

VANCE H. SPATH



19 November 2015

U. S. Department of Justice
Executive Office for Immigration Review
Human Resources Staff, Administration Division
ATTN: Mr. Josh Chapman
5107 Leesburg Pike, Suite 2300
Falls Church, Virginia 22041

Dear Mr. Chapman,

Attached please find my application materials for the vacancy announcement for an Immigration Judge position. As the Chief Trial Judge of the Air Force, I have presided over bench and jury trial in cases ranging from capital murder, to violent assaults, to sexual assault. I am currently presiding over two active capital cases. I have five years of experience as a trial judge, and another 15 years of extensive experience as either a prosecutor or a criminal defense counsel.

In addition to my significant judicial and litigation experience, I have a significant degree of experience in managing high volume litigation, managing large offices of legal personnel, and handling complex civil litigation.

I would welcome the opportunity to discuss whether my judicial, litigation, and management background would be of interest to EOIR.

Sincerely,

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VANCE H. SPATH

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QUALITY RANKING FACTORS

I have addressed all five of the Quality Ranking Factors.

1. Ability to demonstrate the appropriate temperament to serve as a judge.

I have four years' experience as a trial judge. I have demonstrated the appropriate temperament to serve as a judge throughout my time on the bench.

As the Chief Trial Judge of the Air Force (AF), prior Chief Regional Military Judge for the AF's Pacific Judicial Region, and a Regional Trial Judge in the AF's Western Judicial Region, I have presided over more than 240 felony and misdemeanor trials throughout the world. This has included approximately 120 jury trials. The remainder of the trials were judge alone (bench) trials. Throughout these three assignments, my supervisors, who are either judges senior to me, or in my current job, The Judge Advocate General of the Air Force (the top ranking lawyer in the Air Force); have all recognized and commented on my temperament as a trial judge.

Specifically, my judicial performance evaluations include the following comments from them:

- #1/8 O-6 (Colonel) judges.
- Meticulously crafted rulings in 48 pretrial motions; 300+ pages of wisely written decisions protecting both Airmen and the Air Force
- Esteemed jurist in complete control of his courtroom.
- Conscientiously guarded accused's rights and the needs of the Air Force
- Won Major General William Suter Distinguished Judicial Service Award

Needless to say, every decision a trial judge makes requires the exercise of a high degree of discretion. Discretion meaning both a wise interpretation of the law and the actual language used in issuing the ruling. The language and conduct of any judge is always critical. A judge needs to have the perfectly balanced temperament, actual impartiality, and the appearance of complete impartiality. I have a significant record of demonstrating that temperament throughout my time as a judge. I believe all of the letters of recommendation provide significant information regarding my temperament. It is a record of which I am not only proud but diligently work to ensure continues.

During my time as a trial judge, I have presided over a capital murder trial, with significant media interest. The trial was held in Japan, ultimately resulting in a plea bargain, and judge alone sentencing proceeding. My conduct in that trial, in an international environment, required the demonstration of perfect judicial temperament. My supervisor, commenting specifically on that trial in my performance review stated, "Vance's leadership and wisdom protected trial process."

Currently, I am the presiding judge for both a current capital murder trial for an AF member and the military commissions proceedings for the alleged "Cole bombing" mastermind at Guantanamo Bay, Cuba. For both cases, I was handpicked by the top lawyer of the Air Force to be the trial judge. The case at Guantanamo Bay, Cuba, has significant media and federal

government interest, and it again requires the constant demonstration of the appropriate judicial temperament. Hopefully, the recommendation letter submitted by the attorney-advisor who works with me on that case provides the evidence of my temperament.

I have also presided over close to 100 sexual assault trials, and another 50+ trials involving other violent crimes. These highly emotional events require a trial judge who has the demeanor and temperament required to ensure the proceeding is conducted with the appropriate decorum, while at the same time maintaining control of the courtroom. Again, the recommendation letters submitted by people who have seen me in and around the courtroom show my long history of demonstrating the appropriate and required temperament of a judge.

2. Knowledge of immigration laws and procedures

I am familiar with the Immigration and Nationality Act, the policies and procedures of EOIR and the immigration courts, and the conduct of master calendar and individual calendar hearings before immigration judges. I have attended a few immigration hearings in the Alexandria, VA area.

Currently I am presiding over the military commission case involving the alleged mastermind behind the Cole bombing. While this does not necessarily relate to immigration law and procedures directly, it does require a mastery of complex international law and procedure. It also has required me to issue rulings related to a host of constitutional issues, including the application of the constitution at Guantanamo Bay, Cuba, and the protections an illegal combatant enjoys under US law.

Additionally, the Air Force has a small population of non-citizens on active duty. They are all first term Airmen. When they are brought to trial, the trial judge is required to engage in a colloquy with them regarding potential adverse impacts on their immigration status a conviction will have on them. I am responsible for ensuring the trial judges who work for me understand and provide this required advice, and I have to ensure I do as well in my courtroom.

3. Substantial litigation experience, preferably in a high volume context.

I have the following substantial litigation experience, including experience in a high-volume context:

Currently, I am the Chief Trial Judge of the Air Force (AF). I have been in this position for over one and a half years. In this position, I am responsible for docketing and detailing 26 trial judges to approximately 500 trials annually across the AF, the day to day management of the entire AF judiciary, the supervision of 26 trial judges and 4 support personnel, and the oversight of a travel budget in excess of \$1M dollars annually. At the same time, I manage my own substantial trial docket; this typically includes approximately 15 - 20 active felony level trials, and currently, two active capital cases. I am currently the presiding trial judge for the Air Force's only current capital murder case, while at the same time presiding over the Cole bombing case at Guantanamo Bay, Cuba.

As a trial judge, I am continually required to make factual determinations, interpret the law and regulations, draft and issue rulings, instruct juries, determine the guilt or innocence of criminal defendants, and issue sentences for convicted criminal defendants. At the same time, I handle all of the administrative and management responsibilities required to lead the AF Trial Judiciary.

For two years I was the Chief Regional Trial Judge for the AF's Pacific Judicial Circuit. In that position, I was responsible for management, oversight, and ultimately the trial of all courts within that circuit. Although there is only one judge assigned to this circuit, it is the largest geographic circuit in the AF. During those two years, I presided over 86 felony and misdemeanor trials, issued 126 rulings comprised of over 720 pages of legal writing, reviewed 11,000 pages of records of trial, and traveled over 470,000 miles to try criminal cases.

For one year, I was a Regional Trial Judge for the Air Force's Western Judicial Circuit. In that year, I presided over 42 trials, reviewed 2,000 pages of records of trial, and issued 48 pretrial rulings which were comprised of 300 pages of written decisions.

For three years I was the Chief Prosecutor for the Eastern Circuit of the Air Force Judiciary. Geographically, this circuit covered 18 states and 26 Air Force bases. Each year, that circuit tried approximately 240 cases. I was responsible for supervising five senior prosecutors, personally trying 4-6 cases per month, and detailing the senior prosecutors to their trials. My responsibilities also included the training of all prosecutors, approximately 75, within that region.

4. Experience handling complex legal issues.

Throughout my career I have significant experience handling complex legal issues.

Hopefully, a few examples will demonstrate this ability.

As a trial judge, I am routinely confronted with complex and/or novel legal theories requiring that I become fully knowledgeable about those issues before rendering judgment. The cases over which I presided frequently involved factual scenarios that required application of Fourth and Fifth Amendment Constitutional analysis, an area of the law that is both complex and evolving. I have successfully dealt with complex legal issues – both on the bench and as a litigant – including psychology, psychiatry, false confessions and suggestibility, computer forensics, pathology, rape trauma syndrome, post-traumatic stress syndrome, and victimization, and have successfully applied that knowledge to my judicial rulings or my jury presentations.

As the presiding judge over the alleged Cole bombing mastermind at Guantanamo Bay, Cuba, I have had to demonstrate the ability to handle a complicated trial involving international terrorism. I have had to learn and master appropriate international law, the law of war, and the law related to military commissions. I have also had to review and comprehend over 450,000 pages of discovery, evidence, and motions. I have already issued over 300 rulings in the case, on issues ranging from residual hearsay, torture, interrogation, classified evidence, treatment of illegal noncombatants, and international agreements. The reference letter submitted by Fred Taylor, the attorney-advisor on this case, highlights the complexity of this case. A quote from that letter provides context: “In my opinion this is the second most complex capital case in U.S. history, only the ongoing five accused, joint, capital charged Military Commission case involving the alleged planners of the September 11, 2001 attack is more complicated.”

As a contract trial attorney, I defended the Air Force against multi-million dollar claims filed by various defense contractors. These lawsuits involved complex legal issues related to procurement law and the intricate Defense Federal Acquisition Regulation Supplement. These claims against the Air Force were document intensive, sometimes in excess of 100,000 pages of evidence and submissions to the Armed Services Board of Contract Appeals. I had to analyze the issues presented, assimilate the thousands of pages of information, present evidence at an administrative hearing, and then write and file a lengthy post-hearing brief addressing the issues.

5. Experience conducting administrative hearings.

I have significant experience both in conducting administrative hearings and practicing before an administrative law judge.

During my career, I have conducted approximately 25 adversarial administrative hearings related to the removal of Air Force members, administratively, from the Air Force. These hearings required that I made findings of fact and conclusions of law; ruled on evidence admissibility; apply and interpret Air Force Instructions and statutes; document production and discovery; schedule hearings; and order production of witnesses.

When handling these hearings, understanding and applying the applicable administrative procedure was critical. Conducting these administrative hearings also required me to deal with administrative panels, panel selection, and demonstrate control of and provide decorum for the administrative hearing room.

I served as a contract trial attorney for two years. In this role, I represented the Air Force in all facets of complex civil litigation before the Armed Services Board of Contract Appeals (ASBCA). I was responsible for a caseload of between 15-20 multi-million dollar claims against the Air Force by contractors or vice versa. I prepared all submissions to the ASBCA including, pleadings, motions, and complex and lengthy post-trial briefs. In the two years as a contract trial attorney, I appeared before an administrative law judge on approximately 25 different occasions in either full blown ASBCA hearings or some form of alternative dispute resolution forum.

6. Knowledge of judicial practices and procedures.

As the Chief Trial Judge of the Air Force, former Chief Regional Military Judge, Regional Military Judge, chief and senior prosecutor and defense counsel, I have a strong knowledge of judicial practices and procedures. My criminal practice has been in the military which gives me an excellent understanding of the Federal Rules of Evidence, evidentiary foundation requirements, criminal procedure, and courtroom practice.

As a trial judge, I have presided over 240 felony- and misdemeanor-equivalent bench and jury trials throughout the world. In presiding over those trials, I have: conducted motion and evidentiary hearings; made findings of fact and conclusions of law; ruled on motions concerning admissibility of evidence, constitutionality of statutes, constitutionality of rules of evidence, document production and discovery, witness production and depositions, protective orders, trial scheduling, venue, continuances, pretrial confinement, and search and seizure; interpreted and applied the rules of evidence; conducted jury selection; instructed juries on the law; exercised control over the courtroom, to include control over the parties and the order and manner of the presentation of evidence; determined whether a defendant was guilty or not guilty; and imposed sentences on those found guilty.

In addition to both presiding over and trying criminal cases over the last 23 years, I have been hand-selected to teach at a variety of courses on a variety of topics related to judicial practice and procedure. I have taught at the Air Force JAG School as an adjunct faculty member over 100 different times, covering subject matter such as impeachment, closing argument, opening statement, voir dire, cross-examination, direct examination, application of the rules of evidence, trial procedure, view from the bench, and evidentiary foundations.

As a prosecutor and defense counsel, I tried over 300 cases. The vast majority of these were felony trials. I have tried over 100 sexual assault cases, a capital case, seven other murder or attempted murder cases, and approximately 11 complex fraud cases. A few comments from my supervisors will demonstrate my knowledge of judicial practices and procedures: "1/34 JAGs," "One of AF's premier trial advocates," "Finest litigator I have ever served with," and "Tremendous combination of leadership/litigation skills—the best of any JAG observed in my 17+ year career!"