

**APPLICATION FOR NOMINATION TO
JUDICIAL OFFICE**

**SECTION I: PUBLIC INFORMATION
(QUESTIONS 1 THROUGH 65)**

PERSONAL INFORMATION

1. Full Name:

Alice Mae Jones

2. Have you ever used or been known by any other name? **Yes** If so, state name:

**Alice Mae Monninger
Alice Mae Stutts**

3. Office Address:

**Office of the Arizona Attorney General
Capital Center
15 S. 15th Avenue
Phoenix, Arizona 85007**

4. How long have you lived in Arizona? What is your home zip code?

I have lived in Arizona for 26 years total. My adoptive parents brought me to Arizona at six months of age. At age 12, I moved with my mother to the east coast; I returned to Arizona in 2006. I currently live in Chandler, Arizona 85224.

5. Identify the county you reside in and the years of your residency.

I have lived in Maricopa County for approximately 15 consecutive years (since 2006).

6. If nominated, will you be 30 years old before taking office? yes no

If nominated, will you be younger than age 65 at the time the nomination is sent to the Governor? yes no

7. List your present and any former political party registrations and approximate dates of each:

- **Democrat in Arizona since 2016.**
- **Independent in Arizona from 2011 to 2016.**
- **Democrat in Arizona from 2006 to 2011.**
- **Democrat in Virginia from 2001 to 2006.**

(The Arizona Constitution, Article VI, § 37, requires that not all nominees sent to the Governor be of the same political affiliation.)

8. Gender: **Female**

Race/Ethnicity: **Caucasian**

EDUCATIONAL BACKGROUND

9. List names and locations of all post-secondary schools attended and any degrees received.

- **College of William and Mary, Williamsburg, Virginia, B.A.**
- **Sandra Day O'Connor College of Law, Arizona State University, Tempe, Arizona, J.D., *magna cum laude***

10. List major and minor fields of study and extracurricular activities.

College of William and Mary

- **Major in English, Minor in Chemistry**
- **Member, Delta Gamma Sorority**
 - **VP Finance 2002-2003**
 - **VP Membership 2003-2004**
- **Bone Marrow Drive Volunteer**
- **Fund for William and Mary**
- **Law Intern, D.R. Dansby, Attorney at Law**

Sandra Day O'Connor College of Law

- **Senior Production Editor of *Jurimetrics: The Journal of Law, Science, and Technology***

- **Research Assistant to Professor David Kaye**
- **Member, 2010 Class Gift Committee**
- **Member, Phi Alpha Delta Law Fraternity**
- **Member, Women Law Students Association**

11. List scholarships, awards, honors, citations and any other factors (e.g., employment) you consider relevant to your performance during college and law school.

Sandra Day O'Connor College of Law

- **Order of the Coif**
- **Class of 2010 Dean's Award Recipient**
- **Highest Pro Bono Distinction**
- **CALI Award for highest scoring student in Death Penalty Seminar, Spring 2010**
- **CALI Award for highest scoring student Legal Method and Writing, Spring 2008**
- **CALI Award for highest scoring student Evidence, Spring 2008**
- **Willard H. Pedrick Scholar**
- **Truman R. Young, Jr. Prosecutorial Fellowship**

PROFESSIONAL BACKGROUND AND EXPERIENCE

12. List all courts in which you have been admitted to the practice of law with dates of admission. Give the same information for any administrative bodies that require special admission to practice.

- **Supreme Court of Arizona, November 1, 2010**
- **United States District Court for the District of Arizona, May 6, 2013**
- **Ninth Circuit Court of Appeals, June 6, 2013**

13. a. Have you ever been denied admission to the bar of any state due to failure to pass the character and fitness screening? **No** If so, explain.

- b. Have you ever had to retake a bar examination in order to be admitted to the bar of any state? **No** If so, explain any circumstances that may have hindered your performance.

14. Describe your employment history since completing your undergraduate degree. List your current position first. If you have not been employed continuously since completing your undergraduate degree, describe what you did during any periods of unemployment or other professional inactivity in excess of three months. Do not attach a resume.

EMPLOYER	DATES	LOCATION
Office of the Arizona Attorney General, Criminal Appeals Section Unit Chief Counsel (2016-2019, 2020-present) Assistant Attorney General (2012-2016)	05/2020-Present 09/2012-02/2019	Phoenix, AZ
Broening, Oberg, Woods & Wilson, P.C. Of Counsel	03/2019-05/2020	Phoenix, AZ
Arizona Supreme Court Law Clerk to the Honorable Robert M. Brutinel	01/2011-08/2012	Phoenix, AZ
Maricopa County Attorney's Office Volunteer Restitution Coordinator	10/2010-01/2011	Phoenix, AZ
Brookings Institute Consultant for Professor David Gartner	06/2010-10/2010	Tempe, AZ

During law school (2007 to 2010), I did not have any continuous employment beyond the following fellowship and internship.

Truman Young Fellowship Note: This fellowship, which includes a scholarship and stipend, is awarded annually to one ASU law student. During my fellowship my third year of law school, I worked for three months each at the City of Phoenix Prosecutor's Office, the Maricopa County Attorney's Office, and the Arizona Attorney General's Office.	06/2009-05/2010	Phoenix, AZ
Maricopa County Attorney's Office Law Clerk, Appellate Division	06/2008-08/2008	Phoenix, AZ
San Tan Justice Court Judicial Court Clerk Associate	06/2006-08/2007	Chandler, AZ
Vandevanter Black LLP Commercial Real Estate Paralegal	06/2005-03/2006	Norfolk, VA

Note: My father died in March 2006 and my husband (then fiancé) and I moved from Virginia to Arizona in April 2006. I had various jobs from a temporary agency until I obtained employment at the San Tan Justice Court in June 2006.

15. List your law partners and associates, if any, within the last five years. You may attach a firm letterhead or other printed list. Applicants who are judges or commissioners should additionally attach a list of judges or commissioners currently on the bench in the court in which they serve.

Attachment A lists the attorneys currently practicing at the Attorney General's Office as of 6/29/21. The following attorneys I currently or within the past five years directly worked with at the Attorney General's Office:

Beau Roysden	Dominic E. Draye
Justice John R. Lopez IV	Linley Wilson
Joseph Maziarz	Michael O'Toole
Eliza Ybarra	Andrew O'Reilly
Diane Hunt	Rob Walsh
Jim Nielson	Jeffery Sparks
Jon Anderson	Mariette Ambri
Casey Ball	Jonathan Bass
Myles Braccio	Amy Cain
Nicholas Chapman-Husek	Gracynthia Claw
Brian Coffman	Terry Crist, III
Kathryn Damstra	Elizabeth Garcia
Jennifer Holder	Tanja Kelly
Eric Knobloch	Jacob Lines
Karen Moody	Judge Adele Ponce
Scott Simon	David Simpson
Joshua Smith	David Sullivan
Alexander Taber	Amy Thorson
Jana Zinman	

The following attorneys practiced at Broening, Oberg, Woods & Wilson, P.C. while I worked there:

Tyler M. Abrahams	Sarah L. Barnes
Eric C. Bevans	James R. Broening
Richard E. Chambliss	Dani Chronister
Jerry T. Collen	Katherine M. Corcoran
Michelle L. Donovan	Alicyn M. Freeman
Megan E. Gailey	Cody M. Hall
Leanne T. Hay	Brian Holohan
Jason P. Kasting	T. Scott King
Jessica Kokal	Wesley S. Loy
Jathan P. McLaughlin	John W. Oberg
William Rinaudo Phillips	Leah Schachar
Robert T. Sullivan	Donald Wilson Jr.
Mary B. Wilson	Terrence P. Woods

Jonathan Y. Yu

16. Describe the nature of your law practice over the last five years, listing the major areas of law in which you practiced and the percentage each constituted of your total practice. If you have been a judge or commissioner for the last five years, describe the nature of your law practice before your appointment to the bench.

The focus of my legal career has been appellate practice. After finishing my clerkship with Justice Brutinel in 2012, I joined the Criminal Appeals Section of the Arizona Attorney General's Office. This section represents the State of Arizona in all direct appeals from felony criminal convictions in Arizona. The section also represents the Director of the Arizona Department of Corrections, Rehabilitation and Reentry in habeas corpus proceedings by Arizona prisoners who challenge their convictions in federal court. Before I was promoted to Unit Chief Counsel in 2016, approximately 50% of my practice was direct appeals in the Arizona appellate courts and 50% of my practice was federal habeas corpus proceedings in the Arizona District Court and Ninth Circuit Court of Appeals (which are classified as civil proceedings in federal court).

As Unit Chief Counsel from 2016 to 2019, and since I returned to the Criminal Appeals Section in May 2020, my practice is almost entirely focused on direct appeals, with occasional practice in federal court. In addition to maintaining my own caseload, I supervise three to five attorneys on a yearly rotating basis. My duties include reviewing appellate briefs, petitions for review, and various substantive motions and responses. I also assist attorneys in preparing for oral argument in the Arizona appellate courts by participating as a judge in moot oral arguments. I have also assisted with other projects within the office, including drafting a Policy and Procedures Manual for the Criminal Appeals Section and overseeing the Truman Young Fellow, a third-year law student who does a two-to-three-month clerkship in our section.

From March 2019, until May 2020, I brought my appellate expertise to Broening, Oberg, Woods, and Wilson, P.C. Approximately 50% of my practice involved civil appeals. I filed civil appellate briefs in the Arizona appellate courts and the Ninth Circuit Court of Appeals in a variety of practice areas, including legal malpractice, medical malpractice, worker's compensation, and general liability. I also prepared special action briefing.

At Broening, Oberg, Woods, and Wilson, about 30% of my practice consisted of general litigation. I drafted complex motions and responses, such as motions for summary judgment and motions to dismiss. I supported senior civil litigators by preparing advanced and case-dispositive motions, quickly immersing myself in the details of new cases. The remaining 20% of my

practice consisted of drafting coverage opinions, which provide an opinion to an insurance carrier client about how insurance policy language would be interpreted by an Arizona court under a unique set of facts.

17. List other areas of law in which you have practiced.

I have not practiced as an attorney in other areas of law. However, prior to law school I worked in the legal field.

First, I interned for a criminal defense attorney in college. My main tasks were assisting with research and updating his computer system. A case was dismissed due to my research into the medical science at issue.

After college, I joined Vandeventer Black, LLP as a legal assistant in its Norfolk, Virginia commercial real estate group. After showing an aptitude for the law, I was quickly promoted to paralegal.

Next, after returning to Arizona, I worked as a judicial court clerk associate at the San Tan Justice Court with Justice of the Peace Samuel Goodman. I primarily managed civil cases as well as assisted with regular court duties.

18. Identify all areas of specialization for which you have been granted certification by the State Bar of Arizona or a bar organization in any other state.

None.

19. Describe your experience as it relates to negotiating and drafting important legal documents, statutes and/or rules.

I was a member of the Criminal Jury Instructions Committee from 2018 to 2019. This Committee ensures the Criminal Revised Arizona Jury Instructions are up-to-date and correctly state the law. Prior to my first meeting, I created a list of potential revisions and proposed instructions based on new criminal law statutes and recent decisions from the Arizona appellate courts. I also brought to the Committee's attention a mistake in the instructions related to the crimes of selling, transporting, importing, and transferring various drugs because the jury instruction did not track the statutory language. The Committee unanimously agreed to amend the relevant instructions, and the Court of Appeals recently approved of one of the revised instructions in *State v. Farid*, 249 Ariz. 457, 459, ¶ 10 n.3 & 461, ¶ 19 (App. 2020). Because I left criminal practice for civil practice in 2019, I resigned my position on the Committee. However, upon my return to the Attorney General's Office, I re-applied and was recently reappointed to the Committee.

I also served as a member of the Steering Committee on Arizona Appellate Case Processing Standards. This Committee was tasked with recommending to the Arizona Supreme Court case processing standards for all appeals in the Arizona Courts of Appeal and the Arizona Supreme Court. During this process, we reviewed standards published by the National Center for State Courts, comments from various stakeholders, and circumstances unique to Arizona, including the statutory priority of appeals. The Arizona Supreme Court adopted the Committee's final recommendations on July 1, 2016, which provided time standards for processing appeals in the following types of cases: Civil, Criminal, Family, Industrial Commission, Juvenile, and Special Actions.

20. Have you practiced in adversary proceedings before administrative boards or commissions? **No** If so, state:

a. The agencies and the approximate number of adversary proceedings in which you appeared before each agency.

Not applicable.

b. The approximate number of these matters in which you appeared as:

Not applicable.

Sole Counsel: _____

Chief Counsel: _____

Associate Counsel: _____

21. Have you handled any matters that have been arbitrated or mediated? **Yes**
If so, state the approximate number of these matters in which you were involved as:

Sole Counsel: 0

Chief Counsel: 0

Associate Counsel: 2

22. List at least three but no more than five contested matters you negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (3) a summary of the substance of each case; and (4) a statement of any particular significance of the case.

1. ***Plaintiff v. Defendant Attorney***

Note: Case identifying information listed in confidential section.

(1) May 2019-March 2020

(2) Counsel for Plaintiff:

Clement Leslie

Joseph Charles (initial Plaintiff's counsel and replaced by Mr. Leslie)

Phone: (623) 215-4762

Email: cleslie@leslielawoffice.com

Co-counsel for Defendant:

Robert T. Sullivan

Phone: (602) 271-7738

Email: rts@bowwlaw.com

(3) Defendant Attorney had represented Plaintiff and assisted her in obtaining a non-dischargeable judgment in bankruptcy court against another party. Plaintiff alleged that Defendant Attorney had committed legal malpractice during his representation.

(4) I worked with my co-counsel, Mr. Sullivan, from the initial filing of the case until the eventual settlement. The case required extensive research into bankruptcy law and the enforcement of judgments. We initially tried to mediate the case, but it was unsuccessful. Once we fully articulated our defenses to the plaintiff, we were able to successfully negotiate a settlement that prevented costly litigation.

2. ***Petitioner v. Respondent City***

Note: Case identifying information listed in confidential section.

(1) October 2019-February 2020

(2) Counsel for Petitioner:

Daniel Ortega

Phone: (602) 386-4455

Email: danny@ortegalaw.com

Co-counsel for Respondent:

Sarah L. Barnes

Phone: 602-271-7793

Email: slb@bowwlaw.com

- (3) Petitioner initiated a special action proceeding, alleging that the Respondent City, had not provided records related to an officer-involved shooting that had been requested under the Arizona Public Records Law.
- (4) Ms. Barnes and I quickly determined the specific records sought by Petitioner and which items were subject to disclosure under the public record law. The parties agreed to a protective order, the public records were disclosed to Petitioner, and the case was eventually settled and dismissed. Effective communication with Petitioner's counsel fostered a swift resolution to the case.

3. ***Plaintiffs v. Defendant Insurance Company***

Note: Case identifying information listed in confidential section.

- (1) The case was initiated in 2016, but my firm did not begin representing Defendant Insurance Company until March 2019. The case was settled and dismissed in March 2020.

(2) **Counsel for Plaintiffs:**

Michael N. Poli

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Lawrence R. Moon

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Stephen E. Silverman

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Phone: (602) 633-8992

Co-Counsel for Defendant:

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Robert T. Sullivan

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Pro hac vice counsel for Defendant:

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Jennifer Hoffman

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Phone: (213) 620-1398

- (1) Plaintiffs initially filed a complaint in state court, alleging breach of contract and tortious bad faith related to an insurance claim after a fire damaged Plaintiffs' home. Plaintiffs subsequently added claims for unjust enrichment, misrepresentations, and false disclosure, and asserted each as a purported class claim.
- (2) I drafted pleadings, including a notice of removal and motion to dismiss. Although the District Court denied our motion to dismiss, Plaintiffs' claims were limited by the District Court's order. Early during discovery, while determining the parameters of discovery for the alleged class-action claims, a mediation was held and I assisted in drafting the mediation memorandum. The parties reached an agreement, and the case was settled and dismissed before a class was certified.

23. Have you represented clients in litigation in Federal or state trial courts? Yes
If so, state:

The approximate number of cases in which you appeared before:

Federal Courts: 44

State Courts of Record: 5 (1 as a certified law student)

Municipal/Justice Courts: 3 (3 as a certified law student)*

***As a law student, I appeared in and prepared several cases for bench trials in the Phoenix Municipal Court but almost all were dismissed because a victim did not appear. This number does not include those cases.**

The approximate percentage of those cases which have been:

Civil: 92%*

***36 of the federal cases were federal habeas corpus proceedings which are technically considered civil proceedings but arise from a criminal case in state court.**

Criminal: 8%

The approximate number of those cases in which you were:

Sole Counsel:	<u>0</u>
Chief Counsel:	<u>0</u>
Associate Counsel:	<u>52</u>

The approximate percentage of those cases in which:

You wrote and filed a pre-trial, trial, or post-trial motion that wholly or partially disposed of the case (for example, a motion to dismiss, a motion for summary judgment, a motion for judgment as a matter of law, or a motion for new trial) or wrote a response to such a motion:	<u>71%</u>
You argued a motion described above	<u>0%</u>
You made a contested court appearance (other than as set forth in the above response)	<u>23%</u>
You negotiated a settlement:	<u>5%</u>
The court rendered judgment after trial:	<u>3%</u>
A jury rendered a verdict:	<u>3%</u>

The number of cases you have taken to trial:

*These were while I was a certified law student.	Limited jurisdiction court	<u>3</u>
	Superior court	<u>1</u>
	Federal district court	<u>0</u>
	Jury	<u>2</u>

Note: If you approximate the number of cases taken to trial, explain why an exact count is not possible.

24. Have you practiced in the Federal or state appellate courts? **Yes** If so, state:

The approximate number of your appeals which have been:

Civil:	<u>12</u>
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Criminal: 92

Other: 3

The approximate number of matters in which you appeared:

As counsel of record on the brief: 107

Personally in oral argument: 9

25. Have you served as a judicial law clerk or staff attorney to a court? **Yes** If so, identify the court, judge, and the dates of service and describe your role.

I had the honor of being one of (now Chief) Justice Brutinel's first law clerks when he joined the Arizona Supreme Court. I joined his chambers after he took the bench in January 2011, serving as his clerk the remainder of the 2010–2011 term and the entirety of the 2011–2012 term.

I drafted bench memoranda to assist Justice Brutinel in deciding cases where the Arizona Supreme Court had granted review. These memoranda addressed the arguments of the parties and the pertinent legal authorities (such as applicable statutes, cases, and rules). I prepared memoranda addressing specific legal research questions upon Justice Brutinel's request. I also assisted Justice Brutinel in drafting his opinions, preparing first drafts of opinions assigned to him. The bench memoranda and the opinions covered a variety of subject areas, including civil, criminal, and death penalty cases. Additionally, I regularly attended oral arguments and assisted in preparing Justice Brutinel for them.

My clerkship provided me the opportunity to learn early in my career how appellate judges decide a case. For example, the standard of review and whether an issue is preserved for appeal in the trial court is incredibly important in how an appellate court assesses a case. I saw first-hand the process of drafting appellate opinions and the need to write clearly and concisely as well as the necessity to consider the potential impact of an appellate decision in a future case.

26. List at least three but no more than five cases you litigated or participated in as an attorney before mediators, arbitrators, administrative agencies, trial courts or appellate courts that were not negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency and the name of the judge or officer before whom the case was heard; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

1. *State v. Gilstrap*, No. CR-13-0379-PR

- (1) The appeal was originally filed in 2012, and the Arizona Supreme Court issued the final opinion on August 20, 2014. See *State v. Gilstrap*, 235 Ariz. 296 (2014).
- (2) Arizona Supreme Court
Five Justices: Honorable Robert M. Brutinel, author
Honorable Scott Bales
Honorable John Pelander
Honorable Rebecca White Berch
Honorable Ann A. Timmer
- (3) Counsel for Defendant/Appellant Gilstrap:
Jill Evans
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Co-Counsel for State/Appellee:
Robert L. Ellman, Solicitor General
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Phone: (480) 630-6490
Joseph T. Maziarz, Section Chief Counsel
Email: joemaz59@gmail.com
Phone: (602) 376-5678
- (4) Police obtained a warrant to search a home for evidence of methamphetamine. Defendant had been an overnight guest at the home and happened to be showering in one of the bathrooms when police executed the warrant. Police searched Defendant's purse and found methamphetamine (as well as indicia she possessed it for sale), marijuana, and drug paraphernalia. Defendant argued in the trial court, Court of Appeals, and Arizona Supreme Court that the warrant did not authorize the search of her purse. The Arizona Supreme Court disagreed and upheld the convictions.
- (5) This case represented an issue of first impression for Arizona. Courts around the country are split on the test to use to determine whether a warrant authorizes police to search the property of a person who is in the residence to be searched but not named in the warrant. I advocated for the physical-possession test—permitting officers to search all items that could contain the evidence identified in the warrant except items that are in the actual physical possession of a person not

subject to the warrant. This test embodies the principles of several United States Supreme Court cases and provides officers a bright-line rule that is easier for officers to implement. The Arizona Supreme Court agreed and adopted the physical-possession test.

2. *State v. Gehon*, No. 1 CA-CR 15-0789

- (1) The appeal was filed in 2015 and decided by the Arizona Court of Appeals in December 2017. See *State v. Gehon*, 2017 WL 4867245 (Ariz. App. Oct. 10, 2017) (mem. decision).
- (2) Arizona Court of Appeals, Division One
Three Judge Panel: Honorable Maria Elena Cruz, author
Honorable Lawrence F. Winthrop
Honorable Diane M. Johnson
- (3) Counsel for Defendant/Appellant Gehon:
Mark Heath
Email: mark@theheathlawfirm.com
Phone: (480) 442-0489

Co-Counsel for State/Appellee:
Joseph T. Maziarz, Section Chief Counsel
Email: joemaz59@gmail.com
Phone: (602) 376-5678
- (4) For several years, Defendant ran a prostitution business in Phoenix with child and adult female prostitutes, subjecting them to physical and emotional abuse. Some of the victims included Defendant's ex-wife, step-daughter, and niece, to whom he was a legal guardian. He also engaged in sexual intercourse with both his step-daughter and niece when they were minors, and acted as an accomplice in creating and disseminating pornographic movies depicting his niece when she was 16 years old. Ultimately, the State charged Defendant with 130 crimes involving seven victims. After a 99-day jury trial, the jury found him guilty of 101 crimes, and the trial court sentenced him to over 490 years' imprisonment.
- (5) Defendant raised three fact-intensive issues on appeal, including challenging whether sufficient evidence supported many of his convictions. This required me to read the entire record on appeal, which included more than 140 transcripts, 1,100 filings and orders, and over 1,000 exhibits. It took four

months to review this massive record and to prepare the 126-page answering brief. The Arizona Court of Appeals affirmed 100 out of the 101 convictions on appeal.

3. *State v. Chandler*, No. 2 CA-CR 2017-0079

- (1) The appeal was filed in 2017, and the Court of Appeals issued its opinion in 2017. See *State v. Chandler*, 244 Ariz. 336 (App. 2017).**
- (2) Arizona Court of Appeals, Division Two
Three Judge Panel: Honorable Peter J. Eckerstrom, author
Honorable Garye L. Vásquez
Honorable Karl C. Eppich**
- (3) Counsel for Defendant/Appellant Chandler:
Gregory J. Kuykendall
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Amy P. Knight
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Co-Counsel for State/Appellee:
Joseph T. Maziarz, Section Chief Counsel
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Phone: (602) 376-5678**
- (4) Defendant secretly videotaped his two teenage daughters bathing and showering. The girls found the camera and reported it to a teacher. After obtaining a warrant, police found video clips of the two daughters showering and bathing on Defendant's computer, and he admitted that he used them for sexual purposes. Defendant ultimately waived his right to a jury trial, and the trial court found him guilty of three counts of sexual exploitation of a minor. On appeal, Defendant argued that his conduct did not constitute the crime of sexual exploitation of a minor because his daughters had been merely showering and bathing and not engaged in exploitive behavior. I argued the conduct fell within the plain language of the statute and that the legislative history supported this interpretation. In an opinion, the Court of Appeals agreed with my argument, concluding the conduct fell within the language of the statute because the videos were taken for the purpose of the sexual stimulation of the viewer.**

- (5) The opinion in this case provided guidance in future cases on what conduct is prohibited by the sexual-exploitation statute. It was particularly noteworthy because of the clear legislative history. A previous Court of Appeals case had held that a prior version of the sexual-exploitation statute should turn on the intent of the minor, not the intent of a defendant. But the Legislature subsequently amended the statute and explicitly stated its intent to change the outcome of the Court of Appeals' case and to focus on the purpose for which the photograph or video is taken, not the intent of the minor.

4. *Lane, et al. v. The Center for Orthopedic and Research Excellence Inc., et al.*, No. CV2015-007755

- (1) The case was initiated in 2015, and the jury trial occurred in 2019. I became involved after the jury trial in 2019.
- (2) Maricopa County Superior Court, Honorable Rosa Mroz

Note: The case was appealed to the Court of Appeals, Division One, No. 1 CA-CV 20-0177, and I left the firm before the appeal was complete. The trial court's judgment was affirmed by the three-judge panel of the Honorable Lawrence F. Winthrop, author, the Honorable Paul J. McMurdie, and the Honorable Cynthia J. Bailey. see *Lane v. Center for Orthopedic and Research Excellence Inc.*, 2021 WL 734737 (Ariz. App. Feb. 25, 2021).

- (3) Counsel for Plaintiffs:
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Co-Counsel for Defendants:
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- (4) Plaintiffs' mother died of a mixed-drug overdose after she was discharged following surgery. Plaintiffs filed a wrongful death suit, alleging that Defendants had contributed or caused their mother's death by prematurely discharging her and overprescribing her pain medication. Some of the medications found in the mother's system, however, had not been prescribed or disclosed to Defendants, and Defendants contended, among other things, that their mother had contributed to her own death and died by suicide. After a 10-day jury trial, the jury rendered a unanimous defense verdict. The trial court entered judgment in favor of Defendants, and subsequently denied Plaintiffs' motion to set aside the judgment and for a new trial. The Court of Appeals affirmed the trial court's judgment.
- (1) My involvement in this case began after the jury trial, drafting the Defendants' Response to Motion to Set Aside Judgment and Motion for New Trial. Plaintiffs raised several issues, challenging the admission of Defendants' expert testimony, alleging lack of proper notice of the suicide defense, challenging the sufficiency of the evidence of the suicide defense, and alleging insufficient evidence supported the superseding-cause jury instruction. In drafting the response, I collaborated with the trial attorneys, reviewed the discovery, and reviewed the trial transcripts and exhibits to develop a comprehensive response. This case required me to delve into the purpose behind some of the Arizona Rules of Civil Procedure. For example, the rule generally permitting one expert per issue is not to be applied mechanically, and trial courts retain discretion to permit more than one expert to testify about similar subject matter if discussing separate issues within that subject matter. Although I left the firm during the pendency of the appeal, my motion became the basis of the answering brief because the same issues were raised on appeal.

5. *Berg, et. al v. Weiss & Moy, et al.*, No. 1 CA-CV 18-0692

- (1) The initial lawsuit was filed in 2013, and the case was dismissed in 2018. I became involved in the appeal in 2018, which was resolved in 2020, see *Berg, et al. v. Weiss & Moy PC, et al.*, 2020 WL 2086477 (Ariz. App. April 30, 2020) (mem. decision).

(2) **Division One, Arizona Court of Appeals**
Three Judge Panel: Honorable Lawrence F. Winthrop, author
Honorable Maria Elena Cruz
Honorable David B. Gass

(3) **Counsel for Plaintiffs/Appellants:**
Jason M. Bruno
Jared C. Olson
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Co-Counsel for Defendants/Appellees:

Tyler M. Abrahams
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Robert T. Sullivan
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Phone: (602) 271-7738

Alicyn M. Freeman
Email: amf@bowwlaw.com
Phone: (602) 271-7767

(4) **Plaintiffs alleged Defendants had committed legal malpractice when assisting Plaintiffs with a transfer of ownership interest in a company. The malpractice suit involved complex facts and litigation in Nevada. Two years into the malpractice litigation, Defendants suspected Plaintiffs had not disclosed all relevant emails in their possession. After a lengthy forensic investigation, Defendants discovered that Plaintiffs had concealed and destroyed several emails and other evidence that was relevant to the litigation. After a comprehensive evidentiary hearing, the trial court dismissed the case as a discovery sanction and imposed a monetary sanction against Plaintiffs. Plaintiffs appealed to the Court of Appeals, raising 18 issues on appeal. The Court of Appeals upheld the trial court's dismissal of the case and other sanctions, and the Arizona Supreme Court denied further review.**

(5) **The case had a significant record, and I distilled the lengthy record to the most important documents for the Court of Appeals to consider in the appendix to the answering brief. We also decided to cross appeal to preserve an issue related to the preclusion of evidence. I conducted a telephonic oral argument in March 2020 at the beginning of COVID-19 pandemic and adjusted to the different format of oral argument. It is rare for a**

case to be dismissed as a discovery sanction, but Plaintiffs' conduct was particularly egregious. The Court of Appeals affirmed the dismissal, and even granted Defendants' request for attorneys' fees and costs on appeal for "being forced to respond to this frivolous appeal and to discourage similar conduct by Plaintiffs and counsel in the future."

27. If you now serve or have previously served as a mediator, arbitrator, part-time or full-time judicial officer, or quasi-judicial officer (e.g., administrative law judge, hearing officer, member of state agency tribunal, member of State Bar professionalism tribunal, member of military tribunal, etc.), give dates and details, including the courts or agencies involved, whether elected or appointed, periods of service and a thorough description of your assignments at each court or agency. Include information about the number and kinds of cases or duties you handled at each court or agency (e.g., jury or court trials, settlement conferences, contested hearings, administrative duties, etc.).

Not applicable.

28. List at least three but no more than five cases you presided over or heard as a judicial or quasi-judicial officer, mediator or arbitrator. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

Not applicable.

29. Describe any additional professional experience you would like to bring to the Commission's attention.

In law school, I was awarded the Truman R. Young, Jr., Prosecutorial Fellowship, which honors the former Arizona prosecutor who dedicated his life to public service. This opportunity allowed me to work at three state prosecutorial agencies while a law student. Not only did I obtain valuable, hands-on legal experience but I also realized my aptitude for appellate work.

BUSINESS AND FINANCIAL INFORMATION

30. Have you ever been engaged in any occupation, business or profession other than the practice of law or holding judicial or other public office, other than as described at question 14? **Yes** If so, give details, including dates.

I worked at several jobs during high school and college. In high school (from 1997 to 2001), I worked at a fast-food restaurant, Gap, Aeropostale, and as an usher at the Kennedy Center for the Arts in Washington, D.C. During college (from 2001 to 2005), I worked at Blockbuster, a summer camp, Applebee's Restaurant, and the Fund for William and Mary (supporting the capital campaign for the college).

31. Are you now an officer, director, majority stockholder, managing member, or otherwise engaged in the management of any business enterprise? **No** If so, give details, including the name of the enterprise, the nature of the business, the title or other description of your position, the nature of your duties and the term of your service.

Do you intend to resign such positions and withdraw from any participation in the management of any such enterprises if you are nominated and appointed?
_____ If not, explain your decision.

Not applicable.

32. Have you filed your state and federal income tax returns for all years you were legally required to file them? **Yes** If not, explain.
33. Have you paid all state, federal and local taxes when due? **Yes** If not, explain.
34. Are there currently any judgments or tax liens outstanding against you? **No** If so, explain.
35. Have you ever violated a court order addressing your personal conduct, such as orders of protection, or for payment of child or spousal support? **No** If so, explain.
36. Have you ever been a party to a lawsuit, including an administrative agency matter but excluding divorce? **No** If so, identify the nature of the case, your role, the court, and the ultimate disposition.
37. Have you ever filed for bankruptcy protection on your own behalf or for an organization in which you held a majority ownership interest? **No** If so, explain.
38. Do you have any financial interests including investments, which might conflict with the performance of your judicial duties? **No** If so, explain.

CONDUCT AND ETHICS

39. Have you ever been terminated, asked to resign, expelled, or suspended from employment or any post-secondary school or course of learning due to allegations of dishonesty, plagiarism, cheating, or any other “cause” that might reflect in any way on your integrity? **No** If so, provide details.

40. Have you ever been arrested for, charged with, and/or convicted of any felony, misdemeanor, or Uniform Code of Military Justice violation? **No**

If so, identify the nature of the offense, the court, the presiding judicial officer, and the ultimate disposition.

Not applicable.

41. If you performed military service, please indicate the date and type of discharge. If other than honorable discharge, explain.

Not applicable.

42. List and describe any matter (including mediation, arbitration, negotiated settlement and/or malpractice claim you referred to your insurance carrier) in which you were accused of wrongdoing concerning your law practice.

On March 9, 2017, I received notice from the State Bar of Arizona that a bar charge had been filed by a self-represented petitioner from one of my federal habeas corpus cases in the Arizona District Court, *Lewis v. Ryan, et. al*, No. 2:17-CV-00220-JAT. The State Bar reviewed the charge and determined no other investigation was warranted and closed the file. I am unaware of any other accusation of wrongdoing concerning my law practice.

43. List and describe any litigation initiated against you based on allegations of misconduct other than any listed in your answer to question 42.

Not applicable.

44. List and describe any sanctions imposed upon you by any court.

Not applicable.

45. Have you received a notice of formal charges, cautionary letter, private admonition, referral to a diversionary program, or any other conditional sanction from the Commission on Judicial Conduct, the State Bar, or any other disciplinary body in any jurisdiction? **No** If so, in each case, state in detail the circumstances and the outcome.
46. During the last 10 years, have you unlawfully used controlled substances, narcotic drugs or dangerous drugs as defined by federal or state law? **No** If your answer is "Yes," explain in detail.
47. Within the last five years, have you ever been formally reprimanded, demoted, disciplined, cautioned, placed on probation, suspended, terminated or asked to resign by an employer, regulatory or investigative agency? **No** If so, state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) and contact information of any persons who took such action, and the background and resolution of such action.
48. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? **No** If so, state the date you were requested to submit to such a test, type of test requested, the name and contact information of the entity requesting that you submit to the test, the outcome of your refusal and the reason why you refused to submit to such a test.
49. Have you ever been a party to litigation alleging that you failed to comply with the substantive requirements of any business or contractual arrangement, including but not limited to bankruptcy proceedings? **No** If so, explain the circumstances of the litigation, including the background and resolution of the case, and provide the dates litigation was commenced and concluded, and the name(s) and contact information of the parties.

PROFESSIONAL AND PUBLIC SERVICE

50. Have you published or posted any legal or non-legal books or articles? **No** If so, list with the citations and dates.
51. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge? **Yes** If not, explain.
52. Have you taught any courses on law or lectured at bar associations, conferences, law school forums or continuing legal education seminars? **Yes** If so, describe.

- Co-presenter, *CAS/CLS Habeas Corpus Training*, Office of the Arizona Attorney General, September 2016
- Co-presenter, *How to Foolproof your Rule 32 Proceedings to Survive Habeas Review*, Arizona Prosecuting Attorneys' Advisory Council ("APAAC") Summer Conference, June 2017
- Co-presenter, *Appeals for Trial Prosecutors*, APAAC Office, November 2017
- Co-presenter, *Lower Court Appeals and Discretionary Review: Strategies and Practical Tips*, APAAC Appellate Advocacy for Prosecutor's Seminar, November 2018
- Presenter, *An Overview of Civil Appeals in Arizona*, Broening, Oberg, Woods & Wilson, P.C., April 2019
- Co-presenter, *Post-Conviction Relief Program*, Office of the Arizona Attorney General, June 2019
- Presenter, *An Overview of Civil Appeals in Arizona*, City of Tempe Attorney's Office, July 2019
- Presenter, *What's New in Appeals? Appellate Law in Arizona 2020*, Tucson Defense Bar Luncheon, February 2020

53. List memberships and activities in professional organizations, including offices held and dates.

- Member, Appellate Practice Section, Arizona State Bar
- Graduate, Ladder Down, 2020
 - Note: This year-long program for female attorneys provides instruction in various subject areas, such as leadership, business development, and conflict resolution. Graduates serve as mentors for future program participants and maintain life-long connections.

Have you served on any committees of any bar association (local, state or national) or have you performed any other significant service to the bar? **Yes**

List offices held in bar associations or on bar committees. Provide information about any activities in connection with pro bono legal services (defined as services to the indigent for no fee), legal related volunteer community activities or the like.

- **Member, Steering Committee on Arizona Appellate Case Processing Standards, 2016**
- **Member, Criminal Jury Instructions Committee, 2018-2019, 2021**

54. Describe the nature and dates of any relevant community or public service you have performed.

- **Mock trial attorney coach for Desert Vista High School mock trial team, 2013-2021**
 - **In this role, I prepare high school students to compete in annual mock trial tournaments. The team has a minimum of seven high-school students, and the competition consists of several rounds of performing a full trial. My co-coach and I begin working with the students at the beginning of the school year by teaching them basic legal principles and working with practice problems. The official mock trial case is released each November and we work with the students twice a week until March to prepare them for the competition. Working with high school students has been such a rewarding experience. Each year, we watch the students become more confident, improve their public-speaking skills, advance their critical thinking skills, and obtain a deeper appreciation for the law.**
- **Guest Speaker, Constitution Day, Taylor Jr. High School, September 2014**
- **Guest Speaker, Criminal Justice Class, Desert Vista High School, April 2021**
- **Volunteer, Phoenix Municipal Stadium COVID-19 Vaccination Site, March 2021**

55. List any relevant professional or civic honors, prizes, awards or other forms of recognition you have received.

- **Emerging Star Award, Arizona Attorney General's Office, 2014**
- **Arizona Appellate Prosecutor of the Year, Arizona Prosecuting Attorneys' Advisory Council, 2015**
- **Southwest Rising Stars Super Lawyer, 2020**

56. List any elected or appointed public offices you have held and/or for which you have been a candidate, and the dates.

Not applicable.

Have you ever been removed or resigned from office before your term expired? **No** If so, explain.

Have you voted in all general elections held during the last 10 years? **Yes*** If not, explain.

***I verified my voting history on the Secretary of State's website, and it appears my early ballot (which I filled out and mailed) was not received for the 2018 general election. I have otherwise voted and had my vote counted in every general election in Arizona since 2006.**

57. Describe any interests outside the practice of law that you would like to bring to the Commission's attention.

I am a wife and a mother of two wonderful daughters, ages three and six. My husband and I met in Virginia in 2004 when I attended college and he served in the United States Navy.

My husband and I love playing board games and have an extensive collection of more than 70 games. We are beginning to share this passion with our daughters. Also, I enjoy solving jigsaw puzzles, and am an avid fiction reader.

Additionally, I am an animal lover; my family has rescued several dogs and cats. During the COVID-19 pandemic, we planted a garden in our back yard, and enjoyed harvesting fresh vegetables, fruit, and herbs. We will continue gardening post-COVID.

Traveling domestically and internationally is another interest (when I can find time). My travels have included Kabul, AF and Dubai, UAE, where I traveled when my mother worked at the American University of Afghanistan.

HEALTH

58. Are you physically and mentally able to perform the essential duties of a judge with or without a reasonable accommodation in the court for which you are applying? **Yes**

ADDITIONAL INFORMATION

59. The Arizona Constitution requires the Commission to consider the diversity of the state's population in making its nominations. Provide any information about yourself (your heritage, background, life experiences, etc.) that may be relevant to this consideration.

My life experiences and background have influenced my world view. My birth mother suffered from postpartum psychosis, and though she sought therapy, knowledge and awareness about this serious medical condition was limited at the time and therapy proved unhelpful. My birth parents felt unable to properly care for a child and so my paternal aunt and her husband adopted me when I was six months old and brought me to Arizona from Colorado. I was slightly developmentally delayed but quickly thrived in a nurturing environment.

I also have first-hand experience with family members struggling with substance abuse, mental illness, and homelessness. My parents divorced when I was in fourth grade. Although my father, a certified public accountant and chief financial officer, worked long hours, I frequently saw him after the divorce until he could no longer hide the substance abuse. His ambition was fueled by drugs—mainly methamphetamines, pain medication, and alcohol. The previously successful executive plummeted into homelessness, but he refused help and ultimately landed in prison. As a result, when I was 12, my mother and I relocated and contact with my father stopped.

We moved to Connecticut and my mother obtained a PhD in political science. While raising me by herself with no financial help, she attended classes, worked part-time, and wrote her dissertation in three years. Next, she took a job in Washington D.C., and chose to move to Virginia so that I could attend one of the state's outstanding universities as an in-state student.

My mother worked as a researcher in the private sector and academia. She lived in Afghanistan for more than a year and worked at the American University of Afghanistan. She then was employed by a private contractor to conduct studies for the North Atlantic Treaty Organization's (NATO) mission in Afghanistan and the U.S. Department of State. About five years ago, she suffered a rare heart condition correlated with stress. Now, she lives near me and enjoys being me-ma to her two grandchildren. She has been a role model to me, and I would not be where I am today without her support and guidance.

Another major influence in my life has been my family's emphasis on education, particularly for women. My great-grandmother graduated from Bradley Polytechnic Institute (now Bradley University) in Illinois in 1912. (One of my prized possessions is the restored trunk she took to college with her.) My grandmother and mother hold PhDs and my aunt has a doctorate. As a fourth-generation female college graduate, I am proud of this legacy.

60. Provide any additional information relative to your qualifications you would like to bring to the Commission's attention.

I have focused my career on appellate practice. I have written briefs and other substantive pleadings in over 100 appellate cases and conducted several appellate oral arguments. My experience includes assisting in drafting appellate decisions during my clerkship. As a Unit Chief at the Attorney General's Office, I have participated in numerous moot courts, and reviewed more than 240 briefs and other substantive pleadings that were filed in the Arizona appellate courts.

Further, the Arizona Court of Appeals handles cases from a wide variety of subject areas in which I have experience. I have filed appellate briefs in the areas of criminal, worker's compensation, medical malpractice, legal malpractice, general liability, and special action proceedings.

Not only has my career been focused on appellate practice, I have also had first-hand experience at courts of all levels in Arizona. I worked at a Justice Court prior to attending law school, participated in bench and jury trials in law school at the Phoenix City Court and the Maricopa County Superior Court, clerked at the Arizona Supreme Court, and regularly practice at the Arizona Court of Appeals. I also have experience in the Arizona District Court and the Ninth Circuit Court of Appeals.

61. If selected for this position, do you intend to serve a full term and would you accept rotation to benches outside your areas of practice or interest and accept assignment to any court location? **Yes** If not, explain.
62. Attach a brief statement explaining why you are seeking this position.

See Attachment B.

63. Attach two professional writing samples, which you personally drafted (e.g., brief or motion). **Each writing sample should be no more than five pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing samples. Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public on the commission's

website.

See Attachment C, an excerpt from my Answering Brief in *Berg, et al. v. Weiss & Moy, P.C., et al.*, Court of Appeals No. 1 CA-CV 18-0692.

See Attachment D, an excerpt from my Supplemental Brief in *State v. Gilstrap*, Arizona Supreme Court No. CR-13-0379-PR.

64. If you have ever served as a judicial or quasi-judicial officer, mediator or arbitrator, attach sample copies of not more than three written orders, findings or opinions (whether reported or not) which you personally drafted. **Each writing sample should be no more than ten pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing sample(s). Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public on the commission's website.

Not applicable.

65. If you are currently serving as a judicial officer in any court and are subject to a system of judicial performance review, please attach the public data reports and commission vote reports from your last three performance reviews.

Not applicable.

**-- INSERT PAGE BREAK HERE TO START SECTION II
(CONFIDENTIAL INFORMATION) ON NEW PAGE --**

Attachment A



MARK BRNOVICH
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL
OPERATIONS DIVISION

HUMAN RESOURCES
SECTION

TO: Whom This May Concern

FROM: Human Resources – Attorney General Office

DATE: 06/29/2021

RE: Current list of AGO Attorneys as of 06/29/2021

Below is a list of current attorneys at the Attorney General's Office:

AGCFP	ABBEY, DEBORAH K.	AGSGD	BANES, REBECCA A.
AGSGD	ACOSTA, JOE	AGCRM	BARRICK, JENNIFER E.
AGSGD	ACOSTA-COLLINGS, CLAUDIA R.	AGCFP	BARRY, WILBUR F.
AGCFP	ADAMS, AMANDA L.	AGSGD	BASKIN, MONA E.
AGSGD	ADAMS, CATHERINE S.	AGCFP	BAUMANN, AARON A.
AGCRM	ADAMS, KRISTI M.	AGSGD	BECKLUND, MARJORIE S.
AGSGO	AHL, DAVID E.	AGSGD	BEHNKE, KALYN D.
AGCRM	AHLER, PAUL W.	AGSGD	BELJAN, JOTHI
AGCLD	ALLEE, MITCHELL W.	AGSGD	BENJAMIN, DENA R.
AGCRM	AMOO, MUKAI	AGSGO	BENNETT, ERIN D.
AGCFP	ANDERSON, ANDREA R.	AGSGD	BENNETT, THOMAS D.
AGCFP	ANDERSON, CALLEY R.	AGCFP	BERENDSEN, ELIZABETH A.
AGSGD	ANDERSON, KIM S.	AGSGD	BERGIN, DANIEL H.
AGCFP	ANZINI, LAUREN M.	AGSGD	BERGIN, VICTORIA J.
AGSGD	ASCHENBACH, RON J.	AGCLD	BERNHEIM, ROBERT A.
AGSGD	ASTA, SARAH A.	AGCFP	BEVINS, ERIN S.
AGSGD	BABIONE, BYRON J.	AGCFP	BEVINS, WILLIAM F.
AGCFP	BACAL, JOSEPH E.	AGCLD	BISHOP, RYAN G.
AGSGD	BACON, JAMES N.	AGCFP	BLUM, JENNIFER R.
AGSGO	BAEK, RICHARD L.	AGCFP	BODDINGTON, LISA C.
AGCFP	BAIER, DONALD J.	AGSGO	BOND, MICHELLE L.
AGCRM	BALDNER, VICTORIA A.	AGCLD	BONHAM, JENNIFER L.
AGSGO	BALL, CASEY D.	AGSGD	BONNELL, NANCY M.



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AGCFP	BOTTA, ALISON M.
AGCFP	BOYD, MICHAEL E.
AGSGD	BOYLE, PATRICK J.
AGSGO	BRACCIO, MYLES A.
AGSGD	BRACHTL, MARK C.
AGCFP	BRADLEY, BETHANY E.
AGSGD	BRENNAN, CARRIE J.
AGEXO	BRNOVICH, MARK
AGCFP	BROWN, LINDA M.
AGCFP	BROWN, LISA B.
AGSGD	BURTON, MICHELLE
AGCFP	BURZ, REBEKAH J.
AGSGD	CAMPBELL, ELIZABETH A.
AGCFP	CAMPBELL, SEAN M.
AGCFP	CANNON, MATHEW B.
AGSGD	CANTRELL, JEFFREY D.
AGCRM	CAPLINGER, SAMANTHA L.
AGSGD	CAPUTO, LOUIS F.
AGCLD	CARLSEN, CHRISTIAN B.
AGSGD	CARTER, PAUL E.
AGSGD	CASE, NANCY K.
AGSGO	CATLETT, MICHAEL S.
AGSGD	CHAMBERLAIN, KIMBERLY D.
AGCFP	CHAMPAGNE, DEANA M.
AGCFP	CHAPMAN, AMY S.
AGCFP	CHAVEZ, JULIE A.
AGSGD	CHENAL, THOMAS K.
AGSGO	CHIASSON, LAURA P.
AGCFP	CHRISTENSEN, SCOTT A.
AGCFP	CHRISTOPHER, JANET V.
AGCFP	CIAFULLO, MARK A.
AGCLD	CIAFULLO, MARK J.
AGCRM	CLARK, DOUGLAS L.

AGSGO	CLAW, GRACYNTHIA D.
AGSGD	COADY, MONIQUE K.
AGSGO	COFFMAN, BRIAN R.
AGSGD	COHEN, ERIN D.
AGSGO	COLE, DAVID R.
AGCRM	COLL, SEAN P.
AGCFP	CONLEY, JACQUELINE
AGCLD	COOPER, LESLIE K.
AGCFP	COORDES, GREGORY D.
AGSGD	CORCORAN, AUBREY JOY
AGSGD	CORLEY, JASON D.
AGCFP	CORTINA, DARLENE M.
AGCFP	COUNTS, SHALLON L.
AGSGD	COX, CURTIS A.
AGCFP	CRANE, ALISON P.
AGSGD	CRESTIN, KEVIN P.
AGCFP	CRITZ, ANNA G.
AGCFP	CULBERTSON, WEI-TING
AGSGD	CUMMINGS, KYLE R.
AGCFP	CURIGLIANO, ROBERT J.
AGSGO	CURTISI, NATHAN
AGSGD	CUTTS, SHELLEY D.
AGSGD	CYGAN, KIMBERLY J.
AGCRM	DAILEY JR, JAMES M.
AGSGO	DAMSTRA, KATHRYN A.
AGCFP	DAULT, RICHARD D.
AGSGD	DAVIS, CHRISTOPHER B.
AGSGD	DAVIS, SUSAN E.
AGSGD	DELAAT WILLIAMS, MARY H.
AGCFP	DEVANY, ERIC
AGCFP	DHAS, ASHWINI P.
AGCLD	DILWEG, LAURA E.
AGSGO	DIVIS, KATLYN J.
AGCFP	DOLL, HOLLY A.



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AGSGD	DURAN, GINO A.
AGCLD	DYLLA, CHRISTOPHER J.
AGSGD	DYLO, JOSEPH E.
AGCFP	DYSART, ANDREW B.
AGSGO	EASTERDAY, JASON B.
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AGCRM	EMERSON, JORDAN E.
AGCFP	ENRIQUEZ, LAURA I.
AGSGO	ENSIGN, DREW C.
AGCFP	ESPINOSA, GIOCONDA A.
AGCFP	ESPIRITU, EDGARD FRANCIS B.
AGSGD	EVANS, LYNETTE J.
AGCFP	FALGOUT, JOANN
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AGCFP	FOSTER, ALYSON M.
AGCLD	FOX, SAMUEL P.
AGSGO	FRANCIS, JILLIAN B.
AGSGO	FREEMAN, WILSON C.
AGCLD	FREESTONE, SHYLA R.
AGSGD	FRIES, JERRY A.
AGSGD	FRY, JOHN M.
AGCRM	FULLER, SHELBY N.
AGCRM	GADOW, BLAINE D.
AGCRM	GALUSHA-TROICKE, NICHOLE J.
AGCFP	GALVAN, JOSE P.

AGSGD	GALVIN, JEANNE M.
AGCFP	GARBUTT, BART T.
AGCFP	GARDNER, AMELIA A.
AGSGD	GARNER, DEBORAH L.
AGSGD	GENTRY, GWYNDOLYNN D.
AGCFP	GEVERS, ALICIA
AGCFP	GILBERT, ISAAC A.
AGSGD	GILLILAN-GIBSON, KELLY E.
AGCLD	GILLOTT, WENDY M.
AGSGD	GILMAN, LINDSEY E.
AGCRM	GODDARD, KYRA
AGSGD	GOLOB, ELCHONON D.
AGSGD	GOODWIN, MICHAEL K.
AGSGD	GOTTFRIED, MICHAEL E.
AGCFP	GOUDREAU, CONSTANCE G.
AGSGD	GOULD, CONNIE T.
AGCFP	GOURLAY, VIRGINIA W.
AGCLD	GREY, CHRISTINA M.
AGSGD	GRUBE, CHARLES A.
AGSGD	GUILLE, MISTY D.
AGSGD	HACHTEL, LAURIE A.
AGCFP	HALL, DANIEL P.
AGSGD	HALL, ROGER W.
AGSGD	HANDY, JO-ANN A.
AGCRM	HARAMES, BRETT J.
AGSGD	HARGRAVES, SETH T.
AGCFP	HARPER, SHAWN L.
AGSGD	HARRINGTON, KATHLEEN
AGSGD	HARRIS, MARC H.
AGCFP	HARRIS, VERNON L.
AGCFP	HARRISON, CARI A.
AGCFP	HARRISON, WENDY J.
AGCRM	HARRISS, MARY L.
AGCFP	HAWKINSON, ERIN B.



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AGCRM	HEINTZ, RACHEL
AGSGD	HENDERSON, CHRISTINA A.
AGSGD	HERLIHY, MATTHEW T.
AGCFP	HERRERA-GONZALES, VIRGINIA
AGCFP	HESSINGER, MARK E.
AGCFP	HICKS, SARAH K.
AGSGD	HOBART, ANN
AGCFP	HODGSON, MARK A.
AGCFP	HOLDEN, MICHELE B.
AGSGO	HOLDER, JENNIFER L.
AGCRM	HOLGUIN, HOLLIE C.
AGSGO	HOLLYWOOD, KAITLIN
AGCFP	HOLYA, ROBERT B.
AGSGD	HORN, JEREMY D.
AGSGD	HORN, SOPHIA N.
AGCFP	HORNE, WILLIAM M.
AGSGD	HOWARD, ZACHARY S.
AGCFP	HUCKABY, LINDSAY B.
AGCRM	HUDSON, JOHN E.
AGSGD	HUGHES, KENNETH R.
AGSGD	HUGHES, LINDSAY M.
AGCFP	HUMPHRIES, JOHN L.
AGSGO	HUNT, DIANE L.
AGCFP	HUNTER, JENNIFER R.
AGCFP	HURTADO, ANGELA M.
AGCFP	HYNES, GREGORY M.
AGCFP	INIGUEZ, ADOLFO
AGSGD	JACKSON, LAWTON L.
AGSGD	JACOBS, DAVID F.
AGCFP	JAMES, DINITA L.
AGCFP	JAQUET, LORENA

AGSGO	JARVIS, GINGER
AGSGD	JASCULCA, NANCY H.
AGSGO	JESSEN, KATHERINE H.
AGCFP	JOHNSON, ELIZA B.
AGCFP	JOHNSON, JANNA L.
AGCRM	JOHNSON, JOHN S.
AGCFP	JOHNSON, KYLE M.
AGSGO	JONES, ALICE M.
AGCLD	JONES, DYLAN K.
AGCRM	JONES, REBECCA K.
AGCFP	JOSE, THOMAS J.
AGSGD	JOSYULA, PARVATI
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If you have any questions, please contact Human Resources at 602.542.8056.

Thank you,

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Attachment B - Statement of Interest

The name “OJ Simpson” meant almost nothing to me when, as a middle-schooler, I watched the athlete’s infamous trial on television. Instead of the unfolding drama, however, I was captivated by the legal proceedings and by lead prosecutor Marcia Clark. She served as an inspiration because I had never seen a female lawyer in charge. Right then, I knew I wanted a career in law.

My focus has not wavered. Indeed, it has intensified in large part because of personal challenges. Thus, my interest in becoming a Court of Appeals Judge is a culmination of personal, academic, and professional experiences.

A few years after the OJ Simpson trial, I got my first taste of appellate law in high school when I argued before the Virginia Supreme Court in a mock trial tournament. I fielded questions from the seven Justices and helped lead my team to victory. This experience validated my desire to become an attorney and sparked my interest in becoming a judge.

Next, I attended the College of William & Mary as an undergraduate. I was awed by the university’s place in American history. Established in 1693, its long list of luminary alumni includes Thomas Jefferson and James Monroe. I was thrilled, for instance, to sit in the same classroom that Jefferson had used as a W&M student. I also attended various lectures on campus such as one given by Justice Antonin Scalia. My undergraduate experience deepened my appreciation of our system of government.

At the same time, I knew a legal career was a big commitment and so, after college, I obtained a job at a private law firm in Norfolk, Virginia to help ensure I was on the correct path. After about a year, I relocated back to Arizona and worked as a clerk in San Tan Justice Court. Again, these experiences confirmed by desire to attend law school and pursue a legal career.

However, a few weeks before my planned return to Arizona, where I had lived until about age 12, I experienced a profound loss when my father died in a vehicle collision in New Mexico. He had been a successful certified public accountant in Phoenix but had fueled his drive with drugs such as methamphetamines, pain medication, and alcohol. Because of this substance abuse, before I was a teenager, my parents had divorced, my mother and I had left the Valley, and my father, who had refused treatment, became homeless. Finally, he ended up in the New Mexico State Prison.

We reconnected soon after my college graduation. My father had been released from prison, was sober, and working and living in Albuquerque. My then fiancé (now husband) and I were moving from Virginia to Arizona and would be driving through Albuquerque. We planned to meet my father; it had been about 10 years since I had seen him. Sadly, he died two weeks before my fiancé and I were scheduled to leave Virginia.

As the sole next of kin, I was responsible for making final arrangements. My father was driving the vehicle that crashed, and his passenger, a young man, also lost his life. Although my father tested negative for alcohol and other substances, in hindsight, several legal issues were

involved but none were addressed. Among other things, I realized how unprepared most people are for interactions with the legal system.

Moreover, as I learned more about my father's experiences, I was shocked by the obstacles he faced reintegrating into society after his release from prison. He barely made a living. His situation introduced me to a part of society that I had known existed but had never experienced. As a result, a legal career geared toward public service became my goal.

Public service appeals to me because of an unwavering belief in the Rule of Law which is the backbone of our civil society. However, once a debt to society has been paid, individuals deserve an opportunity to reintegrate into society and become productive and involved citizens.

After returning to Arizona and working at San Tan Justice Court, I started law school which validated that I was on the right path. I excelled and learned I have a talent for complex legal reasoning and writing. After serving as a Truman Young Fellow, in which I was exposed to three levels of the state's justice system as detailed in the application, my attention turned toward criminal appellate work mainly because laws and rules are critical to a stable society.

The Rule of Law is vital to our society and must be fairly and equally applied. Although those who violate the law should be held accountable by the State, I am intimately aware of the consequences that convictions have on people's lives. I believe it is important that all are treated fairly and given the chance to rejoin society after serving their punishment.

I enjoy the appellate process. Delving into a case about which I had no prior knowledge and examining all the pieces and how they fit together intrigues me. The challenge is figuring out how the pieces fit together, coming to the correct answer under the law, then clearly communicating that information. Through my clerkship and civil appellate experience, I have learned that the challenge of fitting the pieces together is the same in nearly all situations, civil and criminal. My forte, which I thoroughly enjoy, is digging deeply into the challenge that appellate law requires no matter the type of case.

I also have deep respect for the role of appellate work in the justice system. It keeps our system of justice accountable by ensuring that current statutes and laws are fairly administered in every case. My appellate experience ranges from assisting with drafting opinions at the Arizona Supreme Court to regularly filing briefs and conducting oral arguments in front of the Arizona appellate courts in a variety of subject areas, including both criminal and civil law.

In summary, I have a deep respect for the Rule of Law, an aptitude for analyzing appeals, and a desire to continue to work in the public sector. My life experience also helps bring diversity to the Court. I would be grateful for an opportunity to use my talent as a Court of Appeals Judge who serves the people and State of Arizona. I appreciate your consideration of my application.

**ARIZONA COURT OF APPEALS
DIVISION ONE**

DAVID BERG and VINTNER GROUP, LLC,

Plaintiffs/Appellants/
Cross-Appellees,

vs.

WEISS & MOY, P.C., MARK H. WEISS, and
SHARI B. WEISS.,

Defendants/Appellees/
Cross-Appellants.

No. 1 CA-CV 18-0692

Maricopa County Superior Court
No. CV2013-015419

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actions *prior to* being removed as manager. (See [Appx-GG,HH&II-465-82.](#))

E. The Trial Court Properly Determined That the Flagrancy of the Discovery Violations and Lack of Adequate Alternative Remedy Warranted Dismissing the Case

Plaintiffs intentionally withheld and concealed hundreds of emails and documents that were material and unfavorable to their position; deleted evidence related to ██████; lied throughout the discovery process; and, delayed the proceedings. (See [Appx-E-187.](#)) This egregious conduct warranted the sanction of dismissal.

The trial court afforded Plaintiffs due process before imposing the dismissal sanction for the Plaintiffs' egregious conduct by holding a lengthy evidentiary hearing and authoring a detailed order of dismissal. See [Rivers, 217 Ariz. at 532-33, ¶ 24](#) (stating trial court satisfied due process by holding "an evidentiary hearing preceded by briefing before imposing the [dismissal] sanction" and entering "detailed findings"). Indeed, Judge Kiley told both parties the Motion for Sanctions raised "very serious issues," and he would not form any conclusions on the matter until "each party ha[d] a fair opportunity to gather and present all information that has a bearing on these issues" (R.T. 7/12/17, at 24:1-:15), and he permitted both sides to have three hours each at the evidentiary hearing because he did not "want to cut anyone short." (R.T. 8/18/17, at 21:3-:20.) Again, the evidence presented at the hearing showed, and Judge Kiley specifically found, that ██████ had deliberately concealed and spoliated evidence. ([Appx-E-171, 176-84; see also R.T. 2/5/18, at](#)

69-262.) *See also Wayne Cook Enterprises, Inc.*, 196 Ariz. at 149, ¶ 12 (stating court must make an “express finding that a party, as opposed to his counsel, has obstructed discovery” to impose the sanction of dismissal). Thus, this case is inapposite from the cases cited by Plaintiffs where there had been no finding by the trial court that the party had intentionally concealed or destroyed evidence. (O.B. at 32-33, citing *Souza*, 191 Ariz. at 250 (concluding dismissal not warranted for *negligent* destruction of evidence); *Nesmith v. Superior Court*, 164 Ariz. 70, 71-72 (Ct. App. 1990) (reversing sanction of dismissal, in part, because court had not found “plaintiff personally share[d] complicity in the abusive behavior”).)

Judge Kiley also considered lesser sanctions and concluded that “no lesser sanction than dismissal would adequately remedy the prejudice caused by the Plaintiffs’ discovery misconduct.” (Appx-E-188-90.) *See Wayne Cook Enterprises, Inc.*, 196 Ariz. at 149, ¶ 12 (stating court must consider and reject lesser sanctions to impose the sanction of dismissal). The preclusion of evidence would only favor Plaintiffs because they tried to suppress evidence. (Appx-E-189.) And an adverse jury instruction would “amount to an invitation to the jury to guess about the contents of evidence that neither they nor the Defendants have ever seen.” (*Id.*)

This case had been pending for over *five years*. (*See* I.R. 1 [Complaint filed 11/20/13].) In light of all of the voluminous hidden information that was revealed, discovery would have had to be re-opened and depositions would have had to be

re-done, which would have been “enormously expensive” and a cost “that the Defendants should not have to bear.” (Appx-E-188.) Further, re-opening discovery would not have allowed Defendants to re-depose ██████ member ██████, who is now deceased, and would still have not permitted Defendants to discover “electronic information that has been permanently lost” because of ██████’s actions. (Appx-E-189.) See *Rivers*, 217 Ariz. at 533, ¶¶ 25-26 (concluding trial court acted within discretion by dismissing case when, *inter alia*, “after two and a half years of litigation, the defense would have to redo its preparation of experts and the IME”).

Although Arizona courts have expressed preference for litigating a case on the merits, *see, e.g., id.* at 530-31, ¶ 13, such an outcome cannot happen in this case because Plaintiffs “thwarted the truth-seeking function of the litigation process by causing the irreparable loss of evidence.” (Appx-E-190.) See *Anheuser-Busch, Inc. v. Natural Beverage Distributors*, 69 F.3d 337, 352 (9th Cir. 1995) (concluding dismissal appropriate sanction when the offending party’s “pattern of deception and discovery abuse made it impossible for the district court to conduct another trial with any reasonable assurance that the truth would be available”); *see also Computer Associates Intern., Inc. v. American Fundware, Inc.*, 133 F.R.D. 166, 170 (D. Colo. 1990) (“Any lesser sanction [than entry of default judgment] would allow a party possessing evidence that would insure an adverse result to destroy that evidence with impunity, thus assuring defeat for the opponent while risking only a comparatively

mild rebuke.”).

In sum, Judge Kiley did not abuse his considerable discretion by imposing the only appropriate remedy of dismissal. *See Roberts v. City of Phoenix*, 225 Ariz. 112, 121, ¶ 32 (Ct. App. 2010) (concluding “reasonable grounds” supported trial court’s discovery sanction of entry of default judgment when it “considered the history of the case and the specific instances of the discovery violations, as well as possible lesser sanctions”); *Green v. Lisa Frank, Inc.*, 221 Ariz. 138, 154-55, ¶ 46 (Ct. App. 2009) (affirming dismissal sanction when plaintiffs personally “continuously and willfully violated the trial court’s orders and made misrepresentations to the court about those violations,” which resulted “in significant delays and expensive, unnecessary litigation requiring extensive filings and evidentiary hearings that included expert testimony”); *see also Leon v. IDX Systems Corp.*, 464 F.3d 951, 958-61 & n.5 (9th Cir.) (affirming dismissal sanction where party’s “destruction of 2,200 files on his employer-issued computer greatly impeded resolution of the case by obscuring factual predicate of the case and consuming months of sanction-related litigation”).

II. THE TRIAL COURT PROPERLY CONSIDERED EVIDENCE REGARDING THE [REDACTED] LAPTOP

Plaintiffs contend the trial court should not have considered evidence regarding the [REDACTED] laptop, arguing the evidence is “irrelevant and violates Judge Anderson’s Order In Limine,” and the allegation that he destroyed files on the laptop

ARIZONA SUPREME COURT

STATE OF ARIZONA,

Appellee,

v.

ALICIA LEAH GILSTRAP,

Appellant.

CR-13-0379-PR

Court of Appeals
No. 1 CA-CR 12-0448

Mohave County Superior Court
No. CR-2010-00770

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made a different ruling.” (*Id.* at 192–95.) Essentially, the trial court found no “good cause” to reconsider the suppression motion.

This Court’s long-standing precedent provides that ““*only* the evidence presented at the suppression hearing,”” is to be considered when reviewing a trial court’s ruling on a motion to suppress. *See, e.g., State v. Hummons*, 227 Ariz. 78, 79, ¶ 2, 253 P.3d 275, 276 (2011) (quoting *State v. Garcia*, 224 Ariz. 1, 7, ¶ 6, 226 P.3d 370, 376 (2010)) (emphasis added). It is not clear whether an appellate court considers evidence presented at trial when a motion for reconsideration is based on conflicting trial testimony, and the motion is subsequently denied. In any event, even if this Court considers the evidence presented at trial, as discussed in more detail below, the trial court still properly denied the motion to suppress.

B. THIS COURT SHOULD ADOPT THE PHYSICAL-POSSESSION TEST.

Courts in other jurisdictions are divided about when police may search, pursuant to a valid premises warrant, the belongings of a person who is present at the premises, but who is not named in the search warrant. Courts have developed two different tests, the “physical possession test” and the “relationship test.” (Answering Brief, at 16–17; Response to Petition for

(... continued)

supplemental report memorializing that event during an earlier pretrial defense interview of that officer. (R.T. 5/14/12, at 180–81.)

Review, 7–8.) *See generally* Diane L. Schmauder, Annotation, *Propriety of Search of Nonoccupant Visitor’s Belongings Pursuant to Warrant Issued for Another’s Premises*, 51 A.L.R.5th 375 (1997). Some courts have also created a variation of the relationship test called the “actual notice test.” (Answering Brief, at 16–17; Response to Petition for Review, at 7–8.) This Court should adopt the physical-possession test.²

First and foremost, adoption of the physical-possession test is most in line with Supreme Court case law. The Supreme Court has explained that “the scope of a lawful search is ‘defined by the object of the search and the places in which there is probable cause to believe that it may be found.’” *Maryland v. Garrison*, 480 U.S. 79, 84–85 (1987) (quoting *United States v. Ross*, 456 U.S. 798, 824 (1982)). When police have a search warrant for a premises, they are authorized to search “the entire area in which the object of the search may be found,” and are permitted to open “closets, chests, drawers, and containers” if

² The parties, the trial court, and court of appeals did not find an Arizona case directly on point. This Court has recognized that a premises search warrant does not include searches of unknown *persons* who arrive during the search, *see State v. Mendez*, 115 Ariz. 367, 369, 565 P.2d 873, 875 (1977); *State v. Lewis*, 115 Ariz. 530, 532, 566 P.2d 678, 680 (1977), and recognized that it does not “*alone* constitute grounds to detain” a non-occupant who is merely present at the premises. *See State v. Carrasco*, 147 Ariz. 558, 560, 711 P.2d 1231, 1233 (1985) (emphasis in original). But this Court has not decided the issue presented in this case.

the object of the search could be contained therein. *Ross*, 456 U.S. at 820–21. “This rule applies equally to all containers,” and there is no “constitutional distinction” between different types of containers. *Id.* at 822–24.

Search warrants for premises authorize the police to search a certain structure for evidence of criminal activity (“things”) located at that location at the time of the search. *Zurcher v. Stanford Daily*, 436 U.S. 547, 555 (1978) (“Search warrants are not directed at persons; they authorize the search of ‘place[s]’ and the seizure of ‘things,’ and as a constitutional matter they need not even name the person from whom the things will be seized.”). “The critical element in a reasonable search is not that the owner of the property is suspected of crime but that there is reasonable cause to believe that the specific ‘things’ to be searched for and seized are located on the property to which entry is sought.” *Id.* at 556. Search warrants, however, do not authorize the police to search *persons* found at the premises at the time of the warrant’s execution, unless the search warrant names that particular person as an object of the search, or an exception to the warrant requirements exists. *See Ybarra v. Illinois*, 444 U.S. 85, 91, 96 (1979); *United States v. Di Re*, 332 U.S. 581, 587 (1948). Accordingly, premises search warrants authorize officers to search all containers within the premises that there is “reasonable cause” to believe contain the specific items listed in the search warrant, even if the container is

owned by someone who is not the target of the search warrant, but does not, without more, give police authority to search persons who are merely present.

In *Wyoming v. Houghton*, 526 U.S. 295 (1999), the Court clarified the principle of law reflected in its earlier cases that the Fourth Amendment distinguishes between the search of persons and the search of their belongings. In *Houghton*, police developed probable cause during a traffic stop to search a vehicle based on a syringe found in the driver's pocket and his admission that "he used it to take drugs." *Id.* at 298. During the search of the vehicle, police found a purse in the back seat, which one of the passengers claimed belonged to her. *Id.* An officer first found the passenger's driver's license in the purse, and then found methamphetamine and drug paraphernalia. *Id.* The Supreme Court upheld the search. *Id.* at 307. Although much of the Court's opinion related to the automobile exception, the Court rejected the Wyoming Supreme Court's test, which was the "actual notice" variation of the "relationship test." *See id.* at 299, 306–07; *see also State v. Reid*, 77 P.3d 1134, 1141–42 (Or. App. 2003) (discussing lower court's decision in *Houghton*).

The Court expressly differentiated the search of a person and the search of a person's belongings, limiting its previous holdings in *Di Re* and *Ybarra* to searches of *persons* who are merely present because these decisions were based on the "unique, significantly heightened protection afforded against the

searches of one's person." *Houghton*, 526 U.S. at 303. This reasoning does not extend to a person's *property*. *Id.* In a footnote, the Court said:

Does the dissent really believe that Justice Jackson was saying [in *United States v. Di Re*] that a house search could not inspect *property* belonging to persons found in the house—say a large standing safe or violin case belonging to the owner's visiting grandfather? Of course that is not what Justice Jackson meant at all. He was referring *precisely* to that "distinction between property contained in clothing worn by a passenger and property contained in a passenger's briefcase or purse" that the dissent disparages This distinction between searches of the person and searches of property is assuredly *not* "newly minted," And if the dissent thinks "pockets" and "clothing" do not count as part of the person, it must believe that the only searches of the person are strip searches.

Id. at 303 n.1 (internal citations omitted). The Court held, "The sensible rule (and the one supported by history and case law) is that [a package belonging to someone other than the target of the investigation] may be searched, whether or not its owner is present as a passenger or otherwise, because it may contain the contraband that the officer has reason to believe is in the car." *Id.* at 307.

The physical-possession test embodies these principles and distinguishes between persons and their possessions. This test permits officers to "search all items found on the premises that are plausible repositories for objects named in the search warrant, except those worn by or in the physical possession of persons whose search is not authorized by the warrant, irrespective of the person's status in relation to the premises." *State v. Andrews*, 549 N.W.2d 210,

218 (Wis. 1996). As one court has observed, *Houghton* “leaves little doubt that, if faced with the question, the Court would endorse a ‘physical possession’ test for searches of premises.” *Reid*, 77 P.3d at 1141; *see also State v. Leiper*, 761 A.2d 458, 461 (N.H. 2000) (adopting physical-possession test after considering *Houghton*).

Further, the physical-possession test provides clear guidance to police officers. “A single familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the circumstances they confront.” *Illinois v. Lafayette*, 462 U.S. 640, 648 (1983) (internal quotation and alteration omitted); *see also Atwater v. City of Lago Vista*, 532 U.S. 318, 347 (2001) (“Courts attempting to strike a reasonable Fourth Amendment balance thus credit the government’s side with an essential interest in readily administrable rules.”); *Houghton*, 526 U.S. at 305–06 (stating the “the balancing of interests [under the Fourth Amendment] must be conducted with an eye to the generality of cases” and must take account of “practical realities”).

Although the physical-possession test has been subject to some criticism, *see, e.g., Reid*, 77 P.3d at 1140–41 (discussing strengths and weaknesses of physical-possession test); *Andrews*, 549 N.W.2d at 217 (noting criticism of physical-possession test), the relationship test and “actual notice” variations of