

In private practice, obtained and maintained an “AV” rating from Martindale-Hubbell, 1991.

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.

Judicial

Nebraska Supreme Court Committees:

Minority and Justice Committee, Co-Chair, 2000 – present

Interpreter Advisory Committee, Chair, 1998 – present

Judicial Branch Education Committee, Court’s Chair, 1998 – present

Gender Fairness Implementation Committee, Chair, 1995 – present

Bar Associations

American Bar Association, Member, Litigation Section, 1992 – 1995

American Board of Trial Advocates, 1994 – present (now judicial member)

Madison County Bar Association

National Board of Trial Advocacy

Nebraska Association of Trial Attorneys

Nebraska Council of School Attorneys (was President Elect for 1995)

Nebraska State Bar Association, Member, Legislative Council, 1993 – 1995

Robert Van Pelt American Inns of Court

Seventh Judicial District Bar 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 Nebraska, 1981

There has been no lapse 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.

United States Court of Appeals for the Eighth Circuit, 1981

United States District Court for the District of Nebraska, 1981

Nebraska Supreme Court, 1981

There have been no lapses in membership.

11. **Memberships:**

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

Dates of membership are to the best of my recollection as I have few records documenting specific years of affiliation.

Big Brothers/Big Sisters of Northeast Nebraska

Chair, Board of Directors (1992 – 1994)

City Impact

Board Member (2000 – 2005)

Lincoln People's City Mission, Youth Volunteer (2001 – 2002)

Lincoln Youth Track Club, Active Member and triple jump coach (1997 – 2005)

Madison County Democrats

Chairman (1992 – 1995)

Vice Chair (1990 – 1992)

Meals on Wheels, Volunteer (1998 – 2006)

Norfolk Area Chamber of Commerce

Chair, Legislative Committee (1994)

Norfolk Country Club (approximately 1989 – 1994)

Pheasant Ridge First Edition Home Owners Association

President (2003 – present)

Rejoice Ministries International, Advisory Board (2002 – 2010)

Robert Van Pelt American Inns of Court (2000 – present)

Southeast Nebraska Fellowship of Christian Athletes

Advisory Board Member (1998 – 2007)

Wilderness Ridge Golf Course (2009 – present)

- 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.

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

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.

This list represents the published materials that I was able to locate after a diligent review of my records and the internet. It is possible that there are other published materials to which I no longer have access or for which I did not retain records.

With Melodie Bellamy, *Appellate Practice in Nebraska: An Insider's View on Doing it Right*, THE NEBRASKA LAWYER, Volume 13, No. 5, May 2010. Copy supplied.

Foreword, NEBRASKA LAW REVIEW, Volume 79, No. 4, 2000. Copy supplied.

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

From 2000 to the present, I have co-chaired the Supreme Court/Nebraska State Bar Association's joint Minority and Justice Task Force. As part of the chair's responsibility, I have had significant input (both authoring and editing) in all of the Minority and Justice Committee's reports and publications. These reports are listed below and copies are supplied:

The Nebraska Minority Justice Committee Progress Report of 2010 (January 2011).

The Nebraska Minority Justice Committee Progress Report of 2009 (January 2010).

The Nebraska Minority Justice Committee Progress Report of 2008 (January 2009).

Representative Juries: Examining the Initial and Eligible Pools of Jurors, Nebraska Minority Justice Committee (December 2008).

The Nebraska Minority Justice Committee Progress Report of 2007 (January 2008).

The Nebraska Minority Justice Committee Progress Report of 2006 (January 2007).

Report to the Nebraska Supreme Court on Indigent Defense Systems and Fee Structures, Nebraska Minority Justice Committee (Summer 2006).

The Nebraska Minority and Justice Implementation Committee Progress Report of 2005 (January 2006).

The Nebraska Minority and Justice Implementation Committee Progress Report (February 2005).

The Indigent Defense System In Nebraska: An Update, A Report of the Nebraska Minority and Justice Task Force/Implementation Committee (October 2004).

The Nebraska Minority and Justice Implementation Committee Progress Report (February 2004).

The Nebraska Minority and Justice Task Force Final Report (January 2003).

Since 1998, I have served on the Nebraska Judicial Branch Education Advisory Board. In 2009, the Board issued an End-Year Report. I played no role in the preparation of that report, but a copy is supplied.

Since 1995, I have chaired the Nebraska Supreme Court Gender Fairness Implementation Committee. The reports issued are listed below and copies are supplied:

Progress Report of the Gender Fairness Implementation Committee (1999/2000).

Progress Report of the Gender Fairness Implementation Committee (1998).

Progress Report of the Gender Fairness Implementation Committee (1996).

I am not aware of any other reports, memoranda, or policy statements that I prepared or contributed to the preparation of, but I have been a member of several Supreme Court and bar association committees such that there may be additional reports I do not recall and of which I have not been able to find any record.

- 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.

January 6, 2006: With Linda Crump, co-chair of the Minority Justice Committee, I wrote a letter to Norfolk Mayor Gordon Adams to request a proclamation for Juror Appreciation Week. Copy supplied.

On November 14, 1997, I testified before a legislative interim subcommittee that was studying, among other things, possible legislation to add diversity education as part of the training for judicial nominating commissions. I have been unable to locate a transcript or recording, but I am supplying a copy of a newspaper article setting forth the primary point of the testimony, which was to emphasize the importance of encouraging qualified female and minority applicants to seek judgeships in Nebraska.

In approximately 2004, as chair of the Minority Justice Committee, I also testified before the Legislature about the importance of obtaining access to data that would ensure fairness in the courts.

- 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.

The following list of speeches includes those I was able to locate after a diligent search. In a few instances, I used fully prepared remarks, and in some other instances, I utilized notes or outlines. On several other occasions, I did not speak from prepared speeches, notes, or outlines. I have attempted to locate all speeches or talks given by me but there may be additional occasions on which I have given remarks that I have been unable to identify or recall.

September 17, 2010: Introduction of Prof. Don Hickey, as Alexander Hamilton, to middle school and high school students for Constitution Day (Norfolk, NE). I have no notes, transcript or recording, but press coverage is supplied. The event was co-sponsored by the Nebraska State Bar Foundation and the Nebraska Supreme Court. The address of the Court is State Capitol Building, Room 2219, P.O. Box 98910, Lincoln, Nebraska 68509.

September 16, 2010: Remarks to northeast Nebraska journalists providing an overview of court system (Norfolk, NE). I have no notes, transcript or recording. The address of the Nebraska Supreme Court, which sponsored the event, is State Capitol Building, Room 2219, P.O. Box 98910, Lincoln, Nebraska 68509.

March 23, 2010: Remarks on professionalism to high school students and to Educational Service Unit #6 for Professional Development Day (Crete, NE). I have no notes, transcript or recording. The address of ESU #6 is 210 5th Street, Milford, Nebraska 68405.

December 18, 2009: Commencement address to University of Nebraska College of Law graduates (Lincoln, NE). Speech supplied.

October 16, 2009: Remarks at Nebraska State Bar Association seminar, *How to Apply for a Judicial Vacancy* (Omaha, NE). I have no notes, transcript or recording. The address of the NSBA is 635 South 14th Street, Suite 200, P.O. Box 81809, Lincoln, Nebraska 68508.

May 9, 2009: Commencement address to Northeast Community College graduates (Norfolk, NE). Speech supplied.

March 27, 2009: Thank-you remarks at the Legal Pioneer Award ceremony, Nebraska State Bar Foundation. I have no notes, transcript, or recording. The address of the Foundation is 635 South 14th Street, Suite 120, P.O. Box 95103, Lincoln, Nebraska 68509.

March 18, 2009: Lecture at Lou Ashe symposium regarding civility and ethics, Pacific McGeorge School of Law (Sacramento, CA). I have no notes, transcript or recording. The address of the law school is 3200 Fifth Avenue, Sacramento, California 95817.

September 27, 2008: Lecture to Evidence and Family Law classes, Touro Law School (Central Islip, NY). I have no notes, transcript or recording. The address of Touro Law is 225 Eastview Drive, Central Islip, New York 11722.

June 3, 2008: Remarks to Lincoln Downtown Rotary Club on access to justice (Lincoln, NE). Outline of remarks supplied.

May 5, 2008: Presentation to high school students for Law Day (Lincoln, NE). I have no notes, transcript or recording, but Nebraska State Bar Foundation coverage is supplied. The address of the NSBF is 635 South 14th Street, Suite 200, P.O. Box 81809, Lincoln, Nebraska 68508.

September 13, 2007: Remarks to Minority Justice Committee's annual Diversity Summit (Omaha, NE). I have no notes, transcript or recording. The committee is overseen by the Nebraska Supreme Court, which is located at the State Capitol Building, Room 2219, P.O. Box 98910, Lincoln, Nebraska 68509.

Fall 2007: Remarks on "Integrity in the Practice of Law" during a dinner hosted by the University of Nebraska College of Law chapter of the J. Reuben Clark Law Society. I have no notes, transcript or recording, but JRCLS coverage is supplied.

February 2007: Lecture to Advanced Trial Advocacy class on the importance of making and preserving a record, Nebraska College of Law (Lincoln, NE). I have no notes, transcript or recording. The address of the college is P.O. Box 830902, Lincoln, Nebraska 68583.

November 2, 2006: Remarks upon receiving the Distinguished Judge for Improvement of the Judicial System. I have no notes, transcript or recording, but Nebraska Supreme Court coverage is supplied. The address of the Nebraska Supreme Court, which sponsored the event, is State Capitol Building, Room 2219, P.O. Box 98910, Lincoln, Nebraska 68509.

October 3, 2006: Remarks to Minority Justice Committee's annual Diversity Summit (Omaha, NE). Outline of remarks supplied.

September 18, 2006: Remarks at Juror Appreciation Week ceremony (Lincoln, NE). Outline of remarks supplied.

August 31, 2006: Presentation to Judicial Nominating Commission about my qualifications to be the chief justice. I have no notes, transcript or recording, but press coverage is supplied. The address of the Nebraska Supreme Court, which sponsored the event, is State Capitol Building, Room 2219, P.O. Box 98910, Lincoln, Nebraska 68509.

July 18, 2006: Remarks to Sertoma Club regarding Nebraska's judicial selection system (Schuyler, NE). I have no notes, transcript or recording. The event was sponsored by the Sertoma Club of Schuyler, Nebraska.

April 25, 2006: Remarks at a reception honoring Justice James Hardesty (Reno, NV). I have no notes, transcript, or recording. The address of the Pacific McGeorge School of Law, which sponsored the event, is 3200 Fifth Avenue, Sacramento, California 95817.

February 25, 2006: Benediction at Nebraska Leadership Prayer Breakfast (Lincoln, NE). I have no notes, transcript or recording.

June 12, 2005: Commencement address to Hamilton College graduates (Lincoln, NE). I have no notes, transcript or recording. The college is now known as Kaplan University-Lincoln, which is located at 1821 K Street, Lincoln, Nebraska 68508.

April 11, 2005: Opening remarks to the Minority Justice Committee's annual Diversity Summit (Omaha, NE). I have no notes, transcript or recording. The committee is overseen by the Nebraska Supreme Court, which is located at the State Capitol Building, Room 2219, P.O. Box 98910, Lincoln, Nebraska 68509.

February 11, 2005: Remarks regarding leadership and integrity to Nebraska Future Business Leaders of America (high school, college) (Lincoln, NE). I have no notes, transcript or recording. The address of NFBLA is 301 Centennial Mall South, Lincoln, Nebraska 68509.

October 20, 2004: Remarks at the Nebraska State Bar Association's annual meeting, *Using Interpreters in Nebraska's Courtrooms* (Lincoln, NE). I have no notes, transcript or recording. The address of the NSBA is 635 South 14th Street, Suite 200, P.O. Box 81809, Lincoln, Nebraska 68508.

April 16, 2004: Presentation at Nebraska State Bar Association Seminar, *Briefing and Oral Argument: A View From the Bench* (Lincoln, NE). Materials supplied.

December 1, 2003: Presentation of the Nebraska Minority and Justice Implementation Committee's findings at town hall meeting (Norfolk, NE). I have no notes, transcript or recording, but press coverage is supplied. The committee is overseen by the Nebraska Supreme Court, which is located at the State Capitol Building, Room 2219, P.O. Box 98910, Lincoln, Nebraska 68509.

October 16, 2003: Presentation of the Nebraska Minority and Justice Implementation Committee's findings to Lincoln community members (Lincoln, NE). I have no notes, transcript or recording, but press coverage is supplied. In addition, I made a similar presentation in late October or early November in Lexington, Nebraska, but I have no record of the precise date. The event was co-sponsored by the Nebraska State Bar Association and the Nebraska Supreme Court. The address of the Court is State Capitol Building, Room 2219, P.O. Box 98910, Lincoln, Nebraska 68509.

September 24, 2003: Opening remarks to statewide interpreter training session (Lincoln, NE). I have no notes, transcript or recording. The address of the Nebraska Supreme Court, which sponsored the event, is State Capitol Building, Room 2219, P.O. Box 98910, Lincoln, Nebraska 68509.

January 17, 2002: Remarks to Martin Luther King, Jr., breakfast kicking off the statewide public hearings for the Minority and Justice Task Force (Lincoln, NE). Outline of remarks supplied.

October 1, 2001: Remarks to Nebraska College of Law, Public Service Section, *Access to Justice: Public Service in the Private Sector* (Lincoln, NE). Outline of remarks supplied.

September 7, 2001: Remarks at Young Lawyers Seminar *Appellate Practice in Nebraska* (Lincoln, NE). I have no notes, transcript or recording. The address of the Nebraska State Bar Association, which sponsored the event, is 635 South 14th Street, Suite 200, P.O. Box 81809, Lincoln, Nebraska 68508.

May 1, 2001: Presentation to high school students for Law Day (Lincoln, NE). I have no notes, transcript or recording, but press coverage is supplied. The address of the Nebraska State Bar Foundation, which sponsored the event, is 635 South 14th Street, Suite 200, P.O. Box 81809, Lincoln, Nebraska 68508.

May 1, 2001: Administered the oaths to Nebraska's first five courtroom interpreters. I have since administered the oath to other interpreters on multiple occasions. I have no notes, transcript or recording, but Nebraska Supreme Court coverage is supplied.

September 25, 2001: I was the emcee of the swearing-in ceremony for U.S. Attorney Michael Heavican. I have no notes, transcript, or recording.

March 2000: Lecture to Advanced Trial Advocacy class on the importance of making and preserving a record, Nebraska College of Law (Lincoln, NE). I have no notes, transcript or recording. The address of the college is P.O. Box 830902, Lincoln, Nebraska 68583.

February 18, 2000: Remarks at Nebraska Leadership Prayer Breakfast (Lincoln, NE). I have no notes, transcript or recording, but press coverage is supplied.

December 1999: Moderator of Inns of Court meeting on gender fairness. I have no notes, transcript or recording. The event was sponsored by the Robert Van Pelt Inn of Court in Lincoln, Nebraska.

October 1998: Remarks during a panel discussion on elimination of bias and the promotion of diversity in law during the Nebraska State Bar Association Annual Meeting. I have no notes, transcript or recording. The address of the NSBA is 635 South 14th Street, Suite 200, P.O. Box 81809, Lincoln, Nebraska 68508.

April 4, 1998: Remarks at Nebraska Associated Press Broadcasters Association Convention, *Healthy Tension Between the Press and the Courts* (Norfolk, NE). I have no notes, transcript or recording, but press coverage is supplied. The address

of the Associated Press is 909 North 96th Street, Suite 104, Omaha, Nebraska 68114.

May 1997: Presented on gender fairness during the Nebraska State Bar Association Bench Bar Conference. I have no notes, transcript or recording. The address of the NSBA is 635 South 14th Street, Suite 200, P.O. Box 81809, Lincoln, Nebraska 68508.

July 21, 1995: Investiture Remarks (Omaha, NE). I have no notes, transcript or recording, but press coverage is supplied.

In addition, I speak on an annual basis to groups of students at Youth Leadership Lincoln (in March) and to Nebraska's future leaders at Boys State (in June) about the law, the Constitution, and living a life of integrity. I have done this annually from 1998 through the present. I have not retained any outlines or notes from these various talks. The address of YLL is 920 O Street, Suite 300, Lincoln, Nebraska 68508. Boys State is sponsored by the American Legion, P.O. Box 5205, Lincoln, Nebraska 68505.

- 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 searched my files and numerous electronic databases in an effort to locate the times I have spoken to a reporter or have been quoted in some official capacity. It has not been my practice to give interviews on a regular basis, but it is possible that other press accounts exist that I have not been able to locate.

Growing Need for Spanish Translators in Nebraska Courts, EFE World News Service, June 18, 2009. Copy supplied.

Jordan Pascale, *Demand for Interpreters Outpaces Budget Cost in Translation*, OMAHA WORLD-HERALD, June 15, 2009. Copy supplied.

James Barnes, *State's Minority Committee Continues Seeking Justice*, THE DAILY RECORD, May 1, 2009. Copy supplied.

Jean Ortiz, *Neb. Grapples with Diversity's Pressure on Courts*, ASSOCIATED PRESS, Sept. 29, 2008. Copy supplied.

Interview along with Minority Justice Committee Co-Chair Linda Crump for an article about the implementation success of the committee's report. The article was published as the following: Elizabeth Neeley, *From Investigation to Implementation: Factors for Successful Commissions on the Elimination of Racial and Ethnic Bias*, 44 COURT REVIEW 156 (2007 – 2008). Copy supplied.

Press release, *Three Spanish Court Interpreters to be Certified by the Nebraska Supreme Court*, Nebraska Supreme Court, Jan. 17, 2007. Copy supplied.

Jerry Guenther, *Supreme Court Justice Feels at Home in Norfolk*, NORFOLK DAILY NEWS, Sept. 30, 2006. Copy supplied.

Clarence Mabin, *State's Chief Justice Retiring*, LINCOLN JOURNAL STAR, July 19, 2006. Copy supplied.

Butch Mabin, *Diversifying State Bar a Challenge*, LINCOLN JOURNAL STAR, Apr. 21, 2006. Copy supplied.

Jurors Thanked for Contribution to Justice System, NORFOLK DAILY NEWS, Mar. 4, 2006. Copy supplied.

Butch Mabin, *Changes Reported in Minority Justice*, LINCOLN JOURNAL STAR, Feb. 1, 2006. Copy supplied.

Kevin O'Hanlon, *Racial Profiling Reporting Law Expires Quietly*, Associated Press, Jan. 27, 2006. Copy supplied.

Quoted in *Results for Nebraska, Models for the Nation*, a publication of the University of Nebraska Public Policy Center, 2006. Copy supplied.

Leah Thorsen, *Interpreters Fill Courtroom Niche*, LINCOLN JOURNAL STAR, May 30, 2005. Copy supplied.

Julien Fielding, *Jury Reform Train has 'Left the Station'*, THE DAILY RECORD, May 2, 2005. Copy supplied.

Radio/TV Spot for Public Service Campaign Remembering Favorite Teachers, Sept. 2004. Audio recording available at http://nsea.org/news/media/NSEA_Radio_2.mp3.

Julien Fielding, *Task Force Has Made 17 Months of Progress*, THE DAILY RECORD, May 4, 2004. Copy supplied.

Julien Fielding, *Minority Students Get Taste of Law School Stress*, THE DAILY RECORD, May 3, 2004. Copy supplied.

Butch Mabin, *Task Force: Changes are Ongoing*, LINCOLN JOURNAL STAR, Mar. 26, 2004. Copy supplied.

Jerry Guenther, *Court Interpreters Needed in State Initiatives Suggested to Fix Legal Inequities*, NORFOLK DAILY NEWS, Nov. 19, 2003.

Margaret Reist, *Public Meeting to Address Report on Bias in Courts*, LINCOLN JOURNAL STAR, Oct. 15, 2003. Copy supplied.

Jan. 31, 2003: Press conference to release the Minority and Justice Task Force report. Remarks supplied.

Lorraine Boyd, *Minority and Justice Task Force to Examine Fairness in Nebraska's Courts at Hearings on Feb. 20, 27*, THE DAILY RECORD, Feb. 12, 2002. Copy supplied.

Nancy Evans, *Supreme Court Justice Keeps Perspective With Volunteer Work*, NEBRASKA JUDICIAL NEWS, Jan.-Mar. 2001. Copy supplied.

Butch Mabin, *Study to Look at Justice for Minorities in Nebraska: Is it Fair?*, LINCOLN JOURNAL STAR, Dec. 31, 2000. Copy supplied.

Robynn Tysver, *Judicial Race Bias Targeted*, OMAHA WORLD-HERALD, Oct. 17, 1999. Copy supplied.

Kevin O'Hanlon, *Nebraska's Highest Judges Strive for Legal Consistency*, ASSOCIATED PRESS, Oct. 1, 1999. Copy supplied.

Joe Duggan, *John Gerrard*, LINCOLN JOURNAL STAR, Nov. 17, 1996. Copy supplied.

Stakes in Vote Go Beyond One Judge's Job, OMAHA WORLD-HERALD, Oct. 21, 1996. Copy supplied.

Leslie Boellstorff, *Nelson Picks Gerrard to Fill Seat on Court*, OMAHA WORLD-HERALD, Apr. 21, 1995. Copy supplied.

Leslie Boellstorff, *Norfolk Attorney, 41, Named to High Court*, OMAHA WORLD-HERALD, Apr. 21, 1995. Copy supplied.

Nebraska: Madison Co. Dems Encourage Nelson to Run, THE HOTLINE, Apr. 5, 1995. Copy supplied.

Jerry Guenther, *High Court Sides With County Group*, NORFOLK DAILY NEWS, July 2, 1992. Copy supplied.

Jerry Guenther, *Champagne Flows at Victory Celebration*, NORFOLK DAILY NEWS, July 2, 1992. Copy supplied.

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

On April 20, 1995, I was appointed by then Governor E. Benjamin Nelson to serve as a judge on the Nebraska Supreme Court. I was sworn in on July 6, 1995, and I have been retained (by election) to serve in 1998, 2004, and 2010. Nebraska is a Missouri Plan retention state, and my current term of office expires on December 31, 2016. The supreme court is the appellate court of last resort in Nebraska's judicial system.

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

I was appointed directly from private practice to the Nebraska Supreme Court. Although I participated as a lawyer in numerous civil and criminal jury trials, and bench trials, that have gone to verdict or judgment, I have not presided over any such cases as a trial judge.

- i. Of these, approximately what percent were:

jury trials:	0%
bench trials:	0%
civil proceedings:	0%
criminal proceedings:	0%

- b. Provide citations for all opinions you have written, including concurrences and dissents.

Because I have written over 450 published opinions and 30 other unpublished opinions, I am separately attaching a list of all opinions authored by me, in chronological order. See attachment.

- 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).

I have not presided over any civil or criminal case as a trial judge. Below are 10 cases over which the Nebraska Supreme Court, as an appellate body, presided. The cases are listed in reverse chronological order, but not necessarily in order of significance or importance.

1. *A.W. v. Lancaster Cnty. Sch. Dist. 0001*, 280 Neb. 205, 784 N.W.2d 907 (2010).

A kindergarten student was sexually assaulted in a school restroom during the school day. The student's mother sued the school district on his behalf, alleging that its negligence permitted the assault to occur. The district court entered summary judgment for the school district, reasoning that the assault was not foreseeable. The fundamental issue in this appeal, as framed by the parties, was whether the school district had a legal duty to the student to protect him from the assault. We concluded that although our case law had, in the past, placed factual questions of foreseeability in the context of legal duty, they are more appropriately decided by the finder of fact in the context of determining whether a tort-feasor's duty to take reasonable care has been breached. We adopted the Restatement (Third) of Torts and held that the questions of foreseeability presented in this appeal were matters of fact, not of law, and that there was a genuine issue of material fact regarding whether the school district's conduct met its duty of reasonable care. We reversed and remanded for further proceedings.

Appellants' Counsel:

Vincent M. Powers
Vincent M. Powers & Associates
411 South 13th Street, #300
Lincoln, NE 68508
(402) 474-8000

Appellee's Counsel:

John M. Guthrey
Perry, Guthrey, Haase & Gessford, P.C.,
LLO
233 South 13th Street, #1400
Lincoln, NE 68508
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2. *State v. Edwards*, 278 Neb. 55, 767 N.W.2d 784 (2009).

The victim in this murder case disappeared on her way to the defendant's house, and although her body was never found, her blood was found on the mattress and walls in the defendant's bedroom, on a weapon found in his closet, and in the trunk of his car. The defendant was convicted of second degree murder and use of a deadly weapon to commit a felony. The primary issue on appeal was whether the evidence was sufficient to establish the corpus delicti of homicide, even though the victim's body was never found. Our court concluded that the circumstantial evidence was sufficient to prove that the victim was killed and that the defendant killed her. We also rejected the defendant's *Daubert* challenge to the State's DNA evidence and his other evidentiary challenges. We affirmed the defendant's convictions and sentence.

Appellant's Counsel:

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Appellee's Counsel:

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3. *State v. Henderson*, 277 Neb. 240, 762 N.W.2d 1 (2009).

The appellant was fired from his job as a Nebraska State Patrol trooper after he joined the Knights Party, a Ku Klux Klan-affiliated organization. But the trooper was reinstated when his case was submitted to arbitration under a collective bargaining agreement. The district court concluded that public policy precluded enforcement of the arbitrator's award. Our court, concluding that the laws should be enforced without racial or religious discrimination and the public should reasonably perceive this to be so, agreed with the district court and affirmed its order vacating the arbitration award.

Appellants' Counsel:

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Appellees' Counsel: Jon C. Bruning, Nebraska Attorney General,
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4. *Neb. Legislature ex rel. State v. Hergert*, 271 Neb. 976, 720 N.W.2d 372 (2006).

In this case, an elected University of Nebraska Regent was impeached by the Nebraska Legislature and tried in an original action before the judges of the Nebraska Supreme Court. After a full trial, our court found that Hergert intentionally manipulated and violated Nebraska's campaign finance laws in a scheme to prevent his opponent from receiving public campaign funds, and that during the election campaign and, significantly, after he took office, Hergert intentionally filed false reports of campaign spending in an attempt to cover up this conduct. Thus, we concluded that the Legislature had proved by clear and convincing evidence that Hergert was guilty of false reporting and obstructing government operations. We, therefore, removed Hergert from office and disqualified him from holding any office of trust in the future.

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Defendant's Counsel: Christopher M. Ferdico
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5. *State v. Molina*, 271 Neb. 488, 713 N.W.2d 412 (2006).

The defendant was convicted of second degree murder and child abuse resulting in death for the beating death of his 2-year-old daughter. We affirmed the convictions. We rejected the defendant's primary Double Jeopardy argument, finding that second degree murder was not a lesser-included offense of child abuse resulting in death. Among other things, we also found that the district court had erred in not instructing the jury on negligent child abuse as a lesser-included offense of child abuse resulting in death, but the error was harmless because the jury had resolved the element of intent in the context of lesser-included offenses of homicide.

Appellant's Counsel:

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6. *State v. Hembertt*, 269 Neb. 840, 696 N.W.2d 473 (2005).

The defendant was convicted in the county court of assault and battery, based in part on the testimony of an Omaha police officer regarding statements made by

the victim when police arrived at the scene shortly after the assault. The domestic violence victim did not testify at trial. The issues presented on appeal were whether the officer's testimony as to the victim's statements were properly admitted into evidence under the excited utterance exception to the hearsay rule and, if so, whether the statements were "testimonial" within the meaning of the Confrontation Clause standards explained in *Crawford v. Washington*, 541 U.S. 36 (2004). We concluded that the county court correctly determined that the officer's testimony regarding statements made by the victim was admissible and affirmed the judgment. Certiorari was requested and ultimately denied by the U.S. Supreme Court based on our analysis of the Confrontation Clause.

Appellant's Counsel:	Thomas C. Riley Douglas County Public Defender H05 Civic Center Omaha, NE 68183 (402) 444-7175
Appellee's Counsel:	Jon C. Bruning, Nebraska Attorney General, and James D. Smith, Assistant Attorney General Nebraska Attorney General's Office 2115 State Capitol P.O. Box 98920 Lincoln, NE 68509 (402) 471-2682

7. *State v. Gales*, 269 Neb. 443, 694 N.W.2d 124 (2005).

The defendant was sentenced to death by a three-judge panel pursuant to jury findings of aggravating circumstances, for each of two counts of first degree murder, following our remand for resentencing in *State v. Gales*, 265 Neb. 598 (2003) (*Gales I*). On appeal, we affirmed the sentences of death. We rejected the defendant's challenges to the applicability of L.B.1, which had implemented the system of jury findings of aggravating circumstances following the U.S. Supreme Court's decision in *Ring v. Arizona*, 536 U.S. 584 (2002), based on our rejection of the same arguments in *Gales I*. Among other things, we also found no error in the fact that the jurors were not individually questioned about their awareness of Gales' prior death sentences, as the jurors were carefully instructed about the questions they were to answer, which were specific to the findings of aggravating circumstances.

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Appellee's Counsel: Jon C. Bruning, Nebraska Attorney General,
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8. *Schafersman v. Agland Coop*, 262 Neb. 215, 631 N.W.2d 862 (2001).

The plaintiffs won a \$120,000 jury verdict based upon the jury's finding that contaminated hog feed, negligently delivered to the plaintiffs, caused illnesses and deaths among the plaintiffs' dairy cattle. The Court of Appeals affirmed the district court. We reversed the Court of Appeals, determining that the district court abused its discretion in permitting the plaintiffs' expert to testify regarding causation. Significantly, we also held that after October 1, 2001, Nebraska trial courts should evaluate the admissibility of expert opinion testimony under the analytical framework of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

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Appellees' Counsel: David A. Domina
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9. *State v. Harrold*, 256 Neb. 829, 593 N.W.2d 299 (1999).

County court convicted defendant of manufacturing and distributing obscene material, after he delivered a videotape to a Lincoln cablevision studio for production and showing. The district court affirmed the judgment but the Court of Appeals reversed, finding error in the determination of obscenity and in excluding evidence offered to prove community standards. On further review, we reversed the Court of Appeals and reinstated the conviction, after setting forth and applying Nebraska's obscenity standard as gleaned from *Miller v. California*, 413 U.S. 15 (1973), and its progeny.

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10. *Hartwig v. Oregon Trail Eye Clinic*, 254 Neb. 777, 580 N.W.2d 86 (1998).

In this case, a cleaning worker, who was stuck by a hypodermic needle while emptying a medical clinic's nonmedical waste, brought a negligence action

against the clinic. After granting the clinic's motion in limine to preclude evidence that the worker suffered mental anguish resulting from her fear of testing positive for HIV and contracting AIDS, the district court entered a \$3,000 jury verdict limited to the minor needle stick injury sustained by the plaintiff. The district court denied the plaintiff's motion for new trial based on the alleged error of limiting proof on fear of AIDS mental anguish. In this case of first impression, our court reversed the order of the district court denying the motion for new trial and held that a plaintiff may adduce proof and potentially recover damages for the mental anguish of reasonably fearing AIDS resulting from a physical injury when (1) the plaintiff may have been exposed, via a medically sufficient channel of transmission, to the tissue, blood, or body fluid of another; (2) in circumstances where the identity of the patient upon whom the contaminated needle or instrument was used is unknown; and (3) when it is impossible or impracticable to ascertain whether any such tissue, blood, or body fluid may be HIV positive. The cause was remanded to the district court for a new trial solely on the issue of damages.

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- 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.

I am listing 10 published opinions in reverse chronological order, but not necessarily in order of significance or importance.

1. *A.W. v. Lancaster Cnty. Sch. Dist. 0001*, 280 Neb. 205, 784 N.W.2d 907 (2010).

Appellants' Counsel: Vincent M. Powers
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2. *State v. Henderson*, 277 Neb. 240, 762 N.W.2d 1 (2009).

Appellants' Counsel: Vincent Valentino
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Appellees' Counsel: Jon C. Bruning, Nebraska Attorney General,
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3. *Trosper v. Bag 'N Save*, 273 Neb. 855, 734 N.W.2d 704 (2007) (Gerrard, J.,
concurring).

Appellant's Counsel: Michael P. Dowd
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4. *State v. Moore*, 273 Neb. 495, 730 N.W.2d 563 (2007).

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5. *Larsen v. D B Feedyards, Inc.*, 264 Neb. 483, 648 N.W.2d 306 (2002)
(Gerrard, J., dissenting).

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6. *Schafersman v. Agland Coop*, 262 Neb. 215, 631 N.W.2d 862 (2001).

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Appellees' Counsel: David A. Domina
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7. *Holmes v. Crossroads Joint Venture*, 262 Neb. 98, 629 N.W.2d 511 (2001).

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8. *State v. Harrold*, 256 Neb. 829, 593 N.W.2d 299 (1999).

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9. *Hartwig v. Oregon Trail Eye Clinic*, 254 Neb. 777, 580 N.W.2d 86 (1998).

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10. *State v. Ryan*, 249 Neb. 218, 543 N.W.2d 128 (1996) (Gerrard, J., dissenting).

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- e. Provide a list of all cases in which certiorari was requested or granted.

Majority opinions

State v. Moore, 256 Neb. 553, 591 N.W.2d 86 (1999), *cert. denied sub nom.*,
Knight v. Florida, 528 U.S. 990, 120 S. Ct. 459, 145 L. Ed. 2d 370 (1999)

State v. Harrold, 256 Neb. 829, 593 N.W.2d 299 (1999), *cert. denied*, 528 U.S.
1142, 120 S. Ct. 992, 145 L. Ed. 2d 939 (2000)

State v. Mata, 266 Neb. 668, 668 N.W.2d 448 (2003), *cert. denied*, 543 U.S. 1128, 125 S. Ct. 1088, 160 L. Ed. 2d 1081 (2005)

Martin v. Nebraska Dept. of Correctional Services, 267 Neb. 33, 671 N.W.2d 613 (2003), *cert. denied*, 540 U.S. 1196, 124 S. Ct. 1451, 158 L. Ed. 2d 110 (2004)

State v. Gales, 269 Neb. 443, 694 N.W.2d 124 (2005), *cert. denied*, 546 U.S. 947, 126 S. Ct. 449, 163 L. Ed. 2d 341 (2005)

State v. Hembert, 269 Neb. 840, 696 N.W.2d 473 (2005), *cert. denied*, 548 U.S. 925, 126 S. Ct. 2977, 165 L. Ed. 2d 987 (2006)

State v. Gutierrez, 272 Neb. 995, 726 N.W.2d 542 (2007), *cert. denied sub nom.*, *Sommer v. Nebraska*, 552 U.S. 876, 128 S. Ct. 186, 169 L. Ed. 2d 126 (2007)

State v. Henderson, 277 Neb. 240, 762 N.W.2d 1 (2009), *cert. denied*, 129 S. Ct. 2841, 174 L. Ed. 2d 556 (2009)

In re Chance J., 279 Neb. 81, 776 N.W.2d 519 (2009), *cert. denied sub nom.*, *Andrew J. v. Nebraska*, 131 S. Ct. 113, 178 L. Ed. 2d 69 (2010)

Concurring or dissenting opinions

State v. Ryan, 249 Neb. 218, 543 N.W.2d 128 (1996) (dissent), *cert. denied*, 519 U.S. 927, 117 S. Ct. 293, 136 L. Ed. 2d 213 (1996)

State v. Hansen, 249 Neb. 177, 542 N.W.2d 424 (1996) (dissent), *cert. denied*, 517 U.S. 1249, 116 S. Ct. 2509, 135 L. Ed. 2d 198 (1996)

State v. Lotter, 255 Neb. 456, 586 N.W.2d 591 (1998) (concurrency), *cert. denied*, 526 U.S. 1162, 119 S. Ct. 2056, 144 L. Ed. 2d 222 (1999)

Tipp-It, Inc. v. Conboy, 257 Neb. 219, 596 N.W.2d 304 (1999) (concurrency), *cert. denied*, 528 U.S. 1116, 120 S. Ct. 934, 145 L. Ed. 2d 813 (2000)

State v. Lammers, 267 Neb. 679, 676 N.W.2d 716 (2004) (dissent), *cert. denied*, 543 U.S. 861, 125 S. Ct. 186, 160 L. Ed. 2d 102 (2004)

- 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.

I did not find any opinions authored by me that were reversed by a reviewing court. After a diligent search, I did find one opinion in which the U.S. District Court, on habeas review, criticized our rationale. (See *McCracken* below.)

State v. McCracken, 260 Neb. 234, 615 N.W.2d 902 (2000). McCracken was convicted of murder in the first degree and, on appeal, argued that he was prejudiced by the admission at trial of two mental health evaluations. We determined that by the time the mental health evaluations were admitted at trial, McCracken had placed his sanity at issue; thus, the admission of evidence derived from those evaluations did not violate the Fifth Amendment.

McCracken v. Clarke, 2005 WL 2405927 (No. 4:02CV3090, D. Neb. Sept. 29, 2005). On habeas review, the federal district court also rejected McCracken's argument regarding the admission of the mental health evaluations at trial, but on different grounds. The court stated that we had apparently assumed that both examinations had been compelled, and that the Fifth Amendment privilege was therefore implicated when the evidence was admitted at trial. But according to the federal court's review, the record showed that one examination was not actually received at trial, and the other was the result of a jointly-requested examination. The court therefore found that our analysis was based on a factual error. However, the court found that our error did not avail McCracken. Having so determined, the court saw no need to decide whether our analysis would have been correct otherwise.

- 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.

Less than 8% of our court's opinions are unpublished – and the reason an opinion is unpublished is because there is nothing in the case that changes, or modifies in any way, existing case law. I have listed all unpublished opinions authored by me in Attachment 13b. Each of the opinions is publically accessible in the Nebraska Supreme Court case files that are maintained by the Clerk of the Supreme Court.

- 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.

Gas 'N Shop v. City of Kearney, 248 Neb. 747, 539 N.W.2d 423 (1995) (Equal Protection Clause)

State v. Hansen, 249 Neb. 177, 542 N.W.2d 424 (1996) (dissent) (Double Jeopardy Clause – multiple punishments)

Palmer v. Palmer, 249 Neb. 814, 545 N.W.2d 751 (1996) (Free Exercise Clause)

State v. Orduna, 250 Neb. 602, 550 N.W.2d 356 (1996) (Sixth Amendment right to counsel – use of uncounseled conviction for sentence enhancement; Fourteenth Amendment Due Process Clause – use of uncounseled conviction for sentence enhancement)

State v. Privat, 251 Neb. 233, 556 N.W.2d 29 (1996) (Confrontation Clause – cross-examination of witness)

State v. White, 254 Neb. 566, 577 N.W.2d 741 (1998) (Double Jeopardy Clause – retrial after acquittal)

State v. Fitch, 255 Neb. 108, 582 N.W.2d 342 (1998) (Fourth Amendment warrant clause – probable cause for nighttime search)

State v. Moore, 256 Neb. 553, 591 N.W.2d 86 (1999) (Sixth Amendment right to counsel – ineffective assistance of counsel)

Shearer v. Leuenberger, 256 Neb. 566, 591 N.W.2d 762 (1999) (Fifth Amendment right to remain silent; Fourteenth Amendment Due Process Clause)

State v. Harrold, 256 Neb. 829, 593 N.W.2d 299 (1999) (First Amendment right to free speech – obscenity prosecution)

In re Interest of Dustin H., et al., 259 Neb. 166, 608 N.W.2d 580 (2000) (Concurrence and dissent) (Fourteenth Amendment Due Process Clause – parental rights)

King v. State, 260 Neb. 14, 614 N.W.2d 341 (2000) (concurrence) (Congressional Art. I authority – abrogation of state sovereign immunity)

State v. Davidson, 260 Neb. 417, 618 N.W.2d 418 (2000) (Fourth Amendment warrant clause – probable cause for warrant)

State v. Hess, 261 Neb. 368, 622 N.W.2d 891 (2001) (Sixth Amendment right to counsel – ineffective assistance of counsel; Fourteenth Amendment Due Process Clause – procedural due process)

Marshall v. Wimes, 261 Neb. 846, 626 N.W.2d 229 (2001) (Fourteenth Amendment Due Process Clause – procedural due process)

State v. Thomas, 262 Neb. 138, 629 N.W.2d 503 (2001) (Double Jeopardy Clause – multiple punishment/civil forfeiture)

Medlock v. Medlock, 263 Neb. 666, 642 N.W.2d 113 (2002) (Establishment Clause; Free Exercise Clause)

Rush v. Wilder, 263 Neb. 910, 644 N.W.2d 151 (2002) (Eighth Amendment cruel and unusual punishments clause – failure to provide necessary medical care)

State v. Zarate, 264 Neb. 690, 651 N.W.2d 215 (2002) (Sixth Amendment right to counsel – ineffective assistance of counsel)

State v. Keup, 265 Neb. 96, 655 N.W.2d 25 (2003) (Fourth Amendment reasonableness clause – warrantless search)

Hass v. Neth, 265 Neb. 321, 657 N.W.2d 11 (2003) (Fourth Amendment reasonableness clause – lawfulness of traffic stop; Fourteenth Amendment Due Process Clause – procedural due process)

State v. Kelley, 265 Neb. 563, 658 N.W.2d 279 (2003) (Fourth Amendment reasonableness & warrant clauses – failure to knock and announce)

Gourley v. Nebraska Methodist Health Sys., 265 Neb. 918, 663 N.W.2d 43 (2003) (concurrency) (Nebraska special legislation clause; Nebraska equal protection clause; Nebraska open courts clause; Nebraska right of trial by jury; Nebraska takings clause; Nebraska separation of powers clause; Nebraska due process clause)

State v. Mata, 266 Neb. 668, 668 N.W.2d 448 (2003) (Fifth Amendment right to counsel – invocation of right; Fourth Amendment reasonableness clause – consent to search; Double Jeopardy Clause – multiple punishments; Sixth Amendment right to jury trial – *Apprendi* claim)

State v. Lammers, 267 Neb. 679, 676 N.W.2d 716 (2004) (dissent) (Fourth Amendment reasonableness and warrant clauses – failure to knock and announce)

In re Guardianship of D.J., 268 Neb. 239, 682 N.W.2d 238 (2004) (Due Process Clause – parental rights)

Slansky v. Nebraska State Patrol, 268 Neb. 360, 685 N.W.2d 335 (2004) (Ex Post Facto Clause; Double Jeopardy Clause; Equal Protection Clause)

Welvaert v. Nebraska State Patrol, 268 Neb. 400, 683 N.W.2d 357 (2004) (Ex Post Facto Clause)

State v. Gales, 269 Neb. 443, 694 N.W.2d 124 (2005) (Ex Post Facto Clause; Eighth Amendment cruel and unusual punishments clause – capital sentencing aggravators; Due Process Clause – capital sentencing aggravators; Sixth Amendment right to jury trial – *Apprendi* claim)

State v. Hembertt, 269 Neb. 840, 696 N.W.2d 473 (2005) (Confrontation Clause – use of hearsay evidence)

In re Interest of Corey P. et al., 269 Neb. 925, 697 N.W.2d 647 (2005) (Fourth Amendment – exclusionary rule)

State v. Molina, 271 Neb. 488, 713 N.W.2d 412 (2006) (Double Jeopardy Clause – lesser included offense; Fourteenth Amendment Due Process Clause – instruction on lesser included offense; Sixth Amendment right to counsel – ineffective assistance of counsel)

State v. Moyer, 271 Neb. 776, 715 N.W.2d 565 (2006) (Nebraska fines and penalties clause)

Le v. Laustrup, 271 Neb. 931, 716 N.W.2d 713 (2006) (dissent) (Nebraska equal protection clause)

State v. Stark, 272 Neb. 89, 718 N.W.2d 509 (2006) (Confrontation Clause – limit on cross-examination)

State v. Robinson, 272 Neb. 582, 724 N.W.2d 35 (2006) (Equal Protection Clause – *Batson* claim)

State v. Gutierrez, 272 Neb. 995, 726 N.W.2d 542 (2007) (Equal Protection Clause – *Batson* claim)

State v. Ramirez, 274 Neb. 873, 745 N.W.2d 214 (2008) (Fourteenth Amendment Due Process Clause; Double Jeopardy Clause; Sixth Amendment Right to Counsel – ineffective assistance of counsel)

State v. Rogers, 277 Neb. 37, 760 N.W.2d 35 (2009) (concurrency) (Fifth Amendment right to remain silent – invocation of right during custodial interrogation)

State v. Henderson, 277 Neb. 240, 762 N.W.2d 1 (2009) (First Amendment freedom of association)

State v. Smith, 279 Neb. 918, 782 N.W.2d 913 (2010) (Fourth Amendment reasonableness clause – warrantless search)

Murray v. Neth, 279 Neb. 947, 783 N.W.2d 424 (2010) (Fourteenth Amendment Due Process Clause – procedural due process)

- 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.

I have not sat by designation on a federal court of appeals.

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 recognize that public confidence in the courts is maintained only by stringent adherence to conflict of interest principles. If there is any actual conflict or the objective appearance of a conflict of interest, I recuse myself from a case. I review the parties and counsel in each case to ensure I do not have a close relationship to any of the parties, witnesses, or counsel that would interfere with my neutrality or compromise the objective appearance of justice. I have strictly followed the Nebraska Code of Judicial Conduct during my time on the bench.

For example, in 2008 and 2009, my daughter was employed as a lawyer for the Nebraska Appleseed Center, and I recused myself from all matters in which that organization was counsel to a party. Likewise, my wife is employed as a psychiatric nurse practitioner at the University of Nebraska, and in the rare event that the University Health Center would be involved in a case as a party or witness (or if a decision would have a direct financial impact on my spouse), I would recuse myself from a case. But, I have never had a litigant or party request recusal during my tenure on the bench.

With that said, I am listing all recusals (from a search of my records) in reverse chronological order, with the reasons stated for each recusal. All of the recusals have been sua sponte. There were no actions that could be taken to cure the grounds for recusal, but the court was able to resolve all of the below appeals without the benefit of my participation.

Davio v. Nebraska Dept. of Health & Human Servs., 280 Neb. 263, 786 N.W.2d 655 (2010) (my daughter represented appellee in trial court).

State v. Lewis, 280 Neb. 246, 785 N.W.2d 834 (2010) (wife was a friend and professional colleague of the murder victim).

Metcalf v. Metcalf, 278 Neb. 258, 769 N.W.2d 386 (2009) (appellee was business and personal friend).

Yoder v. Cotton, 276 Neb. 954, 758 N.W.2d 630 (2008) (appellants and family were personal friends, knowledge required recusal).

Schuyler Co-op Assn. v. Sahs, 276 Neb. 578, 755 N.W.2d 802 (2008) (appellant is good (high school) friend, and knowledge of circumstances required recusal).

Nielsen v. Nielsen, 275 Neb. 810, 749 N.W.2d 485 (2008) (formerly represented primary witness, Zwygart, in private practice; professional knowledge required recusal).

JCB Enters. v. Nebraska Liq. Cont. Comm., 275 Neb. 797, 749 N.W.2d 873 (2008) (I had personal knowledge of underlying facts requiring recusal).

Zwygart v. State Bd. of Public Accountancy, 273 Neb. 406, 730 N.W.2d 103 (2007) (formerly represented Zwygart in private practice; matters of professional knowledge required recusal).

State v. Bakewell, 273 Neb. 372, 730 N.W.2d 335 (2007) (appellant and family were personal friends, knowledge required recusal).

State ex rel. Stivrins v. Flowers, 273 Neb. 336, 729 N.W.2d 311 (2007) (Dr. Stivrins is my personal physician, professional knowledge required recusal).

State v. Phelps, 273 Neb. 36, 727 N.W.2d 224 (2007) (while in private practice, my firm was counsel of record for the appellant regarding the subject matter of this appeal).

State v. Barnes, 272 Neb. 749, 724 N.W.2d 807 (2006) (while in private practice, my firm represented the appellant in the case that is the subject of this appeal).

Kaplan v. McClurg, 271 Neb. 101, 710 N.W.2d 96 (2006) (appellant was former associate/employee of mine; professional knowledge required recusal).

Ptak v. Swanson, 271 Neb. 57, 709 N.W.2d 337 (2006) (appellant was former law partner of mine; personal knowledge of facts required recusal).

Zwygart v. State Bd. of Public Accountancy, 270 Neb. 41, 699 N.W.2d 362 (2005) (formerly represented Zwygart in private practice; matters of professional knowledge required recusal).

Blair v. State Farm Ins. Co., 269 Neb. 874, 697 N.W.2d 266 (2005) (professional knowledge of facts required recusal).

Swanson v. Ptak, 268 Neb. 265, 682 N.W.2d 225 (2004) (appellee was law partner in private practice; personal knowledge of facts required recusal).

State ex rel. Counsel for Discipline v. Rokahr, 267 Neb. 436, 675 N.W.2d 117 (2004) (professional knowledge of facts required recusal).

Kracl v. American Family Ins. Grp., No. S-02-1243 (2004), available at 2004 WL 3741930 (appellant Kracl is my first cousin).

State ex rel. Counsel for Discipline v. Mills, 267 Neb. 57, 671 N.W.2d 765 (2003) (I was personal friend of the respondent and had personal knowledge of certain facts that were the subject of this action).

Langemeier v. Urwiler Oil & Fertilizer, Inc., 265 Neb. 827, 660 N.W.2d 487 (2003) (formerly represented primary witness, Zwygart, in private practice; professional knowledge required recusal).

Vonderschmidt v. Sur-Gro and Tri-State Ins. Co. of Minnesota, 262 Neb. 551, 635 N.W.2d 405 (2001) (appellee's counsel had been recently employed as a law clerk of mine; appearance of conflict required recusal).

In re Estate of Eickmeyer, 262 Neb. 17, 628 N.W.2d 246 (2001) (my daughter was employed as a summer clerk by the appellant's law firm).

Kirwan v. Chicago Title Ins. Co., 261 Neb. 609, 624 N.W.2d 644 (2001) (represented appellant in private practice and professional knowledge of facts required recusal).

Lancaster Co. School Dist. No. 0001 v. State Dept. of Labor, 260 Neb. 108, 615 N.W.2d 441 (2000) (at the time, my wife was employed by the appellee school district; appearance of conflict required recusal).

Langemeier v. Urwiler Oil & Fertilizer, Inc., 259 Neb. 876, 613 N.W.2d 435 (2000) (formerly represented primary witness, Zwygart, in private practice; professional knowledge required recusal).

Hood v. AAA Motor Club Ins. Assn., 259 Neb. 63, 607 N.W.2d 814 (2000) (personal and professional knowledge of facts, from private practice, required recusal).

Pfeifer v. E.I. Du Pont de Nemours and Co., 258 Neb. 756, 606 N.W.2d 773 (2000) (while in private practice, I was counsel of record for appellee; similar issue, required recusal).

Smith Barney, Inc. v. Painters Local Union No. 109 Pension Fund, 254 Neb. 758, 579 N.W.2d 518 (1998) (had substantial retirement account with appellee investment firm; appearance of conflict required recusal).

Cedars Corp. v. Sun Valley Dev. Co., 253 Neb. 999, 573 N.W.2d 467 (1998) (professional knowledge of facts, case involving former law partners).

Bonge v. County of Madison, 253 Neb. 903, 573 N.W.2d 448 (1998) (professional knowledge of facts, as former Battle Creek city attorney).

Darrah v. Bryan Memorial Hosp., 253 Neb. 710, 571 N.W.2d 783 (1998) (at the time, my wife was employed by appellee hospital; appearance of conflict required recusal).

Allphin v. Ward, 253 Neb. 302, 570 N.W.2d 360 (1997) (while in private practice, I was counsel of record for the appellant regarding the subject matter of this appeal).

Hobbs v. Midwest Ins., Inc., 253 Neb. 278, 570 N.W.2d 525 (1997) (professional knowledge of facts, from private practice, required recusal).

State ex rel. Wieland v. Moore, 252 Neb. 253, 561 N.W.2d 230 (1997) (business relationship with relator's counsel, Denzel Busick, required recusal).

Spulak v. Tower Ins. Co., Inc., 251 Neb. 784, 559 N.W.2d 197 (1997) (business relationship with appellant's counsel, Denzel Busick, required recusal).

State v. Cook, 251 Neb. 781, 559 N.W.2d 471 (1997) (while in private practice, my firm was counsel of record for the appellant regarding the subject matter of this appeal).

State ex rel. Nebraska State Bar Ass'n v. Van. 251 Neb. 196, 556 N.W.2d 39 (1996) (personal knowledge of facts and the respondent, while in private practice required recusal).

Rauert v. School Dist. 1-R of Hall County, 251 Neb. 135, 555 N.W.2d 763 (1996) (business relationship with appellant's counsel, Denzel Busick, required recusal).

Hauserman v. Stadler, 251 Neb. 106, 554 N.W.2d 798 (1996) (business relationship with appellees' counsel, Denzel Busick, required recusal).

Schiffen v. Niobrara Valley Electric, 250 Neb. 1, 547 N.W.2d 478 (1996) (while in private practice, I filed companion case (wrongful death action) to this cause – professional knowledge of facts required recusal).

In re Appeal of Lane, 249 Neb. 499, 544 N.W.2d 367 (1996) (business relationship with appellee's counsel, Denzel Busick, required recusal).

Nebraska Methodist Health System, Inc. v. Dept. of Health of the State of Nebraska, 249 Neb. 405, 543 N.W.2d 466 (1996) (at the time, my wife was serving on the Nebraska Board of Health, requiring recusal).

Kocsis v. Harrison, 249 Neb. 274, 543 N.W.2d 164 (1996) (business relationship with appellants' counsel, Tom Gleason, required recusal).

State ex rel. Nebraska State Bar Ass'n v. Gleason, 248 Neb. 1003, 540 N.W.2d 359 (1995) (while in private practice, served as co-counsel in malpractice case; professional knowledge required recusal).

15. Public Office, Political Activities and Affiliations:

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed

you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have never held any public office, other than my current judgeship, nor have I had any unsuccessful candidacies for elective office. In 2006, I was one of three finalists for the Nebraska chief justice position. Governor Dave Heineman selected then U.S. Attorney Michael G. Heavican to fill the chief justice position. I have never had an “unsuccessful nomination” for appointed office.

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

I was an active member of the Madison County Democrats, and while in the private practice of law, I served as vice chair from 1990 to 1992 and as chairman from 1992 to 1995. I played an informal role in assisting Governor E. Benjamin Nelson (1990, 1994) and U.S. Senator J. Robert Kerrey (1988, 1994) in their respective political campaigns. I had no particular title or any formal responsibilities; I simply assisted the candidates with fundraising and introduced the candidates to the people of northeast Nebraska. Again, with no formal responsibilities, I also assisted my former law partner, David A. Domina, during his unsuccessful primary campaign for governor of Nebraska in 1986.

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 did not serve as a clerk to a judge after law school.

- 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.

1981 – 1982
Jewell, Otte, Gatz, Collins & Domina
105 South Second Street
Norfolk, Nebraska 68701
Associate

1982 – 1990
Domina, Gerrard, Copple & Stratton, P.C.
2425 Taylor Avenue
Norfolk, Nebraska 68701
Partner

1990 – 1995
Gerrard, Stratton & Ptak, P.C.
1307 South 13th Street
Norfolk, Nebraska 68701
Senior Partner

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

I have never served as a mediator or arbitrator in an alternative dispute resolution proceeding.

b. Describe:

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

I began my career in 1981 as an associate in an “AV” rated general litigation firm. Although I was assigned primarily insurance defense tasks, and cut my teeth on insurance subrogation trials, I nonetheless performed a wide variety of legal functions in my first year including criminal law defense, juvenile court, and many transactional law projects.

In 1982, David Domina started a new law firm in Norfolk and I joined his law practice. During the next eight years, I conducted primarily a general litigation practice. Our firm represented both plaintiffs and defendants in civil and criminal litigation in all state and federal courts. In addition, I was very active in the community – so I represented a number of businesses and nonprofit entities in northeast Nebraska.

In 1990, Domina moved to Omaha and I, along with two partners, opened a new law office in Norfolk. During the last five years of my private practice (1990 – 1995), I engaged primarily in an active trial practice

(70%) and an administrative law/school law practice (30%). My trial practice included several civil jury trials in the state courts and federal courts of Nebraska and South Dakota. In addition, I represented felony criminal defendants in bench trials, jury trials, and appeals in the state court. I have represented numerous administrative clients and school districts in state court, federal court, and agencies such as the Equal Opportunity Commission. In a community the size of Norfolk (population 23,000), a general practice of law really means "general." In addition to general trial practice, I drafted wills and business agreements, prepared private adoption agreements, and litigated before the workers' compensation court and social security administration, etc. – in other words, the general practice of law covers a rather full slate of legal issues.

I was sworn in as a judge on the state supreme court in July 1995, and I did not represent clients in private practice after that date.

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

I never did specialize during my law practice days, and it would be very difficult to do so in northeast Nebraska. As the years went by, I did tend to take on more large litigation matters (e.g., wrongful death, product liability) and delegated some of the general office practice to willing partners and associates. But I did not have a "typical client": I represented everyone from clergy to vagabonds, grieving relatives to hardened criminals, and everything in-between. My clients were individuals, corporations, and businesses from all sectors of the community. In addition, area colleges, school districts, and municipalities made up approximately 30% of my client base.

- 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.

Approximately 70 to 75% of my private practice involved litigation. As a result, I appeared in court frequently. It was typical to appear in court many times weekly for various motions, hearings, and trials.

- i. Indicate the percentage of your practice in:
 - 1. federal courts: 15%
 - 2. state courts of record: 80%
 - 3. other courts: 0%
 - 4. administrative agencies: 5%

ii. Indicate the percentage of your practice in:

1. civil proceedings: 80%
2. criminal proceedings: 20%

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.

In private practice, I tried approximately 120 cases, as sole counsel or chief counsel, to verdict, judgment, or final decision.

i. What percentage of these trials were:

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

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. *Sobansky, as Special Administratrix of the Estate of Sobansky, deceased v. Ford Motor Co.*; U.S. District Court for the District of South Dakota, Civil No. 91-4181; Honorable John B. Jones presiding.

I represented the plaintiff (on her behalf and on behalf of her children) from 1991 through 1993 in this federal court litigation against Ford Motor Company. The plaintiff's husband struck a patch of ice while he was driving a Ford Bronco II on a highway near Vermillion, South Dakota. As he attempted to correct the sliding Ford

Bronco II, the vehicle rolled over in the middle of the highway and he died in the accident. Co-counsel Gerald L. Reade and I filed a wrongful death lawsuit in federal court alleging that Ford Motor Company had defectively designed and manufactured its Bronco II vehicle and knew of the defects that were causing a significant number of unnecessary rollover accidents, including the instant one. Exhaustive investigation and discovery occurred, expert witnesses were retained and deposed, and just prior to trial, the parties were able to mediate a substantial court-supervised settlement agreement. The terms of the settlement remain confidential.

Opposing Counsel: Snell & Wilmer, LLP
400 East Van Buren Street
Phoenix, AZ 85004
(602) 382-6000

Co-Counsel: Gerald L. Reade
200 West Third Street
Yankton, SD 57078
(605) 665-5009

Russell L. Cook, Jr.
The Cook Law Firm
919 Congress Avenue, Suite 1220
Austin, TX 78701
(512) 482-9556

2. *Koch, Personal Representative v. Martin and Breikreutz*; Valley County District Court, Case No. 6342, Honorable Ronald D. Olberding presiding.

From 1994 through 1995 (until I was appointed to the bench), I represented the plaintiff as the personal representative of his wife, who was a 30-year-old young wife and mother when she died from bacterial pneumonia in July 1992. I filed a medical malpractice (wrongful death) lawsuit on behalf of the family, against Dr. Martin and his physician assistant, Breikreutz. The plaintiff alleged that the defendants failed to timely and correctly diagnose and treat the decedent (i.e., treated for viral rather than bacterial pneumonia); and that the defendant's care and treatment fell below the standard of care and caused the decedent's death. Prior to my appointment to the bench in July 1995, I had filed the lawsuit and obtained a full report and deposition of our primary expert witness, an infectious disease specialist. My co-counsel, Denzel Busick, and I conducted discovery and prepared the case for trial. Busick tried the case to a jury (in the months after I took the bench) and obtained a \$700,000 verdict in favor of the Koch family.

Opposing Counsel: David J. Schmitt
Lamson, Dugan & Murray, LLP
10306 Regency Parkway Drive
Omaha, NE 68114
(402) 397-7300

Co-Counsel: Denzel R. Busick (now Hon.)
Social Security Administration – Administrative
Law Judge
1720 South Southeastern Avenue, Suite 200
Sioux Falls, SD 57103
(877) 378-9080

3. *State of Nebraska v. Manzer*, 246 Neb. 536, 519 N.W.2d 558 (1994); Pierce County District Court, Honorable Richard P. Garden presiding.

I represented 17-year-old defendant Manzer from late 1992 through 1994. Manzer was charged with one count of first degree murder for the shotgun slaying of his father, and another count of first degree assault for shooting and wounding his sister on the same night. There were significant issues regarding Manzer's mental state and alleged abuse in the home prior to the crime. Experts were hired and deposed, and substantial defenses were raised and prepared to show diminished capacity and a lack of premeditation on the part of the defendant. On the eve of trial, Manzer reached a plea agreement. As a result of pleading guilty to a reduced charge of second degree murder and one count of assault, Manzer was sentenced to life in prison and a consecutive term of years for the assault. His conviction was reversed on appeal, and Manzer was ultimately resentenced to life in prison for the murder and a lesser term of years for the accompanying charge. Manzer's life sentence was commuted to a term of years, and he was eventually paroled.

Opposing Counsel: Verlyn Luebbe
Pierce County Attorney
106 East Main Street
P.O. Box 203
Pierce, NE 68767
(402) 329-4646

Co-Counsel: Robert F. Bartle
Bartle & Geier Law firm
1141 "H" Street
P.O. Box 83104
Lincoln, NE 68508
(402) 476-2847

Opposing Counsel: Charles E. Lowe, Assistant Attorney General
Dale A. Comer, Assistant Attorney General
Nebraska Attorney General's Office
2115 State Capitol
P.O. Box 98920
Lincoln, NE 68509
(402) 471-2682

Co-Counsel: Robert F. Bartle
Bartle & Geier Law firm
1141 "H" Street
P.O. Box 83104
Lincoln, NE 68508
(402) 476-2847

6. *Tunender v. Niobrara Valley Electric Membership Corp.*; Holt County District Court, Case No. 19047, Honorable William B. Cassel presiding.

From 1989 through 1993, I represented the family of a man who was killed when the vehicle in which he was riding struck Niobrara Valley's parked truck. I filed a wrongful death lawsuit, on behalf of the family, against Niobrara Valley, alleging that employees of the utility company were negligent for parking a large truck partially on the wrong side of the highway (in thick fog), facing oncoming traffic. There were extenuating circumstances, and numerous issues were litigated. The utility company denied negligence, claiming that the truck was parked in the best place possible while repairing a faulty utility line (emergency) in the middle of the night; and the defendant asserted that the driver of the car was the proximate cause of the accident, citing excessive speed and use of alcohol. This case was tried to a jury twice. The first time, in 1992, the trial ended in a hung jury (eight to four, jury could not agree on amount of damages). The second time, in 1993, a unanimous jury returned a verdict in favor of the Tunender estate.

Opposing Counsel: Steven E. Guenzel
Johnson, Flodman, Guenzel & Widger
1227 Lincoln Mall
P.O. Box 81686
Lincoln, NE 68501
(402) 475-4240

7. *Schieffer v. Catholic Archdiocese of Omaha*, 244 Neb. 715, 508 N.W.2d 907 (1993); Douglas County District Court, Honorable Donald J. Hamilton presiding.

In 1992 and 1993, I represented a Catholic priest and co-counsel, Patrick Vipond, represented the Catholic Archdiocese of Omaha. The plaintiff-appellant had commenced an action against the archdiocese and the priest arising from a sexual

relationship that allegedly began while the priest was counseling the plaintiff. Substantial discovery occurred and depositions were taken in preparation for trial; but prior to trial, the district court sustained the defendants' motion to dismiss after an evidentiary hearing was conducted. Plaintiff appealed. The district court found (and the Supreme Court affirmed) that (1) plaintiff failed to adequately state causes of action against the priest for intentional infliction of emotional distress, negligence, and breach of fiduciary duty, given the consensual nature of the relationship; and (2) the archdiocese could not be held liable for the priest's conduct without tort liability as to the priest individually.

Opposing Counsel: Herbert J. Friedman
Friedman Law Offices
3800 Normal Boulevard, #200
P.O. Box 82009
Lincoln, NE 68501
(402) 476-1093

Co-Counsel: Patrick G. Vipond
Lamson, Dugan & Murray, LLP
10306 Regency Parkway Drive
Omaha, NE 68114
(402) 397-7300

8. *Bruns v. Estates of Swanson and Balestra, et al.*; Madison County District Court, Case No. 25971G, Honorable Richard P. Garden presiding.

From 1993 through early 1995, I represented Bruns, the husband and personal representative of his wife, who died as a passenger in a mid-air airplane collision on a clear day near Norfolk, Nebraska, in July 1993. I, along with co-counsel, Mark H. Goodrich, filed a wrongful death lawsuit, on behalf of the family, against both (deceased) pilots' estates and the aviation companies. There was substantial investigation and discovery performed with regard to the Federal Aviation Administration investigation and various experts' reports assigning fault as between the two pilots. After multiple depositions (of expert and fact witnesses) were taken, and the case was fully prepared for trial, the plaintiff and defendants were able to reach a satisfactory (confidential) settlement agreement.

Opposing Counsel: Michael F. Kinney
Cassem, Tierney, Adams, Gotch & Douglas
8805 Indian Hills Drive, #300
Omaha, NE 68114
(402) 390-0300

Michael J. Mooney
Gross & Welch, P.C., LLO
1500 Omaha Tower
2120 South 72nd Street
Omaha, NE 68124
(402) 392-1500

Co-Counsel: Mark H. Goodrich
Goodrich & Associates
P.O. Box 12850
Reno, NV 89510
(775) 851-4800

Counsel for Other Plaintiff: John V. Hendry
(Former Chief Justice of Nebraska Supreme Court)
7224 Carmen Drive
Lincoln, NE 68516
(402) 440-0197

9. *Otoe Cnty. Nat'l Bank v. Lewis et al.*; Brown County District Court, Case No. 6151, Honorable Edward E. Hannon presiding.

In 1988 and 1989, I defended Lewis in an alleged fraudulent conveyance equity lawsuit in Ainsworth, Nebraska. This case presented some intricate badges of fraud issues. The plaintiff bank sued Lewis to set aside certain assignments of trust interests from a brother-in-law to Lewis. It was alleged that the brother-in-law was trying to defraud the plaintiff bank and that Lewis was part of a scheme to convey income to him through the trust instruments. This sophisticated case was tried to the court, and although Lewis was deemed to be an innocent party and received the consideration he paid for the trust annuity, the court annulled and canceled the assignments of trust interest conveying income to the brother-in-law.

Opposing Counsel: Terrence L. Michael (now Hon.)
U.S. Bankruptcy Judge
224 South Boulder Avenue, Room 123
Tulsa, OK 74103
(918) 699-4065

10. *State of Nebraska v. Coenen*; Madison County District Court, Case No. 20746, Honorable Richard P. Garden presiding.

In 1984 and 1985, I defended Coenen after he was charged with first degree murder and two counts of assault. Coenen spent a long day (in late 1984) at a house with his wife, her new boyfriend, and his adult daughter. Although all parties appeared to be getting along for most of the day, things turned sour in the evening. A confrontation ensued late in the evening, and Coenen ended up shooting and killing the boyfriend,

the sweat of others. It has been rewarding to be a part of all of this and to provide some modicum of leadership and direction in most of the projects.

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.

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 will receive payments, upon reaching age 65 (or upon later retirement), from the Nebraska Judges Retirement System.

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.

My wife is a psychiatric nurse practitioner at the University of Nebraska Health Center. A case may arise directly implicating her, or the University Health Center; however, that should be a rare occurrence. Should such a matter arise, I would recuse myself unless it did not present a conflict or the appearance of a conflict. I can think of no other categories of litigation or financial arrangements that are likely to present potential conflicts of interest if I am confirmed.

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

If confirmed, I will handle all matters involving actual or potential conflicts of interest by following the Code of Conduct for United States Judges and the federal recusal statutes. I recognize that public confidence in the courts is maintained only by stringent adherence to these principles. I intend to err on the side of recusing myself when faced with any legitimate challenge to my impartiality.

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.

During my private practice, I regularly provided pro bono legal services to the citizens of northeast Nebraska. I was a long-time panel member with the Nebraska State Bar Association pro bono section and represented low-middle income individuals in all types of legal matters, including family law, adoptions, landlord-tenant disputes, and general litigation. In addition, I represented numerous nonprofit organizations in Norfolk and surrounding communities, on a pro bono basis. This representation included not only the drafting of documents and attendance at meetings, but also often involved representation to employees and volunteers of the nonprofit organization for various criminal, administrative, and civil matters. On a personal basis, I often took on pro bono cases that I felt had merit and would benefit the community at large. One such cause was the *Day v. Nelson* redistricting case, referenced earlier in this questionnaire. A fair estimate of the time I spent on pro bono cases would be in the 6 to 10% range.

Since being appointed to the bench, I regularly speak to high school and college classes, to Boys State, and to community groups about our entire civil and criminal justice system. But just as importantly, I lead bar committees and regularly speak to lawyers about the critical needs of the underserved in our system. Thus, access to justice and the need for pro bono services are a significant part of my ongoing speaking agenda.

26. Selection Process:

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

In November 2010, Senator E. Benjamin Nelson's chief of staff and I engaged in a conversation about a potential vacancy on the district court when District Judge Richard G. Kopf was about to announce his intention to take senior status in 2011. We discussed various possible candidates, including the possibility of my interest in the federal bench. Senator Nelson's staff arranged a meeting with me on November 29, 2010, to discuss in detail my background, interests, and cases that I had decided since assuming the bench in July 1995. An advisory committee utilized by Senator Nelson vetted the information. On December 10, 2010, I met and interviewed personally with Senator Nelson. And on January 10, 2011, I met and interviewed personally with Senator Mike Johanns.

Since January 20, 2011, I have been in contact with pre-nomination officials at the Department of Justice. On February 18, 2011, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. The President submitted my nomination to the Senate on May 4, 2011.

- 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.

AFFIDAVIT

I, JOHN MELVIN GERRARD, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

May 2, 2011

(DATE)

John M. Gerrard

(NAME)

Pamela Kraus

(NOTARY)

