

**UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY**

**QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES**

**PUBLIC**

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

Brendan Van Johnson

The name on my birth certificate is Brent Vandel Johnson. My name was changed to Brendan Van Johnson six months later.

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

United States Attorney for the District of South Dakota

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

Johnson, Heidepriem, Abdallah and Johnson, L.L.P.  
431 North Phillips Avenue, Suite 400  
Sioux Falls, SD 57101-2348

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

1975, Vermillion, South Dakota

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

University of Virginia School of Law  
Attended: September 1998 – May 2001  
Degree Awarded: Juris Doctor in May 2001

University of South Dakota  
Attended: September 1994 – May 1998  
Degree Awarded: B.S. in History in May 1998

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.

2009 to Present  
Sioux Falls Pavilion, Board of Directors for the Husby Performing Arts Center  
301 S. Main Avenue  
Sioux Falls, SD 57104  
This is an unpaid position.

2006 to Present  
American Cancer Society, Midwest Division, South Dakota Region Advisory Committee  
4904 South Technopolis Drive  
Sioux Falls, SD 57016  
This is an unpaid position.

2006 to Present  
Twelve-step Living Corporation Board of Directors (non-profit, alcohol treatment facility)  
2601 S. Minnesota Avenue  
Sioux Falls, SD 57108  
This is an unpaid position.

2006 to Present  
University of South Dakota Board of Trustees  
414 E. Clark Street  
Vermillion, SD 57069  
This is an unpaid position.

May 2005 to Present  
Johnson, Heidepriem, Abdallah and Johnson, L.L.P.  
431 North Phillips Avenue, Suite 400  
Sioux Falls, SD 57101- 2348  
I was an associate attorney in 2005 and became a partner in 2006.

January 2003 to January 2005  
Minnehaha County State's Attorneys Office  
415 North Dakota Avenue  
Sioux Falls, SD 57104  
Deputy State's Attorney

November 2002 to January 2003  
Boston Public Schools  
26 Court Street #7  
Boston, MA 02108  
Substitute Teacher

August 2002 to November 2002  
Tim Johnson for Senate  
(campaign office no longer in existence)  
Senator Tim Johnson  
136 Hart Senate Office Building  
Washington, DC 20510  
Surrogate Candidate, Advisor on legal issues

August 2001 to August 2002  
The Honorable Karen Schreier  
Chief Judge, U.S. District Court for the District of South Dakota  
515 9<sup>th</sup> Street  
Rapid City, SD 57701  
Law Clerk

June 2000 to August 2000  
Howrey Law L.L.P.  
1299 Pennsylvania Avenue NW  
Washington, DC 20004  
Summer Associate

July 1999 to August 1999  
Verner, Liipfert, Bernhard, McPherson and Hand, Chartered  
901 15th Street, NW; Suite 700  
Washington, DC 20005  
Summer Associate

June 1999 to July 1999  
Baker Hostetler L.L.P.  
Washington Square, Suite 1100  
1050 Connecticut Avenue, NW  
Washington, DC 20036-5304  
Summer Associate

May 1998 to August 1998  
Office of Vice President Al Gore  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500  
Intern

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 United States Military but I have registered for selective service.

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.

National Truman Scholar  
University of South Dakota Nominee for Rhodes Scholarship  
Raven Honor Society, University of Virginia  
Mortar Board Honor Society, University of South Dakota  
Guidon Honor Society, University of South Dakota

Various awards and recognitions from University of South Dakota Debate Program  
Various awards and recognition from University of Virginia School of Law Jessup  
International Law Moot Court Team

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.

South Dakota Second Circuit Bar Association, 2005 to present  
South Dakota Trial Lawyer's Association, 2005 to 2009  
American Association for Justice, 2005-2008  
South Dakota Bar Association, 2001 to present  
President of the University of Virginia School of Law Student Bar Association, 2000-2001

10. **Bar and Court Admission:**

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

State Bar of South Dakota  
January 22, 2002 to Present  
No lapses in membership.

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

United States District Court for the District of South Dakota  
March 15, 2005 to Present  
No lapses in membership.

United States Court of Appeals for the Eighth Circuit  
March 31, 2005 to Present  
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.

Sioux Falls Pavilion, 2009 to Present  
Board of Directors for Husby Performing Arts

American Constitution Society, 2008  
Member

National Rifle Association, 2008 to Present  
Member

Twelve-step Living Corporation, 2006 to Present  
Board of Directors  
This is a non-profit organization dedicated to the treatment of substance abuse.

South Dakota Cancer Society, 2006 to Present  
Advisory Committee

University of South Dakota Board of Trustees, 2006 to Present  
Board of Trustees Member

University of South Dakota Foundation, 2006 to Present  
Financial Membership

Minnehaha Country Club, 2006 to Present  
Member

Volunteers of America, 2006 to Present  
Helping Hands Society Financial Membership

Westward Ho Country Club, 2004 to 2006  
Member

South Dakota Democratic Party, 2002 to 2008  
Financial Membership

University of Virginia School of Law, 2001 to Present  
Class of 2001 Fundraising Agent

- b. 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.

No.

**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.

None.

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

None.

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

None.

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

I have spoken on behalf of my father, United States Senator Tim Johnson, on numerous occasions. I have not kept a record of these speeches or events, and copies or transcripts of them are not available. I have made a review of my personal files and searches of publicly available media accounts, and have located the following media accounts:

NPR, Jason Beaubien, "S. Dakota Receives a Healing Sen. Johnson," 3/31/09

Bill Muller, "In August I told you I was back, today I tell you that I am here to stay." 4/19/08

Tim Johnson for U.S. Senate, "Overflow Crowd of Hundred Honor Johnson Accomplishments at One Year Anniversary Party," 8/28/08

Squarespace.com, "An Eventful November 26, 2007 Monthly Meeting," 11/28/07

Badlandsblue.com, Lowell, "McGovern Day Coverage: Library Reception," 6/17/07

The Lion's Roar, 10/28/08

Northern.edu, Brandy Schnabel, "Brendan Johnson visits NSU to inform students about campaigns, Election 2002," 10/23/02

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

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

National Journal, Eric McPike, "GOP fumes as S.D. senator's son seeks prosecutor slot," 3/13/09

AP, Carson Walker, "Brendan Johnson sends application for US attorney," 1/23/09

Argus Leader, Josh Verges, "New state's attorney brings broad acclaim," 1/22/09

AP, n/a, "Sen. Johnson won't aid son's bid for US attorney," 1/19/09

Hog House Blog, Denise Ross, "Column: The conundrum of Brendan Johnson," 12/15/08

Argus Leader, Melanie Brandert, "Doubts linger in NSU death," 1/7/08

Argus Leader, David Kranz, "Meet the 'rock' of the Johnson family," 8/31/07

Argus Leader, Peter Harriman, "'I am Back,'" 8/29/07

ABC's Nightline, Terry Moran, "The long journey home," 8/28/07

ABC's Good Morning America, Bill Weir and Elizabeth Vargas, "Bob Woodruff reports," 8/28/07

Keloland, Jon Wilson, "Dreams DO Come True," 8/22/07

Argus Leader, Faith Bremner, "Johnson speech open to public," 8/22/07

Argus Leader, Kevin Dobbs, "Johnson expects to be on Hill by fall," 7/20/07

The Hotline, n/a, "South Dakota; Johnson close to returning?" 8/20/07

AP, n/a, "Brendan Johnson to speak at McGovern Day event," 6/13/07

Argus Leader, Randell Beck, "Johnson's return depends on public view of senator," 6/3/07

Keloland, Ben Dunsmoor, "Sen. Johnson's Son Talks About Dad's Move Home," 4/30/07

Argus Leader, Faith Bremner, "New milestone for Johnson," 3/14/07

Washington Post, David Montgomery, "At roll call, an uneasy silence," 1/28/07

Argus Leader, Faith Bremner, "Johnson aides, family 'more upbeat'," 1/21/07

Argus Leader, David Kranz, "Son: Dad back at work 'sooner rather than later'," 12/19/06

AP, Mary Clare Jalonick, "Johnson's son says senator is exceeding expectations in recovery," 12/19/06

Argus Leader, David Kranz, "Failed blast a 'bad situation'," 12/4/05

Argus Leader, David Kranz, "S.D. Democratic Party looks lost without Daschle," 11/17/02

Aberdeen American News, Scott Waltman, "Lawmakers, campaign workers urge Aberdeen students to vote," 10/25/02

Argus Leader, Jon Walker, "Thune runs on faith, conservative values," 10/13/02

Argus Leader, Jon Walker, "Zeal for policy propels Johnson's Senate push," 10/6/02

The Hill, Erika Niedowskil, "It's a family affair," 10/16/96

**13. 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.

In 2004 and 2006, I was appointed to the Minnehaha County election re-count board. I was appointed to this position by current South Dakota Supreme Court Justice Glen Severson. I have not held any political 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.

State Senate Minority Leader Scott Heidepriem, 2008 and 2006

I did not have an official title during Senator Heidepriem's campaign, but did assist the campaign by knocking on doors, distributing campaign literature and providing general political advice.

United States Senator Tim Johnson, 2002

I worked on the re-election campaign of Senator Tim Johnson in 2002. My responsibilities included coordinating legal activities for the campaign and speaking on behalf of the candidate.

Tim Johnson for Senate, 1996

I worked on the Senate campaign for Senator Tim Johnson in 1996. My activities included speaking on behalf of the candidate.

14. **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 was a law clerk to the Honorable Karen Schreier, United States District Court Judge for the District of South Dakota. I served in this capacity from August 2001 to August 2002.

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

I have not practiced 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.

June 1999 to July 1999  
Baker Hostetler L.L.P.  
Washington Square, Suite 1100  
1050 Connecticut Avenue, NW  
Washington, DC 20036-5304  
Summer Associate

July 1999 to August 1999  
Verner, Liipfert, Bernhard, McPherson and Hand, Chartered  
901 15th Street, NW; Suite 700  
Washington, DC 20005  
Summer Associate

June 2000 to August 2000  
Howrey Law L.L.P.  
1299 Pennsylvania Avenue NW  
Washington, DC 20004  
Summer Associate

January 2003 to January 2005  
Minnehaha County State's Attorneys Office  
415 North Dakota Avenue  
Sioux Falls, SD 57104  
Deputy State's Attorney

May 2005 to Present

Johnson, Heidepriem, Abdallah and Johnson, L.L.P.  
431 North Phillips Avenue, Suite 400  
Sioux Falls, SD 57101-2348

I was an associate attorney in 2005 and became a partner in 2006.

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

I have not served as a mediator or arbitrator in alternative dispute resolutions.

b. Describe:

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

I worked as a law clerk to the Honorable Karen Schreier in the United States District Court from August 2001 to August 2002. In this capacity, I was responsible for providing assistance in the research and drafting of federal court opinions. I also consistently attended federal court hearings, including jury trials, and assisted in compiling and editing jury instructions.

After the completion of my clerkship, I served as a Deputy State's Attorney in Minnehaha County, South Dakota. This involved daily court appearances and I was responsible for prosecuting a wide range of misdemeanors and felonies. I was either the only prosecutor or the lead prosecutor in a wide range of criminal trials. Minnehaha County is the most populous county in South Dakota.

After serving as a Deputy State's Attorney, I joined my current law firm of Johnson, Heidepriem, Abdallah and Johnson L.L.P., in 2005. I spent my first year as an associate and then was promoted to the position of partner in 2006. My practice focuses on civil and criminal litigation. I have been involved in a wide range of litigation in federal and state court ranging from criminal defense to personal injury to cases involving employment discrimination against members of the armed forces.

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

As a Deputy State's Attorney I represented the people of the State of South Dakota in criminal actions. In private practice, my work has concentrated in the area of civil litigation. I have represented a broad range of plaintiffs and defendants in both federal and state court.

- 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.

In private practice, approximately 95% of my work is litigation related. I appear in court on a weekly basis and have tried numerous criminal and civil cases in front of juries. As a Deputy State's Attorney, 100% of my work was litigation related and I appeared in court on a daily basis.

i. Indicate the percentage of your practice in:

1. federal courts;  
20%
2. state courts of record;  
80%
3. other courts;
4. administrative agencies

ii. Indicate the percentage of your practice in:

1. civil proceedings;  
65%
2. criminal proceedings.  
35%

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.

As a Deputy State's Attorney I was involved in hundreds of cases in state court, ranging from court trials on traffic tickets and other petty offenses to the prosecution of an individual charged with the attempted murder of a police officer. I was sole counsel or chief counsel in every case except one where I served as assistant counsel. In private practice I have tried numerous civil and criminal cases in front of juries and in front of judges. I would estimate that I have participated in forty (40) jury trials and a significantly higher number of court trials.

i. What percentage of these trials were:

1. jury;  
10%
2. non-jury.  
90%

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 appeared before the Supreme Court of the United States.

15. **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. State of South Dakota v. Lewis, 706 N.W.2d 252, 2005 SD 111 (S.D. 2005);

Party Represented: State of South Dakota

Nature of Participation: Assistant Counsel

Date of Trial: September 20-23, 2005

Court of Record: South Dakota Circuit Court, Second Judicial Circuit

Judge: Honorable Gene Paul Kean

Co-Counsel:

David Nelson

3533 Spencer Boulevard

Sioux Falls, SD 57103

(605) 339-2580

Defense Counsel:

Scott Carlson

Crew and Crew

141 North Main Avenue, #706

Sioux Falls, SD 57104

(605) 335-5561

Final Disposition: Defendant was convicted of two counts of attempted murder, two counts of aggravated assault, commission of a felony while armed with a firearm, possession of a controlled weapon, possession of methamphetamine and five counts of stolen property. Defendant received two concurrent life sentences without the possibility of parole and one hundred forty-five years in the state penitentiary.

Capsule Summary: On February 2, 2004, Sioux Falls Police Officers Michael Iverson and Scott Reitmeier were on routine patrol when they came across the defendant trying to close a door to his storage shed. The police officers attempted to assist the defendant in closing the storage shed door. The officers became suspicious of the defendant who had a shotgun in his pickup, no identification, and was verbally combative. The officers attempted to do a pat down search of the defendant, at this point the defendant pushed the officers and tried to flee. Officer Reitmeier took the defendant to the ground, but the defendant was able to reach his firearm and shot at the officers. The police officers were able to successfully arrest the defendant after shots were fired.

2. State of South Dakota v. Wade Hayen, 751 N.W.2d 306, 2008 SD 41 (S.D. 2008)

Party Represented: Wade Hayen  
Nature of Participation: Chief Counsel  
Date of Suppression Hearing: April 27, 2007  
Court of Record: South Dakota Circuit Court, Second Judicial Circuit  
Judge: Honorable Glen Severson

Co-Counsel:

Ronald A. Parsons, Jr.  
Johnson, Heidepriem, Abdallah and Johnson, L.L.P.  
431 North Phillips Avenue, Suite 400  
Sioux Falls, SD 57104  
(605) 338-4304

Kimberly J. Lanham  
Janklow Law Firm  
1700 West Russell Street  
Sioux Falls, SD 57104  
(605) 332-0101

Opposing Counsel:

Deputy State's Attorney Paul Bengford  
Minnehaha County State's Attorneys Office  
415 North Dakota Avenue  
Sioux Falls, SD 57104  
(605) 367-4226

Final Disposition: Charges of possession of methamphetamine and possession of drug paraphernalia were dismissed after suppression hearing.

Capsule Summary: A Sioux Falls Police Officer stopped the defendant's vehicle because he was unable to see the defendant's expiration date on his valid temporary thirty-day dealer's license. The officer walked past the license without checking the expiration and proceeded to ask the defendant for his license and proof of insurance. The officer made no attempt to check the expiration tag first, which was clearly visible and legal. The officer subsequently found methamphetamine on the defendant, but the South Dakota Supreme Court unanimously upheld the decision to suppress the stop and subsequent search for lack of probable cause.

3. Papke v. Harbert and Harlow; 738 N.W.2d 510, 2007 SD 87, (S.D. 2007)

Party Represented: Adeline Papke  
Nature of Representation: Co-Counsel  
Court of Record: South Dakota Circuit Court, Fifth Judicial Circuit  
Judge: Honorable Scott Myren

Co-Counsel:

Scott N. Heidepriem, Ronald A. Parsons, Jr.  
Johnson, Heidepriem, Abdallah and Johnson, L.L.P.  
431 North Phillips Avenue, Suite 400  
Sioux Falls, SD 57104  
(605) 338-4304

Chet Groseclose  
431 North Phillips Avenue, Suite 440

Sioux Falls, SD 57104

(605) 275-0630

Opposing Counsel:

Reed Rasmussen

Siegel, Barnett & Schutz LLP

400 Capitol Building

415 South Main Street

Aberdeen, SD 57402

(605) 225-5420

Final Disposition: This case was settled after an unsuccessful jury trial followed by a successful appeal to the South Dakota Supreme Court.

Capsule Summary: Adeline Papke brought this medical malpractice action against two orthopedic surgeons after she developed gangrenous sores on her leg that required a double amputation. Opposing counsel argued that the physicians were not liable, based in part on a jury instruction advising that a physician was not necessarily negligent because the physician erred in judgment. The South Dakota Supreme Court ruled that this instruction was given in error and ordered a new trial. The Supreme Court also found that as a matter of first impression the collateral source rule prevented surgeons from entering into evidence amounts for medical services that were “written off” pursuant to prior agreements with insurance providers.

4. United States of America v. Hakim, 491 F.3d 843 (8<sup>th</sup> Cir. 2007)

Party Represented: Mahdi Hakim

Nature of Representation: Chief Counsel

Judge: Honorable Lawrence L. Piersol

Court of Record: United States District Court, District of South Dakota

Co-Counsel:

Kimberly J. Lanham

Janklow Law Firm

1700 West Russell Street

Sioux Falls, SD 57104

(605) 332-0101

Opposing Counsel:

Assistant United States Attorney John Haak

P.O. Box 2638

Sioux Falls, SD 57101-2638

(605) 330-4400

Final Disposition: Convicted of possession and conspiracy to distribute over 50 grams of crack cocaine. Defendant received the statutory minimum of life imprisonment.

Capsule Summary: Defendant was convicted based primarily on the testimony of his convicted co-conspirator. The guilty verdict was later upheld by the United States Court of Appeals for the Eighth Circuit.

5. State of South Dakota v. Ajang, Criminal File Number 04-1698

Party Represented: State of South Dakota

Nature of Participation: Chief Counsel

Date of Trial: June 29, 2004

Court of Record: Magistrate Court, Second Judicial Circuit

Judge: Honorable Patricia Riepel

Co-Counsel: None

Defense Counsel:

Carmen Means

Blue & Haeder Law Office

239 Wisconsin Avenue SW, #204

Huron, SD 57350

(605) 352-6783

Final Disposition: Defendant was convicted of interference with an emergency communication.

Capsule Summary: I had tried a previous case against the defendant in court for a violent aggravated assault against his girlfriend. The girlfriend refused to cooperate and the case was dismissed. This was a similar situation where the defendant had assaulted the same girlfriend and she once again was not cooperative in his prosecution. I prosecuted the defendant under a newly enacted statute for interfering with an emergency communication.

6. State of South Dakota v. McBeth, Criminal File Number 04-432  
Party Represented: State of South Dakota  
Nature of Representation: Chief Counsel  
Date of Trial: August 12-13, 2004  
Court of Record: South Dakota Circuit Court, Second Judicial Circuit  
Judge: Honorable Peter Lieberman  
Co-Counsel: None  
Defense Counsel:  
Julie Hofer  
Minnehaha County Public Advocate's Office  
415 North Dakota Avenue  
Sioux Falls, SD 57104  
(605) 367-7392  
Final Disposition: Defendant was convicted of possession of a controlled drug and possession of marijuana.  
Capsule Summary: Defendant was accused of possessing a rock of crack cocaine. The cocaine was found in the motor vehicle and the Defendant said that he was not aware that the cocaine was in his vehicle. The defendant was convicted by a jury on all counts.
  
7. State of South Dakota v. Westra, Criminal File Number 03-2015  
Party Represented: State of South Dakota  
Nature of Representation: Chief Counsel  
Date of Trial: July 3, 2003  
Court of Record: South Dakota Circuit Court, Second Judicial Circuit  
Judge: Honorable Glen Severson  
Co-Counsel: None  
Defense Counsel:  
Paul Pietz  
Pennington County Public Defender's Office  
315 St. Joseph Street

Rapid City, SD 57701

(605) 394-2181

Final Disposition: Defendant was convicted of her fourth offense in ten years for driving under the influence of alcohol and possession of marijuana.

Capsule Summary: This was a significant case because it was one of the lower blood alcohol content cases tried to a jury in South Dakota. The defendant had a blood alcohol content of .09. She was convicted of all counts by the jury.

8. State of South Dakota v. Giovannettone, Criminal File Number 03-2452

Party Represented: State of South Dakota

Nature of Representation: Chief Counsel

Date of Trial: September 24-25, 2003

Court of Record: South Dakota Circuit Court, Second Judicial Circuit

Judge: Honorable Gene Paul Kean

Co-Counsel: None

Defense Counsel:

Steven Binger

Binger Law Office

307 West 14<sup>th</sup> Street

Sioux Falls, SD 57104

(605) 338-4226

Final Disposition: Defendant was convicted of felony injury to property in the first degree.

Capsule Summary: The Defendant had a romantic affair with the victim for approximately one year. After the affair ended, the victim and his wife were picking up their children at a local school. The defendant had been following the victim, and she proceeded to run her car into the victim's car while the children were inside of the vehicle.

9. State of South Dakota v. Dennis Jonker, Criminal File Number 06-1465

Party Represented: Dennis Jonker

Nature of Representation: Chief Counsel

Date of Trial: September 1, 2006

Court of Record: South Dakota Circuit Court, Second Judicial Circuit

Judge: Honorable Patricia Riepel

Co-Counsel: None

Opposing Counsel:

Keith Allenstein

City of Sioux Falls

320 West 4<sup>th</sup> Street

Sioux Falls, SD 57104

(605) 367-7234

Final Disposition: Acquittal of simple assault with a knife

Capsule Summary: The defendant and his neighbors had a long running dispute regarding animals that each kept on their property. The neighbors alleged that the defendant repeatedly threatened them with physical harm. The defendant was acquitted.

10. Kyburz-Carlson Construction Company v. Hurlbert, Civ., 05-432

Party Represented: Jean Hurlbert on behalf of the estate of Hollis Hurlbert

Nature of Representation: Co-Counsel

Date of Trial: April 12-13, 2006

Court of Record: South Dakota Circuit Court, Fifth Judicial Circuit

Judge: Honorable Scott Myren

Co-Counsel:

Steven M. Johnson

Johnson, Heidepriem, Abdallah and Johnson, L.L.P.

431 North Phillips Avenue, Suite 400

Sioux Falls, SD 57104

(605)338-4304

Opposing Counsel:

Roberto Lange

Davenport, Evans, Hurwitz & Smith LLP

206 West 14th Street

Sioux Falls, SD 57101

(605) 336-2880

Final Disposition: Settled after a two-day court trial.

Capsule Summary: Hollis Hurlbert was a co-owner of the successful construction company Kyburz-Carlson. After his death, a dispute arose over whether the remaining owners of Kyburz-Carlson should pay his estate a portion of the full value of the corporation or simply the assets minus the liabilities on the corporate books. This was a complicated financial dispute involving several expert witnesses on both sides and the proper interpretation of a complicated business contract.

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

I handled a substantial amount of work in the field of domestic violence as a Deputy State's Attorney in Minnehaha County, South Dakota. As a young prosecutor, I was asked to spend a significant period of time focusing my attention directly on domestic violence issues. These were difficult cases because of reluctant witnesses and a lack of understanding in the community regarding the nature of these crimes. I worked closely with victims of domestic violence and experts in the field to successfully prosecute these cases, and consistently urged the judges to impose additional conditions on offenders that frequently included longer jail sentences and domestic violence education classes.

I am also proud of the legal work that I have done on behalf of South Dakota's law enforcement community. As a prosecutor, I worked to convict an individual who attempted to murder two Sioux Falls, South Dakota police officers. In private practice, I have represented members of South Dakota's law enforcement community and their families in issues ranging from personal injury lawsuits to protection orders.

I have also been involved in a wide variety of cases involving the use of illegal narcotics. I have prosecuted cases involving methamphetamine, cocaine, crack and marijuana. I have not been involved in lobbying activities.

17. **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.

Not Applicable.

18. **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 not be compensated in the future for any financial or business interest relating to my legal practice.

19. **Outside Commitments During 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.

No.

20. **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).

Financial Disclosure Report is attached.

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

See attached net worth statement.

22. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors 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.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated ethics officials to identify potential conflicts of interests arising from clients I have represented or from any other sources. Any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I have entered with the Department's designated agency ethics official.

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

In the event of a potential conflict of interest, I will consult with ethics officials for the Executive Office for United States Attorneys, Department of Justice.

23. **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. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

I take responsibility to serve the disadvantaged very seriously. I currently volunteer to accept cases on a Pro Bono basis from South Dakota's East River Legal Services. I am also a member of the University of South Dakota Law School's Pro Bono Program. I volunteer for Pro Bono opportunities through the Second Judicial Circuit Bar Association including their "Ask A Lawyer" program.

I also provide Pro Bono services in a less structured manner. Two of my children are adopted from Ethiopia and thus I have made friends with numerous immigrants in the community. I frequently serve as a free resource to provide legal counsel and to assist with challenges they experience in the legal realm.

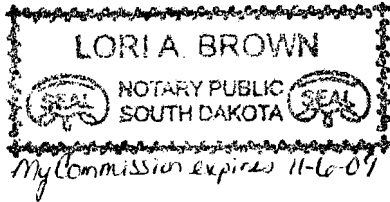
It is difficult to provide the exact amount of time I spend on Pro Bono work as I do not keep track of the hours that I spend on these cases and I do not bill the clients.

AFFIDAVIT

I, Brendan V. Johnson, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

June 29, 2009  
(DATE)

Brendan V. Johnson  
(NAME)



Loria A. Brown  
(NOTARY)