S. HRG. 107–584, PT. 1

CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

JULY 11, AUGUST 22, AUGUST 27, SEPTEMBER 13, AND OCTOBER 4, 2001

PART 1

Serial No. J–107–23

Printed for the use of the Committee on the Judiciary

CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

S. HRG. 107–584, PT. 1

CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

JULY 11, AUGUST 22, AUGUST 27, SEPTEMBER 13, AND OCTOBER 4, 2001

PART 1

Serial No. J–107–23

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

80–915 PDF WASHINGTON : 2002

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

COMMITTEE ON THE JUDICIARY

PATRICK J. LEAHY, Vermont, *Chairman*

EDWARD M. KENNEDY, Massachusetts
JOSEPH R. BIDEN, JR., Delaware
HERBERT KOHL, Wisconsin
DIANNE FEINSTEIN, California
RUSSELL D. FEINGOLD, Wisconsin
CHARLES E. SCHUMER, New York
RICHARD J. DURBIN, Illinois
MARIA CANTWELL, Washington
JOHN EDWARDS, North Carolina

ORRIN G. HATCH, Utah
STROM THURMOND, South Carolina
CHARLES E. GRASSLEY, Iowa
ARLEN SPECTER, Pennsylvania
JON KYL, Arizona
MIKE DEWINE, Ohio
JEFF SESSIONS, Alabama
SAM BROWNBACK, Kansas
MITCH MCCONNELL, Kentucky

BRUCE A. COHEN, *Majority Chief Counsel and Staff Director*
SHARON PROST, *Minority Chief Counsel*
MAKAN DELRAHIM, *Minority Staff Director*

CONTENTS

WEDNESDAY, JULY 11, 2001

STATEMENTS OF COMMITTEE MEMBERS

	Page
Durbin, Hon. Richard J., a U.S. Senator from the State of Illinois	156
Feingold, Hon. Russell D., a U.S. Senator from the State of Wisconsin	157
Hatch, Hon. Orrin G., a U.S. Senator from the State of Utah	131
Leahy, Hon. Patrick J., a U.S. Senator from the State of Vermont	1

PRESENTERS

Allen, Hon. George, a U.S. Senator from the State of Virginia presenting Roger L. Gregory, Nominee to be Circuit Judge for the Fourth Circuit	4
Baucus, Hon. Max, a U.S. Senator from the State of Montana presenting Richard F. Cebull and Sam E. Haddon, Nominees to be District Judges for the District of Montana	7
Burns, Hon. Conrad, a U.S. Senator from the State of Montana presenting Richard F. Cebull and Sam E. Haddon, Nominees to be District Judges for the District of Montana	9
Morella, Hon. Constance A., a Representative in Congress from the State of Maryland presenting Eileen J. O'Connor, Nominee to be Assistant Attorney General for the Tax Division, Department of Justice	11
Scott, Hon. Robert C., a Representative in Congress from the State of Virginia presenting Roger L. Gregory, Nominee to be Circuit Judge for the Fourth Circuit	6
Warner, Hon. John W., a U.S. Senator from the State of Virginia presenting Roger L. Gregory, Nominee to be Circuit Court Judge for the Fourth Circuit	2

STATEMENTS OF THE NOMINEES

Cebull, Richard F., of Montana, Nominee to be District Judge for the District of Montana	44
Questionnaire	49
Gregory, Roger L., of Virginia, Nominee to be Circuit Judge for the Fourth Circuit	13
Questionnaire	14
Haddon, Sam E., of Montana, Nominee to be District Judge for the District of Montana	44
Questionnaire	83
O'Connor, Eileen J., of Maryland, Nominee to be Assistant Attorney General for the Tax Division, Department of Justice	131
Questionnaire	134

SUBMISSION FOR THE RECORD

Molloy, Hon. Donald W., Chief Judge, United States District Court, District of Montana, July 9, 2001, letter and attachments	158

WEDNESDAY, AUGUST 22, 2001

STATEMENTS OF COMMITTEE MEMBERS

Hatch, Hon. Orrin G., a U.S. Senator from the State of Utah	260
Leahy, Hon. Patrick J., a U.S. Senator from the State of Vermont	163

Page

PRESENTER

Norton, Hon. Eleanor Holmes, a Delegate in Congress from the District of Columbia 168

STATEMENTS OF THE NOMINEES

Nedelkoff, Richard R., of Texas, Nominee to be Director of the Bureau of Justice Assistance, Department of Justice 221
Questionnaire 223
Walton, Hon. Reggie, of the District of Columbia, Nominee to be District Judge for the District of Columbia 171
Questionnaire 174

QUESTIONS AND ANSWERS

Responses of Richard R. Nedelkoff to questions submitted by Senator Grassley 259

SUBMISSION FOR THE RECORD

Hutchison, Hon. Kay Bailey, a U.S. Senator from the State of Texas, statement in support of the nomination of Richard R. Nedelkoff to be Director of the Bureau of Justice Assistance, Department of Justice 261

MONDAY, AUGUST 27, 2001

STATEMENTS OF COMMITTEE MEMBERS

DeWine, Hon. Mike, a U.S. Senator from the State of Ohio 268
Hatch, Hon. Orrin G., a U.S. Senator from the State of Utah 338
Leahy, Hon. Patrick J., a U.S. Senator from the State of Vermont 263

PRESENTERS

Norton, Hon. Eleanor Holmes, a Delegate in Congress from the District of Columbia presenting Sharon Prost, Nominee to be Circuit Judge for the Federal Circuit 270
Thurmond, Hon. Strom, a U.S. Senator from the State of South Carolina presenting Terry L. Wooten, Nominee to be District Judge for the District of South Carolina 270

STATEMENTS OF THE NOMINEES

Prost, Sharon, of the District of Columbia, Nominee to be Circuit Judge for the Federal Circuit 271
Questionnaire 272
Wooten, Terry L., of South Carolina, Nominee to be District Judge for the District of South Carolina 297
Questionnaire 298

QUESTIONS AND ANSWERS

Responses of Terry L. Wooten to questions submitted by Senator Durbin 336

SUBMISSION FOR THE RECORD

Biden, Hon. Joseph R., Jr., a U.S. Senator from the State of Delaware, statement in support of the nomination of Sharon Prost to be Circuit Judge for the Federal Circuit 339

THURSDAY, SEPTEMBER 13, 2001

STATEMENT OF COMMITTEE MEMBER

Leahy, Hon. Patrick J., a U.S. Senator from the State of Vermont 341

Page

PRESENTERS

Cochran, Hon. Thad, a U.S. Senator from the State of Mississippi presenting Michael P. Mills, Nominee to be District Judge for the Northern District of Mississippi 342
Lieberman, Hon. Joseph, a U.S. Senator from the State of Connecticut presenting Barrington D. Parker, Jr., Nominee to be Circuit Judge for the Second Circuit 346
McConnell, Hon. Mitch, a U.S. Senator from the State of Kentucky presenting John W. Gillis, Nominee to be Director, Office for Victims of Crime, Department of Justice 347
Lott, Hon. Trent, a U.S. Senator from the State of Mississippi presenting Michael P. Mills, Nominee to be District Judge for the Northern District of Mississippi 344

STATEMENTS OF THE NOMINEES

Gillis, John W., of Kentucky, Nominee to be Director, Office for Victims of Crime, Department of Justice 435
Questionnaire 441
Mills, Michael P., of Mississippi, Nominee to be District Judge for the Northern District of Mississippi 397
Questionnaire 400
Parker, Barrington D., Jr., of Connecticut, Nominee to be Circuit Judge for the Second Circuit 349
Questionnaire 352

QUESTIONS AND ANSWERS

Responses of Michael P. Mills to questions submitted by Senator Leahy 462
Responses of Michael P. Mills to questions submitted by Senator Durbin 463

SUBMISSION FOR THE RECORD

Schumer, Hon. Charles E., a U.S. Senator from the State of New York, statement in support of the nomination of Barrington D. Parker, Jr., Nominee to be Circuit Judge for the Second Circuit 464

THURSDAY, OCTOBER 4, 2001

STATEMENTS OF COMMITTEE MEMBERS

Hatch, Hon. Orrin G., a U.S. Senator from the State of Utah 750
Kohl, Hon. Herb, a U.S. Senator from the State of Wisconsin 465
Leahy, Hon. Patrick J., a U.S. Senator from the State of Vermont 469

PRESENTERS

Breaux, Hon. John B., a U.S. Senator from the State of Louisiana presenting Edith Brown Clement, Nominee to be Circuit Judge for the Fifth Circuit 471
Bunning, Hon. Jim, a U.S. Senator from the State of Kentucky presenting Karen K. Caldwell, Nominee to be District Judge for the Eastern District of Kentucky 474
Ensign, Hon. John, a U.S. Senator from the State of Nevada presenting Jay S. Bybee, Nominee to be Assistant Attorney General, Office of Legal Counsel, Department of Justice 475
Hagel, Hon. Chuck, a U.S. Senator from the State of Nebraska presenting Laurie Smith Camp, Nominee to be District Judge for the District of Nebraska 472
Inhofe, Hon. James M., a U.S. Senator from the State of Oklahoma presenting Claire V. Eagen, Nominee to be District Judge for the Northern District of Oklahoma and James H. Payne, Nominee to be District Judge for the Northern, Eastern and Western Districts of Kentucky 467
Landrieu, Hon. Mary, a U.S. Senator from the State of Louisiana presenting Edith Brown Clement, Nominee to be Circuit Judge for the Fifth Circuit 694
McConnell, Hon. Mitch, a U.S. Senator from the State of Kentucky presenting Karen K. Caldwell, Nominee to be District Judge for the Eastern District of Kentucky 468

Page

Nelson, Hon. E. Benjamin, a U.S. Senator from the State of Nebraska presenting Laurie Smith Camp, Nominee to be District Judge for the District of Nebraska 472
Nickles, Hon. Don, a U.S. Senator from the State of Oklahoma presenting Claire V. Eagen, Nominee to be District Judge for the Northern District of Oklahoma and James H. Payne, Nominee to be District Judge for the Northern, Eastern and Western Districts of Kentucky 466
Reid, Hon. Harry, a U.S. Senator from the State of Nevada presenting Jay S. Bybee, Nominee to be Assistant Attorney General, Office of Legal Counsel, Department of Justice 467

STATEMENTS OF THE NOMINEES

Bybee, Jay S., of Nevada, Nominee to be Assistant Attorney General, Office of Legal Counsel, Department of Justice 701
Questionnaire 703
Caldwell, Karen K., of Kentucky, Nominee to be District Judge for the Eastern District of Kentucky 524
Questionnaire 525
Camp, Laurie Smith, of Nebraska, Nominee to be District Judge for the District of Nebraska 657
Questionnaire 658
Clement, Edith Brown, of Louisiana, Nominee to be Circuit Judge for the Fifth Circuit 476
Questionnaire 477
Eagen, Claire V., of Oklahoma, Nominee to be District Judge for the Northern District of Oklahoma 576
Questionnaire 577
Payne, James H., of Oklahoma, Nominee to be District Judge for the Northern, Eastern and Western Districts of Kentucky 621
Questionnaire 622

QUESTIONS AND ANSWERS

Responses of Karen K. Caldwell to questions submitted by Senator Leahy 735
Responses of Laurie Smith Camp to questions submitted by Senator Leahy 739
Responses of Edith Brown Clement to questions submitted by Senator Leahy 741
Responses of Edith Brown Clement to questions submitted by Senator Kennedy 743
Responses of Edith Brown Clement to questions submitted by Senator Kohl 744
Responses of Edith Brown Clement to questions submitted by Senator Feingold 745
Responses of Claire V. Eagen to questions submitted by Senator Leahy 747
Responses of James H. Payne to questions submitted by Senator Leahy 748

NOMINATION OF ROGER L. GREGORY, OF VIRGINIA, TO BE CIRCUIT JUDGE FOR THE FOURTH CIRCUIT; RICHARD F. CEBULL, OF MONTANA, TO BE DISTRICT JUDGE FOR THE DISTRICT OF MONTANA; SAM E. HADDON, OF MONTANA, TO BE DISTRICT JUDGE FOR THE DISTRICT OF MONTANA; AND EILEEN J. O'CONNOR, OF MARYLAND, TO BE ASSISTANT ATTORNEY GENERAL FOR THE TAX DIVISION, DEPARTMENT OF JUSTICE

WEDNESDAY, JULY 11, 2001

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Committee met, pursuant to notice, at 2:05 p.m., in Room SD–226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Cantwell, and Edwards.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. I do want to welcome Judge Gregory and Judge Cebull and Mr. Haddon and Ms. O'Connor and their families and friends.

Just so you know, we are starting this hearing without my good friend from Utah, the senior Senator from Utah, Mr. Hatch, because he is at a swearing-in at the Justice Department. He wanted us to be able to go ahead because we never know with the Senate schedule whether we will finish. Obviously any questions that he has, there will be time for any other Senators.

We set this hearing, as many of you know, after the Senate reorganized. We wanted to start nomination hearings as soon as possible, so I noticed this hearing 10 minutes after we reorganized the Senate. Only yesterday Committee assignments were completed, so now the Committee can proceed with nomination hearings.

Judge Gregory is here, of course, for the Fourth Circuit, and I will speak more about that. But knowing also that all my colleagues have remarkable schedules of their own, I see the senior Senator from Virginia, my old friend, John Warner, here; his distinguished colleague, the former Governor, now Senator, George Allen; and our friend, Congressman Robert Scott. I will call on you

in that order to speak about Judge Gregory and then, of course, turn to the senior Senator from Montana, Senator Baucus, and his colleague, my friend, Senator Burns, to speak on behalf of and introduce the judicial nominees from their States.

[The prepared statement of Senator Leahy follows.]

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

It is my privilege to call these hearings to order. On behalf of the Committee, I welcome Judge Gregory, Judge Cebull, Mr. Haddon and Ms. O'Connor and their families and friends.

This hearing was set on the schedule within 10 minutes of the reorganization of the Senate. I regret that reorganization was delayed through the entire month of June.

Just yesterday afternoon, the Committee assignments were completed, and we are now in position to proceed.

I know that Judge Roger Gregory, his family, and indeed, all of the people who live in the area covered by the United States Court of Appeals for the Fourth Circuit, have been waiting a long time for this day. Judge Gregory was first nominated for this position on June 30, 2000, over a year ago.

He had the bipartisan support of both his home-state Senators, John Warner and Chuck Robb. Unfortunately, no hearing was scheduled on his nomination and it was returned to the President without Senate action last December.

Judge Gregory's nomination is especially meaningful and historic in several ways. Last December, President Clinton named Roger Gregory the first African-American judge ever to sit on the Fourth Circuit by means of a recess appointment, and he resubmitted his nomination in January of this year. President Bush chose to withdraw Judge Gregory's nomination in March. Then on May 9, with the continued strong support of Senator Warner and Senator Allen, President Bush renominated Judge Gregory.

This makes Judge Gregory on of the few nominees in our history ever to be nominated by Presidents of different parties. In addition, Judge Gregory is in the unique position of serving by means of an appointment whose term expires at the end of this session of the Senate unless his nomination to a full lifetime appointment is acted upon before that time.

His life and career have been exemplary, and his qualifications for this position are stellar. His service on the bench since his appointment has been uniformly praised, and he has proven himself to be fair and collegial.

Based on all of these considerations, it seems appropriate that Judge Gregory's nomination be the first considered by the Senate this year.

The two nominees to the District Court for Montana both appear qualified and well respected. United States Magistrate Judge Richard Cebull and Attorney Sam Haddon are both strongly supported by their home-state Senators, Max Baucus and Conrad Burns. I have heard from both of them about their enthusiasm for these nominations.

I know that Chief Judge Donald Molloy of the Montana District Court will be glad to see them. Judge Molloy is the only active District Judge serving full time in Montana and is anxious to get some help. I thank Judge Molloy for all of his good and hard work, and I am hopeful that we will be able to send him some assistance shortly.

Our final nominee of the afternoon, Eileen O'Connor, is nominated to serve at the Department of Justice as Assistant Attorney General for the Tax Division. This is one of the nominations the Attorney General feels is very important to have considered promptly.

So, Senator Warner, it is good to have you here, sir.

PRESENTATION OF ROGER L. GREGORY, NOMINEE TO BE CIRCUIT JUDGE FOR THE FOURTH CIRCUIT BY HON. JOHN W. WARNER, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator WARNER. Thank you, Mr. Chairman. I will submit for the record basically my statement because that will enable you to proceed expeditiously. And we have a number of colleagues and dis-

tinguished nominees, and, of course, Judge Gregory now sitting as a circuit court judge.

I remember very well, Mr. Chairman, when his name came to the United States Senate. I had not known of this gentleman directly, and shortly after he was nominated, I quickly made arrangements to meet him. And that was a meeting at which time we established a close professional bond and friendship, and I have stood by his side ever since through a rather challenging and unusual process of confirmation.

Nevertheless, we are here today for the purpose of culminating that process, and I am confident that this Committee and, indeed, the Senate as a whole will respect the President's wishes and that this confirmation of a sitting circuit judge will be done. And I say that with all due respect to colleagues and the process itself.

As I say, I will put this into the record. My colleague Senator Allen, and I am privileged to be here with Congressman Scott. We stand united behind this distinguished nominee. And I would also say in fairness, as we do in the Senate, that my former colleague, Senator Robb, was very instrumental in seeing that this nomination came forward.

I also wish to acknowledge the efforts of Elaine Jones, Legal Defense Fund for the NAACP, and Dr. Frank Royal. Dr. Frank Royal is a family physician. He and I have been associated as personal friends for many, many years—as a matter of fact, throughout my career in the Senate. And he came to me early on. He happened to be the family practitioner that serves the Gregory family, and I want to acknowledge his valuable contribution to my efforts and that of others to see that this nomination came forward.

And, lastly, our former Governor of Virginia, Governor Douglas Wilder, who addressed a letter to me, my colleague Senator Allen, and Congressman Scott, and I would like to read that into the record.

Chairman LEAHY. Please.

Senator WARNER. "Gentlemen: I first want to thank you for the strong and unwavering support relative to the nomination of Roger L. Gregory for a position on the United States Fourth Circuit Court of Appeals. It has been invaluable in the process.

"I also want to thank the chairman of the Judiciary Committee, Senator Leahy, for scheduling the hearing, as well as former chairman, Senator Hatch, for the courtesies extended the nominee. I also commend Senator Charles S. Robb for starting the process by recommending Judge Gregory to President Bill Clinton for the bench. Needless to say, there are a number of persons who have played a pivotal role in bringing the nomination to this point, but none more outstanding the record of the nominee himself. I have long felt confident that once a hearing was in place, others would more widely see the sterling qualification of the individual.

"I regret very much that due to a previously scheduled vacation starting last Saturday I will not be in the country to witness and attest to this regard." The three of us invited him to join us today.

"I have known the judge since his college days at Virginia State University through the present. I have known him as a student, a law partner, and a friend. I know that he enjoys a splendid reputation with bench and bar, as well as being an integral part of the

community at State and local events. His devotion to family and civic responsibilities is outstanding, and his character is beyond reproach. Impartiality, integrity, and resourcefulness will guide him in his decision making. I am confident he will make a very lasting contribution in his State and country."

And, again, my very thanks to each of you for endeavoring to make this happen. I thank you.

Chairman LEAHY. Thank you, Senator Warner.

Senator Allen?

PRESENTATION OF ROGER L. GREGORY, NOMINEE TO BE CIRCUIT JUDGE FOR THE FOURTH CIRCUIT BY HON. GEORGE ALLEN, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator ALLEN. Thank you, Mr. Chairman, and thank you for having this hearing. And I very much appreciate the opportunity to appear before this Committee and you with my good colleague, Senator Warner, and my good friend and colleague, I suppose, on the other side of the Capitol, Bobby Scott. And we are all here united and honored and pleased to introduce Judge Roger Gregory to you and to your committee.

It is my belief that in Roger Gregory the Fourth Circuit and, indeed, all of the United States will have somebody who obviously has a background. Governor Wilder's statements speak for themselves, and I endorse those and concur. But he is a person who will serve with integrity and dignity. He is also here, though, with his family. You have mentioned his family. His wife, Carla, is here, and his children, Adriene, Rachel, and Christina. If you all would stand up. I know you care a great deal about your family. It is good to have you all here.

In my judgment, not only does he have a wonderful family, a great record, which I am going to share with you a little bit about, but what matters is judicial philosophy. And I think from my interviews and discussions with Judge Gregory, he understands the importance of adherence to duly adopted laws and respect for the Constitution.

But I would like to share with you some of the things that may be missed in some of the statements from even Governor Wilder, who he was a law partner with, because I think Judge Gregory is an embodiment and a testament to what people can do in America with hard work and personal determination.

Judge Gregory is the first person in his family to finish high school. He went on to graduate summa cum laude from Virginia State University, a university where his mother once had worked as a maid. He received his juris doctor degree, his law degree, from the University of Michigan and later taught at Virginia State University as an adjunct professor. That is a wonderful story of success.

Before being a judge, his investiture as a judge, he was a founding partner of the firm of Wilder and Gregory. He was a highly respected litigator, representing many corporate and municipal clients in his hometown area of Richmond, Virginia. He has been active in many civic and community affairs. He and I both served together on the Board of the Historic Riverfront Foundation in Richmond. He has served for many years on the Board of Directors of

the Christian Children's Fund, the Richmond Renaissance Foundation, and the Black History Museum, among others.

In 1983, Commonwealth magazine named Roger Gregory one of Virginia's top 25 best and brightest. In 1997, he was the recipient of the National Conference of Christians and Jews Award. He has an AV rating in Martindale–Hubbell, which is the highest combined legal ability and general recommendation rating given to lawyers.

He has been a leader of the Old Dominion Bar Association, having served as president from 1990 to 1992. And I am truly impressed and comfortable with his philosophy of what the proper role of a judge should be. He understands, in my judgment, that the judicial branch is not the legislative branch. I think he is one, in talking with him, that judges should not be results-oriented but law is a process, and judicial activism can be—an activist court can be very dangerous.

But he also had a respect and I think does have a respect for duly adopted laws by elected legislatures and elected Congresses as well, and that is very important.

I am very happy that we are at this stage, because throughout these processes and some of the aggravations and annoyances, not necessarily for your part, Mr. Chairman, but from folks who are in my party, through it all I also want to commend President Bush for listening to Senator Warner and myself and also for all the members of this Committee who are going to put the character and the quality and the competence of this man, Roger Gregory, ahead of any personal piques or aggravations with process.

I think that the Senate soon will be acting as statesmen, and I feel, Mr. Chairman, that you and your fellow members of your committee, once you have had an opportunity to closely focus on Roger Gregory's record and then also ask him questions, you will be as impressed as Senator Warner, myself, and Congressman Scott are and will be very pleased to nominate him for a lifetime appointment to the Fourth Circuit Court of Appeals.

Thank you, Mr. Chairman, and thank you for having this prompt hearing.

Chairman LEAHY. I thank you, too, Senator Allen. I should note that we have had these kinds of questions about blue slips or no blue slips. Both you and Senator Warner made very strong public statements in support of Judge Gregory, and under our new rules I can say this also reflects what was in your private correspondence with this committee, strong words of support. I well remember Senator Warner coming to me early on in this process, and he said that we are going to work this out, Senator Allen and I will be together on this, and if you will just give us some space, we will work it out. Senator Warner being an extremely effective Senator, and I am sure you have had, Senator, the same thing with him, and in all the years we have served together, he has always kept his word. He has always maintained his word. And he has always followed through on his commitments.

John, if I might make a personal comment, this is just one more time that you did that, and you are absolutely right in the fact that you and Senator Allen were so straightforward with the new Presi-

dent. Had you not been, we probably would not be at this point. I commend and compliment both of you for that.

Senator ALLEN. Thank you, Mr. Chairman.

Senator WARNER. Mr. Chairman, that is a rare moment in a career of 23 years in this institution, but I assure you, the three individuals appearing here on his behalf were the Three Musketeers from day one.

[Laughter.]

Chairman LEAHY. I understand, and I was not going to ignore the other side of the Capitol. I know both of you have to leave for other Committee meetings. Feel free to go any time you want.

Congressman Scott, you and I have had a number of discussions about this nominee. You have been unfailingly consistent in your support of him, and you and I have a long and personal relationship of working together on significant issues. Again, I stand behind no one in my admiration of you and your abilities, and so I yield to you, sir.

PRESENTATION OF ROGER L. GREGORY, NOMINEE TO BE CIRCUIT JUDGE FOR THE FOURTH CIRCUIT BY HON. ROBERT C. SCOTT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Representative SCOTT. Well, thank you, Mr. Chairman. It is certainly a pleasure to appear before you, and it is an honor and a pleasure for me to join my two Virginia Senators in introducing Judge Roger Gregory to the committee.

Judge Gregory is from Richmond, Virginia, part of which is in the 3rd Congressional District, which I represent, and his nomination to the Fourth Circuit Court of Appeals is a source of pride for all Virginians. I have known the judge for over 20 years. He is a stellar professional. He has stellar professional and legal credentials. He is a summa cum laude graduate of Virginia State University and a graduate of the University of Michigan Law School.

After practicing law with two large firms, he became the founding member and managing partner of the law firm of Wilder and Gregory in Richmond. He is a truly consensus candidate for a permanent appointment to the Fourth Circuit Court of Appeals. He has bipartisan support from the congressional delegation, the Governor, and other political leaders from Virginia. He also has the support of many organizations and individuals from Virginia and beyond. As a judge sitting on the Fourth Circuit Court of Appeals for the past several months, he has earned the respect of his colleagues on the bench.

I hope you will give Judge Gregory's nomination strong consideration. I believe that if he is confirmed, he will be a fine permanent addition to the Fourth Circuit Court of Appeals.

Thank you, Mr. Chairman.

Chairman LEAHY. Congressman Scott, thank you for taking the time to come over. As I said, I knew of your strong support before, and I am delighted to have it reiterated here.

Now, in Montana, I know Chief Judge Donald Molloy has been very worried because he has been somewhat home alone. He is the only United States District Judge serving full-time in Montana,

and resolved we are going to be bringing up Richard Cebull and Attorney Sam Haddon this afternoon.

Now, this is not just because I want to help out Chief Judge Donald Molloy, but I cannot walk in the doors of either the Republican or Democratic side of the Senate without being cornered by either Senator Baucus or Senator Burns saying, "Where are our judges?" So here we go. You are going to have the first two district judge nominees this year before you. Senator Baucus, we will start with you as the senior Senator from Montana, and then go to Senator Burns.

PRESENTATION OF RICHARD F. CEBULL AND SAM E. HADDON, NOMINEES TO BE DISTRICT JUDGES FOR THE DISTRICT OF MONTANA BY HON. MAX BAUCUS, A U.S. SENATOR FROM THE STATE OF MONTANA

Senator BAUCUS. Well, thank you very, very much, Mr. Chairman. You are correct in capturing the urgency of this matter. We begin, Senator Burns and I, on behalf of Sam Haddon and Rick Cebull in thanking you very, very much and thanking the Committee for holding this hearing in a very expeditious fashion.

We have been in a tough spot in Montana the last few months. As you undoubtedly know, currently only one of our three judgeships is filled, one out of three, and that has placed an enormous strain on our remaining judge, Don Molloy. You have alluded to that. And we are here just to restate how difficult it has been for Judge Molloy. He has traveled day and night throughout Montana doing his duty as one of the Federal judges of Montana, but filling in for two others. We are on the brink of a judicial crisis, and we again thank you.

To fill these positions, to ensure that we maintain in Montana swift and certain justice, we thank you again for holding these hearings so we can have all three of our judgeships filled. We are very grateful for it.

Second, I am very grateful to my colleague, Senator Burns. He and I are working together in recommending both Richard Cebull and Sam Haddon. I might say that this is a bit unique. It is not too often that two Senators from different political parties are working so closely together, but we are doing so because it is the right thing to do. And I very much thank Senator Burns for even asking me if I want to participate in this process, something he did not have to do, but something that he thought was right for Montana. And I commend him for doing it.

Chairman LEAHY. If the Senator would yield on that point, I wish more States where you have Senators of opposite parties would do the same thing. It would certainly make my life a lot, lot easier.

Senator BAUCUS. Well, we aim to please, Mr. Chairman, whatever you wish.

Richard Cebull has served as a Billings attorney for close to 30 years, Mr. Chairman, specializing in medical malpractice. And since 1998, he has been the U.S. magistrate in Great Falls, Montana. I know he is eager to get back to Billings and fill the shoes of Judge Jack Shanstrom, who has recently retired. Rick is a Montana native. He was born and raised in Roundup, Montana, and

has earned the respect of our State, and I am very proud to introduce him and recommend him to you today.

Sam Haddon graduated from the University of Montana Law School in 1965 after serving with the U.S. Border Patrol and the Federal Bureau of Narcotics in the late 1950s and 1960s. He has worked very hard. He has been in private practice in Billings, Montana, and Missoula and is currently a partner with Boone, Karlberg and Haddon, one of the more respected firms in our State.

I know that the opportunity to serve as a Federal district judge is a goal that Sam has strived towards for years. This is a culmination of a wonderful dream for him, and in that respect, in addition to his qualifications, I know he will be a first-class judge. And as the first member of his family to go to college, this is certainly an accomplishment for him and for his family to be very proud of.

I know both Rick and Sam personally. We in Montana tend to know each other, or if we do not, we tend to know each other at least by reputation. We know a lot about each other. They will be an excellent addition to the Federal bench, and I give them my highest recommendation.

I might say, Mr. Chairman, that we are here today witnessing a procedure under one of the most durable agreements that people have put together freely in constituting how they govern themselves, that is, our United States Constitution. Sometimes I think we do not reflect enough on the genius of our Founding Fathers in writing this document, particularly a Constitution with three separate, co-equal branches of Government. And it is unique here today that we are seeing the three branches come together, that is, the President, the executive branch, has nominated two people from our State of Montana to be on the Federal bench, to participate in the judicial branch, and here we are in the legislative branch giving our advice and consent.

It is a wonderful document. It is a wonderful procedure. And I know that both Rick and Sam will not only dispense justice fairly in Montana, but they are two people who have a deep respect and reverence for the special quality of our Constitution, and, in particular, a high regard for the third branch of Government, the Federal judiciary.

I think it is important for us to remember, too, Mr. Chairman, that the most distinguishing factor that determines whether a country is durable or viable is whether it has an independent judiciary. We in America do. It is something that we should remember and be very proud of and continue to keep thriving and alive.

Rick Cebull and Sam Haddon are certainly two people who will help maintain that tradition and that very important part of America. And so it is for all those reasons I recommend them very highly.

[The prepared statement of Senator Baucus follows.]

STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM THE STATE OF MONTANA, ON THE NOMINATION OF RICHARD CEBULL AND SAM HADDON

Good Afternoon. I'd like to begin by sincerely thanking the Senate Judiciary Committee for taking up the federal district court judgeship nominations for Montana today.

We've been in a tough spot over the last few months. Currently, only one of three of our judgeships is filled, which is placing an enormous strain on our remaining

judge, Donald Molloy. We're on the brink of a judicial crisis. To ensure that we maintain swift and certain justice, Montana must have all three federal judgeships filled as soon as possible. The nominations of Richard Cebull and Sam Haddon are among the first the Committee is considering and all of us in Montana are very grateful.

Senator Conrad Burns and I were happy to join together in recommending Richard Cebull and Sam Haddon to President Bush last February. Conrad and I have continued to work together and do everything possible to more the nomination process along as quickly as possible. Both men are deserving of our support and will fill the federal district judgeship positions admirably.

Richard Cebull served as a Billings attorney for close to 30 years specializing in medical malpractice work. Since 1998, he's been the U.S. magistrate in Great Falls. I know he's eager to move back to Billings and to fill the shoes of Judge Jack Shanstrom is on senior status. Rick is a Montana native, born and raised in Roundup, and has earned the respect of our state. I'm proud to introduce and recommend him to you today.

Sam Haddon graduated from the University of Montana Law School in 1965 after serving with the U.S. Border Patrol and the Federal Bureau of Narcotics in the late 1950s and early 1960s. He's worked in private practice in Billings and Missoula and is currently a partner with Boone, Karlberg and Haddon. I know that the opportunity to serve as a federal district judge is a goal Sam has strived towards for years. As the first member of his family to go to college, this is certainly an accomplishment to be proud of.

I've had the chance to meet and talk with both Rick and Sam and know the type of work they do. They will be an excellent addition to the bench and I give you my highest recommendation for them today. I'd like to thank the Committee again for holding this hearing today and urge you to continue to move the process forward as quickly as possible. Thank you.

Chairman LEAHY. Thank you very much, and I agree with you. No democracy can exist without an independent judiciary.

Senator, and my good friend, Senator Burns, who again can now leave me alone, we are having the hearing. I am delighted to have you here. More importantly, Mrs. Burns is here. You, like many of us, Senator Burns, married way above yourself.

[Laughter.]

Chairman LEAHY. But we are delighted to have both of you here. As you have often said to me.

PRESENTATION OF RICHARD F. CEBULL AND SAM E. HADDON, NOMINEES TO BE DISTRICT JUDGES FOR THE DISTRICT OF MONTANA BY HON. CONRAD BURNS, A U.S. SENATOR FROM THE STATE OF MONTANA

Senator BURNS. As you know, Mr. Chairman, there are a lot of us in that same category.

[Laughter.]

Senator BURNS. I will not pick them out today.

I am spending your money today. We have Interior Appropriations on the floor and a vote coming up soon, so I will make this kind of quick. I have a letter from the Honorable Don Molloy and his appeal to this Committee to act responsibly and quickly about these nominations and I will make that part of the record.

Mr. Chairman, we do have a crisis in Montana. We have now only Judge Molloy as an Article III Judge. If he would just go on for the rest of the year without help, he would handle around 1,200 cases. We do not even work mules that hard. But he has done an admirable job. In fact, he has almost reached the point where he is contemplating emergency procedures in Montana, including the suspension of the Speedy Trial Act, if he does not receive some

much needed assistance. I have attached a copy of his letter and want to make it part of the record.

Mr. Chairman, when we looked at this situation, it did not take Senator Baucus and I very long to recognize that we did have this crisis, that we had to come up with men of great integrity and someone we could agree on very quickly and move them through the process. And I appreciate Senator Baucus and his efforts and attitude toward this. We worked together very well on this, and I think we have two of Montana's finest.

President Bush made Sam Haddon and Richard Cebull his first district court judge nominees and did so on an expedited basis. I am hopeful that Sam and Richard will also be the first district court judges confirmed by this Committee and by the entire Senate.

Finally, Mr. Chairman and members of this committee, I want to say a few words about the nominees before you today. I have known Sam Haddon and Richard Cebull for many years. Richard comes from Roundup, Montana, where another famous Montanan made his mark in the Gulf War, General Paul Funk, who commanded the armored division in that operation. So Ric understands and we understand public service. I think you will agree that their respective resumes speak for themselves. Their colleagues have rated them the highest ratings possible. The American Bar Association has given them the highest rating, and done so unanimously. And, finally, between them they have over a half-century of experience in law.

But all of these ratings and accomplishments may not tell the entire story. The rest of the story is that Sam Haddon and Richard Cebull are of the kind of character that makes anybody who lives in the State of Montana very, very proud and me very honored to present them to you today.

We have heard a lot of things said about Sam and Ric, but one that really matters today is that their hand shake is their word; there are some folks that you would rather have their handshake than a contract. And you are looking at two of those men today. Their integrity is without question. They are fair, decent, and honest men who bring respect and professionalism to the Federal judiciary.

Most importantly, I know that Sam and Richard will never forget, when they sit on the bench, that they were appointed and not anointed.

Thank you, Mr. Chairman and the members of this committee. I look forward to working with you to expedite the confirmation of these two men as our next judges in the court judges of Montana.

Chairman LEAHY. Well, thank you very much, and also please let Judge Molloy know that help is on the way. You hear the trumpets coming across the mountains. Help will be on the way thanks to both you and Senator Baucus.

Senator BAUCUS. Well, thank you, Mr. Chairman. I must tell you that the jungle drums in the Federal bench are the best I have ever seen. Judge Molloy knows everything that is happening.

Chairman LEAHY. I will bet he does. He will know ahead of us.

Thank you very much. I know both of you have to go to the floor, and I appreciate your coming being here.

Senator BURNS. Thank you.

Senator BAUCUS. Thank you.

Chairman LEAHY. I do not want anybody to think that I am forgetting my good friend, Congresswoman Morella, of Maryland. Congresswoman Morella and I have been friends for a long, long time. I know she is here to speak for Eileen O'Connor, who is nominated to be Assistant Attorney General for the Tax Division. While Ms. O'Connor and I both have Irish names, Ms. Morella knows the real secret of my ancestry. And so, Congresswoman, I am delighted to have you here. Please feel free to proceed.

PRESENTATION OF EILEEN J. O'CONNOR, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL FOR THE TAX DIVISION, DEPARTMENT OF JUSTICE BY HON. CONSTANCE A. MORELLA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Representative MORELLA. Thank you very much. Thank you, Chairman Leahy. And I will let the world know that you are part of the Italian–American Congressional Caucus. We are very proud of that, too.

I want to thank you very much for the opportunity to allow me to introduce a very distinguished constituent of mine, Eileen J. O'Connor, nominated by President Bush to serve as Assistant Attorney General of the Tax Division of the Department of Justice.

I note—and you will agree, I trust—that Eileen O'Connor's career, both public and private, is impressive. Her ability to represent the interests of the United States Government is unquestionable.

Just to point out a few of the items from Eileen's distinguished career, she is a graduate of Columbus State University and Catholic University of America's Columbus School of Law. Professionally, her career has been highlighted with positions as corporate tax law specialist with the Internal Revenue Service, tax manager with Arthur Andersen, senior manager and associate partner at Grant Thornton, and the Office of Federal Tax Services, an officer for tax services with Aronson, Fetridge and Weigle. Most recently, Mrs. O'Connor serves as counselor to the Attorney General.

Academically, Mrs. O'Connor has served as adjunct professor at both Georgetown University Law Center and George Mason University School of Law. She also serves on the editorial board of the Tax Advisor, a monthly tax journal. Additionally, she holds memberships with the Federal Bar Association, the Bar Association of the District of Columbia, the American Institute of Certified Public Accountants, the Federalist Society, and the American Bar Association. So her professional associations and memberships are pretty impressive and extensive.

As a respected national tax expert, Eileen O'Connor has authored numerous articles and publications. She has made presentations at many conferences and seminars, focusing on a broad scope of tax issues, such as limited liability companies, women and tax, tax accounting, practitioner-client confidentiality, tax reform, and, last but not least, how to cope with an IRS tax audit.

When Eileen is not sifting through the Tax Code and fulfilling the demands of a wife and mother, she works with many committees seeking to improve the tax profession and the tax system. She donates time to her church, and of particular interest, Eileen has

drafted a booklet devoted to helping women better understand the Federal income tax system. That is probably something that men could well gain from, also, since we contribute to making this tax system one that does require experts to help them understand it and weave their way through the travails.

I believe that after examining the credentials of Eileen O'Connor, you will agree that her education and as an educator, her experience both in the public and the private sector, her proven ability and commitment and her integrity render her worthy of your confirmation. And, you know, I noted also that some time ago I had the honor of introducing her husband, Circuit Judge A. Raymond Randolph, and I was reminded of the fact that behind every successful man is a surprised mother-in-law. Behind every successful woman is a mother-in-law who knew it all the time, and a very proud family. And so I would say, as you consider recommending Eileen O'Connor as Assistant Attorney General for the Tax Division, that in the words of Shakespeare, the force of her own merit makes her way.

Thank you, sir.

Chairman LEAHY. Thank you very much, Congresswoman. As always, it is good to have you here. I also know that you have a very busy schedule on the other side of the Capitol, so please feel free to leave.

Representative MORELLA. Thank you.

Chairman LEAHY. I am going to ask the staff if they would just clean up the bench here just a little bit, and then we will call Judge Gregory. And I am going to take one minute to respond to one phone call out here. So we will recess for just one minute, and it will literally be one minute.

[Recess at 2:37 to 2:39 p.m.]

Chairman LEAHY. I would note that last December President Clinton named Roger Gregory to be the first African-American judge ever to sit on the Fourth Circuit by means of a recess appointment. He resubmitted his nomination January of this year. President Bush originally had withdrawn Judge Gregory's nomination, but then with the continued strong support of Senator Warner and Senator Allen, the same support that Senator Warner and Senator Robb had shown earlier, the President renominated Judge Gregory. This makes the judge one of the few nominees in our history ever to be nominated by Presidents of different parties for the same judgeship. He is in the unique position of serving by means of an appointment whose term would expire at the end of this session of the Senate unless we acted on it before then, which we will.

His life and career have been exemplary. His qualifications for the position are stellar. His service on the bench since his appointment has been uniformly praised. He has proven himself to be fair and collegial. And based on all these considerations, I think it is appropriate that Judge Gregory's nomination will be the first one to the Federal judiciary considered by the Senate this year.

Judge Gregory, please come forward, sir, and take—oh, first, introduce your family, please, Judge. I want to make sure their names are in the record.

Judge GREGORY. Thank you very much. I will introduce my wife, Carla, of 21 years, and my three lovely daughters, Adriene, Rachel,

and Christina, and my sister-in-law, Merley Lewis is present. I also have a chamber family here: my secretary/administrative assistant, can't do anything without her, Tammie Hicks; and my three clerks, who have just been wonderful, Maya Eckstein, Gretchen Speidel, and Damon Jones.

Chairman LEAHY. Why don't you all stand up so we can all see you here. Thank you all for being here, and please take a seat. Judge Gregory, please take a seat. I want to make sure their names—you will be a little bit a part of history because you will be in the record.

And also, we have our newest member of the committee, Senator Edwards, who has joined us. Senator Edwards is also, as you know, in the Fourth Circuit, and Senator Edwards spoke eloquently and often on your behalf last year, Judge Gregory. And this year one of the very first things he said to me when we came back in January, he said, "What are we going to do to get Judge Gregory confirmed?" So I am pleased to have him here.

Judge if you would stand and raise your right hand, please. Do you solemnly swear that the testimony you are about to give before this Committee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Judge GREGORY. I do.

Chairman LEAHY. Judge, this is your day. Feel free to start with any statement you might have before we begin with questions.

STATEMENT OF ROGER L. GREGORY, OF VIRGINIA, NOMINEE TO BE CIRCUIT JUDGE FOR THE FOURTH CIRCUIT

Judge GREGORY. Thank you. Mr. Chairman, first and foremost, I would like to thank you for scheduling this hearing. It is indeed an honor to be considered by this Committee to consider my nomination. I consider it to be one of the highest points of my life.

You have met my family, and for the record I would like to put in the names of my late parents, George and Fannie Gregory. Without their unwavering support and their love, this day would not be possible, and I certainly want to recognize them.

Also, for the record, we would like to thank Senator John Warner and Senator Allen and Congressman Scott for appearing here and speaking so generously about me and their unwavering support through this process. I thank them very much with their busy schedules to be here today, as well as to recognize former Governor Wilder, whose letter was in the record. His unwavering support and friendship have been wonderful.

I thank you. That is all I have for an opening statement or I will begin to reiterate. Thank you very much, Mr. Chairman, for scheduling this hearing. I am very pleased to be here to answer your questions.

[The biographical information of Judge Gregory follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

   Roger Lee Gregory

2. Address: List current place of residence and office address(es).

   Residence:
   Richmond, VA

   Office:
   212 Lewis F. Powell, Jr. U. S. Courthouse
   1000 East Main Street
   Richmond, Virginia 23219-3517

3. Date and place of birth.

   July 17, 1953, Philadelphia, Pennsylvania.

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

   I am married to Carla Eugenia Lewis Gregory
   Carla is employed by Philip Morris Incorporated t/a Philip Morris USA, as manager of the library in the operation center located at 4201 Commerce Road, Richmond, VA 23261.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

   1971 to 1975 Virginia State University
   Bachelor of Arts degree in May of 1975.

   1975 to 1978 University of Michigan
   Juris Doctor degree in May of 1978.

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions end organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

   1973 to 1975 Virginia State University (Political Science Department).
   Work study position.

June to August 1976 City of Richmond Commonwealth Attorney's Office.
Law clerk position.

May 1977 to August, 1977 Butzel, Long, Gust, Klien & Van Zile.
Summer Law Clerk.

1978 to 1980 Butzel, Long, Gust, Klien & Van Zile. Associate Attorney.

1980 to 1982 Hunton & Williams. Associate Attorney.

Co-founded Wilder & Gregory in 1982. Partner from September 1982 to January 17, 2001.

Circuit Judge, United States Court of Appeals for the Fourth Circuit, January 18, 2001 to present.

1984 to 2001 Richmond Renaissance. Board of Directors.

1988 to 1994 Central Virginia Legal Aid Society. Board of Directors.

1990 to 1992 Poverty Law. Board of Directors.

1990 to 1993 Richmond Bar Association. Board of Directors.

1994 to 1999 Richfood Holdings Incorporated. Director.

1994 to 2001 Virginia State University Foundation. Board of Trustees.

1996 to 1999 Virginia Association of Defense Attorneys. Board of Directors.

1997 to Present Christian Children's Fund. Board of Directors.

1998 to Present Historic Riverfront Foundation. Board of Trustees.

1998 to 2001 Black History Museum and Cultural Center of Virginia. Board of Trustees.

2000 to 2001 Community Foundation. Board of Trustees.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, end honorary society memberships that you believe would be of interest to the Committee.

Honor Societies

I was inducted into the Alpha Mu Gamma National Foreign Language Honor Society in 1973.

I was inducted into the Alpha Kappa Mu National Honor Society in 1974.

I was awarded the Alpha Kappa Mu scholarship in 1975.

Virginia State University

Summa Cum Laude
"Top Black College Students in America," Black Enterprise Magazine, 1975
Alpha Kappa Mu, national honor society
Alpha Gamma Mu, foreign language honor society
Who's Who in colleges and universities
Frederick Douglas Award, highest grade point in Political Science, 1975

University of Michigan

Campbell Moot Court Competition quarter finalist
Ann Arbor Legal Aid Society – third year student practice 1977

Recognition by the Bar

I was named a Fellow of the Virginia Bar Foundation in 1992. This honor is bestowed upon lawyers who have demonstrated excellence in the practice of law and contributed to the betterment of the Bar.

Recognition by Law Directory Publication

I have an "AV" rating in the Martindale-Hubbell law directory, which is the highest combined legal ability and general recommendation rating given to lawyers.

Richmond Community

1983, Commonwealth Magazine, "Virginia's Top 25 Best and Brightest"

1990, Surroundings Magazine, "Virginia's 100 Most Influential Persons"

1991, Virginia State University, President's Proclamation of Honor

1991, Leadership Metro Richmond, Alumnus of the Year Award

1997, Recipient of the National Conference of Christian's and Jews' Award

9. Bar Associations: List all bar associations, legal or judicial-related committees 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.

American Bar Association (member since 1979)
Participant in the Minority Counsel Demonstration Program since 1988

National Bar Association (member since 1990)

Michigan State Bar (member since 1978)

Virginia State Bar (member since 1980)
1989-92 Bar Counsel
1989-92 Commission on Women and Minorities in the Profession
1990-92 Long Range Planning Committee
1998-99 Member of the Virginia Supreme Court's Committee to Study fees for Court Appointed Counsel

Old Dominion Bar Association (member since 1981)
1983-87 Treasurer
1987-88 Second Vice-President
1988-90 First Vice-President
1990-92 President
1992-94 Immediate past President
2000 Judicial Selection Committee

Richmond Bar Association (member from 1980 to 1998)
1993-94 Judicial Selection Committee
1990-93 Board of Directors
1996-98 Nominating Committee

Virginia Association of Defense Attorneys (member since 1990)
1996-99 Board of Directors
1999-01 Long Range Planning Committee

1999-01 Chair of the Finance Committee

Fourth Circuit Judicial Conference (permanent member since 1991)

Central Virginia Legal Aid Society
1988-94 Board of Directors

Poverty Law
Board of Directors (1990-92)

Virginia Association of School Board Attorneys (member since 1989)

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

I do not belong to any organizations that are active in lobbying before public bodies.

I belong to the following organizations:

Christian Children's Fund, Board of Directors since 1997, Vice Chair since 1999

Historic Riverfront Foundation, Board of Trustees since 1998

Omega Psi Phi, fraternity member since 1981

Sigma Pi Phi, fraternity, since 1997

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Supreme Court of Michigan, admitted in 1978
U.S. District Court for the Eastern District of Michigan, admitted in 1978.
U.S. Court of Appeals for the Sixth Circuit, admitted in 1978.
Supreme Court of Virginia, admitted in 1980.
U.S. District Court for the Eastern District of Virginia, admitted in 1980.
U.S. District Court for the Western District of Virginia, admitted in 1980.
U.S. Court of Appeals for the Fourth Circuit, admitted in 1980.
U.S. Bankruptcy Court for the Eastern District of Virginia, admitted in 1982.
U.S. Supreme Court, admitted in 1999.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

I do not have published books or articles. I was the executive producer of a documentary on the life of Oliver W. Hill, Jr. (a copy of the video has previously been provided).

I authored a portion of the Virginia Association of Defense Attorneys' Long Range Planning Report that was distributed to members (a copy is attached).

I do not have any written speeches on issues involving constitutional law or legal policy. I taught constitutional law as an adjunct instructor at Virginia State University from 1981 to 1985, but I do not have any written lectures.

I do not have copies of speeches I gave. I have notes that I use to give inspirational speeches and presentations on topics of academic achievement, Christian charity/mission/responsibility of church laity, civic/community involvement, Law Day commemoration, black history commemoration and legal practice (copies of the notes are attached).

I have given speeches at the following churches: Good Shepherd Baptist Church in Petersburg, VA, Zion Baptist Church in Petersburg, VA, Unity Baptist Church in Petersburg, VA, Morning Star Baptist Church in Petersburg, VA, Fourth Baptist Church in Richmond, VA, Wesley Memorial Methodist Church in Richmond, VA, St. Paul's Episcopal Church in Richmond, VA, St. Peter's Baptist Church in Glen Allen VA,

Springfield Baptist Church in Glen Allen, VA, Mt. Olive Baptist Church in Rectortown, VA, and Amity Baptist Church in South Hill, VA.

As vice chair of Richmond Renaissance, I gave brief remarks at the annual meeting of the Board of Directors and I gave remarks at public functions sponsored/supported by Richmond Renaissance (a video tape of a television talk show I did on behalf of Richmond Renaissance was previously provided).

I have spoken to college students about striving for high academic achievement and giving something back to society after graduation. I have spoken at Virginia State University (Founders Day speaker 1991 and Honors Convocation speaker in 2000) in Petersburg, VA, Virginia Union University (lectures) in Richmond, VA, Virginia Commonwealth University in Richmond, VA, University of Richmond in Richmond, VA and St. Paul's College in Lawrenceville, VA. (a copy of the press releases have been attached).

I have spoken at the following schools: Petersburg High School (a video tape of the commencement speech in June 1990 was previously provided), Peabody Middle school in Petersburg, VA and several schools in the Richmond School system to include speaking at the Scholastic Standout program on June 10, 2000.

On October 15, 2000, I was the keynote speaker for Men's Day at Zion Baptist Church in Petersburg, Virginia. I did not prepare a written document, but I am submitting notes used to deliver the speech.

I was a luncheon speaker at the Old Dominion Bar Association mid-year meeting on February 10, 2001. I do not have a copy of the speech, but I am submitting notes used to deliver the speech.

On April 2, 2001, I spoke at Virginia Commonwealth University to students and business leaders who are participating in the Business School's mentoring program. I did not prepare a written document and I have no notes.

13. Health: What is the present state of your health? List the date of your last physical examination.

I am in good health. My last physical examination was May 23, 2000.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

On December 27, 2000, I was recess appointed to serve as Circuit Judge on the United States Circuit Court of Appeals for the Fourth Circuit. I was sworn in on January 18, 2001. The Fourth Circuit hears appeals from federal district courts in the states of Maryland, Virginia, West Virginia, North Carolina and South Carolina.

15. Citations: If you are or have been a judge, provide:
(1) citations for the ten most significant opinions you have written; (2) a short summary of end citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

(1) I have only written two opinions since my appointment to the court on January 18, 2001. The two opinions are as follows:

Joan H. Cox v. County of Prince Williams (Case No. 00-2159)

Worldwide Security Services, Corp. v. Southern Financial Bank (Case No. 00-1040)

Copies of the printed opinions are attached.

(2) The U. S. Supreme Court has not reviewed either of my opinions.

(3) See response to question 15 (1) above.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

I have never held a public office.

17. Legal Career:

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

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

I have never served as a law clerk to a judge.

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

I have never practiced law alone.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

1978 to 1980
Butzel Long (then approx. 60 lawyers)
Suite 900, 150 Jefferson
Detroit, MI 48226
(313) 225-7000

I was as an associate attorney with the firm.
I worked in the tax section and later in the litigation section.

1980 to 1982
Hunton & Williams (then approx. 250 lawyers)
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219
(804) 788-8200

I was an associate attorney with the firm.
I worked in the litigation section.

1982 to 2001
Wilder & Gregory (range six to eleven lawyers)
707 East Main Street
Suite 1000
Richmond, VA 23219
(804) 643-8401

I co-founded the firm in 1982 and served as managing partner from 1985 until January 2001. The Wilder & Gregory law firm had nine lawyers. The firm's areas of practice included: litigation, insurance defense administrative law, education law, municipal finance, commercial real estate, banking, creditor's rights and church law. I supervised the litigation team.

Teaching Experience

From 1981 to 1985, I taught constitutional law at Virginia State University as an adjunct professor. This upper level class analyzed constitutional principles by the casebook method and used the Socratic approach to classroom discussion. Approximately nine of my former students are now practicing law in Virginia and other states.

From 1996 to 1999, I was on the faculty of the Virginia State Bar Ethics and Professional Responsibility course. This course is mandatory for all persons recently admitted to the Virginia State Bar. I conducted workshops and was selected to present a lecture at the plenary session.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

1978 - During my first year of practice, I worked in the tax section. I prepared requests for private rulings and research memoranda relative to the tax implications of corporate transactions.

1979 - I began working in the litigation section when a large client of the firm had numerous suits for product liability after a national recall of its leading product.

1980 to 1982 - I moved to a larger firm where I continued to work in the litigation section. I was a member of a team that worked on major litigation in various areas of the law such as product liability, construction and commercial.

1981 to 1988 - I formed a firm with L. Douglas Wilder, who had been a sole practitioner for more than twenty years. In my general practice, I handled matters such as criminal defense, personal injury matters, domestic relations, wills, real estate closings, bankruptcy and civil litigation.

1988 to January 17, 2001 - The firm began representing large corporate and municipal clients. I began trying tort cases for large insurance companies. I was actively engaged in trial practice in federal and state courts. Each year I tried several cases in the areas of insurance defense, criminal defense, employment law and commercial law.

The firm was chosen as one of the original twenty minority-owned firms to participate in the ABA Minority Counsel Demonstration Program. The ABA Program gave the firm the opportunity to meet counsel for several large corporations. Now the firm represents many large companies in the private and public sector. The firm is the first minority-owned firm to be listed in the Bond Buyer (red book).

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

I was general counsel to an urban school district for fourteen years and handled matters relating to grievances, student discipline, special education issues, employment law and general advice on education law. I litigated employment cases in federal

court for large automotive manufacturers. I handled commercial litigation for regional and national banks. I tried insurance defense cases for several large insurance companies. I tried product liability and public liability cases for a national, fast food restaurant company. I represented a large research hospital authority in employee grievance hearings. I represented a major transportation company in FELA litigation in state courts.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I appeared regularly in state and federal court during the last five years. The frequency of my court appearances over the last five years did not vary.

2. What percentage of these appearances was in:

(a) federal courts: 20%

(b) state courts of record: 80%

(c) other courts: None

4. What percentage of your litigation was:

(a) Civil: 75%

(b) Criminal: 25%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I tried approximately 120 such cases as sole counsel, approximately 20 as chief counsel and approximately 10 as associate counsel.

5. What percentage of these trials was:

(a) Jury: 45%

(b) non-jury: 55%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. 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. Prudential Insurance v. Lillian Tull, 532 F. Supp. 341 (E.D.Va. February 11, 1982) and 690 F.2d 848, (4th Cir. 1982).

This was an interpleader action filed by Prudential to determine who was the beneficiary of a Servicemen's Group Life Policy. The widow of the serviceman had been found guilty of the murder of her husband. A Virginia statute prohibited any person from recovering funds as a result of a death caused by his or her intentional act. There was no comparable federal statute prohibiting the widow from recovering death proceeds under such criminal circumstances. Since Prudential administered thousands of these policies, it had an interest in protecting the general rule that federal law preempts the application of all state laws in determining rights under Servicemen policies. This was a significant question of whether state law would apply to prevent a murderer from recovery of insurance proceeds or would federal law apply.

I represented Prudential Insurance at the district court level as an associate attorney working under the supervision of Lewis T. Booker, lead counsel. I was responsible for researching the legal issues and writing legal memoranda and assisting with the briefs. The federal district court ruled that the widow was barred from recovery by the Virginia statute but not by federal law. On appeal, the Fourth Circuit agreed that the widow could not recover, but ruled that she was barred by application of federal common law. I was not involved in the case at the appellate level. However, the appellate court upheld Prudential's contention that federal law preempted a state statute.

a. The date of representation:

Briefs and arguments were submitted in the United States District Court during the period of October 1981 to February 1982.

b. The name of the court and the name of the judge or judges before whom the case was litigated: and

The United States District Court for the Eastern District of Virginia, Richmond Division. The trial judge was the Honorable D. Dortch Warriner. I did not participate in the appellate case.

c. The individual name, addresses and telephone numbers of co-counsel and of principal counsel for each of the other parties:

Lewis T. Booker, Esquire, Hunton & Williams, was lead counsel for Prudential, Riverfront Plaza E. Tower, 951 E. Byrd Street, Richmond, VA 23219, (804) 788-8200.

William W. Davenport, Esquire was counsel for defendant, 9500 Courthouse Road, Chesterfield, VA 23832, (804) 748-1221.

2. Commonwealth v. Bertha Williams, F-83-688.

This was a first-degree murder case in which the victim, who had been stabbed, had a blood alcohol content of .44% (four times higher than the level at which one is considered under the influence for driving). My defense was based upon a legal theory of self-defense.

I represented the defendant, Bertha Williams. I was sole defense counsel and tried the case before a jury. The jury found Bertha Williams guilty of manslaughter and sentenced her to 12 months in jail (in Virginia juries sentence defendants in criminal cases). The maximum punishment for the crime charged was life.

a. The date of representation:

July 16, 1983

b. The name of the court and the name of the judge or judges before whom the case was litigated: and

Circuit Court for the City of Richmond. The presiding judge was the Honorable Thomas Nance.

c. The individual name, address and telephone numbers of co-counsel and of principal counsel for each of the other parties:

There was no co-counsel. The Commonwealth's Attorney was James C. Wicker, Esquire, 406 W. Franklin, Richmond, VA 23219, (804) 648-7403.

3. Rosetta Bryan and Infant v. Kmart Corporation, LM 3351-2.

This was a claim for damages resulting from plaintiff and her infant child being hit by golf bags that fell from an upper shelf. Plaintiff alleged that Kmart Corporation displayed the golf bags in a negligent manner and knew or should have known that the way the golf bags were displayed presented a hazardous condition for customers. The case is significant because plaintiff was claiming substantial physical injuries and there was photographic evidence showing that the infant was struck on the head when the golf bags fell. The defense was that

Kmart was not negligent and plaintiff's own negligence was the proximate cause of the accident.

I represented Kmart Corporation. I was sole defense counsel and tried the case before a jury. The jury found that Kmart Corporation was not liable for the injuries.

a. The date of representation:

October 6 - 10, 1989

b. The name of the court and the name of the judge or judges whom the case was litigated: and

Circuit Court for the City of Richmond. The presiding judge was the Honorable Theodore J. Markow.

c. The individual name, addresses and telephone numbers of co-counsel and of principal counsel for each of the other parties:

There was no co-counsel. Rosetta Bryan and her infant child were represented by Augustus S. Hydrick, Jr., Esquire, 2222 Monument Avenue, Richmond, VA 23226, (804) 358-8499.

4. Richmond Tenant Organization v. Richmond Redevelopment Housing Authority, 751 F. Supp.1204, (E.D.Va.1990), aff'd., No. 91-2608, 1991 U.S. App. LEXIS 27694 at * 1 (4th Cir. November 8, 1991).

This was a suit brought by an organization representing residents of public housing in Richmond, Virginia to challenge the adequacy of notice of the changes in tenants' lease agreements and their reasonableness. The changes in the lease agreements were adopted to address crime problems and prohibited, among other things, tenants from possessing firearms in public housing.

I represented the Richmond Redevelopment and Housing Authority and my co-counsel was William G. Broaddus, Esquire. We shared duties at the trial. At the conclusion of the evidence, the court found that the notice given by the authority was legally adequate and, as a matter of fact, not misleading. The court found the prohibition of firearms and several of the other challenged provisions reasonable. The court made minor modifications in the lease agreement by invalidating offending clauses in some of the challenged lease provisions. On appeal, the Fourth Circuit affirmed the decision of the United States District Court.

a. The date of representation:

November 27 - 28, 1990

b. The name of the court and the name of the judge or judges before whom the case was litigated: and

United States District Court for the Eastern District of Virginia, Richmond Division. The presiding judge was the Honorable Richard L. Williams.

The case was appealed to the Honorable Judges of the United States Court of Appeals for the Fourth Circuit. The Honorable H. Emory Widener, Jr. and Paul V. Niemeyer, Circuit Judges and the Honorable James H. Michael, Jr., United States District Judge for the Western District of Virginia, sitting by designation, presided at oral arguments. I did not participate in the oral arguments. The decision of the court was rendered per curiam.

c. The individual name, addresses and telephone numbers of co-counsel and of principal counsel for each of the other parties:

My co-Counsel was William G. Broaddus, Esquire, McGuire, Woods, Battle & Boothe, One James Center, 901 E. Cary Street, Richmond, VA. 23219, (804) 775-1085.

Counsel for Richmond Tenant Organization, Inc. was Henry W. McLaughlin, Esquire, Central Virginia Legal Aid Society, 101 W. Broad Street, Suite 101, Richmond, VA 23241, (804) 648-1012.

5. Yvonne Thurnbauer v. Gilbert/Robinson t/a Darryl's, 3:00 90 CV-00512.

This was a suit against a franchisee for damages resulting from plaintiff falling when she stepped on a ramp walkway leading from the dining area to the bar. Plaintiff alleged that the ramp was negligently designed and that the lighting was inadequate.

I represented Darryl's restaurant. Clarence N. Jenkins, Jr., Esquire, then a new associate in the firm, assisted me at trial. The case was tried before a jury. The jury found in favor of Darryl's restaurant.

a. The date of representation:

March 12 - 13, 1991

b. The name of the court and the name of the judge or judges whom the case was litigated: and

United States District Court for the Eastern District of Virginia, Richmond Division. The presiding judge was the Honorable James R. Spencer.

c. The individual name, addresses and telephone numbers of co-counsel and of principal counsel for each of the other parties:

Associate counsel was Clarence L. Jenkins, Jr. Esquire, Wilder & Gregory, 707 E. Main Street, Suite 1000, Richmond, VA. 23219, (804) 643-8401.

Counsel for Yvonne Thurnbauer were James G. Bates, Esquire (died in November 1994) and Nathan A. Nelson, Esquire (license revoked February 1998).

6. Paco-Jon Broadcasting Corporation v. State Street Bank, U.S. District Court, 3:91CV 00414 and U.S. Bankruptcy Court 91-33984-BNS.

This was a Chapter 11 petition filed in bankruptcy court on behalf of a radio station. The station's principal creditor, States Street Bank, had been awarded judgment and possession by the federal district court. The bankruptcy petition was an attempt to keep the company operating with the debtor in possession and to re-organize the company. The case raised significant questions regarding the right of a bankrupt to seek the protection of the bankruptcy laws when a federal district court has awarded a principal creditor judgment and possession but the assets have not been seized. The case was proceeding in the bankruptcy court and the federal district court at the same time.

I represented Paco-Jon Broadcasting Corporation as sole counsel at all hearings in the federal district court and the bankruptcy court. The federal district court dismissed the Chapter 11 petition in the bankruptcy court. The court ruled that the prior judgment in the federal district court pre-empted the bankruptcy court from granting Paco-Jon Broadcasting Corporation any relief under Chapter 11 of the Bankruptcy Code.

a. The date of representation:

Several motions were briefed and heard in the bankruptcy court and the federal district court during the period from September to November of 1991.

b. the name of the court and the name of the judge or judges before whom the case was litigated: and

The Chapter 11 petition was pending in the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division. The presiding judge was the Honorable Blackwell N. Shelley.

The motion to dismiss the Chapter 11 petition was filed in the United States District Court for the Eastern District of Virginia, Richmond Division. The presiding judge was the Honorable James R. Spencer.

c. The individual name, addresses and telephone numbers of co-counsel and of principal counsel for each of the other parties:

There was no co-counsel. State Street Bank was represented by Charles L. Glerum, Esquire, Choate, Hall & Stewart, Exchange Place, 53 State Street, Boston, MA 02109, (617) 227-5020 and Janis R. Orfe, Esquire, Crowell & Moring LLP, 1001 Pennsylvannia Avenue, N.W., Washington, D.C. 20004-2595, (202) 624-2500.

7. Pella D.Walker v. Petersburg School Board, et. Al., 3:94CV 00036.

This was a suit for wrongful termination brought by a teacher who alleged that she was fired after she criticized the school administration for falsifying students' scores on standardized tests. The plaintiff contended, among other things, that her rights to free speech and due process and equal protection were violated. This case generated a great deal of publicity and controversy regarding the performance of students in urban school districts on standardized tests. In addition, it was one of the first cases in which a teacher alleged civil rights violations for a termination relating to his or her role in administering standardized tests.

I was sole counsel for one of the defendants, the school principal. The case was tried in federal court with a jury. At the conclusion of the plaintiff's case the court entered judgment for the School Board and the superintendent and dismissed them from the case. The case continued as to my client, the principal. At the conclusion of the evidence and argument, the jury found in favor of the defendant.

a. The date of representation:

The case was tried on December 20, 1994.

b. The name of the court and the name of the judge or judges before whom the case was litigated: and

United States District Court for the Eastern District of Virginia, Richmond Division. The presiding judge was the Honorable Robert R. Merhige, Jr.

c. The individual name, addresses and telephone numbers of co-counsel and of principal counsel for each of the other parties:

There was no co-counsel.

Counsel for co-defendants Petersburg School Board and Dr. Fauntleroy was D. Patrick Lacy, Jr., Esquire, Hazel & Thomas, 411 E. Franklin Street, Richmond, VA 23219, (804) 344-3437.

Counsel for plaintiff was Neil Kuchinsky, Esquire, 200 Lakeview Avenue, Colonial Heights, VA 23805, (804) 526-2101.

8. Shantel D. Pender v. Ronald J. Angelone, Director Virginia Dept. of Corrections, 257 Va. 501 (1999). Federal Habeas Petition is Pending, U.S. District Court, Case No. 3:00CV79.

This is a habeas corpus petition in which Pender sought to overturn his 1993 conviction of first-degree murder and sentence of fifty years. Pender contended that his Sixth Amendment rights were violated because he was denied effective assistance of counsel at his trial. Pender filed his petition for writ of habeas corpus pro se in the Supreme Court of Virginia. The Supreme Court of Virginia remanded the case to the trial court to conduct an evidentiary hearing on the issue of ineffective assistance of counsel. The case is significant because his trial counsel conducted no discovery. His counsel did not investigate any witnesses and did not put on any evidence at trial. There was evidence that the victim was seen with a gun on the day of the stabbing and was seen making gestures as if to pull a weapon moments before the incident. This evidence was never presented by the defense. The critical issues is whether Pender could show that there is a reasonable probability that, but for trial counsel's errors, the result of his trial would have been different as required under Strickland v. Washington, 466 U.S. 668 (1984).

I was retained to represent Pender at the evidentiary hearing in the trial court. I also represented Pender before the Supreme Court of Virginia. I was sole counsel for the petitioner. Upon consideration of the testimony and exhibits presented at the evidentiary hearing, the trial court denied Pender's habeas writ. I appealed to the Supreme Court and that court affirmed the decision of the trial court. I filed a petition for habeas corpus in the United States District Court for the Eastern District of Virginia under 28 U.S.C, § 2254. Pender's petition for writ of habeas corpus is pending in the federal district court.

a. The date of representation:

September 29 - 30, 1997, habeas hearing. February 23, 1999, oral argument in the Supreme Court of Virginia.

b. The name of the court and the name of the judge or judges before whom the case was litigated: and

The habeas evidentiary hearing was in the Circuit Court for the City of Petersburg. The Honorable Judge Robert G. O'Hara, Jr. presided at the habeas hearing. The appeal was heard in the Supreme Court of Virginia, before the Honorable Chief Justice Harry L. Carrico and the Honorable Associate Justices A. Christian Compton, Lawrence L. Koontz, Elizabeth B. Lacy, Leroy R. Hassell, Barbara M. Keenan and Cynthia D. Kinser.

The habeas petition is pending in the United States District Court for the Eastern District of Virginia, Richmond Division. The Honorable James R. Spencer is assigned to the case.

c. The individual name, addresses and telephone numbers of co-counsel and of principal counsel for each of the other parties:

There was no co-counsel. The Department of Corrections was represented by Linwood T. Wells, Jr., Esquire, Office of the Attorney General, 900 East Main Street, Richmond, VA 23219, (804) 786-4624.

9. Janet Harris v. General Motors, U.S. District Court 97-880-A and U.S. Court of Appeals for the Fourth Circuit, 98-1394.

Plaintiff alleged that she was sexually harassed by a co-employee. She also alleged that General Motors took retaliatory actions against her because she filed grievances with the union concerning inequities in assigning overtime hours. This case was significant because plaintiff was suing on claims that had been settled by the union on her behalf. It was important to the company to assure that agreements reached with the union on behalf of employees are valid and cannot be relitigated in court.

I represented General Motors as lead counsel. An associate attorney in my firm worked on the case and assisted in discovery, research and writing briefs. At the conclusion of formal discovery, we moved for summary judgment and I argued that motion. The court granted the motion and dismissed the case with prejudice. The court ruled that plaintiff had not shown sufficient evidence to prove sexual harassment. The court also held that plaintiff's claims as to discrimination in awarding overtime had been settled in the union grievance procedure and could not be relitigated.

Plaintiff appealed the decision to the United States Court of Appeals for the Fourth Circuit. The decision of the U.S. District Court was affirmed.

Plaintiff petitioned to the United States Supreme Court for a writ of certiorari. The writ was denied.

a. The date of representation:

On February 20, 1998, the motion for summary judgment was argued.

The case was briefed in the United States Court of Appeals for the Fourth Circuit in 1999.

b. The name of the court and the name of the judge or judges whom the case was litigated: and

United States District Court for the Eastern District of Virginia, Alexandria Division. The Honorable Albert V. Bryan, Jr. heard the motion for summary judgment.

The case was appealed to the Honorable Judges of the United States Court of Appeals for the Fourth Circuit. The decision was rendered per curiam, without oral argument.

c. The individual name, addresses and telephone numbers of co-counsel and of principal counsel for each of the other parties:

My co-counsel was M. Janet Palmer, Esquire, Wilder & Gregory, 707 E. Main Street, Suite 1000, Richmond, VA 23219, (804) 643-8401. Counsel for Harris was Sol Z. Rosen, Esquire, 2501 Calvert Street, NW, #212, Washington, D.C. 20008, (202) 296-8485.

10. Alonzo Young v. General Motors, U.S. District Court, 97-1252-A and U.S. Court of Appeals for the Fourth Circuit, 99-1265.

Plaintiff alleged that General Motors was accepting the workers' compensation claims of white employees and rejecting those of African-American employees. Plaintiff sought to show that white workers were routinely allowed benefits for injuries that were similar to those that had been deemed ineligible for African-Americans. Plaintiff had litigated General Motors' denial of his claim before the Workers' Compensation Commission. The Commission ruled that plaintiff was not entitled to benefits under the Workers' Compensation Act and plaintiff did not appeal to the state appellate court.

I represented General Motors as lead counsel. An associate attorney in my firm worked on the case and participated in trying the case. At the conclusion of plaintiff's evidence we moved for a directed verdict as a matter of law. The court granted the motion and dismissed plaintiff's case.

Plaintiff appealed to the United States Court of Appeals for the Fourth Circuit. The decision of the U.S. District Court was affirmed.

a. The date of representation:

The case was tried on September 29 - 30, 1998.

b. The name of the court and the name of the judge or judges whom the case was litigated: and

United States District Court for the Eastern District of Virginia, Alexandria Division. The Honorable Leonie M. Brinkema presided at the trial.

The case was appealed to the Honorable Judges of the United States Court

of Appeals for the Fourth Circuit. The decision was rendered per curiam and without oral argument.

The individual name, address and telephone numbers of co-counsel and of counsel for each of the other parties:

My co-counsel was M. Janet Palmer, Esquire, Wilder & Gregory, 707 E. Main Street, Suite 1000, Richmond, VA 23219, (804) 643-8401. Counsel for Young was Sa'ad El Amin, Esquire, 4221 Chamberlayne Avenue, Richmond, VA 23227, (804) 264-2375.

19. 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 the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

From 1985 to January, 2001, I was general counsel to the Richmond Public Schools. I was actively involved in all aspects of education Law; representing the school administration in teacher contract disputes, student discipline hearings, personnel hearings, exceptional education due process hearings, procurement matters, premises liability, workers compensation, general tort liability and employment litigation.

From 1987 to 2001, I headed Wilder & Gregory's insurance defense practice. The firm represented State Farm Insurance, Travelers Insurance, Utica Insurance, Kemper Insurance and Companion Insurance in personal and commercial claim litigation. I tried several jury trials in insurance defense litigation. In addition, I have trained and supervised associates in trial practice in the area of insurance defense and products liability defense.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List 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. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

   I had a SEP plan with the law firm of Wilder & Gregory in the amount of $55,000. The funds are now managed by the Prudential Insurance Company. Wilder & Gregory has agreed to pay me $87,500 for my interest in the firm. This amount will be paid out over a period of three years.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

   I will not participate in any case where any party was represented by me within the last five years nor where a party is an entity of which I was a director or trustee within the last five years.

   Any cases involving Wilder & Gregory would be a potential conflict because of my financial arrangement. I will not participate in any case where Wilder & Gregory represents any party for a period of three (3) years. I am not aware of any other potential conflicts.

   I do not have any particular category of litigation or financial arrangement that would pose a conflict. In all cases, I will follow the guidelines of the Code of Judicial Conduct under 28 U.S.C. 455.

3. 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.

4. 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, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies Of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See the attached financial disclosure report required by the Ethics in Government Act of 1978.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

   See the attached net worth statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

   No.

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			**LIABILITIES**		
Cash on hand and in banks	25,000	00	Notes payable to banks-secured	0	
U.S. Government securities-add schedule	0		Notes payable to banks—unsecured	0	
Listed securities-add schedule	38,800	00	Notes payable to relatives * see note	47,500	00
Unlisted securities—add schedule	0		Notes payable to others		
Accounts and notes receivable:	7,000	00	Accounts and bills due * see supplemental statement (this amount is not included in total for liabilities)	4,000	00
Due from relatives and friends	0		Unpaid income tax	0	
Due from others	0		Other unpaid tax and interest	0	
Doubtful	0		Real estate mortgages payable—add schedule	196,000	00
Real estate owned-add schedule	400,000	00	Chattel mortgages and other liens payable	0	
Real estate mortgages receivable	0		Other debts--itemize:	0	
Autos and other personal property	23,600	00	Credit cards (total balances) * see schedule	61,300	00
Cash value—life insurance	58,000	00	Car note balance	23,000	00
Other assets—itemize:	0		Car lease agreement (7 months remaining on lease agreement)	3,500	00
Philip Morris profit sharing/cash value	180,115	00	Credit line account * see schedule	20,600	00
Prudential annuity SEP (cash value)	55,000	00			
IRA - New York Life Annuity	4,000	00			
Contingent Asset: Approximate distribution from Partnership interest in Wilder & Gregory (paid over 3 years):	72,500	00	Total liabilities	351,900	00
			Net Worth	512,115	00
Total Assets	864,015	00	Total liabilities and net worth	864,015	00
CONTINGENT LIABILITIES			**GENERAL INFORMATION**		
As endorser, comaker or guarantor	0		Are any assets pledged? (Add schedule.)	No	
On leases or contracts	0		Are you defendant in any suits or legal actions?	No	

Legal Claims	0		Have you ever taken bankruptcy?	No	
Provision for Federal Income Tax	0				
Other special debt	0				

ATTACHMENT TO NET WORTH STATEMENT

SCHEDULES

Real estate owned:

Residence in Richmond, VA	400,000

Listed securities:

John Hancock Financial Services Common Stock	32,000
Philip Morris, Common Stock	5,800
World Airways Common Stock	1,000
	38,800

Real Estate Mortgage Payable:

Wells Fargo Mortgage Co. principal balance due	196,000
*Note: (monthly payment amount)	3,100

Credit Cards (total balances)

MBNA Bank/Visa	19,000
MBNA Bank	9,000
MBNA Bank	18,200
MBNA Bank	1,500
Citi Bank	8,000
HSBC Bank	6,600
	61,300

Credit Line Account:

Bank of America	600
SunTrust Bank	20,000
	20,600

***NOTATIONS:**

*Notes payable to relatives My aunt is like a mother since my parents died and this debt is not enforced by any required installment payments.

*Accounts and bills due This amount (4,000) is the total monthly payment due on all debts listed on the Net Worth Statement as "Other debt—itemize", to wit: credit cards, credit line, car note and car lease agreement (all payments due on the debts listed below are current).

III. GENERAL (PUBLIC)

1. 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.

I was a voluntary legal aid lawyer from 1980–82
During weekly office hours in the evenings I counseled clients and took intake information from new clients.

I represented clients in court.

I was on the Board of Central Virginia Legal Aid Society from 1988 to 1994.
The Board of Directors established policies and procedures for the provision of legal services for indigent clients. In addition, the Board approved the operating budgets of the office.

1990 to 1993, I frequently appeared on a radio show called "law line" sponsored by the Central Virginia Legal Aid Society. I answered landlord /tenant and consumer protection questions of persons who called into the station during the live broadcast.

1993-1995, I was a mentor to Cigna Scholars, minority undergraduate students, at the University of Richmond who are interested in law careers.

1997-98, I was a mentor to an elementary student at Fisher Model School in the Richmond Public Schools.

Since 1997, I have provided legal services to the Black History Museum and Cultural Center of Virginia regarding construction and employment law.

I provide legal workshops and presentations to citizen groups on legal topics throughout the community using my church as a focal point.

1995 – Produced an educational documentary film based on the life of legal pioneer Oliver W. Hill.

Although I was retained to represent Pender in the aforementioned habeas case, more than half of my time was provided pro bono. I worked on this matter over the last two years, donating in excess of 80 hours.

2. The American Bar Association's Commentary to its Code of judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

I do not belong to any organizations that discriminate on the basis of race, sex or religion.

I am a member of two fraternities that have male membership, to wit: Omega Psi Phi, college fraternity, and Sigma Pi Phi, graduate fraternity.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

I am not aware of a selection commission or bar association that has recommended any candidates for this nomination to this appellate court. In this process, I was interviewed by representatives of the White House Counsel, Department of Justice, American Bar Association and the Federal Bureau of Investigation.

4, Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem—solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; end

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Judicial review must be exercised with careful reflection on the rule of law and cautious respect for judicial restraint in order to maintain the balance of power among the three branches of government.

Judicial activism is avoided when the federal judiciary exercises judicial self-restraint -- - limiting consideration to only an actual case or controversy presented, refraining from political questions, adhering to the rule of *stare decisis*, avoiding constitutional issues, honoring the presumption of constitutionality and requiring litigants to have constitutional standing. These restraints are consistent with judicial interpretation that acknowledges the resilience of the Constitution and its applicability to the governance of past, present and future generations of Americans.

Chairman LEAHY. Well, I thank you very much. I was also pleased with what you said when you mentioned your parents. I was fortunate my parents were still with us when I was sworn in the first couple times in office, and the only two reprints I have of the Congressional Record in my office are the eulogies I gave both of them on the Senate floor. And, like you, I have always felt that whatever I accomplished, it never would have happened without their initial upbringing.

Judge let's go into a question that really gets asked of everybody but we need to ask, and that is the question of stare decisis. How do you see stare decisis? Who do you see it binding? And to what extent must it bind all courts at all levels?

Judge GREGORY. Well, first, stare decisis gives the consistency and the stability in our law, particularly in our constitutional law. And if I am fortunate enough to be confirmed by this Committee and by the Senate, I will follow it and I will consider it, and not only just a task, but it is a duty and a charge that I should follow the precedent of the constitutional rule of law and the precedents set down by the Supreme Court and the precedent of the Fourth Circuit.

So I consider as a judge I am bound by that, and as an intermediate appellate court, those are my marching orders, if you will, the rule of law and the precedents set down by the Supreme Court, and I follow that.

Chairman LEAHY. Well, suppose you have a case where you have a Supreme Court precedent, and you look at it and you do not personally agree with it, but it is a Supreme Court precedent. I am not talking about the Fourth Circuit or any other circuit, but a Supreme Court precedent and you do not agree with it. Do you have to follow it?

Judge GREGORY. I have to follow it and I will follow it.

Chairman LEAHY. A more difficult course is when you have to do a statutory interpretation. How do you determine—I mean, I suppose you have a case of first impression, but it involves basically interpretation of a statute. How do you determine congressional intent? Because sometimes our statutes up here are drawn just because of the nature of going through the legislative process of compromise and all, and it may not be quite as clear as you or other judges might like. Do you go into legislative history? How do you determine that?

Judge GREGORY. Well, first of all, Mr. Chairman, in the rare case that it really is a case of first impression, I think the first response is to my clerks: Go back and look again. Are you sure? Because it is rare.

But if, in fact, it is a case of first impression and there is no precedent, I would look for analogous precedent, other cases that speak to guidance in that regard. So I would look for analogous law. And if it is statutory law, I follow the plain language, because Article I, Section 1 of the Constitution says all legislative powers granted herein is in the Congress. Therefore, it is not to make the law. So, therefore, I would look to analogous precedent and the letter of Congress, because I believe what Congress meant, Congress said in the statute.

So that is what I would do, analogous precedent and look at the plain language of the statute or the Constitution itself if it is an constitutional question.

Chairman LEAHY. I agree with you that an issue of first impression is probably not too apt to happen, but it is more apt to happen if we pass something really controversial and your circuit is the lucky one that gets the first test case on it.

Senator Edwards?

Senator EDWARDS. Thank you, Mr. Chairman. And thank you, I look forward very much to serving on this Committee and working with the chairman and the ranking member, this Committee that does so much important work.

Judge Gregory, I appreciate your introducing all your family members and your law clerks, and I particularly appreciate your reference to your parents. I know they were proud of you. I know they would be very proud of you if they were here today.

And I want to tell you that I have spoken to many lawyers and judges who know you well, and not just recently but also in the past when you were originally under consideration by the President. And you are held in uniform high regard with every single lawyer, every single judge that I spoke to about you. And you are well respected, hard-working, knowledgeable in the law, somebody who, as you said a moment earlier, does not make law but applies the law in a very fair, evenhanded fashion. I heard the same thing from every single person I talked to about you. No one could have come to this Committee with higher marks than you, I can tell you that.

And it goes without saying that both your Senators have shown up and Congressman Scott also showed up to speak on your behalf. So we are proud to have you here.

I also might add from my perspective, and I hope the perspective of many others, that this is a historic moment. And your confirmation, which I am satisfied will occur, will also be a historic moment.

The Fourth Circuit Court of Appeals that serves your State and my State has, I think, the largest African-American population of any circuit court in the country, and it is such a positive thing in our Nation's history that we now have a well-qualified, well-respected African-American judge sitting on the Fourth Circuit. So I think it is an important moment for you, an important moment for your family, but I also think it is an important moment for our country.

I cannot tell you how pleased I am. I was pleased when the President did the recess appointment of you. I am pleased that you have been renominated by President Bush, and I congratulate him for doing that and having the wisdom and good judgment to do it. And I know you are going to serve this court and the people of this circuit, not just your State but all of the States of the circuit, well.

I can tell you without qualification I will feel very good about any of my 8 million people in the State of North Carolina who appear before you on any matter that they have in that court. So we are very pleased, very, very pleased to have you here, and I think it is an important moment for you, for your family, and also for the country.

I also want to add just for my colleagues' benefit that we have had some difficulty over the past several years in getting judges from the State of North Carolina a hearing and confirmation votes on the floor of the Senate for the Fourth Circuit. As a result, our State, which—as much as I love Virginia, our State, which is the largest State in the circuit, has no representation on the court. And I have been having constructive conversations with the White House about working together to find a way to fill those vacancies. As recently as yesterday, I had a conversation with the White House Counsel about that issue. I will continue to talk with them. We want very much for our State to be represented on the Fourth Circuit and to be represented with the kind of quality that you bring to the bench.

Hopefully we will be able to get some folks from North Carolina nominated that will be able to serve alongside you and provide you with the support and help that you need. And I feel optimistic about that based on the conversations that we have had.

But, more importantly today, I just want to congratulate you. I do not have any questions for you. I already know you are ready for this job. You have been doing it, and you are ready to go on to confirmation. We are proud for you and proud for the country.

Thank you, Judge.

Judge GREGORY. Thank you very much, Senator Edwards.

Chairman LEAHY. Thank you. To continnue this tough adversarial cross-examination you are receiving, Judge, we will now go to Senator Cantwell of Washington State.

Senator CANTWELL. Thank you, Mr. Chairman. I do also want to welcome Judge Gregory here today. I am pleased that President Bush took a look at your qualifications and decided to renominate you to the Fourth Circuit. I was not here earlier, but I am glad to see that the Senators from Virginia were also here on your behalf.

I do believe that it is important to have diversity on the circuit courts, not just in philosophy but in background, and I believe that you will add a lot of diversity and experience to the Fourth Circuit.

So, like my colleagues, Mr. Chairman, I do not have questions for Mr. Gregory, but I very much appreciate this nomination and our ability to move forward on it quickly.

Chairman LEAHY. Thank you.

Judge Gregory, normally with the last question, that would be the last question of this afternoon. I do, though, because of the close working relationship and friendship that Senator Hatch and I have, I know that it was an official duty that took him off the Hill connected with his former role as chairman. And I am going to ask at this point, sir, if you could step down but stay here until Senator Hatch comes back should he have further questions. Obviously, the record will stay open for a couple days for any member, but if you would not mind doing that, sir, I would ask if you might rejoin your family, and I would bring Richard Cebull up for his hearing.

Judge GREGORY. Thank you, Mr. Chairman. I would be pleased to.

Chairman LEAHY. Why don't we have both Mr. Haddon and Judge Cebull come on up here? Judge Cebull and Mr. Haddon, come and join us, and why don't I swear you both at the same time.

Do you swear that the testimony you are about to give before this Committee will be the truth, the whole truth and nothing but the truth?

Judge CEBULL. I do.

Mr. HADDON. I do.

Chairman LEAHY. Please be seated.

Judge Cebull, you might want first to introduce your family so that we have them in the record.

STATEMENT OF RICHARD F. CEBULL, OF MONTANA, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF MONTANA

Judge CEBULL. Thank you, Mr. Chairman. I too married above and beyond myself, and that is fortunate. Unfortunately, she was not able to be here, but she is supporting me.

Chairman LEAHY. I am sure she is.

Judge CEBULL. Thank you, as are my children and my grandchildren.

Chairman LEAHY. But I wanted you to at least be able to refer to them so someday they will see that in the record, sir.

Judge CEBULL. All right. My son Brian and daughter Katie—Katie lives in Denver with her children and husband, and Brian lives in Billings. And I would have had to rent a van, I think, to get them all here. But they are here.

Chairman LEAHY. I am glad you are here, sir. Thank you.

Judge CEBULL. Thank you.

Chairman LEAHY. Mr. Haddon?

STATEMENT OF SAM E. HADDON, OF MONTANA, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF MONTANA

Mr. HADDON. Thank you, Mr. Chairman. I do have one person with me today, my wife Betty, who has been the cornerstone of my life for the last 42 1/2 years.

Our three children—Elizabeth, Steven and Allison—and their spouses and families are occupied elsewhere, but they have all assured us that they are here in spirit.

Chairman LEAHY. Mr. Haddon, you were fortunate enough to marry a registered nurse, I understand.

Mr. HADDON. That is correct.

Chairman LEAHY. Not a bad thing to do. It has worked in the Leahy family for 39 years.

Mr. HADDON. It has certainly worked in our family, and one of our daughters has followed in her mother's steps and is also a nurse practitioner.

Chairman LEAHY. That is wonderful. Please take a seat, sir.

I will start with you, Judge Cebull. In a case last year, called *Lozeau* v. *Lake County, Montana*, you ruled that inmates bringing a lawsuit to affect prison conditions under the Prison Litigation Reform Act were entitled to attorney's fees, even though the suit settled out of court rather than proceeding to judgment.

This term—and it was a controversial 5–4 decision—the Supreme Court made the opposite ruling, holding that the party that has failed to secure a judgment on the merits or a court-ordered consent decree is not the prevailing party and may not receive attorney's fees. A very strong dissent in that case took basically the po-

sition you did. Your opinion tracks Judge Ginsburg's dissent in this West Virginia case, an opinion you had issued earlier.

So have you changed your view of what the law requires on what it means to be a prevailing party when you petition for attorney's fees?

Judge CEBULL. Yes, Mr. Chairman. I followed Ninth Circuit precedent in my ruling, and I think it was back in April of 2000. And I did hold, pursuant to Ninth Circuit authority, that the prevailing party included the catalyst theory. And I am aware of that May 29, 2001, U.S. Supreme Court decision that says, no, it doesn't.

Chairman LEAHY. So you would take the same position that Judge Gregory took earlier that the Supreme Court gets the final word?

Judge CEBULL. Absolutely, and the Ninth Circuit, who is my intermediate appellate court, yes, sir.

Chairman LEAHY. But you must take some satisfaction in knowing a very strong dissent took the same position you did. You don't have to answer that, Judge.

[Laughter.]

Judge CEBULL. It offers little solace.

Chairman LEAHY. You have had quite a bit of experience already has a factfinder and a decisionmaker. You were a trial judge in the Northern Cheyenne Tribal Court. You were a settlement master. You have been a U.S. Magistrate for the last three years.

Those of us who have practiced law know that we have a system that would totally collapse in the Federal court system if we didn't have the magistrates. But how do you anticipate it is going to be different sitting as an Article III judge?

Judge CEBULL. The main difference, Mr. Chairman, will be the volume and type of criminal cases. Now, I handle only misdemeanor, up through a Class A misdemeanor, and as an Article III judge I will be handling all of the Federal felony criminal cases in my district, if I am honored by this Committee and confirmed by the Senate.

Chairman LEAHY. Mr. Haddon, I look at your background and you have been in a lot of different bar activities that have improved the profession. You have been active, and I will probably leave some of these out, but the American College of Trial Lawyers, the American Academy of Appellate Lawyers, the ABA, the American Judicature Society, the American Law Institute, the American Bar Foundation. You were on an advisory commission making recommendations to your State supreme court about the standards for admission to practice in Montana.

You were Chair of a commission to study and suggest revision to the State's laws of evidence. You have served on the Montana Supreme Court's Commission on Practice, which I understand has ethic complaints and others that go before that.

Now, a judge, of course, has some restrictions, obviously, both time but also professionally. But would you see, though, that it would be possible also as a sitting Federal judge to still take part in appropriate bar associations or professional legal associations?

Mr. HADDON. Yes, Mr. Chairman. I would, of course, be guided by whatever the constraints are that would apply to any sitting

judge, but it would certainly be my hope to continue to be active, where appropriate, in matters related to the advancement of our profession.

Chairman LEAHY. Mr. Haddon, you have a lot of litigation experience, but I notice that it is virtually all civil.

Mr. HADDON. That is correct.

Chairman LEAHY. And yet the criminal jurisdiction of the Federal courts expands all the time. In fact, in some places it overwhelms it almost to the extent that you can't get a civil case heard. So it would be safe to assume you are going to be handling a lot of criminal cases.

Do you anticipate any difficulty in getting prepared for that type of law?

Mr. HADDON. Mr. Chairman, I would not anticipate difficulty. I would certainly anticipate a challenge and an obligation to work diligently with the other judges who would be available, to take advantage of the materials that the Administrative Office of the United States Courts has available, and to, as necessary, go back to school to learn what it means to handle a significant criminal caseload.

Chairman LEAHY. In fact, you know, Mr. Haddon, you said something there that kind of makes me think of this. This could be the same in any profession, but in one way or another every judge can go back to school all the time.

I mean, obviously when a case comes before you, you are going to have the advantage of having superb law clerks, but to read that, to go back to reeducate yourself, to take advantage of the various publications; both of you, for that matter.

I have always thought in the job that I have, in some ways it is like going back to school all the time, and that is really one of the most exciting parts about it. All the best judges I know look forward to that part of it, to basically reeducate themselves on new points of law all the time.

Mr. HADDON. I certainly consider it an exciting challenge.

Chairman LEAHY. I can imagine it will be.

Senator Cantwell?

Senator CANTWELL. Thank you, Mr. Chairman. I also have questions for Mr. Haddon.

You mentioned in your paperwork about pro bono work that you did representing members of the Flathead Nation. Could you elaborate on that?

Mr. HADDON. Yes, Ms. Cantwell. I have not done a great deal of that. That is a relatively new program that was set up on the Flathead Reservation. I was asked to become a member of the bar of that court, and solicited by, or at least given the opportunity to make myself available to do pro bono work for the disadvantaged folks up on the reservation, and I have done that on a limited basis.

I have been asked on perhaps four or five occasions to give advice to tribal members who have had difficulties at one level or another with some matter, very little court work. Most of it has been private consultations with clients.

Senator CANTWELL. So it was advice in four or five different cases?

Mr. HADDON. Yes.

Senator CANTWELL. Do you believe in tribal sovereignty, Mr. Haddon?

Mr. HADDON. I beg your pardon?

Senator CANTWELL. Do you believe in tribal sovereignty?

Mr. HADDON. I'm sorry. I missed the last—

Senator CANTWELL. Do you believe in tribal sovereignty?

Mr. HADDON. Well, certainly the United States Supreme Court and our treaty system have recognized a substantial measure of tribal sovereignty. I believe that what the Court has said and what the treaties that have been written and are a part of our history say about the role and responsibility of tribal law and the status of Native Americans is a part of our history. It is a part of the body of law that we observe, and it is as significant in its way as any other part of our legal system.

Senator CANTWELL. I know that you were active in the 1970s, I believe, on behalf of the State at that time, a case that went to the U.S. Supreme Court. You represented the State of Montana in *Moe* v. *Confederated Salish and Kootenai Tribes*. That was an issue of challenging tribal immunity on, I think, an issue of State taxes maybe related to cigarettes.

Mr. HADDON. That is correct.

Senator CANTWELL. Could you expand in your involvement?

Mr. HADDON. I was asked to participate in that case as a special assistant attorney general on behalf of the State. The case was tried before a three-judge panel, a three-judge court.

The basic position of the Confederated Tribe was that the State of Montana had no authority to tax the sale of cigarettes that were sold by tribal members on the reservation. The position of the State of Montana was just the opposite. The tribes also took the position that the State of Montana could not prosecute individuals who purchased such non-tax-paid cigarettes and took them off the reservation.

The three-judge court ruled in favor of the tribes on the issue of taxation, ruled in favor of the State of Montana on the capacity of the State to impose its criminal laws upon individual who purchase such cigarettes and removed them from the reservation. And the United States Supreme Court, following hearing and argument, affirmed the decision of the three-judge panel.

Senator CANTWELL. Is that the only case that you were involved in representing the State against a tribal nation?

Mr. HADDON. Yes, it is.

Senator CANTWELL. And that was in what capacity?

Mr. HADDON. I was designated as a special assistant attorney general for the State.

Senator CANTWELL. Thank you. That is all the questions I have, Mr. Chairman.

Chairman LEAHY. Thank you.

Well, gentlemen, again this has been an exercise in rigorous cross-examination of both of you. I suspect you will survive. Again, I will ask you, while we call Ms. O'Connor up, for the same reason as I did for Judge Gregory if you might sit back. I hope we will wrap this up fairly soon, but if you could still stay and be available for other members of the committee.

Judge CEBULL. Thank you. May I thank you on behalf of us both for providing this hearing and the honor of being here.

Chairman LEAHY. Well, thank you very much, Judge Cebull. I appreciate that. As I said, I noticed these hearings less than 10 minutes after we finally got the Senate reorganized. I intend to move forward vigorously, as much as the Senate schedule will allow us, on these. But I also know the situation you have with Judge Molloy kind of feeling home alone.

Judge CEBULL. Right.

Chairman LEAHY. You can call him once we finish this and tell him that help is on its way.

Judge CEBULL. Thank you.

Mr. HADDON. Thank you very much, Mr. Chairman.

Chairman LEAHY. Thank you.

[The biographical information of Judge Cebull and Mr. Haddon follow:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name (include any former names used.)**
   Richard Frank Cebull

2. **Address: List current place of residence and office address(es).**
   Residence: Vaughn, MT Office: 215 1st Avenue North, Rm. 221
   Great Falls, MT 59401

3. **Date and place of birth.** March 18, 1944. Billings, Montana.

4. Marital Status **(include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).** Linda Kay Cebull. Certified Public Accountant. Not employed outside of home at present time.

5. Education: **List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**
   Montana State University, 1962-1964.
   Eastern Montana College, 1964-1965.
   Montana State University, 1965-1966. Bachelor of Science, June 1966.
   University of Montana School of Law, 1966-1969. Juris Doctor, June 1969.

6. Employment Record: **List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

   United States Magistrate Judge, Montana District, 1997 - Present.

   Brown, Gerbase, Cebull, Fulton, Harman & Ross, P.C., P.O. Drawer 849, Billings, MT 59103-0849, 1972-1997. Shareholder and Secretary.

   Longan & Holmstrom, Billings, MT, 1969-1972. Associate.

   In addition to the legal partnership noted above, I remain a partner in a law firm related partnership known as CSA Partnership which owns rental property. In addition, I was a partner in another firm related partnership known as BCA Partnership, and my interest is currently being purchased. Finally, I was a limited and minimal partner in a land-owning real estate partnership known as NGV Partners, from approximately 1985-1991, but this partnership no longer exists.

   Board of Directors, Midland Empire Horse Show Association, Billings, MT, 1975-1980, Member and President.

Board of Trustees, State Bar of Montana, 1977-1980. Member

Summer employment during years at Law School following graduation from college:
1968 - Missoula City Attorney Office, Missoula, MT, Summer Intern
1967 - Camp Well Drilling Company, Missoula MT, Driller

7. **Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.**
No.

8. **Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.**
1. Highest rating in Martindale-Hubbell Directory, A-V.
2. Selected to appear in all editions of Naefeh & Smith's "Best Lawyers in America" from 1987-1997.
3. Selected as a charter member of the Montana Chapter of American Board of Trial Advocates (ABOTA Advocate).
4. Lawyer Delegate to the Ninth Circuit Judicial Conference, 1985-87.
5. Appointed to the Montana Supreme Court Commission on Civil Jury Instructions, 1985-Present.
6. Chairman, Civil Justice Reform Act Advisory Group.
7. Selected and served as faculty member of the annual Advanced Trial Advocacy Program at the University of Montana School of Law since 1991 (excluding 1998-99).
8. Elected as a Fellow of the American College of Trial Lawyers in 1993. State Nomination Committee from 1995-97.
9. Elected as a Fellow of the International Academy of Trial Lawyers in 1994.
10. Burton K. Wheeler Scholarship (1968, University of Montana Law School).

9. **Bar Associations: List all bar associations, legal or judicial-related committees 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.**
1. Yellowstone County Bar Association (President 1992-93).
2. State Bar of Montana (Trustee 1977-80).
3. Montana Defense Trial Lawyers Association (approximately 1980-97).
4. Federation of Insurance & Corporate Counsel (1976-97).
5. American Board of Trial Advocates (Advocate).
6. Fellow, American College of Trial Lawyers.
7. Fellow, International Academy of Trial Lawyers.
8. Chairman of the Federal Practice Section, State Bar of Montana from approximately 1990-92.
9. Montana Supreme Court Commission on Civil Jury Instructions.
10. Chairman, Civil Justice Reform Act Advisory Group.

10. **Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.**

1. Rocky Mountain Elk Foundation. (Bylaws attached)
2. National Rifle Association. (Bylaws attached)
3. Elks Club, Billings, Montana (Note: I have not paid dues to this organization for the last three years. I am not a member in good standing and have requested that my name be removed from their membership rolls).

11. **Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.**
1. Supreme Court and all Montana State District Courts, June 1969.
2. United States District Court, District of Montana, June 1969.
3. United States Court of Appeals, Ninth Circuit, 1972.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them. I have lectured at numerous seminars during my years in practice, ending in December 1997. The seminars are listed below to the best of my recollection. I have spoken at other seminars not listed below but am unable to locate final notes or outlines of my presentations. These seminars addressed various aspects of trial practice. Available copies of the speeches, programs or relevant documents listed below are attached.

1. On August 26, 1988, I was a speaker on a subject entitled "Confronting Damages: Legal, Medical and Philosophical Perspectives"at a Montana Defense Trial Lawyers ("MDTL") seminar in Billings, Montana.
2. On November 3-4, 1988, I was a speaker on a subject entitled "The Defendant's Effective Utilization of Voir Dire"at the MDTL annual meeting in Missoula, Montana.
3. On March 3, 1989, I was a speaker on the subject of "Effective Voir Dire" at the MDTL annual meeting in Missoula, Montana.
4. I was a speaker at the MDTL seminar held in Billings, Montana on August 26, 1989 entitled "Confronting Damages." I spoke on the subject of cross-examination.
5. On August 1-4, 1990, I was a speaker in Polson, Montana on the subject of Medical Malpractice Defense at the Montana Trial Lawyers Association ("MTLA") annual meeting at a seminar entitled "Seminar of the Masters."
6. On June 2-9, 1991; May 31-June 4, 1992; May 30-June 3, 1993; May 29-June 2, 1994; May 20-24, 1996; May 19-23, 1997; and May 22-25, 2000 I was a faculty member of the Advanced Trial Advocacy Program at the University of Montana School of Law in Missoula, Montana. On May 26, 1999, I was a speaker on "Settlement Conferences" at the aforesaid program.
7. On June 21, 1991, I was a member of a panel at a Continuing Legal Education ("CLE") Institute program in Billings, Montana entitled "Professionalism."

8. On October 11, 1991, I was a speaker at a CLE Institute program in Missoula, Montana entitled "Current Issues in Federal Practice."
9. On June 18, 1992, I was a speaker on a subject entitled "Background on the Civil Justice Reform Act of 1990: Reasons for adoption of the new rules and an explanation of the most important and controversial rules.
10. On July 21, 1995, I was a speaker in Polson, Montana on a subject entitled "Voir Dire Demonstration" at the Montana Trial Lawyers Association ("MTLA") annual meeting at a seminar entitled "Seminar of the Masters."
11. On October 10, 1997, I was a speaker at an MTLA seminar in Great Falls, Montana entitled "Building the Damages Case: A Nuts and Bolts Approach."
12. On July 30-31, 1998, I was a speaker in Polson, Montana at the Montana Trial Lawyers Association ("MTLA") annual meeting at a seminar entitled "Seminar of the Masters."
13. I was and am a member of the Montana Pattern Jury Instruction Commission, thereby an author of the civil jury instructions utilized in State and Federal district courts. (One copy attached)
14. I was the Chairman of the Civil Justice Reform Act Advisory Group, thereby an author of the District of Montana Local Rules.

13. **Health: What is the present state of your health? List the date of your last physical examination.** Excellent. I received a general physical examination on March 22, 2001.

14. **Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.**
1. From approximately 1970-72, I was a Trial Judge, Northern Cheyenne Tribal Court, Lame Deer, Montana. I was appointed to this office. My jurisdiction was limited to criminal trials of tribal members charged with violating tribal ordinances.
2. From February 2, 1998 to the present, I have been a United States Magistrate Judge in the District of Montana, Great Falls Division. I was selected for this office by the United States District Court Judges for the District of Montana. A Magistrate Judge exercises the jurisdiction of the District Court, delegated by the United States District Judges of the District pursuant to 28 U.S.C. § 636 and the Local Rules of Court. In general terms, jurisdiction over criminal matters is limited to initial appearances on complaints or an information, preliminary examinations, detention (bond) hearings, arraignments on indictments, all petty offenses and misdemeanors except for Class A misdemeanors which can be handled through consent of the parties, and all matters referred by the District Judge. Civil Jurisdiction is the same as a District Judge upon consent of the parties. Also, a Magistrate Judge has jurisdiction over all civil matters referred by the District Judge for disposition without the consent of the parties.

15. **Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written;**
    1. Noble v. Shopko, CV-00-001-GF-RFC (D. Mont. 2000).
    2. Van Haur v. Canyon Resources Corp., 26 M.F.R. 411 (1999).

3. Holm v. First Healthcare Corp., 24 M.F.R. 143 (1998).
4. Gaines v. Apfel, 25 M.F.R. 285 (1999).
5. Scheet v. U.S. West Communications, Inc., 27 M.F.R. 321 (2000).
6. 3 Rivers Tel. Coop., Inc. v. U.S. West Communications, Inc., 125 F.Supp.2d 417 (D. Mont. 2000).
7. Blackfeet Tribe of the Blackfeet Indian Reservation v. Blaze Construction, Inc., 108 F.Supp.2d 1122 (D. Mont. 2000)
8. Lozeau v. Lake County, Montana, 98 F.Supp.2d 1157 (D. Mont. 2000).
9. Bloxham v. Mountain West Farm Bureau Mut. Ins. Co., 43 F.Supp.2d 1121 (D. Mont. 1999).
10. Carlson v. State Farm Mut. Auto. Ins. Co., 76 F.Supp.2d 1069 (D. Mont. 1999).

(2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and

One of my decisions was reversed by the Ninth Circuit Court of Appeals. In an appeal of the denial of Social Security benefits by an Administrative Law Judge ("ALJ"), I ruled that substantial evidence existed in the record to support a finding that the petitioner could perform jobs in the unskilled, light exertional level range. The Ninth Circuit disagreed, holding that the petitioner could only perform these tasks if he responded appropriately to treatment for a mental condition, and that insufficient evidence existed to support the conclusion that he had made such a response. Wetzel v. Secretary of Health and Human Services, 225 F.3d 666 (9th Cir. 2000).

Also, on one occasion during my three years as a United States Magistrate, an Article III Judge has failed to adopt my Findings and Recommendations on a dispositive motion. The case involved an appeal of a denial of benefits by the Social Security Administration. I recommended that the summary judgment motion by the Commissioner of Social Security be granted and that the decision of the Administrative Law Judge ("ALJ") denying benefits be upheld. While not addressing that part of my findings and recommendations dealing with the reasons for the ALJ's denial, Chief Judge Donald Molloy did not adopt the Findings and Recommendations. Judge Molloy remanded the case to the Social Security Administration based upon his finding that the petitioner's rights to due process had been violated since he was not informed of his right to request advance payment for transportation costs to the hearing before the ALJ. *Strange v. Commissioner of Social Security*, CV-99-134-GF-DWM, United States District Court (Montana).

(3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. None.

If any of the opinions listed were not officially reported, please provide copies of the opinions.

Copies provided.

16. <u>Public Office</u>: **State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.** None.

17. <u>Legal Career</u>:

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

1. **whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;** I did not serve a clerk.

2. **whether you practiced alone, and if so, the addresses and dates;** I did not practice alone during my legal career.

3. **the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;**

Brown, Gerbase, Cebull, Fulton, Harman & Ross, P.C., P.O. Drawer 849, Billings, MT 59103-0849, 1972-1997. Shareholder.

Longan & Holmstrom, Billings, MT, 1969-1972. Associate.

b. 1. **What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?** In my early years with Longan & Holmstrom, I represented individuals and small businesses. My practice areas included estate planning, divorce proceedings, personal injury and other general practice. When I joined the law firm of Anderson, Symmes, Forbes, Peete & Brown (the predecessor to the law firm of Brown, Gerbase, Cebull, Fulton, Harman & Ross, P.C.), I represented individuals and businesses on behalf of insurance companies in the defense of personal injury and product liability cases. Beginning in approximately 1983, I specialized in the defense of professional liability cases, primarily for physicians and other medical professionals and, on occasion, clinics and hospitals who allegedly were involved in a professional liability case. As a practicing attorney, from approximately 1994-1997, in addition to my caseload, I served as a settlement master or mediator in approximately 75-100 cases involving minor and complex civil litigation.

2. **Describe your typical former clients, and mention the areas, if any, in which you have specialized.** I represented individuals and businesses on

behalf of insurance companies in the defense of personal injury and product liability cases. Beginning in approximately 1980, I specialized in the defense of professional liability cases, primarily for physicians and other medical professionals and, on occasion, clinics and hospitals who allegedly were involved in a professional liability case. During this period, I also represented lawyers charged with professional negligence.

c. 1. **Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearance in court varied, describe each such variance, giving dates.** Prior to being selected as a United States Magistrate Judge, I appeared in court frequently.

2. **What percentage of these appearances was in:**

(a) **federal courts:** 10%

(b) **state courts of record:** 90%

(c) **other courts:** 0%

3. **What percentage of your litigation was:**

(a) **civil:** From 1969 to 1972, my practice was approximately 60% civil litigation and 20% general legal practice. From 1972 to my taking the bench as United States Magistrate Judge in February of 1998, my practice was 100% civil litigation.

(b) **criminal:** From 1969 to 1972, my practice was approximately 20% criminal litigation. From 1972 to my taking the bench as United States Magistrate Judge in February of 1998, my practice was 0% criminal litigation.

4. **State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.** Sole Counsel: approximately fifteen to twenty. Chief counsel: approximately twenty to twenty-five. Associate counsel (co-counsel): approximately twenty to thirty.

5. **What percentage of these trials was:**

(a) **jury:** 95%

(b) **non-jury:** 5%

18. **Litigation: Describe the ten most significant litigated matters which you personally handled. 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.

I have tried numerous cases that I believe involved significant legal matters. Many of those cases were never appealed. The following cases represent ten of the most significant legal actions which I personally handled.

1. Plumb v. Fourth Judicial District Court, 927 P.2d 1011 (Mont. 1996) had a significant practical impact on the manner in which medical malpractice cases were defended in Montana. I represented Dr. Timothy Adams as amicus curiae before the Montana Supreme Court in the Defendant's application for a writ of supervisory control.

The Plaintiff suffered injuries as a result of a slip and fall in the Defendant's store in Missoula, MT. The Plaintiff sought treatment for her injuries from Dr. Adams. The Defendant subsequently claimed that the Plaintiff's injuries would have been very minor had it not been for the negligent medical treatment afforded to the Plaintiff by Dr. Adams.

The Montana Statute involved, Montana Code Annotated § 27-1-703, permitted the Defendant to name Dr. Adams as a "nonparty" defendant. Dr. Adams was not a party to the lawsuit. This statute was declared unconstitutional by the Montana Supreme Court on the grounds that, while the State has a legitimate interest in enacting a scheme of liability which apportions liability for damages based on the degree of a party's fault for another person's injuries, the nonparty defense provided for by the 1995 amendments to Section 27-1-703 are not rationally related to that legitimate governmental objective.

In explaining the practical problems that the unconstitutional statute generated, I explained to the Montana Supreme Court during oral argument the difficulties created for an effective defense of a physician by the existence of the statute. The statute allowed a defendant to allege that the plaintiff's injuries were caused or aggravated by the treating physician's medical treatment (the nonparty defendant). Lawyers representing physicians named as defendant's for medical negligence claims were placed in a quandary: the defense lawyer, in counseling his defendant client regarding settlement, was duty bound to advise the physician that settlement of the claim, even for "nuisance value," may not end the physician's exposure to subsequent "nonparty" defendant claims.

I was required to advise physician clients that even if the client settled a lawsuit against him or her, a defendant in any underlying negligence action brought by the plaintiff for initially causing the injury could name the physician as a "nonparty" defendant. Thus, the physician would be in a position where he or she has settled a

medical malpractice claim and could, in the future, suffer the repercussions of bad publicity and damage to his or her reputation without the ability to defend against the charges of professional incompetence. This could occur even if the plaintiff never sued the physician but he or she was still a nonparty defendant.

Thus, the physician's absence from the case as a party defendant created an inability to defend him/herself. The Montana Supreme Court agreed with my position and reversed and remanded the lower court's opinion.

Date of representation: 1996. **The name of the court and the name of the judge or judges before whom the case was litigated:** Montana Supreme Court: Justice Trieweiler, Chief Justice Turnage, Justice Nelson, Justice Gray, Justice Leaphart, and District Court Judge John C. McKeon sitting by designation. **The individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.** Co-counsel for Dr. Adams: Tiffany Lonnevik, P.O. Box 1784, Kalispell, MT 59901, 406-257-3350. Counsel for Plumb: Greg Morgan, P.O. Box 10338, Bozeman, MT 59719, 406-586-0576. Counsel for Plumb: Robert Cameron, P.O. Box 1697, Helena, MT 59624, 406-443-6820. Counsel for Southgate Mall: Dan Spoon, P.O. Box 9019, Missoula, MT 59807, 406-721-8488 and John Alke, P.O. Box 1166, Helena, MT 59624, 406-442-3690. Counsel for CBI Services, Inc.: Robert L. Sterup, P.O. Box 7188, Billings, MT 59102, 406-252-3800.

2. Silvis v. Hobbs, 824 P.2d 1013 (Mont. 1992). This was a case involving injury to an infant that alleged negligence on the part of my client obstetrician Dr. John Hobbs, Jr. M.D., and Saint Vincent Hospital resulting in cerebral palsy in Cassandra Lee Silvis, daughter of the Plaintiff, Susan Silvis. After a trial spanning approximately thirteen days, the jury found that Dr. Hobbs and the hospital did not act negligently in their care of mother Susan.

The Plaintiffs appealed the verdict claiming it was not supported by substantial evidence. The Montana Supreme Court affirmed the jury's verdict declaring that the Appellate Court could not retry the case or disturb the jury's findings unless the findings were inherently impossible or improbable as not to be entitled to belief.

Date of representation: Approximately 1992. **The name of the court and the name of the judge or judges before whom the case was litigated.** Thirteenth Judicial District Court, Yellowstone County, Billings, MT, the Honorable Robert Holmstrom presiding; Montana Supreme Court: Justice Harrison, Chief Justice Turnage, Justice Gray, Justice Trieweiler, and Justice Hunt. **The individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.** I was chief counsel in the case for Dr. Hobbs and I was assisted by my associate, John J. Russell, P.O. Drawer 849, Billings, MT 59103, 406-248-2611. Counsel for co-defendant Saint Vincent's Hospital: Robert Brown and Brendon Rohan, P.O. Box 2000, Butte, MT 59702, 406-497-1200. Plaintiff's counsel: William Trine, 1435 Arapahoe Avenue, Boulder, CO. 80302, 303-442-0173; A. Clifford Edwards, P.O. Box 20039, Billings, MT. 59104, 406-256-8155.

3. McCain v. Batson, 760 P.2d 725 (Mont. 1988). This was an action brought against my client Dr. John Batson, a Wyoming physician, to recover damages for alleged

negligent treatment of the Plaintiff rendered as a "good Samaritan." I moved for summary judgment in favor of Dr. Batson under the Montana Good Samaritan statute, Montana Code Annotated § 27-1-714, and the motion was granted on February 4, 1988. The Plaintiff appealed the judgment. This case represented only the sixth occasion where a court in any jurisdiction had applied the Good Samaritan statute to a medical malpractice claim up through 1981. The Montana Supreme Court ruled, in summary, that my client had merely provided temporary first aid to the Plaintiff and the standard of proof required evidence of gross negligence rather than ordinary negligence.

Date of representation: Approximately 1986-88. **The name of the court and the name of the judge or judges before whom the case was litigated**: Eighth Judicial District Court, Gallatin County, MT, the Honorable Joseph Gary presiding. Montana Supreme Court: Justice Harrison, Chief Justice Turnage, Justice Gray, Justice Sheehy, and Justice Hunt. **The individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.** I was the sole counsel in the case for Dr. Batson. Plaintiff's counsel: James J. Screnar, 125 West Mendenhall, Bozeman, MT 59715, 406-586-1926.

4. Degnan v. Executive Homes, Inc., 696 P.2d 431 (Mont. 1985). I represented Walter and Carol Degnan asserting that the implied warranty of habitability applied to a home constructed on unstable ground. The Plaintiff contracted for Defendant Executive Homes for construction of the home who in turn employed Defendant Mora Bros., Inc. as the builder. The Montana Supreme Court, in affirming summary judgment in favor of the Plaintiffs, ruled that Mora Bros. was the builder-vendor of the home and breached the implied warranty of habitability. This case was the first to declare that unstable ground beneath a home is a defect under the implied warranty of habitability.

Date of representation: Approximately 1983-85. **The name of the court and the name of the judge or judges before whom the case was litigated**: Thirteenth Judicial District Court, Yellowstone County, Billings, MT, the Honorable Charles J. Luedke presiding. Montana Supreme Court: Justice Morrison, Justice Harrison, Chief Justice Turnage, Justice Weber, Justice Sheehy, Justice Hunt and Justice Gulbrandson. **The individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties**: I was the sole counsel in the case for Degnan's. Counsel for Defendant Mora Bros.: Ward Swanser (deceased), P.O. Box 2559, Billings, MT 59103, 406-248-7731. Counsel for Defendant Executive Homes: McGimpsey & Bacheller, P.O. Box 1500, Billings, MT 59103, 406-259-8299. Counsel for Defendant Charles Gamble: Peterson, Schofield & Leckie, 1645 Parkhill Drive, #6, Billings, MT 59102, 406-252-6679.

5. Slagsvold v. Johnson, 544 P.2d 442 (Mont. 1975). My co-counsel Weymouth Symmes and I represented and defended Mr. C. Allan Johnson in this wrongful death and survivorship action. Esther Johnston died as a passenger in an automobile which was involved in a collision with an automobile driven by our client. The trial court granted our motion for a directed verdict and the Montana Supreme Court affirmed. The Supreme Court held that, as a matter of law, the Defendant acted within the standard of conduct required of automobile drivers in such situations.

Date of representation: 1974-75. **The name of the court and the name of the judge or judges before whom the case was litigated**: Thirteenth Judicial District Court, Yellowstone County, Billings, MT, the Honorable Robert H. Wilson presiding. Montana Supreme Court: Justice Castles, Chief Justice Harrison, Justice Harrison, Justice Haswell, and Justice Daly. **The individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties**: Co-counsel: Weymouth Symmes (deceased), P.O. Drawer 849, Billings, MT 59103, 406-248-2611. Plaintiff's co-counsel: Richard Simonton, Dawson County Courthouse, P.O. Box 1249, Glendive, MT 59330, 406-377-2666. Plaintiff's co-counsel: Dale Cox (deceased and former address unknown).

6. Keebler v. Harding, 807 P.2d 1354 (Mont. 1991). I represented Allen Keebler and his wife Betty in this action to enjoin Defendants Harding and Nevins from using a road across the Keebler's land claimed under a prescriptive easement. In 1990, after a three-day non-jury trial, the trial court, Honorable G. Todd Baugh presiding, ruled in favor of my clients. Harding appealed the judgment..

The Montana Supreme Court affirmed the trial court's determination that Harding had failed to establish the existence of a prescriptive easement across the Keebler's property. The significance of the ruling is that it established the proposition that the local custom of allowing neighbors to cross one's land through closed gates established permissive, as opposed to adverse, use.

Date of representation: 1990-91. **The name of the court and the name of the judge or judges before whom the case was litigated**: Thirteenth Judicial District Court, Carbon County, the Honorable G. Todd Baugh presiding. Montana Supreme Court: Justice Hunt, Chief Justice Turnage, Justice Harrison, Justice McDonough, and Justice Daly. **The individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties**: Plaintiff's counsel: Gary L. Beiswanger, P.O. Box 20562, Billings, MT 59104, 406-248-2696.

7. Bale v. State of Montana, Gallatin County DV-90-509, 8/3/1992. This case was a wrongful death and survivorship action arising from the death of Robert Bale and for personal injuries suffered by his wife Esther when their vehicle, driven by Robert, slid on ice on U.S. Highway 191 over an embankment and came to a rest upside down in the Gallatin River in April of 1987. Mr. Bales died at the scene of the accident.

The Plaintiffs brought suit for negligence against the State of Montana claiming that the State of Montana Highway Department should have installed a guardrail before the accident. My former law partner, Steve Harman, requested that I represent the State of Montana as co-counsel in this case. The jury found no negligence on the part of the State of Montana, and the verdict was not appealed.

Date of representation: 1991-92. **The name of the court and the name of the judge or judges before whom the case was litigated**: Eighth Judicial District Court, Gallatin County, the Honorable Larry Moran presiding. **The individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties**: Co-counsel: Steve Harman, P.O. Drawer 849, Billings, MT, 406-248-

2611. Plaintiff's counsel: Michael Cok and Bruce Scrafford, P.O. Box 1105, Bozeman, MT 59771, 406-587-4445.

8. Howard v. Dooner Laboratories, Inc., 688 P.2d 279 (Mont. 1984). My client, Maciej Tomaszewski, M.D., was sued for medical malpractice, the complaint alleging that a drug he prescribed manufactured by Defendant Dooner Laboratories caused the plaintiff to suffer seizure attacks and other serious injuries. The Plaintiff Betty Howard had been examined by my client in Billings, Yellowstone County, MT, and the medication prescribed there. She allegedly suffered the injuries after ingesting the pills at her home in Lewistown, Fergus County, MT. The Plaintiffs filed suit in Fergus County, MT and I moved for a change of venue to Yellowstone County, the County where the examination, diagnosis and prescription for the medication took place. The Honorable Peter L. Rapkoch denied my motion and I appealed to the Montana Supreme Court.

In reversing the decision of the lower court, the Montana Supreme Court adopted the following rule for proper venue in medical malpractice cases: the county where the "tort was committed" is the county where the examination, diagnosis, and prescription occurred and not the county where the plaintiff allegedly suffered damage, i.e., where the "tort accrues."

Date of representation: Approximately 1980-84. **The name of the court and the name of the judge or judges before whom the case was litigated**: Tenth Judicial District Court, Fergus County, Lewistown, MT, the Honorable Peter L. Rapkoch presiding. The Montana Supreme Court: Justice Harrison, Justice Sheehy, Justice Weber, Justice Gulbrandson, Chief Justice Haswell, and Justice Morrison. **The individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties**. Plaintiff's counsel: Torger Oaas, P.O. Box 76, Lewistown, MT 59457, 406-538-2338.

9. Keele v. Saint Vincent Hospital et al., 852 P.2d 574 (Mont. 1993). I represented James R. Harris, M.D., an Obstetrician-Gynecologist practicing in Billings, MT who performed an emergency ("Code I") cesarean section to preserve the health of the Plaintiff's fetus. Dr. Harris only used a local anesthesia because no anesthesiologist was available to administer general anesthesia. The Hospital was a defendant because of its alleged failure to summon an anesthesiologist. The Plaintiffs's amended complaint claimed loss of parental consortium of Lisa Keele, the child who was born as a result of the cesarean section. I filed a motion to dismiss Lisa's claim for loss of parental consortium under Rule 12(b)(6) of the Montana Rules of Civil Procedure. This motion was granted and the Plaintiff's appealed.

The sole issue on appeal was whether a minor child's cause of action for loss of parental consortium required the parent to have suffered an injury rendering him or her a quadriplegic. The Montana Supreme Court reversed the lower court's decision and held that there was no basis for limiting the cause of action for loss of parental consortium. The Supreme Court expanded the law for such claims relying on an Arizona Supreme Court decision. The Court established new elements for a minor child to establish such a claim.

Date of representation: 1988-93. **The name of the court and the name of the judge or judges before whom the case was litigated**: Thirteenth Judicial District Court, Yellowstone County, Billings, MT, the Honorable Russell K. Fillner presiding. The Montana Supreme Court: Justice Harrison, Justice Gray, Justice Weber, Justice McDonough, Chief Justice Turnage, and Justice Trieweiler. **The individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.** Counsel for Plaintiff: William Fitzgerald, P.O. Box 1729, Billings, MT 59103, 406-252-3461. Counsel for the Hospital: Robert Brown, P.O. Box 2000, Butte, MT 59702, 406-497-1200.

10. Estates of Milliron v. Francke, 793 P.2d 824 (1990 Mont.). My client Roundup Memorial Hospital and Dr. Walter Francke, M.D., were sued after Alfred Milliron died after suffering a reaction to an injection of dye during an intravenous pyelogram ("I.V.P.") performed by Dr. Francke, a radiologist and an independent contractor with the hospital. The plaintiff named the hospital as a defendant and alleged that it was vicariously liable for the negligence of Dr. Francke.

The Plaintiff claimed that Defendant Francke was an ostensible agent of the hospital. In addition, the Plaintiff asserted a new theory of recovery in Montana claiming that the hospital was liable for the negligence of the independent contractor under the theory of non-delegable duty.

The hospital was granted summary judgment and the Plaintiff appealed. The Supreme Court held that Montana Code Annotated § 28-10-103 defined ostensible agency and refused to adopt the rule of liability set forth in § 429 of the Restatement 2d of Torts. Moreover, the Supreme Court refused to adopt the reasoning of an Alaska Supreme Court case which applied the non-delegable duty exception to employer nonliability to a hospital for a physician's negligence.

Date of representation: 1988-93. **The name of the court and the name of the judge or judges before whom the case was litigated**: Fourteenth Judicial District Court, Musselshell County, MT, the Honorable Roy C. Rodeghiero presiding. The Montana Supreme Court: Justice Harrison, Justice Barz, Justice Hunt, Justice Weber, Justice McDonough, Chief Justice Turnage. **The individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.** Counsel for the Estate: Dane C. Schofield, 1645 Parkhill Drive, #6, Billings, MT 59102, 406-252-6679.

Name, address, and phone number for 10-12 members of the legal community who have had recent contact with you.

1. Sam Haddon, 201 West Main Street, Suite 300, Missoula, MT, 59807. Phone: 406-543-6646.
2. Jacque Best, 302 West Main Street, Sidney, MT, 59270. Phone: 406-482-1802.
3. Doug Buxbaum, 1941 Harrison Avenue, Suite B, Butte, MT, 59701. Phone: 406-723-5600.
4. Dana Christensen, 160 Heritage Way, Kalispell, MT, 59904. Phone: 406-751-6000.
5. A. Clifford Edwards, 1601 Lewis Avenue, Billings, MT, 59102. Phone: 406-256-8155.

6. Tom Lewis, 725 3rd Avenue North, Great Falls, MT, 59403. Phone: 406-761-5595.
7. William Rossbach, 401 North Washington Street, Missoula, MT. Phone: 406-543-5156.
8. Keith Strong 507 Davidson Building, Great Falls, MT, 59401. Phone: 406-771-6806.
9. Lori Suek, 119 First Avenue North, Great Falls, MT, 59401. Phone: 406-761-7715.
10. Tony Gallagher, 104 2nd Street South, Great Falls, MT, 59401. Phone: 406-727-5328.
11. Alexander Blewett, 501 2nd Avenue North, Great Falls, MT, 59401. Phone: 406-761-1960.

19. **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 the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)** I believe the most significant "legal activity" which I have pursued has been as a member of the Montana Pattern Jury Instruction Commission. The Commission was established and appointed by the Supreme Court of Montana in approximately 1985. The Commission substantially revised the old Montana Jury Instruction Guide ("MJIG") in its entirety. This work required monthly, lengthy meetings of the Commission for a period of several years and continues to require semi-annual, if not quarterly, meetings to continually update our instructions and citation to authority.

My individual responsibility was to draft and maintain all instructions in the "Professional Negligence" chapter of our publication. Each remaining Commission member was also assigned a topic and chapter for which he or she was primarily responsible. The final draft of every instruction is the product of input, discussion and argument from every Commission member. The Montana Pattern Instruction Guide ("MPI") is the result of a tremendous effort by every member of the Commission and enjoys widespread use throughout state and federal courts in Montana.

I also have been privileged to serve as a faculty member of the Advanced Trial Advocacy Institute held the last week of May each year at the University of Montana School of Law. This program was founded and chaired by Mr. Sam E. Haddon. It is an intense week-long course utilizing an actual case to teach trial skills to both beginning and experienced lawyers. I have been invited with others to participate in the trial school faculty for all but one or two years since approximately 1991. It is tremendously satisfying to observe the transformation of young or inexperienced attorneys to trial lawyers who can utilize the basic skills of trial advocacy.

I was a member of the Board of Trustees of the State Bar of Montana from 1977 to 1980. I was President of the Yellowstone County Bar Association from 1992-93. I was Chairman of the Civil Justice Reform Act Advisory Group for the State of Montana. This group was created in response to a requirement of the Civil Justice Reform Act passed by the U.S. Congress in 1990. Our advisory group revised the Local Rules of Court for the U.S. District Court, District of Montana, to comply with the requirements of federal law over the course of many meetings held across Montana.

I continue my involvement with federal rules and practice by serving as Chairman of the Local Rules Committee for the U.S. District Court, District of Montana. Our committee has recently promulgated a complete preliminary revision of the Local Rules for the U.S. District Court in Montana. The Committee will be publishing this complete revision for comment from practicing attorneys for final revision and approval within the next several months.

I have lectured at numerous seminars held across Montana for the past fifteen years on various subjects relating to trial practice and techniques. I have been invited to speak at seminars by such organizations as the State Bar of Montana, the Montana Defense Trial Lawyers, the Montana Trial Lawyers Association, the Yellowstone County Bar Association, and the Cascade County Bar Association.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List 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. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.** My interest in BCA Partnership is being purchased by my former law firm. From the BCA Partnership, $33,765.43 at seven percent interest per year over seven years for annual payments of $6,430.06. The current balance is $25,843.42. I also retain my share of my profit sharing plan from my former law firm; all assets of my retention are reflected in the attached financial statement.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

   The Clerk of Court for the District of Montana has, on file, a list of individual stock ownership for each Judge. This list is checked for a conflict each time a new case is assigned to a particular judge. I own a very limited number of individual company stocks and therefore the potential conflict for a conflict is minimal.

   The only financial arrangement which could present a potential conflict of interest is my continued ownership of an interest in CSA Partnership, which exists from my former law firm and which owns a piece of rental property adjacent to the law firm building. The potential for conflict is almost non-existent.

   I will follow the Guidelines of the Code of Judicial Conduct in resolving any potential conflict of interest.

3. **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.

4. **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, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)**
   See attached Financial Disclosure Report.

5. **Please complete the attached financial net worth statement in detail (Add schedules as called for).** See attached Net Worth Statement.

6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**
No.

AO-10 (w)
Rev. 1/2000

FINANCIAL DISCLOSURE REPORT
Nomination Report

Report required by the Ethics in Government Act of 1978, as amended (5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
Cebull, Richard F.	United States District Court	05/17/2001
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U S District Judge - Active	**5. Report Type (check type)** X Nomination, Date 05/16/2001 __ Initial __ Annual __ Final	**6. Reporting Period** 01/01/2000 to 04/30/2001
7. Chambers or Office Address United States District Court P.O. Box 2386 Great Falls, MT 59403-2386	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.** Reviewing Officer _____ Date _____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.

I. POSITIONS *(Reporting individual only; see pp. 9-13 of Instructions.)*

☐ NONE (No reportable positions.)

	POSITION	NAME OF ORGANIZATION / ENTITY
1	Partner	C.S.A.
2		
3		

II. AGREEMENTS *(Reporting individual only; see pp.14-16 of Instructions.)*

☐ NONE (No reportable agreements.)

	DATE	PARTIES AND TERMS
1	08/31/00	BCA Parnership, effective 12/31/98. Retired from partnership 12/31/98. Agreement for purchase of interest signed 8/31/00.
2		
3		

III. NON-INVESTMENT INCOME *(Reporting individual and spouse; see pp. 17-24 of Instructions.)*

☒ NONE (No reportable non-investment income.)

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1			
2			
3			
4			

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Cebull, Richard F.	05/17/2001

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)

☐ NONE (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1	EXEMPT	
2		
3		
4		
5		
6		
7		

V. GIFTS

(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)

☐ NONE (No such reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1	EXEMPT		
2			
3			

VI. LIABILITIES

(Includes those of spouse and dependent children. See pp 33-35 of Instructions.)

☒ NONE (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE*
1			
2			
3			
4			
5			
6			

* VAL. CODES: J=$15,000 or less K=$15,001-$50,000 L=$50,001 to $100,000 M=$100,001-$250,000 N=$250,001-$500,000
O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

FINANCIAL DISCLOSURE REPORT | Name of Person Reporting: Cebull, Richard F. | Date of Report: 05/17/2001

VII. Page 1 INVESTMENTS and TRUSTS-- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income,assets, or transactions.)									
1 BROKERAGE ACCOUNT #1					EXEMPT				
2 10000 U of MT UNIV REVS HIGHER ED FACS IMPT-D	A	Interest	J	T	"				
3 5000 MONTANA HIGHER ED	A	Interest			"				
4 5000 FORSYTH MT PCR	A	Interest	J	T	"				
5 10000 MT DEPT OF TRANS HWY REV REF BK	A	Interest	J	T	"				
6 10000 HELENA MT WTR REV REF SER B	A	Interest	J	T	EXEMPT				
7 5000 DENVER CO CITY & CNTY ARPT REV SER A	A	Interest	J	T	"				
8 10000 MT ST HEALTH FAC RV AUTH RV B/D MBIA SISTERS	A	Interest	J	T	"				
9 5000 MONTANA ST HLTH FACS AUTH REV MISSION RIDGE	A	Interest	J	T	"				
10 10000 MT ST BRD HSG RV AMT SINGLE FAM MTG B/E SER A 2	A	Interest	J	T	"				
11 5000 MONTANA STATE HLTH FAC AUTH MT DE CTR PROJ B/E		None	J	T	EXEMPT				
12 2685 BILLINGS MT INDL DEV REV YMCA PROJ REGD	A	Interest	J	T	"				
13 INTEL CORP CS	A	Dividend	K	T	"				
14 OCEAN ENERGY INC. (TEX) CS	A	Dividend	J	T	"				
15 ST MARY LAND & EXPL CS		None	J	T	"				
16 AIM EQUITY FDS INC MF	B	LTG	J	T	"				
17 ALLIANCE TECH FUND INC MF	B	LTG	K	T	EXEMPT				

1 Inc/Gain Codes: A=$1,000 or less B=$1,001-$2,500 C=$2,501-$5,000 D=$5,001-$15,000 E=$15,001-$50,000
(Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

2 Val Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000 N=$250,001-$500,000
(Col. C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market
(Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Cebull, Richard F.

Date of Report: 05/17/2001

VII. Page 2 INVESTMENTS and TRUSTS-- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions.)									
18 EATON VANCE TAX MGD GROWTH - C		None	J	T	"				
19 GROWTH FUND AMER INC.	B	Div, LTG	J	T	"				
20 KOPP FDS EMERGING GROWTH FD CL A		None	J	T	"				
21 PUTNAM TAX EXP INC FD MF	A	Dividend	J	T	"				
22 PUTNAM INTL GROWTH FD CL C	A	Div, LTG	J	T	EXEMPT				
23 GREAT HALL INVT FDS	A	Dividend	J	T	"				
24 LIBERTY FDS TR IV COL TAX EXEMPT	A	Dividend	J	T	"				
25 IRA #1	B	Dividend	K	T	EXEMPT				
26 GREAT HALL INVT FDS					"				
27 EL PASO NAT GAS CO CS					"				
28 BURLINGTON RESOURCES INC CS					"				
29 MCI WORLDCOM INC CS					"				
30 FIDELITY ADV STAT OPP-T MF					"				
31 FRANKLIN US GOV SEC SERIES - A					"				
32 IRA #2	D	Div & LTG	L	T	Exempt				
33 FINANCING CORP CPN FICO STRIPS SER 4					"				
34 GREAT HALL INVT FDS					"				

1 Inc/Gain Codes: A=$1,000 or less B=$1,001-$2,500 C=$2,501-$5,000 D=$5,001-$15,000 E=$15,001-$50,000
(Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

2 Val Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000 N=$250,001-$500,000
(Col. C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market
(Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT | Name of Person Reporting: Cebull, Richard F. | Date of Report: 05/17/2001

VII. Page 3 INVESTMENTS and TRUSTS-- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income,assets, or transactions.)									
35 AIM EQUITY FDS INC AGGRESSIVE GROWTH FD MF					"				
36 AIM VALUE - A MF					"				
37 PUTNAM INTL GROWTH FD					"				
38 FIRST TRUST TARGET 5 JAN 00					"				
39 FIRST TRUST TOTAL TARGET JUNE 00					"				
40 FIRST TR DART 5 JAN 01					"				
41 BROKERAGE ACCT #2					EXEMPT				
42 5000 MT WASTEWATER TREATMENT WORKS	A	Interest	J	T	"				
43 FIDELITY ADVISOR SERIES I EQUITY GROWTH		None	K	T	"				
44 FIDELITY ADVISOR SERIES II GROWTH OPPORTUNITIES	B	LTG			"				
45 RECEIVABLE - BCA PARTNERSHIP	D	PRIN & INT	K	T	EXEMPT				
46 CSA PARTNERSHIP	A	Rent	J	U	"				
47 IRA #3	F	DIV & INT	O	T	EXEMPT				
48 BANK ONE CORP CS					"				
49 WELLS FARGO & CO CS					"				
50 HOME DEPOT INC CS					"				
51 WAL-MART STORES INC CS					"				

1 Inc/Gain Codes: A=$1,000 or less B=$1,001-$2,500 C=$2,501-$5,000 D=$5,001-$15,000 E=$15,001-$50,000
(Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

2 Val Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000 N=$250,001-$500,000
(Col. C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market
(Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Cebull, Richard F.

Date of Report: 05/17/2001

VII. Page 4 INVESTMENTS and TRUSTS-- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
						If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	(2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income,assets, or transactions.)									
52 AMERICAN MUTUAL FUND INC. MF					EXEMPT				
53 BOND FUND OF AMERICA INC. MF					"				
54 EURO PACIFIC GROWTH FUND-SBI MF					"				
55 FUNDAMENTAL INVESTORS INC MF					"				
56 GOLDMAN SACHS GROWTH & INCOME FUND-CL A MF					"				
57 GOLDMAN SACHS INTERNATIONAL EQUITY FUND-CL A MF					EXEMPT				
58 GOLDMAN FSACHS BALANCED FD CL A MF					"				
59 INVESTMENT CO OF AMERICA MF					"				
60 NEW PERSPECTIVE FUND INC MF					"				
61 PUTNAM FUND FOR GROWTH & INCOME-CL A MF					"				
62 PUTNAM GLOBAL GROWTH FUND INC-CL A MF					"				
63 PUTNAM HEALTH SCIENCES TRUST CL A MF					"				
64 PUTNAM INTERNATIONAL NEW OPPORTUNITIES FUND-CL A					"				
65 PUTNAM INVESTMENT FUNDS CLASSIC EQUITY FUND CL A					"				
66 PUTNAM INVT FDS RESEARCH FUND MF					EXEMPT				
67 PUTNAN STRAGIC INCOME FUND CL A					"				
68 PUTNAM VISTA FUND INC-CL A MF					"				

1 Inc/Gain Codes: A=$1,000 or less B=$1,001-$2,500 C=$2,501-$5,000 D=$5,001-$15,000 E=$15,001-$50,000
(Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

2 Val Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000 N=$250,001-$500,000
(Col. C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market
(Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT | Name of Person Reporting: Cebull, Richard F. | Date of Report: 05/17/2001

VII. Page 5 INVESTMENTS and TRUSTS-- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions.)									
69 PUTNAM VOYAGER FUND INC-CL A MF					"				
70 WASHINGTON MUTUAL INVESTORS FUND INC MF					"				
71 FORD MOTOR CREDIT CO					"				
72 COMMONWEALTH EDISON COMPANY					"				
73 FPL GROUP CAP INC DEBENTURE					"				
74 JC PENNEY & CO BD					EXEMPT				
75 GENERAL ELECTRIC CAP CORP MED TERM NTS BD					"				
76 FLORIDA PWR & LIGHT CO 1ST MTG-IBC-MBIA BD					"				
77 HERTZ CORP SENIOR NOTES					"				
78 ARKANSAS POWER & LIGHT CO 1ST MORTGAGE					"				
79 FORD MOTOR CREDIT CO GLOBAL LANDMARK SECURITIES					"				
80 VAN KAMPEN AMERICAN CAPITAL TR					"				
81 FNMA GTD REMIC PASSTHRU TR 1997-69					"				
82 TVA PWR BD SER C					"				
83 INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT					"				
84 PASSPORT MONEY MARKET					"				
85 BROKERAGE ACCT #3					EXEMPT				

1 Inc/Gain Codes: A=$1,000 or less B=$1,001-$2,500 C=$2,501-$5,000 D=$5,001-$15,000 E=$15,001-$50,000
(Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

2 Val Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000 N=$250,001-$500,000
(Col. C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market
(Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Cebull, Richard F.

Date of Report: 05/17/2001

VII. Page 6 INVESTMENTS and TRUSTS-- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
[ ] NONE (No reportable income, assets, or transactions.)									
86 SMALLCAP WORLD FUND MF	B	LTG	J	T	"				
87 NEW WORLD FUND INC NEW	A	Dividend	J	T	"				
88 TSA (501(C)3		None	K	T	EXEMPT				
89 KEMPER GENERAL ACCOUNT II					"				
90 KEMPER TOTAL RETURN					"				
91 FIRST INTERSTATE BANK CHECKING X		None	J	T	EXEMPT				
92 FIRST INTERSTATE BANK SAVINGS X	A	Interest	J	T	"				
93									
94									
95									
96									
97									
98									
99									
100									
101									
102									

1 Inc/Gain Codes: (Col. B1, D4)	A=$1,000 or less F=$50,001-$100,000	B=$1,001-$2,500 G=$100,001-$1,000,000	C=$2,501-$5,000 H1=$1,000,001-$5,000,000	D=$5,001-$15,000 H2=$5,000,001 or more	E=$15,001-$50,000
2 Val Codes: (Col. C1, D3)	J=$15,000 or less O=$500,001-$1,000,000	K=$15,001-$50,000 P1=$1,000,001-$5,000,000	L=$50,001-$100,000 P2=$5,000,001-$25,000,000	M=$100,001-$250,000 P3=$25,000,001-$50,000,000	N=$250,001-$500,000 P4=$50,000,001 or more
3 Val Mth Codes: (Col. C2)	Q=Appraisal U=Book Value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Cebull, Richard F.	05/17/2001

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Cebull, Richard F.	05/17/2001

IX. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature Date 5/18/01

Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
One Columbus Circle, N.E.
Suite 2-301
Washington, D.C. 20544

RICHARD F. and LINDA K. CEBULL
FINANCIAL STATEMENT
4/30/2001

ASSETS		LIABILITIES	
Cash on hand and in banks	$38,753.48	Notes payable to banks - secured	$52,466.37
U.S. Government secutities - schedule	$38,535.75	Notes payable to banks - unsecured	$0.00
Listed securities - schedule 2	$1,361,280.14	Notes payable to relatives	$0.00
Unlisted securities	$0.00	Notes payable to others	$0.00
Accounts and notes receivable:		Accounts and bills due	$0.00
Due from others	$25,843.42	Unpaid income tax	$0.00
Real estate owned - schedule 3	$317,000.00	Other unpaid tax and interest	$0.00
Real Estate mortgages receivable	$0.00	Real estate mortgages payable	$0.00
Autos and other personal property	$50,075.00	Chattel mortgages and other liens payable	$0.00
Cash value - life insurance	$24,390.45	Other debts - itemize	$0.00
Other assets	$0.00		
		Total Liabilities	$52,466.37
		Net Worth	$1,803,411.87
Total Assets	$1,855,878.24	Total liabilities and net worth	$1,855,878.24

CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor	$0.00	Are any assets pledged?	no
On leases or contracts	$0.00	Are you defendant in any suits or legal action:	no
Legal claims	$0.00	Have you ever taken bankruptcy?	no
Provision for Federal Income Tax	$0.00		
Other special debt	$0.00		

Richard F. Cebull 4/30/01
Schedule to attach to Financial Statement

Schedule 1 - U.S. Government Securities		Current Market
	Tennessee Valley Authority Power Bond 1993 Series C	$ 21,131.25
	International Bank for Reconstruction and Development	7,593.90
20000	Financing Corp Cpn Fico Strips Ser 4	9,810.60
		38,535.75

Schedule 2 - Listed Securities		
Stocks/Options		
800	Intel Corp	24,728.00
88	Ocean Energy Inc	1,628.88
100	St Mary Land & Expl	2,485.00
40	Burlington Resources Inc.	1,888.40
18	El Paso Energy Corp	1,238.40
186	Worldcom Inc	3,394.50
324	Bank One Corp	12,441.60
1350	Home Depot Inc	64,935.00
200	Walmart Stores Inc	10,566.00
159	Wells Fargo & Co New	7,603.38
Municipal Bonds		
10000	MT Dept of Trans Hwy Rev Ref	10,182.50
10000	Helena MT Wtr Rev Ref Ser B	9,478.30
5000	MT St Hlth Fac Auth Mt Dev Ctr Proj B/E	5,316.90
10000	University MT univ Revs Higher Ed Facs Impt-D	10,087.90
5000	Forsyth Mt Pcr Ref Mt Pwr O/Y	5,142.65
10000	Montana St Health Fac Rv Augh Rv B?E MBIA Sisters of Charity Lv	9,431.80
5000	Denver Co City & Cnty RV Arpt Ser A	5,116.75
5000	Montana St Hlth Facs Auth Rev Mission Ridge	4,993.00
10000	Montana St Brd Hsg RV Amt Single Fam Mtg	10,031.50
5000	Montana State Wastewater Treatment Works	5,000.00
Mutual Funds		
660.150	Aim Aggessive Growth - A	7,096.61
257.370	Alliance Technology - A	20,968.26
462.535	Eaton Vance Tax Mgd Growth - C	9,491.22
497.440	Growth Fund of America	12,754.46
214.869	Kopp Fds Emerging Growth Fd Cl A	2,965.19
790.457	Liberty Tax Ex - A	10,125.75
359.073	Putman Tax Ex Income - A	3,178.11
816.271	Fidelity Adv Value Strat -T	21,631.89
263	Franklin US gov Sec Series - A	1,785.77
497.802	Putman Intl Growth - C	11,115.92
733.260	Fidelity Advisor Series I Equity Growth Cl T	22,574.31
1833.714	Aim Aggressive Growth - A	19,712.43
278.964	Aim Value - A	3,378.25
278.848	Putnam Intl Growth - C	6,226.68
	Kemper General Account II	19,716.26
3592.725	Kemper Total Return	25,795.25
209.808	New World Fund Inc New	4,376.59
421.336	Smallcap World Fund Inc.	9,505.34
1598.88	American Mutual Fund Inc	39,620.25
5061.366	Bond Fund of America Inc	65,190.39
545.585	Euro Pacific Growth Fund	16,449.39
1348.846	Fundamental Investors Inc	40,573.29
6786.563	Goldman Sachs Growth & Income Cl A	144,621.66
1847.549	Goldman Sachs Intl Equity Cl A	32,812.47
305.981	Goldman Sachs Tr Balanced Fd Cl A	5,871.78
1179.604	Investment Co of America	36,084.18
1504.675	New Perspective Fund Inc	35,856.41
2975.011	Putnam Fund for Growth & Income Cl A	58,220.97

2048.233	Putnam Global Growth Fd Cl A	18,495.54
393.529	Putnam Health Sciences Tr Cl A	25,929.63
335.419	Putnam International New Opportunities Fund Cl A	3,558.80
1809.495	Putnam Investment Funds Classic Equity Fund Class A	23,396.77
1203.286	Putnam Invt Fds Research Fd Cl A	17,989.13
8019.53	Putnam Strategic Income Fund Class A	51,645.77
4618.575	Putnam Vista Fund Inc Class A	47,155.65
432.633	Putnam Voyager Fund Inc Cl A	8,890.61
1716.847	Washington Mutual Investors	51,385.23
Unit Trusts		
1133	First Trust Dart 5 Jan 01	11,545.27
620	FT Total Target June 00	5,251.40
	Van Kampen American Capital Tr	22,784.45
Asset and mortgage backed securities		
	Federal natl Mtg Assn Remic pass thru CTFS	19,925.00
Corporate Bonds		
	Ford Motor Credit Co Global Landmark Secs-Globls	20,225.00
	Commonwealth Edison Company First Mortgage	10,325.00
	FPL Group Cap Inc Debenture	21,233.60
	Arkansas Power & Light Company 1st Mortgage	18,090.00
	JC Penney Incorporated Note	15,000.00
	General Electric Capital Corporation Medium Tern Notes	21,425.00
	Ford Motor Credit Co Global Landmark Securities	5,143.75
	Florida Pwr & Light Co First Mortgage	20,895.00
	Hertz Corp	27,600.00
		1,361,280.14

Schedule 3 - Real estate owned (at cost)

Home and 8.0 A Land, MT	276,000.00
Cabin and 1.18 A Land, MT	25,000.00
40 A, MT	16,000.00
	317,000.00

III. GENERAL (PUBLIC)

1. **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.** Montana has not adopted the American Bar Association's Code of Professional Responsibility. Montana lawyers are governed by Rule 6.1, Montana Rules of Professional Conduct. Rule 6.1 reads as follows:

> "Rule 6.1 - Pro Bono Publico Service. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:
>
> (A) Provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to:
>
> (1) persons of limited means or
>
> (2) Charitable, religious, civic, community governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and
>
> (B) provide any additional services through:
>
> (1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;
>
> (2) delivery of legal services at a substantially reduced fee to persons of limited means; or
>
> (3) participation in activities for improving the law, the legal system or the legal profession.
>
> In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.
>
> The responsibility above set forth in this rule is a goal to which each lawyer should aspire. The rule will not be enforced through any form of disciplinary process."

In attempting to reach the goals established in Canon 2 of the American Bar Association's Code of Professional Responsibility and Rule 6.1 of the Montana Rules of

Professional Conduct, I have offered legal advice to persons of limited means for free or at a substantially reduced fee.

When I was a practicing attorney, I spent approximately two hours each week giving advice to non-paying clients, many of whom were of very limited means. I received many inquiries either in person or by phone from Medicaid patients regarding potential medical malpractice claims. I would generally listen to them, and, in every case, I would refer them to an excellent and experienced plaintiff's malpractice attorney for consultation. I was required to refuse representation of numerous physicians through the years because I had a conversation or conference about the case with the prospective plaintiff.

I represented several persons through the years who could not afford to pay any legal fees. For example, I represented a gentleman in a case which I filed against his daughter because she had convinced him to deed his small ranch to her as an "estate planning" device. I spent in excess of two hundred hours on the case before it was amicably resolved in my client's favor. The client paid for depositions in the case but he did not pay any legal fees because he was of very limited means.

I represented a young Hispanic male many years ago in a criminal trial and thereafter rendered free legal advice on a wide variety of issues over a period of years to members of his family who were of very limited means.

I served on the Medical Ethics Committee at the Deaconess Medical Center in Billings, MT for approximately five years until my appointment as a United States Magistrate Judge in February of 1998. This Committee was designed to assist all persons in need of assistance in making end of life decisions on behalf of their family or other loved ones.

The Committee met at least once per month for two hours at which time we would hear from distressed family members, many of whom were of limited financial means. Moreover, the Committee members were subject to being "on call." As a result, we would be requested to render oral opinions to those in need regarding end of life decisions on an "as needed" basis. The Committee was also called to action with short notice on numerous occasions.

As President of the Yellowstone County Bar Association, I continued the custom and practice of soliciting and encouraging members of the Bar Association to contribute funds to purchase turkeys and other food for the disadvantaged during holidays.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?** I was a member in good standing of the Elks Club in Billings, MT, a fraternal organization from 1970 until 1997 . I have recently requested that my name be removed from their membership roles if they have not already done so. I believe that some chapters of this organization did discriminate, at one time, on the basis of sex. However, during my membership in the Billings chapter, any such discrimination ended and women were admitted as members and officers.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).** No. I advised Senator Conrad Burns' Chief of Staff subsequent to the November 2000 Presidential Election that I would be interested in the position of United States District Judge for the District of Montana, Billings Division.

   I then contacted numerous supporters of Senator Burns over a several week period to gain personal support for the position. I was eventually contacted by Senator Burns' office and Senator Burns and staff personally interviewed me on February 9, 2001 in Helena, MT. I completed forms and associated paperwork as required by the White House and the Department of Justice and was nominated by President Bush on May 17, 2001.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.** No.

5. **Please discuss your views on the following criticism involving "judicial activism."**

   The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

   Some of the characteristics of this "judicial activism" have been said to include:

   a. **A tendency by the judiciary toward problem-solution rather than grievance-resolution;**

   b. **A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;**

   c. **A tendency by the judiciary to impose broad, affirmative duties upon governments and society;**

   d. **A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and**

   e. **A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.**

The jurisdiction of federal courts is limited to questions of federal law, statutory or constitutional, and cases meeting the requirements for diversity of citizenship. In diversity cases, federal judges are obligated to apply the law of the state in which he or she presides, whether the law is statutory or case precedent. It is not the prerogative of the judge to "create" his or her own law or to change the law when interpreting statutory or constitutional language whose meaning is plain on it face. When interpreting federal statutes, courts should strive to give effect to Congressional intent primarily by focusing on expressed intent as evidenced by what Congress actually said, and not by divining intent based upon an individual judge's belief of what the statute ought to mean. Thus, the role of the court is to apply neutral principles and avoid deciding cases based upon personal preferences.

I possess a strong belief in the separation of powers, and I believe that adherence to the above-stated principles not only is the appropriate course for a judge, but also results in decision making immune from the type of referenced criticism -- that of "judicial activism."

Regarding issues of standing and ripeness, my view is that by their very nature, federal courts are courts of limited jurisdiction. The doctrines of standing and ripeness are the touchstones of the requirement in Article III that there be a "case or controversy," and district courts should therefore exercise restraint lest they become embroiled in hypothetical controversies involving parties who lack a sufficient stake in the outcome.

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Sam Ellis Haddon
Sammy Ellis Haddon

2. Address: List current place of residence and office address(es).

Home: **Missoula, Montana**

Office: **201 West Main, Suite 300**
P.O. Box 9199
Missoula, Montana 59807-9199

3. Date and place of birth.

Birth date: **June 19, 1937**
Birth place: **West Monroe, Louisiana**

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Married
Spouse: Betty Grace Loyd
Spouse's Occupation: **Registered Nurse (part-time)**
Spouse's Employer: **Judy L. Schmidt, M.D.**
Physician Center Building 3B
2835 Fort Missoula Road
Suite 301
Missoula, MT 59804

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Rice University, Houston, Texas (1955 - 1959) B.S. - 1959

University of Montana School of Law, Missoula, Montana (1962 - 1965) J.D. (With Honors) - 1965

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Athletic Director, Camp Truda, Oxford, ME - July - September 1959.

Immigration Patrol Inspector, United States Border Patrol - October 1959 - February 1961.

Agent (Criminal Investigator), Federal Bureau of Narcotics - February 1961 - September 1962.

Research Assistant in Law, University of Montana School of Law (part-time) - September 1964 - May 1965.

Associate, private law practice, Anderson, Symmes, Forbes, Peete and Brown, n/k/a Brown Law Firm, P.C, Billings, Montana - June 1966 - June 1969.

Partner and Shareholder, private law practice, Boone, Karlberg & Haddon P.C. in Missoula, Montana - June 1969 - Present.

Adjunct instructor (part-time), University of Montana, School of Law, 1971 - present.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Scholastic Awards:	**Allen Smith Award (Outstanding Senior in Law School)**
	Justin Miller Award (Best Comment in Law Review)
	Phi Delta Phi Outstanding Student Award

Scholarships:	**Full Fee Scholarship Recipient (1962-63, 1963-64)** **Research Assistant in Law (1964-65)**
Professional Awards:	**Western Montana Bar Association -- Career Achievement Award (1996)**
	The University of Montana School of Law -- Advanced Trial Advocacy Distinguished Faculty Award (1997)
	The University of Montana School of Law -- Advanced Trial Advocacy Recognition of Leadership (2000)

9. Bar Associations: List all bar associations, legal or judicial-related committees 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.

Fellow, American College of Trial Lawyers (Member - Legal Ethics Committee).

Advocate, American Board of Trial Advocates.

Member, American Academy of Appellate Lawyers.

American Bar Association - Member of Tort and Insurance Practice Section (Trial Tactics Committee) and Litigation Section.

Life Member, The American Judicature Society (Director -1976-79).

Life Member, The American Law Institute.

National Institute of Trial Advocacy - Advocates Association.

Fellow, American Bar Foundation.

Montana Bar Association (Chairman of Young Lawyers Section -1967-68) (Member of Executive Committee - 1968-69) (Montana Medical Association-Montana Bar Association Joint Medical-Legal Screening Panel member - 1969-82).

State Bar of Montana (Member Board of Trustees - 1976-78).

Western Montana Bar Association (Recipient, 1996 Career Achievement Award).

Member, Montana Supreme Court Commission on Admission to Practice.

Member and Chairman, Montana Supreme Court Commission on Rules of Evidence (Chairman 1974 - Present).

Member and Chairman, Montana Supreme Court Commission on Practice (Chairman 1996 - Present).

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

a. Organizations with lobbying activities:

i. Trout Unlimited (Life Member).

ii. National Rifle Association (Life Member).

b. Other organizations:

i. Federation of Fly Fishers (Life Member).

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Supreme Court of Montana - June 7, 1965.

United States District Court for the District of Montana - April 19, 1966.

United States Court of Appeals for the Ninth Circuit - May 3, 1966

Supreme Court of the United States - June 30, 1975.

Tribal Court of the Confederated Salish and Kootenai Tribes - May 6, 1998.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Sam E. Haddon, *Access and Wharfage Rights and the Territorial Extent of Indian Reservation Bordering on Navigable Water -- Who Owns the Bed of Flathead Lake?*, 27 Mont. L. Rev. 79 (1965).

Sam E. Haddon, *A History and Explanation of Montana Disciplinary Practices*, 25 Mont. L. Rev. 243 (1964).

Sam E. Haddon, *Preliminary Hearing is a Critical Stage of the Proceeding at Which the Indigent Defendant is Required to Have the Assistance of Counsel*, 25 Mont. L. Rev. 174 (1963).

Sam E. Haddon, Course materials, University of Montana, School of Law, Advanced Trial Advocacy Program, May 21, 2000 - May 25, 2000 (Course Summary, program information, Program Outline, Faculty and Participant Group Sections - representative of materials for each year of program).

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent.

March 8, 2001.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Judge Pro Temporare - State of Montana District Court for the Fourth Judicial District, Missoula County, Montana, at the request of The Honorable E. Gardner Brownlee, District Judge, October of 1975. (Criminal trial - jury selection only.)

Special Master - Montana Supreme Court, May of 1978.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Not applicable.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None.

17. Legal Career:

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

1. 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;

Law Clerk to United States District Judge William J. Jameson, District of Montana, Billings, Montana - June 1965 - June 1966.

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

No solo practice.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.

Associate, private law practice, Anderson, Symmes, Forbes, Peete and Brown n/k/a Brown Law Firm, P.C, 315 North 24th Street, P.O. Drawer 849, Billings, Montana - June 1966 - June 1969.

Partner and Shareholder, private law practice, Boone, Karlberg & Haddon P.C., 201 West Main, Suite 300, P.O. Box 9199, Missoula, Montana - June 1969 - Present.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

A substantial majority of my practice has been in the field of civil litigation. At the present time, approximately 90% of my work is related to litigation. The early years were devoted primarily to insurance defense work. My cases have encompassed a variety of law fields, including commercial litigation, contract actions, plaintiff claims and defense of personal injury actions, civil rights actions, constitutional law issues, taxpayer lawsuits, water rights litigation, mortgage and lien foreclosures, Indian law questions, and class actions.

For the past 14 years, I have been a member of the Commission on Practice of the Montana Supreme Court, which is responsible for screening and hearing complaints of unethical conduct involving lawyers admitted to practice in Montana. The Commission adjudicates some 230 cases per year and conducts approximately 8

formal hearing per year. I have served as Chairman and as the principal presiding person at Commission meetings and hearings since 1996.

In addition, I have served as an adjunct instructor, part-time, at the University of Montana School of Law since 1971. I have taught courses in Contract Law, Professional Responsibility, Courtroom and Office Practice, and Trial Tactics. Since 1985, I have acted as Course Coordinator for the Advanced Trial Advocacy Program which provides intensive trial advocacy training to third year and graduating law students and Montana practitioners.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

My clients have included private citizens, public officials, philanthropic organizations, homeowner associations, taxpayer groups, physicians, lawyers and other professionals, local and Montana business organizations, national business organizations, local and state-wide labor organizations, insurance companies, the Montana Supreme Court, State Bar of Montana, the Montana State Legislature, the University of Montana, various Montana state agencies and the State of Montana.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Regularly.

2. What percentage of these appearances was in:

(a) federal court;

45% (APPROX.)

(b) state courts of record;

50% + (APPROX.)

(c) other courts.

Less than 5%

3. What percentage of your litigation was:

   (a) civil;

   98% +

   (b) criminal.

   Less than 2%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

   Tried to verdict or judgment - approximately 75.
   Of the 75, sole counsel in 50, chief counsel in 27 - 30, associate counsel in 3 - 5.

5. What percentage of these trials was:

   (a) jury;

   20%

   (b) non-jury.

   80%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. 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.

    The cases listed below are representative of the variety of significant litigated matters I have handled over the years. Each case, in my view, presented unique law issues and professional challenges.

1. *Moe v. Confederated Salish and Kootenai Tribes*, 425 U.S. 463, 96 S. Ct. 1634, 48 L.Ed.2d 96 (1976); Opinions below 392 F. Supp. 1297 (D. Mont. 1975) and 392 F. Supp. 1325 (D. Mont. 1975).

Courts: United States District Court for the District of Montana; United States Supreme Court.

Judges: The Honorable James W. Browning, The Honorable William J. Jameson and The Honorable Russell E. Smith (District Court).

United States Supreme Court - all members of Court. Opinion, Justice Rehnquist.

Co-counsel:

Robert L. Woodahl, Esq. (retired)
Attorney General for the
State of Montana
28 1st St. N.W.
Choteau, MT 59422
(406) 466-2110 (hm)

The Honorable Jean A. Turnage
Chief Justice of the Supreme Court, retired
312 First St. E.
Polson, MT 59860
(406) 883-5367 (wk)

Opposing Counsel:

Victor F. Valgenti, Esq.
University Plaza, Suite 200
100 Ryman Street
Missoula, MT 59802
Telephone: (406) 542-2140
Attorney for Confederated Salish and Kootenai Tribes

Richard A. Baenen, Esq.
1735 New York Avenue, N.W.
Washington, D.C. 20006
Telephone: (202) 833-9800
Attorney for Confederated Salish and Kootenai Tribes

Parties Represented: John C. Moe, et al. (Missoula County Officials); State of Montana.

Date of Representation: APPROX. September 1973 - May 1976.

Participation: Assumed role of chief counsel during proceedings before the three-judge court. Wrote briefs and presented arguments at hearings before three-judge court. Prepared jurisdictional statement and briefs and argued case in United States Supreme Court.

Summary and Significance: The case involved a fundamental constitutional question of whether reservation Indian immunity from State taxation constituted unlawful racial discrimination. The significance of the case is in the issues raised and in the fact that it was accorded full and complete hearing, oral argument and written opinion by the United States Supreme Court.

Final Disposition: Judgment of three-judge Court affirmed on appeal to U.S. Supreme Court.

2. *Patterson v. State Department of Revenue*, 557 P.2d 798 (1976).

Courts: District Court of the State of Montana in and for the County of Missoula; Montana Supreme Court.

Judges: The Honorable Jack L. Green (District Court).

Montana Supreme Court - Chief Justice James T. Harrison; Justice John C. Harrison, Justice Wesley Castles and Justice Frank I. Haswell.
Opinion, Justice Haswell

Co-counsel:

The Honorable Jean A. Turnage
312 First St. E.
Polson, MT 59860
Telephone: (406) 883-5367 (wk)

Opposing Counsel:

R. Bruce McGinnis, Esq.
1612 Leslie
Helena, MT 59601
Telephone: (406) 442-6007

Randall Swanberg, Esq. (deceased)

Parties Represented: John F. Patterson, Jr. as Trustee of the Estate of John F. Patterson: Ian M. Lange and Jo-Ann Lange, his wife; Rustem S. Medora and Minkie R. Medora, his wife; James A. Walsh and Roberta A. Walsh, his wife; James A. Walsh and Roberta A. Walsh, his wife; Keith Anguin and Dorothy M. Anguin, his wife; individually and as taxpayers of Missoula county and the State of Montana, and The University Area Homeowners Association, Inc., a Non-Profit Montana Corporation.

Date of Representation: April 1975 - December 1976

Participation: Responsibility as chief counsel for the case in Montana District Court and in the Montana Supreme Court. Prepared pleadings and prepared and presented the case for trial, wrote briefs in Supreme Court and participated in argument before Montana Supreme Court.

Summary and Significance: The action was brought on behalf of taxpayers of the state of Montana to enjoin implementation of a state-wide real property reappraisal plan promulgated by the State Department of Revenue. The case (and a companion case) involved representation of a substantial number of clients in two trials and required multiple appearances before the Montana Supreme Court.

Final Disposition: On appeal, the reappraisal plan was successfully challenged and stricken by the Montana Supreme Court as invalid.

3. ***State ex. rel. Sullivan v. State of Montana, Teachers' Retirement Board*, 571 P.2d 793 (1977).**

Courts: District Court of the State of Montana in and for the County of Missoula; District Court of the State of Montana in and for the County of Lewis & Clark; Montana Supreme Court.

Judges: The Honorable Edward T. Dussault (Missoula County District Court), The Honorable Gordon R. Bennett (Lewis & Clark County District Court).

Montana Supreme Court - Chief Justice Paul Hatfield, Justice Gene B. Daly, Justice Frank I. Haswell, Justice John C. Harrison, and Justice Daniel J. Shea.
Opinion, Chief Justice Hatfield

Co-counsel: None.

Opposing Counsel:

J. Michael Young, Esq.
#2 Railroad Square
P.O. Box 1746
Great Falls, MT 59403
Telephone: (406) 771-0007 (wk)

Party Represented: Robert E. Sullivan.

Date of Representation: 1976 - November 1977

Participation: Full responsibility for case in Montana State District Courts and in Montana Supreme Court. Prepared all papers, wrote all briefs and conducted all arguments on behalf of client.

Summary and Significance: The case was brought by the Dean of the University of Montana School of Law to require the Teachers' Retirement Board to allow purchase of certain retirement credits for teaching service performed outside the State of Montana. The Board's refusal, upheld by the District Court, was reversed on appeal. The case was significant in two particulars:

1) **It presented a unique question of statutory interpretation and construction as a matter of first impression in Montana.**

2) **I was called upon to represent, as personal attorney, the Dean of the Law School from which I graduated.**

Final Disposition: District Court judgment reversed. Retirement credit purchase allowed.

4. *Weinstein v. The University of Montana, at Missoula,* **898 P.2d 101 (Mont. 1995) (Post-appeal proceedings unreported).**

Courts: Montana Fourth Judicial District, Missoula County; Montana Supreme Court, Cause No. DV-93-77918.

Judges: The Honorable John W. Larson.

Montana Supreme Court - Justices Jim Nelson, Karla Gray, William Hunt, Fred Weber, and C.W. Leaphart
Opinion, Justice Leaphart

Co-counsel:

William L. Crowley, Esq.
Boone, Karlberg & Haddon P.C.
201 West Main, Suite 300
P.O. Box 9199
Missoula, MT 59807-9199
Telephone: (406) 543-6646

Opposing Counsel:

Dexter L. Delaney, Esq.
Brian L. Delaney, Esq.
Mulroney, Delaney & Scott
100 Ryman Street, # 100
P.O. Box 8228
Missoula, MT 59807
Telephone: (406) 721-2550

Parties Represented: The University of Montana, George M. Dennison and Robert L. Kindrick.

Date of Representation: From commencement of case, May 1993, through final satisfaction of judgment and dismissal, March 1996.

Participation: Acted as lead counsel for all the Defendants from filing of action through final disposition. Participated in preparation of pleadings, discovery, pretrial motions, pretrial settlement conference, pretrial appeal to Montana Supreme Court (898 P.2d 101), jury trial, post-trial motions and final disposition of case.

Summary and Significance: Plaintiff Weinstein brought the action against the University of Montana for breach of contract and against the University President and Provost for tortious interference with contract arising from Weinstein's discharge as Director of the Mansfield Center at the University. The individual Defendants were dismissed on summary judgment before trial. A jury trial resulted in a verdict against the University for $170,000.00.

The case was significant in that it involved a high-profile dispute between prominent officials at the University, which raised several infrequently encountered issues of University hiring practices and employment law.

Final Disposition: The case was settled following trial.

5. ***Joyce M. Rivers v. 19th Hole, Inc. d/b/a Glacier View Golf Club, and Glacier View Fairway Estates, a Montana general partnership*, Docket No. CV 93-56-M-CCL, 12/8/95 (Unreported).**

Court: United States District Court for the District of Montana, Missoula Division.

Judge: The Honorable Charles C. Lovell.

Co-counsel:

Steven C. Haddon, Esq.
Boone, Karlberg & Haddon P.C.
201 West Main, Suite 300
P.O. Box 9199
Missoula, MT 59807-9199
Telephone: (406) 543-6646

Opposing counsel:

Stephen C. Berg, Esq.
Warden, Christiansen, Johnson
& Berg PLLF
221 First Avenue East
P.O. Box 3038
Kalispell, MT 59903-3038
Telephone: (406) 755-5535

Party Represented: Joyce M. Rivers.

Date of Representation: May 1993 - December 1995

Participation: Acted as lead counsel for Plaintiff from filing of complaint through trial and payment of the Court's judgment award.

Summary and Significance: Our client, a lawyer employed as general counsel for ALASCOM, was injured when an elk antler display fell from a wall and hit her on the head. Although liability was admitted, the case presented particularly difficult damage issues. Ms. Rivers developed fibromyalgia as a result of the injury and was obliged to take an early retirement from her position with ALASCOM. The Court, following trial, entered a judgment of $237,458.98 in her favor.

The case is significant because I was able to assist a fellow member of the bar in obtaining a significant recovery resulting from an unusual injury.

Final Disposition: Judgment award was paid in full following trial. No appeal.

6. ***Robert G. Steele v. The Supreme Court of the State of Montana, The State Bar of Montana, The Committee on Character and Fitness of the State Bar of Montana, Fred J. Weber, William E. Hunt, John C. Harrison, J.A. Turnage, James C. Nelson, Annie M. Bartos Betsy Brandborg, Barbara E. Bell, Robert J. Sullivan, Michael W. Tolstedt, Jan Weber, Allen B. Chronister, Ann Brodsky, Six Unnamed Employees of the State of Montana, Six Unnamed Employees of the State Bar of Montana, and The State of Montana*, Docket No. CV 94-90-M-CCL, 5/18/95 (Unreported).**

Court: United States District Court of the State of Montana, Missoula Division.

Judge: The Honorable Charles C. Lovell.

Opposing Counsel:

Robert G. Steele
Pro Se
10095 Rustic Road
Missoula, MT 59802
Telephone: (406) 258-6570

Parties Represented: The Supreme Court of the State of Montana, The State Bar of Montana, The Committee on Character and Fitness of the State Bar of Montana, Fred J. Weber, William E. Hunt, John C. Harrison, J.A. Turnage, James C. Nelson, Annie M. Bartos Betsy Brandborg, Barbara E. Bell, Robert J. Sullivan, Michael W. Tolstedt, Jan Weber, Allen B. Chronister, Ann Brodsky, Six Unnamed Employees of the State of Montana, Six Unnamed Employees of the State Bar of Montana, and The State of Montana.

Date of Representation: July 1994 - June 1995

Participation: Appointed Special Assistant Attorney General to serve as counsel on behalf of all Defendants. Handled all aspects of the defense from first appearance in September 1994 through entry of judgment and dismissal May 18, 1995.

Summary and Significance: The case was brought by an individual who had been denied certification for admission to the State Bar of Montana, claiming violation of various constitutional rights. Defendants included the Montana Supreme Court, individual members of the Court, the State Bar of Montana, the State Bar's Commission on Character and Fitness and its members, and other individuals. Eleventh Amendment judicial immunity, legislative immunity, subject matter jurisdiction, *res judicata*, and issue preclusion defenses issues were raised. The Eleventh Amendment and judicial immunity defenses raised by Defendants were accepted by the Court as basis for dismissal.

The case is significant in two particulars:

1. **It afforded an opportunity to represent the Supreme Court of our state and its members, the State Bar of Montana, and the members of the Commission on Character and Fitness in an action challenging the propriety of their conduct; and**

2. **It raised unique constitutional doctrine issues fundamental to our system of government and to regulation of the practice of law.**

Final Disposition: The complaint was dismissed as to all Defendants. No appeal was taken.

7. *George W. Steers, Personal Representative of the Estate of Kevin C. McMahon, Deceased v. Payless Car Rental Systems, Inc., a Nevada corporation*, **Docket No. CV 93-19-M-CCL (Unreported).**

Court: United States District Court for the District of Montana, Missoula Division.

Judge: The Honorable Charles C. Lovell.

Co-counsel:

C.F. Vulliet, Esq.
C.F. Vulliet & Associates
P.O. Box 22
5899 84th S.E.
Mercer Island, WA 98040
Telephone: (206) 232-7847

E. Craig Daue, Esq.
199 W. Pine St.
P.O. Box 3657
Missoula, MT 59806
Telephone: (406) 327-8677
Attorney for Estate of Kevin McMahon

Erik B. Thueson, Esq.
Thueson & Lamb
213 5th Ave.
P.O. Box 280
Helena, MT 59624
Telephone: (406) 442-8848
Attorney for Estate of Thomas McMahon

William R. Baldassin, Esq.
323 W. Pine St.
P.O. Box 7875
Missoula, MT 59802
Telephone: (406) 721-2120
Attorney for Third Party Defendants
Harold Magruder, Wilbur Watkins and
George Watkins

I. James. Heckathorn, Esq.
Crowley, Haughey, Hanson, Toole
& Dietrich, P.L.L.P.
431 First Avenue West
Kalispell, MT 59901
Telephone: (406) 752-6644
Attorneys for Third Party Defendant Douglas O. Henry,
d/b/a Henry Logging, Inc.

Opposing Counsel:

Gary D. Kalkstein, Esq.
Kalkstein Law Firm PLLC
508 Toole Ave.
P.O. Box 8568
Missoula, MT 59807-8568
Telephone: (406) 721-9800
Attorneys for Payless Car Rental Systems, Inc.

Tracy Axelberg, Esq.
Christensen, Moore, Cockrell,
Cummings & Axelberg P.C.
Two Medicine Bldg.
160 Heritage Way
P.O. Box 7370
Kalispell, MT 59904-0370
Telephone: (406) 751-6000
Attorneys for Payless Car Rental Systems, Inc.

Lon J. Dale, Esq.
Milodragovich, Dale, Steinbrenner
& Binney, P.C.
620 High Park Way
P.O. Box 4947
Missoula, MT 59806-4947
Telephone: (406) 728-1455
Attorneys for Western Auto Rental
d/b/a Payless Car Rental

Party Represented: Estate of Kevin McMahon.

Date of Representation: APPROX. January 1993 - March 1995

Participation: Served as co-counsel with C.F. Vulliet of Seattle on behalf of the Estate of Kevin McMahon. Mr. McMahon, a prominent young Seattle attorney, along with his brother, Thomas McMahon, died in a rented automobile/logging truck collision on February 8, 1990. Claims were asserted against the operator of the truck and against the local and national car rental entities. Following extended discovery and motion practice, the case was settled for policy limits, reserving claims against a separate underwriter for additional coverage. (*See* No. 10 below.)

Summary and Significance: The significance of the case was that I was able to assist in obtaining a maximum available recovery on behalf of the family of a young professional who lost his life as a result of defective equipment on a rented vehicle.

Final Disposition: The case was settled for policy limits.

8. ***George Steers, Personal Representative of the Estate of Kevin McMahon v. Associated International Insurance Company*, Docket No. 78598, 11/10/98 (Unreported).**

Court: Montana Fourth Judicial District Court, Missoula County.

Judge: The Honorable Douglas G. Harkin.

Co-counsel:

Steven C. Haddon, Esq.
Boone, Karlberg & Haddon P.C.
201 West Main, Ste. 300
P.O. Box 9199
Missoula, MT 59807-9199
Telephone: (406) 543-6646

C.F. Vulliet, Esq.
C.F. Vulliet & Associates
P.O. Box 22
5899 84th S.E.
Mercer Island, WA 98040
Telephone: (206) 232-7847

Opposing Counsel:

Paul M. Sharkey, Esq.
Sharkey & Northcutt PLLP
910 S.W. Higgins, Ste. 4
Missoula, MT 59803
Telephone: (406) 721-1970
Attorney for Associated International Insurance Company

Mark S. Williams, Esq.
Williams & Ranney, P.C.
235 E. Pine
P.O. Box 9440
Missoula, MT 59807-9440
Telephone: (406) 721-4350

Party Represented: Estate of Kevin McMahon.

Date of Representation: December 1993 - December 1998

Participation: Served as counsel for the estate from filing of complaint through satisfaction of judgment.

Summary and Significance: This case was a companion to CV 93-19-M-CCL. It involved the question of whether additional liability insurance coverage was available to satisfy the damage claims arising from the death of Kevin McMahon. The District Court ruled that additional insurance coverage was available and awarded damages of $281,589.04.

Final Disposition: District Court judgment was paid in full. No appeal.

9. ***Maguire v. State*, 835 P.2d 98 (Mont. 1995).**

Courts: Montana Second Judicial District Court, Silver Bow County; Montana Supreme Court.

Judges: The Honorable Mark P. Sullivan (District Court).

Montana Supreme Court - all members of Court.
Opinion, Justice R. C. McDonough.

Co-counsel:

G. Curt Drake, Esq.
Keller, Reynolds, Drake, Johnson
& Gillespie, P.C.
50 S. Last Chance Gulch
Helena, MT 59601
Telephone: (406) 442-0230

Opposing Counsel:

William P. Joyce, Esq.
1100 Utah Avenue
Butte, MT 59701
Telephone: (406) 723-8300

Parties Represented: The State of Montana, Montana Department of Institutions, the Montana Developmental Center and Carroll V. South, Director of Department of Institutions.

Date of Representation: APPROX. April 1991 - August 1992

Participation: I did not try this case. Rather I was appointed as Special Assistant Attorney General to handle the appeal on behalf of the Defendants. A $1,700,000.00 jury verdict had been returned against the State for emotional distress and personal injuries arising from the rape and impregnation of a severely developmentally disabled woman resident of Montana Developmental Center by a care giver at the Center. The appeal presented enormous challenges. Most issues related to rulings made during conduct of the trial, which are always difficult to overturn. Included in those issues were the question of the State's responsibility for criminal acts of one of its employees, which were not within the course and scope of employment, and the right of the victim's mother to recover damages for emotional distress.

Summary and Significance: The case is significant in that it offered an opportunity to present, in the face of extreme sympathy factors favoring the opposition and a less than optimum record, basic arguments on law issues of first impression in Montana. Reversal of the District Court's rulings on the responsibility for criminal conduct and emotional damage claims was obtained. The result confirms the principle of our system that all parties can receive fair and equal treatment by the Courts.

Final Disposition: The case was settled following remand to the District Court for further proceedings.

10. Prison Riot Litigation:

a. ***Kenneth Allen, et al. v. Curt Chisholm, et al.*, Docket No. CV 93-35-H-CCL, 4/8/98 & 4/30/98 (unreported).**

Court: In the United States District Court for the District of Montana, Helena Division.

Judge: The Honorable Charles C. Lovell.

Co-counsel:

John H. Maynard, Esq.
Marcia Davenport, Esq.
Crowley, Haughey, Hanson, Toole & Dietrich, P.L.L.P.
100 N. Park Ave.
P.O. Box 797
Helena, MT 59624
Telephone: (406) 449-4165

David L. Ohler, Esq.
Department of Corrections and Human Services
1539 - 11th Avenue
Helena, MT 59620
Telephone: (406) 444-5682

Opposing Counsel:

David F. Ness, Esq.
707 Georgia Ave, Ste. 203
Chattanooga, TN 37401
Telephone: (423) 756-4349

b. ***Kenneth J. Laird, et al. v. Curt Chisholm, et al.*, Docket No. CV 92-50-H-CCL, 4/8/98 & 4/30/98 (unreported).**

Court: In the United States District Court for the District of Montana, Helena Division.

Judge: The Honorable Charles C. Lovell.

Co-counsel:

John H. Maynard, Esq.
Marcia Davenport, Esq.
Crowley, Haughey, Hanson, Toole
& Dietrich, P.L.L.P.
100 N. Park Ave.
P.O. Box 797
Helena, MT 59624
Telephone: (406) 449-4165

David L. Ohler, Esq.
Department of Corrections and
Human Services
1539 - 11th Avenue
Helena, MT 59620
Telephone: (406) 444-5682

Opposing Counsel:

Ronald F. Waterman, Esq.
Gough, Shanahan, Johnson & Waterman
33 South Last Chance Gulch
P.O. Box 1715
Helena, MT 59624
Telephone: (406) 442-8560

c. ***Rudy Meissner, et al. v. Curt Chisholm, et al.*, CF 93-34-H-LBE, (consolidated into CV 92-50-H-CCL on 6/6/94), 4/8/98 & 4/30/98 (unreported).**

Court: In the United States District Court for the District of Montana, Helena Division.

Judge: The Honorable Charles C. Lovell.

Co-counsel:

John H. Maynard, Esq.
Marcia Davenport, Esq.
Crowley, Haughey, Hanson, Toole
& Dietrich, P.L.L.P.
100 N. Park Ave.
P.O. Box 797
Helena, MT 59624
Telephone: (406) 449-4165

David L. Ohler, Esq.
Department of Corrections and
Human Services
1539 - 11th Avenue
Helena, MT 59620
Telephone: (406) 444-5682

Opposing Counsel:

Ronald F. Waterman, Esq.
Gough, Shanahan, Johnson & Waterman
33 South Last Chance Gulch
P.O. Box 1715
Helena, MT 59624
Telephone: (406) 442-8560

d. *Terry Alan Langford v. Jack McCormick, et al.*, **Docket No. CV 92-32-H-LBE, 4/8/98 & 4/30/98 (unreported).**

Court: In the United States District Court for the District of Montana, Helena Division.

Judge: The Honorable Leif B. Erickson, Federal Magistrate Judge.

Co-counsel:

John H. Maynard, Esq.
Marcia Davenport, Esq.
Crowley, Haughey, Hanson, Toole
& Dietrich, P.L.L.P.
100 N. Park Ave.
P.O. Box 797
Helena, MT 59624
Telephone: (406) 449-4165

David L. Ohler, Esq.
Department of Corrections and
Human Services
1539 - 11th Avenue
Helena, MT 59620
Telephone: (406) 444-5682

Opposing Counsel:

Palmer A. Hoovestal, Esq.
40 W. 14th St., Ste. 4A
P.O. Box 747
Helena, MT 59604-0747
Telephone: (406) 457-0970

e. ***William Jay Gollehon v. Jack McCormick, et al.*, Docket No. CV 94-23-LBE, 3/5/98 (unreported).**

Court: In the United States District Court for the District of Montana, Helena Division.

Judge: The Honorable Leif B. Erickson, Federal Magistrate Judge.

Co-counsel:

John H. Maynard, Esq.
Marcia Davenport, Esq.
Crowley, Haughey, Hanson, Toole
& Dietrich, P.L.L.P.
100 N. Park Ave.
P.O. Box 797
Helena, MT 59624
Telephone: (406) 449-4165

David L. Ohler, Esq.
Department of Corrections and
Human Services
1539 - 11th Avenue
Helena, MT 59620
Telephone: (406) 444-5682

Opposing Counsel:

Palmer A. Hoovestal, Esq.
40 W. 14th St., Ste. 4A
P.O. Box 747
Helena, MT 59604-0747
Telephone: (406) 457-0970

f. ***Robert Close v. Jack McCormick, et al.*, Docket No. CV 94-14-H-LBE, 4/8/98 & 4/30/98 (unreported).**

Court: In the United States District Court for the District of Montana, Helena Division.

Judge: The Honorable Leif B. Erickson, Federal Magistrate Judge.

Co-counsel:

John H. Maynard, Esq.
Marcia Davenport, Esq.
Crowley, Haughey, Hanson, Toole & Dietrich, P.L.L.P.
100 N. Park Ave.
P.O. Box 797
Helena, MT 59624
Telephone: (406) 449-4165

David L. Ohler, Esq.
Department of Corrections and Human Services
1539 - 11th Avenue
Helena, MT 59620
Telephone: (406) 444-5682

Opposing Counsel:

Palmer A. Hoovestal, Esq.
40 W. 14th St., Ste. 4A
P.O. Box 747
Helena, MT 59604-0747
Telephone: (406) 457-0970

g. *Brian Spray v. Curt Chisholm, et al.*, **Docket No. CV 93-62-H-CCL, 4/8/98 & 4/30/98 (unreported).**

Court: In the United States District Court for the District of Montana, Helena Division.

Judge: The Honorable Charles C. Lovell.

Co-counsel:

John H. Maynard, Esq.
Marcia Davenport, Esq.
Crowley, Haughey, Hanson, Toole & Dietrich, P.L.L.P.
100 N. Park Ave.
P.O. Box 797
Helena, MT 59624
Telephone: (406) 449-4165

David L. Ohler, Esq.
Department of Corrections and Human Services
1539 - 11th Avenue
Helena, MT 59620
Telephone: (406) 444-5682

Opposing Counsel:

Palmer A. Hoovestal, Esq.
40 W. 14th St., Ste. 4A
P.O. Box 747
Helena, MT 59604-0747
Telephone: (406) 457-0970

h. *Randy Corsi v. Curt Chisholm, et al.*, **Docket No. CV 95-26-H-LBE, 4/8/98 & 4/30/98 (unreported).**

Court: In the United States District Court for the District of Montana, Helena Division.

Judge: The Honorable Leif B. Erickson, Federal Magistrate Judge.

Co-counsel:

John H. Maynard, Esq.
Marcia Davenport, Esq.
Crowley, Haughey, Hanson, Toole
& Dietrich, P.L.L.P.
100 N. Park Ave.
P.O. Box 797
Helena, MT 59624
Telephone: (406) 449-4165

David L. Ohler, Esq.
Department of Corrections and
Human Services
1539 - 11th Avenue
Helena, MT 59620
Telephone: (406) 444-5682

Opposing Counsel:

Wendy L. Holton, Esq.
Holton and Hooks
211 5th Ave.
Helena, MT 59601
Telephone: (406) 442-9349

i. *Glen Goings v. Curt Chisholm, et al.*, **Docket No. CV 93-58-H-CCL, 4/8/98 & 4/30/98 (unreported).**

Court: In the United States District Court for the District of Montana, Helena Division.

Judge: The Honorable Charles C. Lovell.

Co-counsel:

John H. Maynard, Esq.
Marcia Davenport, Esq.
Crowley, Haughey, Hanson, Toole
& Dietrich, P.L.L.P.
100 N. Park Ave.
P.O. Box 797
Helena, MT 59624
Telephone: (406) 449-4165

David L. Ohler, Esq.
Department of Corrections and
Human Services
1539 - 11th Avenue
Helena, MT 59620
Telephone: (406) 444-5682

Opposing Counsel:

Scott C. Wurster, Esq.
236 Wisconsin Ave.
P.O. Box 970
Whitefish, MT 59937-0970

Wendy L. Holton, Esq.
Holton and Hooks
211 5th Ave.
Helena, MT 59601
Telephone: (406) 442-9349

j. *Marc Blaine McGuire v. Jack McCormick, et al.*, **Docket No. DV 92-27-H-LBE, 4/8/98 & 4/30/98 (unreported).**

Court: In the United States District Court for the District of Montana, Helena Division.

Judge: The Honorable Leif B. Erickson, Federal Magistrate Judge.

Co-counsel:

John H. Maynard, Esq.
Marcia Davenport, Esq.
Crowley, Haughey, Hanson, Toole
& Dietrich, P.L.L.P.
100 N. Park Ave.
P.O. Box 797
Helena, MT 59624
Telephone: (406) 449-4165

David L. Ohler, Esq.
Department of Corrections and
Human Services
1539 - 11th Avenue
Helena, MT 59620
Telephone: (406) 444-5682

Opposing Counsel:

Scott C. Wurster, Esq.
236 Wisconsin Ave.
P.O. Box 970
Whitefish, MT 59937-0970

k. ***Alan D. McMillin v. Jack McCormick, et al.*, Docket No. CV 92-7-H-LBE, 4/8/98 & 4/30/98 (unreported).**

Court: In the United States District Court for the District of Montana, Helena Division.

Judge: The Honorable Leif B. Erickson, Federal Magistrate Judge.

Co-counsel:

John H. Maynard, Esq.
Marcia Davenport, Esq.
Crowley, Haughey, Hanson, Toole & Dietrich, P.L.L.P.
100 N. Park Ave.
P.O. Box 797
Helena, MT 59624
Telephone: (406) 449-4165

David L. Ohler, Esq.
Department of Corrections and Human Services
1539 - 11th Avenue
Helena, MT 59620
Telephone: (406) 444-5682

Opposing Counsel:

Scott C. Wurster, Esq.
236 Wisconsin Ave.
P.O. Box 970
Whitefish, MT 59937-0970

l. ***Joseph, et al. v. Curt Chisholm, et al.*, Docket No. CV 94-74-H-CCL, 4/8/98 & 4/30/98 (unreported).**

Court: In the United States District Court for the District of Montana, Helena Division.

Judge: The Honorable Charles C. Lovell.

Co-counsel:

John H. Maynard, Esq.
Marcia Davenport, Esq.
Crowley, Haughey, Hanson, Toole
& Dietrich, P.L.L.P.
100 N. Park Ave.
P.O. Box 797
Helena, MT 59624
Telephone: (406) 449-4165

David L. Ohler, Esq.
Department of Corrections and
Human Services
1539 - 11th Avenue
Helena, MT 59620
Telephone: (406) 444-5682

Opposing Counsel:

Christine D. Somers, Esq.
Haxby & Somers
1485 Continental Dr.
P.O. Box 3008
Butte, MT 59702-3008
Telephone: (406) 723-6966

m. *Paul Allen v. Jack McCormick, et al.*, **Docket No. CV 94-78-H-CCL, 4/8/98 & 4/30/98 (unreported).**

Court: In the United States District Court for the District of Montana, Helena Division.

Judge: The Honorable Charles C. Lovell.

Co-counsel:

John H. Maynard, Esq.
Marcia Davenport, Esq.
Crowley, Haughey, Hanson, Toole
& Dietrich, P.L.L.P.
100 N. Park Ave.
P.O. Box 797
Helena, MT 59624
Telephone: (406) 449-4165

David L. Ohler, Esq.
Department of Corrections and
Human Services
1539 - 11th Avenue
Helena, MT 59620
Telephone: (406) 444-5682

Opposing Counsel:

David F. Ness, Esq.
707 Georgia Ave, Ste. 203
Chattanooga, TN 37401
Telephone: (423) 756-4349

n. *D. Lankford v. Curt Chisholm, et al.*, **Docket No. MC 94-46-H-CCL, 1995 (unreported).**

Court: In the United States District Court for the District of Montana, Helena Division.

Judge: The Honorable Charles C. Lovell.

Co-counsel:

John H. Maynard, Esq.
Marcia Davenport, Esq.
Crowley, Haughey, Hanson, Toole
& Dietrich, P.L.L.P.
100 N. Park Ave.
P.O. Box 797
Helena, MT 59624
Telephone: (406) 449-4165

David L. Ohler, Esq.
Department of Corrections and Human Services
1539 - 11th Avenue
Helena, MT 59620
Telephone: (406) 444-5682

Opposing Counsel:

Scott C. Wurster, Esq.
236 Wisconsin Ave.
P.O. Box 970
Whitefish, MT 59937-0970

All cases consolidated into CV 93-19-H-LBE

Plaintiffs, after consolidation and amendments, included:
Kenneth Allen, Paul Allen, William Baker, Howard Bashor, Robert Close, Gary Cox, David T. Dawson, Edward Estrada, Glen Goings, William Jay Gollehon, Christopher Grant, Anthony Heaney, Vern Kill on Top, Kenneth J. Laird, Terry Alan Langford, Daniel Lopez, Marc Blain McGuire, Duncan Peder McKenzie, Jr., Alan D. McMillin, Rudy Meissner, Joseph Milinovich, Steve Ritchson, Scott Seelye, Ron Smith, William Smock, Brian Spray, Douglas Turner, Robert Wild & Ricky Worden

Participation: Our firm assumed the defense of a portion of the Defendants named in 14 separate lawsuits brought by some 34 inmates at the Montana State Prison (MSP) alleging civil rights violations arising out of a riot which occurred at MSP on September 22, 1991. Ultimately, 79 persons employed at MSP on the day of the riot who were named as Defendants were represented by us. The claims asserted included alleged beatings with clubs and chains, improper medical attention, verbal abuse, inappropriate restraints and unwarranted body cavity searches. After extensive motion practice and discovery, all but 5 of the Defendants we represented were dismissed prior to trial. The consolidated cases were tried to a jury in a month-long trial. One of the 5 remaining Defendants represented by us was dismissed at the start of the trial. Another was dismissed during trial. One more was fully exonerated by the jury. Five of the claimants were awarded nominal damages by directed verdict against the remaining 2 Defendants.

<u>Summary and Significance</u>: These cases were the most challenging and the most complex of my career. We represented the largest number of clients ever in one consolidated proceeding. Separate defenses had to be prepared for each client for the claims of numerous separate Plaintiffs. Several of the Plaintiffs had committed murders of other inmates during the riot. An additional two Plaintiffs were convicted murderers who were executed before trial. Significant questions relating to admissibility of evidence and civil rights law had to be addressed. Challenging trial strategy and witness management issues were presented daily.

The case was particularly significant to me because it afforded the opportunity for fundamental questions concerning the operations of MSP and the conduct of its personnel during a period of extreme stress and strife to be fully and fairly scrutinized and evaluated by a jury of Montana citizens through our court system.

<u>Final Disposition</u>: All claims not dismissed prior to conclusion of trial were settled while appeals and post-trial motions were pending. No damages were paid.

19. <u>Legal Activities</u>: 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 the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

My professional activities and interests apart from client representation have been concentrated in three areas:

1. **Bar-related;**
2. **Court committees and commissions; and**
3. **Law teaching.**

What I consider to be some of the more significant components of those activities are:

1. **<u>Bar related</u>.**

I was Chairman of the Young Lawyers' Section of the Montana Bar Association in 1967 - 1968, a member of the Executive Committee, Montana Bar Association in 1968 - 1969 and a member of the State Bar of Montana Board of Trustees in 1976 - 1978. I served on an advisory commission to the Montana Supreme Court in 1985, which studied and made recommendations to the Court for revision of the standards for admission to practice in our state. I was a director of

the American Judicature Society for one year and, since becoming a Fellow of the American College of Trial Lawyers, I have served on two of its committees, the Canada - American Committee and the Ethics Committee.

2. Court committees and commissions.

In 1974, I was appointed Chairman of the Montana Supreme Court's newly created Commission on Rules of Evidence. This Commission undertook a two year study of the law of evidence in Montana, culminating in recommendations to the Montana Supreme Court and adoption by the Court of new Rules of Evidence. I participated in five separate day-long seminars at locations across Montana at which the new rules were discussed. The Commission continues to study developments in the law of evidence and to make recommendations to the Montana Supreme Court for revisions in the rules as warranted.

I have been privileged to be an elected by the Bar and appointed by the Court member of the Montana Supreme Court's Commission on Practice since 1986. I have served as Chairman of the Commission since 1996. The Commission is responsible, as an arm of the Court, for screening and hearing complaints of unethical conduct involving lawyers admitted to practice in Montana. It adjudicates some 230 cases per year and conducts approximately 8 formal hearings per year. The Montana disciplinary system is unique in that it is entirely self-administered by members of the Bar. It has no paid professional staff. Investigations are handled by practicing lawyers. Special counsel, who serve as prosecutors, are drawn from members of the practicing Bar. I am, without question, honored to be a part of its operation.

3. Law teaching.

I am a graduate of the University of Montana Law School and remain in its debt for affording me the opportunity to study law and become a lawyer. I have had a part-time teaching affiliation with the Law School that has spanned almost 30 years and which continues to be one of the most enjoyable parts of being a member of our profession. I have taught courses in Contract Law, Professional Responsibility, Courtroom and Office Practice, and Trial Tactics. The Advanced Trial Advocacy Program for which I have served as Course Coordinator since 1985, is a week-long NITA format intensive advocacy training program for third year and graduating law students, and Montana practitioners. The work with this program,

and with national NITA programs at which I have served as a faculty member, have been among the most rewarding of my career.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List 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. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

   I have a vested interest account in the Boone, Karlberg & Haddon P.C. Profit Sharing Plan and Trust, Thomas H. Boone, Trustee, from which I am eligible to make withdrawals. I will transfer my interest in the plan to a personal IRA account upon confirmation.

   My interest as a Shareholder in Boone, Karlberg & Haddon P.C. will be acquired by the P.C. or its remaining Shareholders upon my confirmation.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

   I will sever all ties, financial and otherwise, with my law firm, effective upon confirmation. I will recuse myself from any cases in which members or associates of my present firm appear as parties, counsel or witnesses until all financial matters with the firm are fully and finally resolved and paid. I do not anticipate any financial arrangements that will present a conflict of interest and will, of course, abide by and follow the tenets of the Code of Conduct for United States Judges in all matters.

3. 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.

4. 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, patents, 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 for Nominees, Form AO-10, attached.

5. Please complete the attached financial net worth statement in detail. (Add schedules as called for.)

Financial Statement Net Worth, attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I served as a member of the Bush for President Montana Steering Committee in 2000.

AO-10 (w)
Rev. 1/2000

FINANCIAL DISCLOSURE REPORT
Nomination Report

Report required by the Ethics in Government Act of 1978, as amended (5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
Haddon, Sam E.	District Court - Montana	05/18/2001
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5. Report Type (check type)**	**6. Reporting Period**
U.S. District Judge (Nominee)	X Nomination, Date 05/17/2001 ___ Initial ___ Annual ___ Final	01/01/2000 to 04/30/2001
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.**	
301 S. Park Helena, MT 59626	Reviewing Officer _____ Date _____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.

I. POSITIONS *(Reporting individual only; see pp. 9-13 of Instructions.)*

☐ NONE (No reportable positions.)

	POSITION	NAME OF ORGANIZATION / ENTITY
1	Vice President	Boone, Karlberg & Haddon P.C.
2	Partner	Central Square Partnership
3	Partner	Boone, Karlberg & Haddon

II. AGREEMENTS *(Reporting individual only; see pp.14-16 of Instructions.)*

☐ NONE (No reportable agreements.)

	DATE	PARTIES AND TERMS
1		A sum certain value for my interest as Shareholder in Boone, Karlberg & Haddon P.C. will be established and, upon my confirmation, that interest (cntd Part 8)
2		My vested interest account in the Boone, Karlberg & Haddon P.C. Profit Sharing Plan and Trust, Thomas H. Boone, Trustee, from which I am eligible (cntd Part 8)
3		

III. NON-INVESTMENT INCOME *(Reporting individual and spouse; see pp. 17-24 of Instructions.)*

☐ NONE (No reportable non-investment income.)

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1	12/31/00	Boone, Karlberg & Haddon P.C. - Wages	171157.69
2	12/31/00	University of Montana School of Law - Wages	3000.00
3	04/30/01	Boone, Karlberg & Haddon P.C. - Wages	40333.36
4	12/31/00	Judy L. Schmidt, M.D. -- Wages for spouse, Betty L. Haddon	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Haddon, Sam E.	05/18/2001

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)

☐ NONE (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1	Exempt	
2		
3		
4		
5		
6		
7		

V. GIFTS

(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)

☐ NONE (No such reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1	Exempt		
2			
3			

VI. LIABILITIES

(Includes those of spouse and dependent children. See pp 33-35 of Instructions.)

☐ NONE (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE*
1	First Trust Company of Montana	Industrial Revenue Bonds	L
2	City of Missoula	Mortgage Note	J
3	City of Missoula	Lease	K
4			
5			
6			

* VAL CODES: J=$15,000 or less K=$15,001-$50,000 L=$50,001 to $100,000 M=$100,001-$250,000 N=$250,001-$500,000
O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Haddon, Sam E.

Date of Report: 05/18/2001

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
1 Boone, Karlberg & Haddon P.C. Employee Profit Sharing Trust	G	Distribution	P1	W	Exempt				
2 Sterling Financial Corportion	A	Dividend	J	T	Exempt				
3 Central Square Building	F	Rent	N	W	Exempt				
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									

1 Inc/Gain Codes: (Col. B1, D4) A=$1,000 or less; B=$1,001-$2,500; C=$2,501-$5,000; D=$5,001-$15,000; E=$15,001-$50,000; F=$50,001-$100,000; G=$100,001-$1,000,000; H1=$1,000,001-$5,000,000; H2=$5,000,001 or more

2 Val Codes: (Col. C1, D3) J=$15,000 or less; K=$15,001-$50,000; L=$50,001-$100,000; M=$100,001-$250,000; N=$250,001-$500,000; O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000; P3=$25,000,001-$50,000,000; P4=$50,000,001 or more

3 Val Mth Codes: (Col. C2) Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash/Market; U=Book Value; V=Other; W=Estimated

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Haddon, Sam E.	05/18/2001

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

PART 2: Parties and Terms re: A sum cert, cntd ...will be acquired by cash purchase by the P.C. or its remaining Shareholders

PART 2: Parties and Terms re: My vested , cntd ...to make withdrawals, will be transferred to a personal IRA account upon confirmation.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Haddon, Sam E.	05/18/2001

SECTION HEADING. (Indicate part of report.)

Information continued from Parts I through VI, inclusive.

PART 1. POSITIONS (cont'd.)

Line	Position	Name of Organization/Entity
4	Adjunct Instructor (Part-time)	University of Montana, School of Law

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Haddon, Sam E.	05/18/2001

IX. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature Sam E Haddon Date May 18, 2001

Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
One Columbus Circle, N.E.
Suite 2-301
Washington, D.C. 20544

SAM E. HADDON FINANCIAL STATEMENT
NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES	
Cash on hand and in banks	$113,750.00	Notes payable to banks--secured	
U.S. Government securities--add schedule		Notes payable to banks--unsecured	
Listed securities--add schedule	$2,500.00	Notes payable to relatives	
Unlisted securities--add schedule		Notes payable to others	
Accounts and notes receivable:		Accounts and bills due	
Due from relatives and friends		Unpaid income tax	
Due from others		Other unpaid tax and interest	
Doubtful		Real estate mortgages payable--add schedule	$142,000.00
Real estate owned--add schedule	$375,000.00	Chattel mortgages and other liens payable	
Real estate mortgages receivable		Other debts--itemize:	
Autos and other personal property	$150,000.00	Central Square Partnership Debts:	
Cash value--life insurance		First Trust Company of Montana Industrial Revenue Bonds	$61,050.00
Other assets--itemize:		City of Missoula - Mortgage Note	$13,220.00
Boone, Karlberg & Haddon P.C. Employee Profit Sharing Trust	$2,107,251.00	City of Missoula - Leases	$20,038.00
Boone, Karlberg & Haddon P.C.	$120,000.00		
Central Square Partnership	$301,440.00	Total liabilities	$236,308.00
		Net Worth	$2,933,633.00
Total Assets	$3,169,941.00	Total liabilities and net worth	$3,169,941.00
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor	No	Are any assets pledged? (Add schedule)	Yes
On leases or contracts	No	Are you defendant in any suits or legal actions?	No
Legal Claims	No	Have you ever taken bankruptcy?	No
Provision for Federal Income Tax	No		
Other special debt	No		

Supporting Schedules:
Real estate owned -- Personal residence in Missoula, Montana
Listed securities -- Sterling Financial Corporation 180 shares
Real estate mortgages payable -- Personal residence in Missoula, Montana
Assets pledged -- Mr. Haddon has an 11% interest in Central Square Partnership which owns real estate that is pledged to First Trust Company and The City of Missoula as noted above.

III. GENERAL (PUBLIC)

1. 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.

   Rule 6.1 of the Montana Rules of Professional Conduct, adopted by the Montana Supreme Court, defines the goals for lawyer *pro bono publico* service in our state. My work has always included a substantial component of such service.

   All my work for charitable, religious and philanthropic organizations has been without fee. While I do not keep or maintain billing records for this type of service, I estimate that it has taken up at least 50 hours per year.

   I do some simple estate planning and will preparation for no fee or at a reduced fee for elderly clients and acquaintances. I estimate the number of persons so represented to have been an average of 5 to 7 per year. No billing records are maintained for those not charged.

   All law-related commission and committee work throughout my career has been without compensation. As a member of the Commission on Practice from 1986 - 1996, I devoted approximately 15 hours per month to Commission work. Since being named Chairman in 1996, I have devoted approximately 40 hours per month to Commission activities.

   All clients referred to me through the Tribal Defenders Office of the Flathead Nation have been represented without fee.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates – through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

   No.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

No. Not applicable.

Following the election of President Bush, I submitted a request to Senator Conrad Burns (R. - Mont.) that I be considered for recommendation to the President to fill the vacancy on the District Court for the District of Montana created by the retirement of Judge Charles C. Lovell. I also submitted a request to Senator Max Baucus (D. - Mont.) for support of my request for recommendation. Background résumés were provided to both Senators. I met with Senator Burns and discussed with him my interest in the appointment. I also met with White House Counsel, the Honorable Alberto Gonzales, and with Deputy White House Counsel, Tim Flanigan, about my interest in securing the appointment. Senators Burns and Baucus submitted their joint recommendation to the President on February 13, 2001. On March 6, 2001, I received word that I was to be suggested to the Department of Justice for recommendation to the President for nomination to fill the vacancy.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Federal courts are courts of limited jurisdiction and may exercise only those powers conferred by law. The role of a federal district court is to apply the law as enacted by Congress, and as interpreted by the United States Supreme Court and by the United States Circuit Courts of Appeal, to actual controversies between parties who have legally recognized substantive and protected interests in the particular matter in issue. The court should recognize the importance of *stare decisis* in making decisions and, in any case, should limit its rulings to resolution of the specific controversy before it.

AFFIDAVIT

I, Sam E. Haddon, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

May 15, 2001 — DATE

Sam E Haddon — NAME

STATE OF MONTANA)
: ss.
County of Missoula)

SUBSCRIBED AND SWORN TO before me this 15th day of May, 2001.

NOTARY PUBLIC FOR THE STATE OF MONTANA
(Notarial Seal) Residing at Missoula, Montana
My Commission Expires: 1/27/03

Chairman LEAHY. Ms. O'Connor, your husband is a judge and he has done this a lot, but bear with me.

Would you swear or affirm that the testimony you are about to give before the Committee will be the truth, the whole truth and nothing but the truth?

Ms. O'CONNOR. I do.

Chairman LEAHY. I would also give you an opportunity to introduce your husband.

STATEMENT OF EILEEN J. O'CONNOR, OF MARYLAND, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL FOR THE TAX DIVISION, DEPARTMENT OF JUSTICE

Ms. O'CONNOR. Thank you, with pleasure. I am accompanied today by my best friend, whom I have the great good fortune to be married to, the Honorable A. Raymond Randolph, of the District of Columbia Circuit.

Chairman LEAHY. Judge, it is good to have you here with us.

I am going to put a statement from Senator Feingold in the record.

As I mentioned earlier, Senator Hatch was involved downtown on another matter that actually related to his membership and former chairmanship of this committee. That is why I have asked each of you to stand by until he might come back.

Why don't you hold, Ms. O'Connor, and let me yield to Senator Hatch?

STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Senator HATCH. I will put my statement in the record.

Let me just congratulate all of you. I am very pleased that all of you are being put through the committee, hopefully, in the immediate future and that we have this hearing today. I want to thank Senator Leahy for moving ahead and doing this.

I am very pleased with this group of nominees, and I will just tell you in advance, so don't worry about me, I will submit my questions in writing. I have looked over all of your backgrounds rather carefully. I want to compliment the President of the United States for making these excellent choices.

I am pleased, Judge Gregory, to be able to get this matter resolved and am pleased to be a strong supporter of yours, as well as all the rest of you. This is a real privilege to have you all here. It is going to be a privilege for you to serve in your respective callings, and I believe that you will all act with distinction.

So with that, I will just turn the time back to my chairman.

[The prepared statement of Senator Hatch follows.]

STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Thank you, Chairman Leahy.

It is both an honor and a pleasure to be here this afternoon with these extremely well-qualified nominees for the federal courts and the Department of Justice. I would like to congratulate all of the nominees for their selection by President Bush to serve in these important positions. All of you have distinguished yourselves with hard work and great intellect, and I think you will do great service to the citizens of this country upon your confirmations.

Judge Gregory's legal experience, character, and good judgment make him an excellent choice for the Fourth Circuit Court of Appeals. A graduate of Michigan Law

School, he has handled just about every kind of litigation. He spent his first four years in practice at two large and prestigious law firms before co-founding a small law firm with the Honorable Douglas Wilder, the former Governor of Virginia. At first, their practice included criminal defense, personal injury, domestic relations, wills, real estate closings, bankruptcy and civil litigation. Eventually the firm began representing large corporate and municipal clients, and Judge Gregory has tremendous experience trying numerous cases in the areas of insurance defense, criminal defense, employment law and commercial law. Since the beginning of this year, Judge Gregory has been doing an excellent job as a judge on the Fourth Circuit. There are a number of vacancies on the Fourth Circuit and we currently have three nominees for that court, all of whom I hope we confirm as soon as possible. President Bush has found Judge Gregory to be well qualified to continue in that position and I believe he should be confirmed.

President Bush, in a very significant gesture aimed at changing the tone in Washington, focused on Judge Gregory's qualifications and, with the support of Senators Warner and Allen, nominated Judge Gregory to a lifetime appointment. Judge Gregory's re-nomination is an unmistakable gesture of bipartisanship by President Bush, which I must add is unprecedented in modern times. Today's hearing—along with what I hope will be timely confirmation votes in Committee and on the Senate floor—will be significant, concrete proof of President Bush's good-faith effort to move forward toward a constructive spirit of cooperation with the Senate.

The two nominees for the District of Montana also demonstrate the rewards of bipartisanship. Both are highly qualified and are supported by both Senators from Montana one Republican and one Democrat.

Judge Cebull has an outstanding record as a lawyer and a judge. He spent 28 years in private practice—both in general practice as well as specializing in the defense of personal injury, product liability, and professional liability cases. From 1970 to 1972, Judge Cebull served as Trial Judge for the Northern Cheyenne Tribal Court. His jurisdiction covered criminal trials of tribe members charged with violating tribal ordinances. In 1998, Judge Cebull began serving his appointment as United States Magistrate Judge for the District of Montana, Great Falls Division, where he continues to serve at the present time. During his three years as Magistrate Judge, he has assembled a near-perfect record of having his decisions adopted and affirmed.

Mr. Haddon's career is similarly outstanding. As a private practitioner since 1966, Mr. Haddon has developed considerable expertise in a broad range of litigation topics—both at the trial and appellate levels. Mr. Haddon has represented clients before state courts, Indian tribal courts, federal district court, the Ninth Circuit Court of Appeals and the United States Supreme Court. His cases have included the areas commercial litigation, taxpayer suits, personal injury claims, civil rights, Indian law and constitutional law—to name a few. Mr. Haddon has also unselfishly donated his superior legal talents by performing *pro bono* work for members of the Flathead Nation Indian tribe—as well as for charitable, religious and philanthropic organizations.

Switching now to the Department of Justice, I would like to welcome Ms. Eileen O'Connor, the nominee for Assistant Attorney General for the Tax Division. That is the Division that supervises all federal criminal tax prosecutions. It also defends the United States in tax refund lawsuits, institutes collection actions, defends the IRS in all tort claims, and represents the federal government in bankruptcy actions. In addition, the Tax Division represents federal departments and agencies in cases concerning the federal government's immunity from state and local taxation.

Ms. O'Connor has proven to be a highly qualified expert on federal taxation issues. Over the course of her career, she has worked extensively as a partner for national accounting firms, as a corporate tax law specialist for the Internal Revenue Service, and as a sole practitioner. She has also applied her expertise in her role as an adjunct law professor at George Mason University and Georgetown University. In all of these roles, Ms. O'Connor has demonstrated impeccable skill and judgment—exactly the qualifications needed for the important position of Assistant Attorney General for the Justice Department's Tax Division. As with the earlier nominees, I commend the president for nominating her.

Again, it is a great pleasure to welcome these nominees to this Committee.

Chairman LEAHY. Well, I would point out, Senator Hatch, that all of the nominees here have undergone strenuous, arduous cross-examination, but none more arduous than what you just put them through there, which gives you some idea, Orrin, of what it has been like this afternoon.

Senator HATCH. Well, I appreciate you being so fair to these good nominees.

Chairman LEAHY. Do you have any objection, then, to all of them, except Ms. O'Connor, leaving?

Senator HATCH. I think you ought to be released. I will just submit questions in writing, and if you can get those answers right back, it would help us.

Chairman LEAHY. Ms. O'Connor, you stay, but Judge Gregory, you and your family, and Judge Cebull and Mr. Haddon, please feel free to leave. I mean, you are welcome to stay, but feel free to leave if you would like.

Senator HATCH. I will really doubt your judgment if you stay.

Chairman LEAHY. Yes, I think you are probably right. That is that Western "cut to the quick."

[Laughter.]

Senator HATCH. I will just welcome you, Ms. O'Connor. I am very proud of your nomination and look forward to supporting you all the way.

Ms. O'CONNOR. Thank you very much, Senator. I see there are a few hardy people remaining for this exciting section of this hearing.

Chairman LEAHY. We all love taxes, let me tell you.

Ms. O'CONNOR. Mr. Chairman, Senator Hatch, members of the committee, thank you so much for setting this hearing today. I am very honored and privileged to be before you today as President Bush's nominee to be the Assistant Attorney General for the Tax Division of the Department of Justice.

I apologize for my laryngitis, but you don't know how grateful I am to have any voice at all today after what I have been through.

I thank Senator Hatch for the time that he spent with me a few weeks ago to get to know me a little bit, and I am very grateful to my Representative, Congresswoman Morella, for making the time to be here today and putting together from what I know not that glowing introduction of me.

I very much appreciate the committee's consideration of my nomination and I hope that you will recommend my confirmation to the Senate. I look forward to responding to any questions you have.

[The biograhpical information of Ms. O'Connor follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

   Eileen Janette O'Connor
   Nickname: Lee
   Married name 1970 to 1973: Eileen J. Whitefield, Mrs. Larry K. Whitefield

2. Address: List current place of residence and office address(es).

   Home: Bethesda MD 20817
   Office: 950 Pennsylvania Avenue, NW, Washington, D.C.

3. Date and place of birth: June 15, 1950; Philadelphia PA

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

   Married 5/18/1984 to: A. Raymond Randolph, Circuit Judge
   United States Court of Appeals, District of Columbia Circuit
   333 Constitution Avenue, NW
   Washington, DC

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

   Columbus State University, 1968 to 1973, B.S. 1973
   Catholic University of America's Columbus School of Law, 1974 to 1978, J.D. 1978

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

   1973 – 1975: Ernst & Ernst (subsequently Ernst & Whinney, and now Ernst & Young); tax senior
   1975 – 1978: National Office of Internal Revenue Service; corporation tax law specialist
   1978 – 1983: Arthur Andersen & Co.; senior tax manager
   1983 – 1984: sole practitioner tax consultant
   1984 – 1985: Adjunct Professor, Georgetown University Law School LLM program
   1984 – 1999: Grant Thornton LLP; senior manager and associate partner
   2000 – 2001: Aronson, Fetridge & Weigle; officer
   Spring 2001: Adjunct Professor, Tax Policy, George Mason University School of Law
   1998 – present: National Advisory Board, Independent Women's Forum
   2001 – present: Editorial Board, *The Tax Adviser* (the monthly tax publication of the AICPA)
   2001 – present: Counselor to the Attorney General, United States Department of Justice

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

   No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

National Honor Society in high school

9. Bar Associations: List all bar associations, legal or judicial-related committees 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.

Bar Association of the District of Columbia
Federal Bar Association
American Bar Association

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

The following are my memberships and other organization activities. I am not familiar with their lobbying activities, if any.

I am a member of the Federal Bar Association, the Bar Association of DC, the American Institute of Certified Public Accountants, the Federalist Society, and the American Bar Association.

In addition to my Church, I contribute to the Cato Institute, the American Enterprise Institute, and the Heritage Foundation. I am a member of the National Advisory Board of the Independent Women's Forum.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

District of Columbia Court of Appeals: August 22, 1984
United States Tax Court: May 4, 1988

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee.

Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Articles

"Constructor's Guide to the Taxpayer Relief Act of 1997: A Comprehensive Guide to the New Tax Code - What It Is - and What It Might Have Been," *Constructor*, December 1997

"IRS Technical Positions: How They Develop," *CFMA's Building Profits*, November/December 1997

"Taxpayers Can Now Claim Cost Recovery Deductions Missed in Prior Years," *Tax Management Memorandum, Vol 37, No. 20, September 30, 1996*

"How to Defeat an IRS Challenge to Your Insurance Deductions, *CMFA Building Profits*, May June 1996

Federal Income Tax Update, Construction Financial Management Association Annual Conference, May 1998, Las Vegas, Nevada

Federal Taxation of the Construction Industry, Associated General Contractors of America 79th Annual Convention, March 13, 1998, New Orleans LA

The Current Code: A Real World Perspective, The Economics of Taxation: Foundations for Reform, Legislative Staff Retreat, January 21-22, 1998, Baltimore, Maryland, sponsored by George Mason University's Center for Market Processes

Federal Tax Issues for Large Contractors, AICPA National Construction Industry Conference, New Orleans, LA, December 8 and 9, 1997

The Tax Consequences of Insurance Choices, AICPA National Construction Industry Conference, New Orleans, LA, December 8 and 9, 1997

Worker Classification and its Tax and Other Consequences, Construction Financial Management Conference, October 23, 1997, sponsored by the Associated General Contractors of America and the Construction Financial Management Association Las Vegas, Nevada

The Taxpayer Relief Act of 1997, Grant Thornton LLP client seminar, Portland, Oregon, October 1997

Current Developments & Strategies in Construction Taxation, Construction Financial Management Annual Conference, Chicago, Illinois, May 1997

Current Developments & Strategies in Construction Taxation, 1997 Oregon Society of CPAs, Oregon Chapter of AGC, OSCPA Construction Industry Conference, Portland, Oregon, May 1997

Current Developments in the Taxation of S Corporations, Heart of America Tax Institute, Kansas City, Mo., November 7, 1996

Current Developments in the Federal Income Taxation of Corporations, Virginia Tax Conference, Charlottesville, Virginia, June 7, 1996

Construction Tax Update, Construction Financial Managers Association 1996 Annual Conference and Exhibition, Phoenix, Arizona, May 1996

Federal Income Tax Update, 1996 Oregon Society of CPAs / Associated General Contractors Construction Industry Conference, Portland, Oregon, May 1996

How the Current Flat Tax Proposals Would Affect the Homebuilding Industry, Builders' Association of South Florida, February 1996

LLCs: How Do They Measure Up?, 28th Annual Louisiana Tax Conference, December 1995

What is Congress Proposing To Do With Our Wonderful Tax System? Builders' Association of South Florida, July 1995

How to Cope with an IRS Audit, Construction Financial Managers Association Annual Spring Conference, May, 1994, New York, New York

The S versus C Corporation Decision after the 1993 Tax Act, the 19th Annual Wichita State University Accounting and Auditing Conference, May 1994

Current Issues and Opportunities in Accounting Methods and Periods, Associated Accounting Firms International Annual Tax Conference, Washington, D.C., October 1993

Choice of Entity: Which is Right for You? The Michigan Association of Certified Public Accountants, Detroit, 1993

How the 1993 Tax Act Affects Construction Contractors, Kau'ai, November 1993; Honolulu, November, 1993; Construction Financial Managers Association, Kansas City, Missouri, November 1993

Federal Income Tax Issues Facing Construction Contractors after the Revenue Reconciliation Act of 1993, Construction Financial Managers Association Regional Fall Conferences, 1993, Atlanta, Chicago, Meadowlands, Oakland

Federal Income Tax Issues Facing Construction Contractors, Construction Financial Managers Association Annual Spring Conference, May, 1993, Las Vegas, Nevada

Federal Income Tax Issues Facing Construction Contractors, Western Region Construction Education Association, Reno, Nevada, November 1992

How Clinton's Tax Proposals Would Affect the Construction Industry, Associated Building Contractors, Cincinnati, Ohio, April 1993

Dealing with the Internal Revenue Service, Construction Financial Managers Association Fall Conference, 1992

Current Issues and Opportunities in Accounting Methods and Periods, Associated Accounting Firms International Annual Tax Conference, October 1990

AICPA Corporate Income Tax Workshop, 1989 (two-day comprehensive seminar), Las Vegas,Nevada

Current Issues and Opportunities in Accounting Methods and Periods, XXVII Annual Mid-America Tax Conference, 1988, St. Louis, Missouri

Accounting Methods, Periods, and Elections, 39th Annual Kansas Tax Conference, 1989, Wichita, Kansas

Latest Developments in the Taxation of Corporations and Shareholders, The West Michigan Tax Symposium, 1985, Grand Rapids, Michigan

VIDEO COURSES

Annual AICPA Corporate Income Tax Videocourse, segments on IRS examinations, accounting methods and periods, S corporation issues, 1988 to present

"S Corporations," four-hour continuing professional education videocourse, Totaltape, 1988

"Alternative Minimum Tax," four-hour continuing professional education videocourse, Totaltape, 1988

None of these speeches, presentations, or videos involved constitutional law or legal policy, other than Federal income tax matters. To the best of my knowledge, there was no press coverage of any of these speeches or presentations.

In addition to these writings, for 15 years I wrote and edited Grant Thornton's monthly client newsletter, but have retained no copies.

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent. March 7, 2001

14. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None.

15. Legal Career:

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

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

I did not serve as clerk to a judge.

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

From 1983 to 1984, I established my own national tax consulting practice. My office was at 818 Connecticut Avenue, NW, Washington, D.C.

3. the dates, names and addresses of law firms or offices, companies or governmental

agencies with which you have been connected, and the nature of your connection with each;

1973 – 1975:	Ernst & Ernst (later Ernst & Whinney, and now Ernst & Young) Columbus, GA and 1225 Connecticut Avenue NW, Washington, D.C. tax senior
1975 – 1978:	National Office of Internal Revenue Service 1111 Constitution Avenue, NW, Washington, D.C. corporation tax law specialist
1978 – 1983:	Arthur Andersen & Co. 1666 K Street, NW, Washington, D.C. senior tax manager
1984 – 1985:	Georgetown University Law School Washington, D.C. Adjunct Professor, LLM program
1984 – 1999	Grant Thornton LLP 2000 L St., NW, 1850 M St., NW, and 1707 L St., NW Washington, D.C. senior manager and associate partner
2000 – 2001:	Aronson, Fetridge & Weigle Suite 300, 700 King Farm Boulevard, Rockville, MD officer
Spring, 2001:	George Mason University School of Law 4400 North Fairfax Drive, Arlington, VA Adjunct Professor, Tax Policy
1998 – present:	Independent Women's Forum P.O.Box 3058, Arlington, VA 22203 Member, National Advisory Board
2001 – present:	*The Tax Adviser* (the monthly tax publication of the AICPA) Harborside Financial Plaza, 201 Plaza III, Jersey City, NJ 07311 Editorial Board
2001 – present:	United States Department of Justice 950 Pennsylvania Avenue, NW, Washington, D.C. Counselor to the Attorney General

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

I have worked almost exclusively as a national tax consultant with large national accounting firms.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Working with the tax specialists in other offices of my firms, I have focused primarily on the Federal income tax issues affecting large and mid-sized businesses. My areas of specialization have been tax practice and procedure and the timing of income and deductions.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

My work has focused exclusively on non-criminal matters, and has not involved court appearances, except for one status call in Tax Court.

2. What percentage of these appearances was in:

(a) federal courts;	0%
(b) state courts of record;	0%
(c) other courts.	0%

Other than the status call in Tax Court referred to in the preceding answer, I have made no court appearances.

3. What percentage of your litigation was:

(a) civil;	0%
(b) criminal.	0%

My work has not involved litigation.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried no cases to verdict or judgment.

5. What percentage of these trials was:

(a) jury;	0%
(b) non-jury.	0%

My work has not involved litigation.

16. Litigation: Describe the ten most significant litigated matters which you personally handled. 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 representations;
(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.

I have not litigated cases.

17. 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 the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

As described above, my work has not involved litigation, but rather working with clients and tax professionals in an effort to avoid the need for it.

I worked for 20 years in two national accounting firms as a nationally recognized expert in tax accounting, controversy, and practice and procedure matters.

I have represented, and assisted in the representation of, clients of my firms in numerous matters involving significant amounts of taxable income and potential penalties.

I was part of a successful effort to change Treasury regulations that would have required ambassadors and foreign service officers, among others, to include as taxable income the value of the secure automobile transportation required by their assignments.

Recent years have seen a proliferation of devices and transactions promoted by tax and investment professionals to reduce taxes. As a national tax expert at my firms, I have spent considerable time analyzing these proposals and on the merits or weaknesses of these plans and the possible risks of being associated with them.

During my 20 years as a member of the national tax offices of two major national professional services firms, I worked with hundreds of tax professionals in offices located throughout the country. I prepared and presented dozens of in-house training sessions to tax professionals of all levels of experience. I participated in two week-long management training sessions, and was part of a select group of partners to attend an intensive leadership training program consisting of six bi-monthly half-week sessions over the course of a year. I coordinated the efforts of senior tax partners in compiling and maintaining the firm's manual on operating procedures.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List 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. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

   None.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

   I anticipate no areas of potential conflict of interest at any point during my service in the position to which I have been nominated. In the event potential areas do arise, I will consult with the appropriate Department of Justice ethics official.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

   No.

4. 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, patents, honoraria, and other items exceeding $500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

   See attached Schedule A, SF 278.

5. Please complete the attached financial net worth statement in detail (add schedules as called for).

   Statement Attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

   No.

U.S. Department of Justice

Washington, D.C. 20530

MAY 25 2001

Ms. Amy L. Comstock
Director
Office of Government Ethics
Suite 500
1201 New York Avenue, NW
Washington, DC 20005-3919

Dear Ms. Comstock:

In accordance with the provisions of Title I of the Ethics in Government Act of 1978 as amended, I am forwarding the financial disclosure report of Eileen J. O'Connor who has been nominated by the President to serve as Assistant Attorney General, Tax Division, Department of Justice. We have conducted a thorough review of the enclosed report.

The conflict of interest statute, 18 U.S.C. § 208, requires that Ms. O'Connor recuse herself from participating personally and substantially in a particular matter in which she, her spouse, or anyone whose interests are imputed to her under the statute has a financial interest. We have counseled her to obtain advice about disqualification or to seek a waiver before participating in any particular matter that could affect her financial interests. She has no remaining financial interest in Grant Thornton LLP an accounting and consulting firm where she was employed until October, 1999. She will sever all financial ties with Aronson Fetridge & Weigle, her present employer which is also an accounting and consulting firm.

We have advised her that because of the standard of conduct on impartiality at 5 CFR 2635.502 she should seek advice before participating in a particular matter having specific parties in which a member of her household has a financial interest or in which someone with whom she has a covered relationship is orrepresents a party. She will have a covered relationship

with Aronson Fetridge & Weigle, her clients and with George Mason University Law School. If confirmed, Ms. O'Connor has agreed to resign from her positions with George Mason University in May when the semester ends, and will resign from Aronson Fetridge & Weigle at the end of this month. She understands that she should seek advice before participating in a matter involving Aronson Fetridge & Weigle for at least 1 year and George Mason University Law School as long as her husband is employed there.

Based on the above agreements and counseling, I am satisfied that the report presents no conflicts of interest under applicable laws and regulations and that you can so certify to the Senate Judiciary Committee.

Sincerely,

Janis A. Sposato
Acting Assistant Attorney General
for Administration and
Designated Agency Ethics Official

Enclosure

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved:
OMB No. 3209 - 0001

Date of Appointment, Candidacy, Election, or Nomination *(Month, Day, Year)*	Reporting Status (Check Appropriate Boxes)	Incumbent ☐	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate ☑	Termination Filer ☐ Termination Date *(If Applicable) (Month, Day, Year)*
Reporting Individual's Name	Last Name: O'Connor			First Name and Middle Initial: Eileen J	
Position for Which Filing	Title of Position: Assistant Attorney General, Tax Division			Department or Agency *(If Applicable)*: Department of Justice	
Location of Present Office (or forwarding address)	Address *(Number, Street, City, State, and ZIP Code)*: 700 King Farm Boulevard, Rockville, MD 20817			Telephone No. *(Include Area Code)*: 301-231-6217	
Position(s) Held with the Federal Government During the Preceding 12 Months *(If Not Same as Above)*	Title of Position(s) and Date(s) Held: none				
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination: Senate Judiciary Committee			Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☑ No	
Certification: I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	Signature of Reporting Individual: E. J. O'Connor			Date *(Month, Day, Year)*: 4/26/2001	
Other Review (If desired by agency)	Signature of Other Reviewer: Mary Brown			Date *(Month, Day, Year)*: 4/27/01	
Agency Ethics Official's Opinion: On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).	Signature of Designated Agency Ethics Official/ Reviewing Official: [illegible]			Date *(Month, Day, Year)*: 4/27/01	
Office of Government Ethics Use Only	Signature			Date *(Month, Day, Year)*	

Comments of Reviewing Officials *(If additional space is required, use the reverse side of this sheet)*

(Check box if filing extension granted & indicate number of days _____) ☐

(Check box if comments are continued on the reverse side) ☐

Fee for Late Filing
Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a $200 fee.

Reporting Periods

Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

Nominees, New Entrants and Candidates for President and Vice President:

Schedule A -- The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of date of filing.

Schedule B -- Not applicable.

Schedule C, Part I (Liabilities)--The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

Schedule C, Part II (Agreements or Arrangements)--Show any agreements or arrangements as of the date of filing.

Schedule D -- The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Agency Use Only

OGE Use Only

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: O'Connor, Eileen J.

SCHEDULE A

Assets and Income — BLOCK A

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse).

None ☐

Valuation of Assets at close of reporting period. — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

	Assets and Income (Block A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples	Central Airlines Common				X												X						X										
	Doe Jones & Smith, Hometown, State			X																												Law Partnership Income $130,000	
	Kempstone Equity Fund					X								X										X									
	IRA: Heartland 500 Index Fund													X											X								
1	Grant Thornton LLP (GT), Chicago, IL																															retirement payments $78,500	
2	Aronson Fetridge & Weigle (AFW), Rockville, MD																															salary $85,000 thru 3/31/01	
3	George Mason University Law School, Arlington, VA																															Salary $4,400 thru 3/31/01	
4	George Mason University Law School, Arlington, VA - spouse																															Salary	
5																																	
6	IRA at Citibank - Fidelity Advisor Growth Opportunities		✓											✓								✓											

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot Be Used.

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: O'Connor, Eileen J.

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period. — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
7	Citibank Money Market account, Washington, DC			✓															✓				✓										
8	Fidelity Growth and Investment -GT 401(k)			✓										✓								✓											
9	Fid. Mgd Inc Port - GT 401(k)			✓										✓								✓											
10	Fidelity Inter Bond - GT 401(k)			✓										✓								✓											
11	Fidelity Ret Govt Mm - GT 401(k)				✓									✓									✓										
12	Paine Webber Money Market - J				✓									✓									✓										
13	Paine Webber Money Market - H				✓									✓							✓												
14	Van Kampen US Govt Fund - H			✓										✓							✓												
15	house in NJ - Glenbora				✓													✓			✓												

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot Be Used.

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: O'Connor, Eileen J.

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period. — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
16	H IRA Fannie Mae			✓										✓								✓											
17	H IRA Growth Fund of America				✓									✓								✓											
18	H IRA Lord Abbett affiliated fund					✓								✓									✓										
19	H IRA Washington Mutual Investor				✓									✓									✓										
20	H IRA Money Market Fund Paine Webber			✓										✓									✓										
21																																	
22																																	
23																																	
24																																	

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot Be Used.

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: O'Connor , Eileen J.

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period. — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rents and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
25	GT PS Plan Smith Barney Cap Pres Fund		✓											✓							✓												
26	GT PS Plan Smith Barney Balanced Fund		✓											✓							✓												
27	GT PS Plan Smith Barney L Cap Val Fund		✓											✓							✓												
28	GT PS Plan Smith Barney L Cap Gro Fund		✓											✓							✓												
29	GT PS Plan Smith Barney E Cap Gro Fund		✓											✓							✓												
30	GT PS Plan Smith Barney Emerg Mrkt Fund		✓											✓							✓												
31	AFW 401(k) Lord Abbett Dev Growth A Fund	✓												✓							✓												
32	AFW 401(k) Orchard S&P 500 Index Fund		✓											✓							✓												
33	AFW 401(k) American Century Ultra Inv Fund	✓												✓							✓												

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot Be Used.

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Do not complete Schedule B if you are a new entrant, nominee, or Vice Presidential or Presidential Candidate

Reporting Individual's Name: O'Connor, Eileen J.

SCHEDULE B

Page Number: 6 / 8

Part I: Transactions

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

None ☐

	Identification of Assets	Transaction Type (x): Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	Amount of Transaction (x): $1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
Example	Central Airlines Common	X			2/1/99			X									
1																	
2																	
3																	
4																	
5																	

* This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260, and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☐

	Source (Name and Address)	Brief Description	Value
Example1	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty)	$500
Example2	Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
1			
2			
3			
4			
5			

Prior Editions Cannot Be Used.

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: O'Connor, Eileen J.

SCHEDULE C

Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at **any time** during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None ☑

	Creditors *(Name and Address)*	Type of Liability	Date incurred	Interest Rate	Term if applicable	$10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			X		X				X		
	John Jones, 123 1St., Washington, DC	Promissory note	1999	10%	on demand		X									
1																
2																
3																
4																
5																

Category of Amount or Value (x)

* This category applies only if the underlying liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None ☐

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will recieve lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1	Through July 2000, received retirement payments in connection with early retirement	Grant Thornton LLP, Chicago IL	05/01
2	401(k) plan - fully invested in excepted investment funds - will be rolled over into IRA	Grant Thornton LLP, Chicago IL	10/99
3	Partner Savings Plan	Grant Thornton LLP, Chicago IL	
4	401(k) plan - fully invested in excepted investment funds - will be rolled over into IRA	Aronson, Fetridge & Weigle, Rockville MD	
5			
6			

Prior Editions Cannot Be Used.

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name	SCHEDULE D	Page Number
O'Connor , Eileen J.		8 / 8

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization *(Name and Address)*	Type of Organization	Position Held	From *(Mo., Yr.)*	To *(Mo., Yr.)*
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	Aronson Fetridge & Weigle, Rockville, MD	accounting and consulting firm	officer	07/00	present
2	Independent Women's Forum, Arlington, VA	non-profit education	member, national advisory board	08/98	present
3	Grant Thornton LLP	accounting and consulting firm	senior manager and associate partner	06/84	10/99
4	George Mason University School of Law	law school	adjunct professor	01/01	05/01
5					
6					

Part II: Compensation in Excess of $5,000 Paid by One Source

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

None ☐

	Source *(Name and Address)*	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (Client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	Aronson Fetridge & Weigle, Rockville, MD	tax consulting
2	Grant Thornton LLP, Chicago, IL	tax consulting
3	George Mason University School of Law	adjunct professor
4		
5		
6		

Prior Editions Cannot Be Used.

FINANCIAL STATEMENT
NET WORTH

ASSETS		LIABILITIES	
Cash on hand and in banks, including money market accounts	$165,000	Notes payable to banks – secured	-0-
U.S. Government Securities		Notes payable to banks - unsecured	-0-
Listed Securities		Notes payable to relatives	-0-
Unlisted Securities		Notes payable to others	-0-
Accounts and notes receivable:		Accounts and bills due	-0-
Due from relatives and friends	-0-	Unpaid income tax	-0-
Due from others	-0-	Other unpaid tax and interest	-0-
Doubtful	-0-	Real estate mortgage payable to HSBC	$435,000
Real estate owned in MD and NJ	$920,000	Chattel mortgages and other liens payable	-0-
Real estate mortgages receivable	-0-	Other debts - itemize	
Autos and other personal property	$200,000	Auto loans	$28,000
Cash value – life insurance	-0-		
Retirement savings in mutual funds	$596,000		
		Total liabilities	$463,000
		Net worth	$1,418,000
Total Assets	$1,881,000	Total liabilities and net worth	$1,881,000
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor	None	Are any assets pledged?	No.
On leases or contracts	None.	Are you a defendant in any suits or legal actions?	No.
Legal Claims	None.		
Provision for Federal income tax		Have you ever taken bankruptcy?	No.
Other special debt	None.		

III. GENERAL (PUBLIC)

1. 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.

   Serving on committees working to improve the legal system or the profession constitutes valuable public service. Rule 6.1(b)(3), ABA Model Rules of Professional Conduct. Along these lines, I have been active in the American Institute of Certified Public Accountants as a member of the Tax Accounting Committee Task Force from 1985 – 1998; the Tax Practice and Procedure Committee from 1985 – 1987, the Tax Legislative Liaison Committee from 1988 – 1990; the Tax Policy and Simplification Committee from 1991 – 1993, including chairing the Tax Reform Transition Issues Task Force, and the Tax Executive Committee from 1994 – 1997. These committees, each with its own technical focus, seeks to improve the tax profession and the tax system, by, among other things, identifying problems in tax administration and working with the tax profession, the IRS, Treasury, or Congress to solve them.

   Additionally, acting as a continuing legal education instructor constitutes valuable public service. Rule 6.1(b)(3), ABA Model Rules of Professional Conduct. In this vein, all but a few of the speeches and seminar presentations listed on pages 3, 4, and 5 of this questionnaire were made in connection with continuing legal and professional education programs.

   With members of my Church, I have prepared Thanksgiving Dinner baskets for needy families. With members of my firm, I have helped purchase and wrap Christmas presents for needy families. I have collected donations for the March of Dimes. I have been an assistant coach for a girl's softball team. I drafted a booklet intended to help women understand the Federal income tax system.

2. Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion – through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies.

   No.

Chairman LEAHY. Thank you.

Ms. O'Connor, you have a pamphlet, "Women and Taxes: Understanding Where Your Money Goes," that you authored as part of a series. You wrote, "Public debate over tax reform almost always produces complaints about tax breaks for the rich, but this is deliberately misleading." Who is being deliberately misleading in that regard?

Ms. O'CONNOR. I guess anyone who hears it. I don't recall. It has been over a year since I finished that and if you could read me a little more of the context, I might recall what I was referring to.

Chairman LEAHY. We will get the context, and I will, if you would hold with us.

President Bush's original tax cut plan would have provided the top 1 percent of taxpayers, those with incomes over $319,000 a year, with 43 percent of the benefits of his tax plan, according to the Congressional Budget Office. That same 1 percent, of course, contributes 21 percent of all revenue collected, so they would get about double the percent of revenue they pay the Federal Government.

Would that have been a tax break for the rich?

Ms. O'CONNOR. I am not sure I followed all of that.

Oh, thank you. I am being handed—I think what I was probably referring to there is the point that President Bush has made in many of his remarks on tax reform, and that is that if you are going to cut taxes, if you are going to cut income taxes, the people who pay them are going to be the ones who get the breaks, and the more taxes you pay, the bigger a break you are probably going to get.

I could assure the Senator, though—and I thank him for the question—that any views I have on tax policy have no interference with and do not override my overarching respect for the rule of law, which is what, as Assistant Attorney General of the Tax Division, I will be called upon to enforce.

Chairman LEAHY. Yes, and let me just back up a little bit. The pamphlet reads well and is well-written. I disagree with some of the conclusions, but I also assume that sometimes we have what has to be enforcing the statutes; other times what is being either an advocate or using the best case to make one's point.

I would have to assume with this confirmation that you well understand the difference.

Ms. O'CONNOR. Absolutely, Senator.

Chairman LEAHY. Let me give you an example on that, then, on some of the differences. The New York Times reported on a growing number of small business owners who are refusing to withhold Federal income taxes on their workers. I have actually gotten some calls on call-in shows in my State of Vermont about that.

The small business owners who call themselves the Tax Honesty Movement believe that the Federal Government has no jurisdiction to collect income taxes from most Americans. The IRS has put these small business owners on notice that if they refuse to withhold taxes from workers' paychecks, they might be prosecuted.

Is the IRS right on that?

Ms. O'CONNOR. This is a very important issue today, Senator, and it relates also to the point which I just mentioned, which is

that the rule of law must be respected. Some people pay taxes because it is the right thing to do, to obey the law. Some people will pay their taxes only if they are afraid not to. We owe it to all of those who pay taxes to make sure that everyone who is supposed to pay taxes does.

The protester movements that you mention are a source of some attention both at the Internal Revenue Service and at the Justice Department's Tax Division these days. It is very important that in order for our self-assessment to work, people have to respect the law, and for the law to be respected, it must be enforced.

Chairman LEAHY. So you believe in this case if enforcement is called for, you see no reason why the Justice Department should not go forward with that enforcement?

Ms. O'CONNOR. I am not familiar with all the particulars of the case you mention, but generally speaking, absolutely the tax laws should be enforced.

Chairman LEAHY. Now, you also wrote in the same pamphlet we gave you, "It is not too much to ask that our Tax Code be simple, fair and understandable enough that the average person could do her own taxes in a reasonable amount of time. Simplifying the Tax Code simply makes sense for employers, employees, families and the Government." I will tell you, every spring when I am doing my taxes, I couldn't agree with you more.

How would you simplify the Tax Code?

Ms. O'CONNOR. Well, first, Senator, I would run for office.

Senator HATCH. That is throwing it back down to him.

[Laughter.]

Chairman LEAHY. We have all thought that, too, and we still seem to get more complicated every year. When I first came here, I was told that they have an arrangement for the IRS to any Member of Congress; if you want, they will come up and do your taxes for you. It was also a time when we had free haircuts. Obviously, with my hairline, I did not avail myself of the latter, and decided very quickly not to avail myself of the former. I said I have got to sit down here and go through this myself to see what most Vermonters are going through.

Are there any magic bullets in simplifying the Tax Code?

Ms. O'CONNOR. If there were, Senator, I am sure that you and your colleagues would have found it by now. There is constantly a tension between complexity and fairness, and I am sure that the Department of the Treasury will make proposals to you—at least I am thinking that they probably will make proposals to you toward simplification.

Chairman LEAHY. Well, Secretary O'Neill and I had also talked about that, but your role now will be that of enforcing the laws, if confirmed, not worrying how the Tax Code would be.

Ms. O'CONNOR. That is right, Senator.

Chairman LEAHY. Well, I thank you very much. I am sorry you have had to stay here so long, but—

Ms. O'CONNOR. The only problem with that, Senator, is it was so humbling to be in the company of those very excellent judge nominees.

Chairman LEAHY. You are being very kind to them, but you live in the company of an excellent judge.

Ms. O'CONNOR. I do, indeed.

Chairman LEAHY. Senator Hatch?

Senator HATCH. Well, I just want to congratulate you. I know your reputation very well, I know how outstanding you are, and I expect you to be one of the best people who has ever served in this position.

Ms. O'CONNOR. Thank you very much, Senator.

Senator HATCH. So I am very proud to support you, and I appreciated the conversation we had in my office where we discussed a few of these matters. I just want you to know that we will try and put you through as soon as we possibly can.

Ms. O'CONNOR. Thank you very much.

Senator HATCH. Judge, we are so happy to have you here. We are honored to have you supporting your wife here in this hearing. It means a lot to us.

Chairman LEAHY. Just one more of the President's nominees who survived a grueling grilling.

Thank you, Ms. O'Connor for being here.

Ms. O'CONNOR. Thank you very much.

Senator HATCH. There may be hope yet for these other nominees.

Chairman LEAHY. He has been working on me.

Ms. O'CONNOR. Thank you very much for your time and your consideration.

Chairman LEAHY. We will keep the record open for other Senators to have a chance to submit questions, if they have them.

With that, we stand adjourned.

[Whereupon, at 3:25 p.m., the Committee was adjourned.]

[Submissions for the record follow.]

SUBMISSIONS FOR THE RECORD

Statement of Hon. Richard J. Durbin, a U.S. Senator from the State of Illinois

Today, this Committee is holding its first hearing on individuals who have been nominated by President Bush to fill vacancies on the federal bench.

I want to thank Chairman Leahy for scheduling this hearing so quickly—within moments after the Senate reorganized on the last day before recess. I think it speaks to the level of commitment to fairness and efficiency that Chairman Leahy has always exhibited in these matters, and I look forward to working with him and my other colleagues on this Committee as we act upon judicial vacancies during this term.

As we do so, we need to be mindful of our heavy responsibility. There are few duties more important to a United States Senator than to advise and consent on judicial nominations.

Unlike executive branch nominees, a judicial appointment serves for life. Unlike political appointees, judges make decisions that have far-reaching and long-term consequences that can impact the lives of Americans for generations. And unlike term appointees who serve at the pleasure of a President, a judge's decision cannot be overturned easily by the next President, or even by Congress.

Therefore, I take my duty in reviewing judicial nominations extremely seriously, and I know my colleagues do as well.

I am also mindful of the fact that a vast majority of the vacancies have been pending since the last administration. This, of course, means that those vacancies should have been filled by President Clinton's nominees with advise and consent of the previous Senate. But they were not, and instead, they will now be filled by President Bush.

I don't need to go into details about the remarkable delays and rejections that the Clinton nominees suffered, as the record speaks for itself. Names like Helene *White, Richard Paez, Marsha Berzon*, and *Ronnie White* became famous not simply because they are great lawyers, but because they had to endure some of the longest delays

and procedural obstacles that any successful or unsuccessful judicial nominee ever had to face.

I want to emphasize a simple point that I believe the American people recognize: Under the previous Administration, an overwhelming majority of nominees were individuals of integrity and conscience who had distinguished careers in the law, who held moderate views that are in step with the mainstream, and who held the best interests of our nation and its people at the core of their jurisprudence.

We should expect no less from this Republican Administration.

In other words, dozens of President Clinton's nominees were denied their chances to serve on the bench by the Republican Senate even though they were clearly qualified, and held centrist, moderate, and mainstream views.

The people of our nation spoke last November, and the message was clear. The country is evenly split. The President was not given a mandate by the people to change the course of our nation. This is not the time to put forward ideologues or people with extreme views, and the Senate has a duty to see that the third branch of our government reflects the same balance and moderation that the American people chose when they sent us here to represent them 50-50.

In looking at the backgrounds of the judicial nominees before us today, I believe these individuals are great examples of the type of jurists American people deserve. They are all highly qualified and moderate, and have strong support from their peers and others who have reviewed their records.

I also appreciate the fact that the two nominees for the Montana District Courts were strongly recommended by both Senators Baucus and Burns working together in a model bipartisan approach.

I commend President Bush for including Mr. Gregory, Mr. Cebull, and Mr. Haddon among his first batch of nominees sent to the Senate, and I look forward to supporting them.

Thank you.

Statement of Hon. Russell D. Feingold, a U.S. Senator from the State of Wisconsin

I first would like to commend you, Mr. Chairman, for holding this hearing. As I said during the Courts Subcommittee hearing on the judicial nominations process two weeks ago, I believe it is time to end the accusations and recriminations, if we can. I believe that you are showing your good faith by holding this hearing and moving forward on the President's nominees. I look forward to working with you to give these nominations thorough but fair consideration, which I don't think always was given to President Clinton's nominees. As I have said before, I believe President Bush should take a bold step toward "changing the tone" of the judicial nominations process by acknowledging the part that his party played in creating the tensions that currently exist. He can do that by re-nominating some of President Clinton's nominees who received the most reprehensible treatment. If he does that, it would truly be a historic step and I think he would find many Senators willing to follow his lead.

I was very pleased that President Bush decided to re-nominate at least one of those Clinton nominees who received unfair treatment by the Senate, Judge Roger Gregory, who is before us today. But I would like to remind my colleagues that President Clinton was roundly criticized for making Judge Gregory a recess appointment to the U.S. Court of Appeals for the Fourth Circuit. President Clinton had sought throughout his Presidency to put an African-American on the Fourth Circuit. He recognized that the Fourth Circuit does not reflect the diversity of the residents of the states within its boundaries. He recognized that it was a great injustice for the Circuit with the highest percentage of African-Americans in the nation to have never had an African-American jurist on its court. But time and again, President Clinton's efforts were blocked by Senate Republicans. So he took the unusual step of naming a judge as a recess appointment. He took a lot of political heat for that. But let's be honest. But for the courageous act of President Clinton in making Judge Gregory a recess appointment to the court after the Senate had refused to act on his nomination, Judge Gregory almost certainly would not have been re-nominated by President Bush and would not be before us today.

Roger Gregory has had a distinguished career, which includes an adjunct professorship at Virginia State University and partnership with former Virginia Governor Doug Wilder at the law firm of Wilder & Gregory. In addition, Roger Gregory is the

recipient of numerous professional awards and distinctions and has been actively involved in community and civic affairs in Virginia.

Mr. Chairman, I also note that the two Republicans Senators of his home state, Virginia, have also given their enthusiastic support to his nomination. Both Senator Allen and Senator Warner have urged that Roger Gregory be confirmed despite the controversy surrounding his recess appointment. The two Virginia senators have spoken of Roger Gregory's profound respect for Fourth Circuit precedents, his disdain for what he calls "result-oriented" justice, and his deep appreciation of the rights and powers of states.

Mr. Chairman, it is indeed time for an eminently well-qualified African-American to have a permanent appointment to the Fourth Circuit. It is time for the confirmation of Judge Roger Gregory. I salute the President for renominating Judge Gregory, I applaud you Mr. Chairman for holding this hearing promptly. And I urge this Committee and the Senate to give his nomination speedy consideration. Thank you, Mr. Chairman.

RUSSELL SMITH COURTHOUSE
MISSOULA, MONTANA 59807–7309
July 9, 2001

Senator Conrad Burns
187 Dirksen Senate
Office Building
Washington, D.C. 20510

Dear Senator Burns:

I am delighted that the Senate has elected to make Sam Haddon and judge Richard Cebull the first district court nominees to be considered by the Judiciary Committee, I spoke to Senator Leahy's staff and advised that I would be providing you information to reflect the problems that having only one Article III Judge in Montana's vast geographic area. I am providing the same information to Senator Baucus by separate cover.

The most immediate and pressing concern is the inability of one judge to handle the enormous work load. The average case load in the United States in 1999 for a single Article III judge was 402 civil. cases and 93 criminal cases. In Montana, the 1999 average was 209 civil cases and 78 criminal cases.

In the year 2000, the average changed. The U.S. average that year for an Article III judge was 396 civil cases and 96 criminal cases, while in Montana the average jumped to 310 civil cases and 101 criminal cases. During this year, at the current rate, I will be handling 802 civil cases and 332 Criminal cases unless we get help. That amounts to twice the U.S. average for civil cases and over three times the average for criminal cases. That would mean I would have to dispose of three to four cases a day to even stay up with the filings. Bringing in outside judges has been. a help, but it's been a logistical nightmare. The outside judges have helped clear up some of the backlog in Helena and are helping out with the criminal cases in Billings and in Helena. However, the help comes primarily in trying cases, not in other dispositions. As you can see from my attached memo, far more than trials occupies each day. We are in dire need of the services of judge Cebull and Sam Haddon.

The judiciary committee's hearings on judge Cebull and Sam Haddon. mitigate the need that I have felt to suspend the Criminal Speedy Trial Act under the provisions of 18 U.S.C. § 3174. Though I could not do this on my own, it would be my responsibility as the Chief Judge of the District to apply under 18 U.S.C. § 3174(a) to the Circuit's judicial Council to suspend the Act's time limits "for a period of time not to exceed one year for the trial of cases for which Indictments or Information are filed within such one year period." 18 U.S.C. § 3174(b). I am grateful to the Senate and to the President for moving to get us immediate help. Quick action means we do not have to ask to suspend the Speedy Trial law and its attendant consequences.

The shortage of judges has caused critical problems with the United States Probation Office as well as the United States Marshals Service. As you know, the United States Marshals Service in Montana. must deal with the geography and limited federal facilities available to house federal prisoners. We have had an enormous number of pretrial detainees by virtue of the methamphetamine problem that is rampant in Montana, particularly on our Reservations. The complications for the Marshals

are reflected in the Memorandum prepared for me by Acting United States Marshal Don Combs. Clearly, the shortage of judges is impacting the abilities of public servants to accomplish their required tasks.

The same holds true with respect to the United States Probation Office. Chief Probation Officer Frank Fleming prepared a letter at my request which reflects the pressing difficulties that have been created for the probation office in preparing presentence reports particularly when we have out of state judges or, which has been more frequent, when everyone has to come to Missoula, or Great Falls, or where I happen to be that particular day. Chief Fleming is concerned that the quality of the work is being impeded by the shortage of judges and that is explained in his letter. Again, his staff is "jumping" to meet the needs of the judiciary in fashioning appropriate sentences for the numbers of defendants that we are processing. The quick help will alleviate this concern when the new judges are confirmed and sworn in.

In short, I consider the situation a dire emergency and am very grateful to you and to Senator Baucus for moving these nominations jointly and expeditiously. Too often there is sense of cynicism about anything public officials do. I am confident that each of our senators has worked in the State's best interest in agreeing on these two extraordinarily accomplished nominees. I am also very impressed with Jeff Forbes and Will Brook and their ability to work together in resolving this crisis and their willingness to keep me advised.

Please extend my deep appreciation to Senator Leahy and to Senator Hatch as well as the President. If there is any question, please feel free to call me.

Very truly yours,

DONALD W. MOLLOY
Chief Judge

MEMO

To: Senator Max Baucus and Senator Conrad Burns
From: Chief Judge Molloy
Subject: Confirmation hearings: Magistrate Judge Cebull and Mr. Sam Haddon
Date: July 9, 2001

Senators Baucus and Bums:
The following information is an indication of the pending cases:

	Civil	Criminal	Total
Missoula	206	39	245
Butte	123	17	140
Great Falls	145	66	211
Helena	79	18	97
Billings	244	117	341
District	777	257	1034

I am also including for your information what this week is for me. This morning I begin a 32 Count Indictment and trial involving mail fraud and EPA Clean Water Act violations. The case is expected to last the entire week. A typical trial day goes from 8:15 a.m. until 5:00 p.m. with an hour off for lunch. As you can see, there is going to be a conflict Wednesday, Thursday and Friday because of the schedule.

At the same time, Judge Tom Zi1ly of the Western District of Washington is in Billings trying a criminal case and will be there the balance of the week.

The following is the schedule for the week of July 9–13, 2001:

1Monday: July 9, 2001
8:15 CR 01–07 BU *USA* v. *David Phillips jury trial in Missoula*
3(Scheduled to last all week)

Tuesday, July 10, 2001
8:15 Continuation of CR 01–07–BU jury trial

Wednesday, July 11, 2001
9:00 CR 01–05–BU *USA* v. *Dale Bowser change of plea in Missoula*
9:30 CR 01–12–BU *USA* v. *Ochoa-Valdovinos change of plea in Missoula*
10:00 CR 01–09–BU *USA* v. *Jay Condo change of plea in Missoula*

10:30 CR 01–03–M *USA* v. *Karen Rogina change of plea*
11:00 Continuation of CR 01–07–BU Jury trial

Thursday, July 12, 2001
9:00 CR 00–47–M *USA* v. *James Stoker sentencing*
10:00 CR 01–02 M *USA* v. *Penny Spencer sentencing*
10:30 CR 01–OZ M *USA* v. *J a Spencer sentencing*
1:80 CR 00–77–BU *McQuillan* v. *Westphal preliminary pretrial conference in Missoula*
2:15CV 00–81–BU *Burroughs* v. *Golden Sunlight preliminary pretual conference in Missoula*
3:00CV 00–224–M *Gage* v. *preliminary pretrial conference*

Friday, July 13, 2001
9:00 CR 01–18–CTF *USA* v. *Deborah Gee revocation hearing in Missoula*
10:00 CR 00–24–GF *Holland* v. *Jefferson final pretrial conference in Missoula*
11:00 CV 00–231–M *Great Western* v. *State Farm preliminary pretrial conference*
1:00 CV 00–159–GF *Young* v. *BN preliminary pretrial conference in Nissoula*
2:00 CV 01–32–GF *Kafka* v. *Hagener oral argument in Missoula*
3:00 CR 01–07–H *USA* v. *Brandon Hernandez oral argument in Missoula*

This is a typical week and has been since January.

CHIEF JUDGE MOLLOY

U.S. DISTRICT COURT
CHIEF U.S. PROBATION OFFICER
DISTRICT OF MONTANT
July 3, 2001

Hon. Donald W. Molloy
Chief U.S. District Court Judge
P. O. Box 7309
Missoula, MT 59807-7309

Dear Chief Judge Molloy;

I am writing to inform you of the impact realized by the U.S. Probation Office and clients under supervision due to the existing shortage of Article Three Judicial Office within Montana. Several areas of our duties including our ability to provide quality sentencing information to the court and our ability to effectively intervence in the lives of offenders has been sigificantly impacted. I have received input from United States Probation staff and I am providing you the following information as it relates to the impact the present judicial shortfall has created in our areas of statutory responsibility.

As you are aware, Rule 32 of the Federal Rules of Criminal Procedure directs in part that; "a probation officer must make a presentence investigation and submit a report to the court before sentence can be imposed." The rule then goes on to prescribe time frames in which the investigation is to be completed, disclosed, and any disputed issues should be resolved. Additionally, due to the number(s) of juveniles that appear before our bench, due to the provisions of 18 U.S.C. § 1153, Offense committed within Indian Country, the time frame for the completion of the presentence investigation and the previously noted bench marks is significantly abbreviated. Due to the shortage of judicial officers, we have noted the following trends:

- Shorter time frames to complete the presentence report due to having to send it to visiting judges to comply with a time parameters of Rule 32.
- Due to shorter time frames the ability to provide the most current and accurate information regarding the defendant and offense of conviction may also be negatively impacted.
- Due to the abbreviated time frames for the preparation of juvenile presentence reports the information utilized by the Court to assist in sentencing may be negatively impacted.
- The different styles and requirements of visiting judges have created a lack of understanding of what the Court will require from staff. (i.e. staffing the case with the Judge, appearance at the sentencing hearing, special conditions, etc.) This in turn creates scheduling difficulties and travel require-

ments that are unable to be planned for until the visiting judge arrives in the district.

• Your Honor, as well as the visiting Judges, have been attempting to hold Court in each of the divisions; therefore, probation staff have been required to travel more frequently throughout the district to hearings that had been previously conducted at the location of their duty station. This has had negative impact on our travel budget.

• Due to the varying availability of the visiting Judges, often numerous sentencing will be scheduled to occur on one or consecutive days. This negatively impacts the quality of the presentence reports due to the volume of reports our officer(s) are required to prepare for a single day of sentencing proceedings. This also has a negative impact on our support staff who prepare the final reports due to the volume of reports they must produce for a single date.

• Due to the scheduling, volume and location; staff that have been assigned to supervise offenders have had to be utilized to assist in the preparation of presentence reports. This has negatively impacted the quality of supervision these officers have been previously providing, due tot he time required to prepare reports, and may pose some risk to the community where the offender resides.

In accordance with provision of 18 U.S.C. § 3603(2) a probation officer shall; "keep informed to the degree required by the conditions specified by the sentencing court, as to the conduct and condition of a probationer or a person on supervised release who is under supervision, and to bring about improvements in his conduct and condition."

Due to our need to utilize officer who are generally assigned supervision cases, I am concerned that our ability to carry out this statutory mandate may be compromised. I believe the present judicial crisis has negatively impacted the supervision are in the impacted the supervision and the following manner:

• Due to a shortage of judicial officers, warrants for violations of the conditions of supervision are not being issued as promptly as when the district had a full compliment of Article Three Judicial Officers. This delay places members of the community at risk and may simultaneously limit the Court's ability to utilize alternatives to imprisonment. This is due to the concept that the offender's behavior will continue to deteriorate between the time the violation is filed and the time they appear before the Court.

• We have noticed that expedient implementation of modifications of conditions has been negatively impacted by the shortage of full time Judicial Officers. A modification conditions often used to address non-compliance or risk they pose to the community. Due to the shortage of Judges, these modifications are not addressed in expedient modification, an offender's behavior my continue to deteriorate to a point where few alternatives to imprisonment exist. During the downward spiral, the community may become victim to potential crime by the defendant.

An additional area of concern exists regarding offenders who commit violations supervision conditions when an offenders is arrested on a warrant issued by the Court. Due to the fact that all violations of probation or supervised release must be heard by a District Court Judge, the revocation process has become delayed because of the unavailability of the regular sitting Judges. This negatively impacts the offender who is required to remain in custody until the matter can be disposed of. Also, the U.S. Marshal Service must hold this client for a longer period of time.

The present configuration of Judicial Officers has had a negative impact on the probation department, as well as, the sentencing and supervision process. The existing situation of having a shortage of Judges is difficult; however, I thank you for all the considerations you have afforded the probation office staff. I believe unless the number of District Court Judges is increased to the appropriate level, the quality of information afforded to the Court for sentencing, the supervision of offenders in the community, and the speedy access to the Court by offenders will be jeopardized.

Sincerely,

FRANK R. FLEMING
Chief U.S. Probation Officer

U.S. DEPARTMENT OF JUSTICE
U.S. MARSHALS SERVICE
DISTRICT OF MONTANA
June 29, 2001

MEMORANDUM TO: Chief Judge Molloy, District of Montana

FROM: Donald D. Combs, Acting United States Marshal

SUBJECT: District Judge Shortage

Per our conversation this morning attached is a brief list of issues that having only one District Judge has caused the U.S. Marshals Service already shorthanded, the continued shortage of District Judges has compounded our problems for the following reasons:

1. Same court cities do not have adequate bed space at the county jail so the U.S. Marshals Service has to house some defendants where bed space is available. An example would be housing a prisoner in Great falls that has court appearances in Butte. (300 miles round-trip)

2. Great Falls case defendants sometimes have to be transported to Missoula for court because of a change in the court calender. (320 miles round-trip)

3. Visiting Judges sometimes come into the district to assist with the severe backlog of cases and this also requires moving defendants long distances to Court.

Because the U.S. Marshals Service does not have adequate staff to accomplish the required prisoner productions, we have to hire contract guards to assist us thus causing budget-issues.

Statistically, any increase in Court activity will generate more work for the U.S. Marshals Service and from fiscal year 1999 to fiscal year 2000 the District of Montana saw an increase in all of the following U.S. Marshals Service Programs: Criminal Cases Commenced, Criminal Bench Tours, Prisoner Received, Prisoner Productions to Court and Average Daily Prisoner Population.

NOMINATION OF HON. REGGIE WALTON, OF THE DISTRICT OF COLUMBIA, TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA AND RICHARD R. NEDELKOFF, OF TEXAS, TO BE DIRECTOR OF THE BUREAU OF JUSTICE ASSISTANCE, DEPARTMENT OF JUSTICE

WEDNESDAY, AUGUST 22, 2001

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Committee met, pursuant to notice, at 10:14 a.m., in Room SD–226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senator Leahy.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. Good morning. It seems to me I am home alone here, but certainly if anyone wishes to come in and join us, they are more than welcome. Especially if there are any members who have asked for us to have more hearings, if they would want to show up for them, I would be delighted to have them here.

But I am glad to schedule this nominations hearing to consider one of President Bush's nominees to the United States District Court for the District of Columbia, as well as his nominee to be Director for the Bureau of Justice Assistance at the Department of Justice.

Now, the Senate has been in session for only 4 weeks since an agreement on reorganization was reached and I was able to schedule nominations beginning in July. But despite the short time period of 4 weeks of session, I have nevertheless been able to make progress on moving nominations for both the Department of Justice and the judiciary.

I am somewhat concerned—and I don't necessarily have to say this—about some on the other side of the aisle who continue to make public comments about the nominations process because these comments are designed to continue the rough partisan politics that plagued this Committee and the process for the last 6 years.

Now, political cheap shots are easy to make, and maybe those of us who have been in public office a long time should expect them.

But while harsh political rhetoric over nominations may be a habit that the White House and some Republicans—and I exclude my good friend Orrin Hatch from this—may find hard to break, a review of the facts about the progress we have made should help set the record straight. So I will. This is the sixth hearing I have held to consider Presidential nominations, the third hearing I have held to consider judicial nominations since July, the first month as Chairman of the Committee, and including the short period in January when I was privileged to serve as chairman. Today actually marks a total of seven nomination hearings that I have held as chairman over the same total number of weeks for five judicial nominations and eight executive branch nominations.

I want to contrast this. From January 20th, when the other side controlled the Senate, until the reorganization of the Senate, a period of about five and a half months, the Committee on the Judiciary held only four hearings for eight executive branch nominations. They held no judicial nominations. And if I was interested in some kind of political payback, as one Member of the Senate suggested a couple of weeks ago, then the pace of moving nominations under my chairmanship would be worse, not better—in fact, much better—than the prior leadership of the Committee.

In fact, I have noticed a hearing next week for nominations to the United States Court of Appeals for the Federal Circuit and to the U.S. District Court for the District of South Carolina. And while I attempted to schedule additional district court nominees for the July 24th hearing, none of the files for nominees to the district courts pending before this Committee were here as complete.

I would remind the White House—I don't know if there is anybody here from the White House, but I would remind them that it is hard to hold hearings if you won't send us the files. They kind of have to work together.

Now, a lot of us are trying to restore dignity and regularity to the nominations process. It has been lacking. We are trying to bring it back. We are trying to make the process move smoothly. And so when bumps in the road are created on the other side, it is somewhat frustrating.

For example, President Bush's decision to delay the American Bar Association's evaluation of a judicial nominee's qualifications until the nominee is made public has forced delay in the process as well. And that is a break with precedent. Just so that people understand, the Presidents who have used the ABA process before sending the nomination up, President Eisenhower did, President Kennedy did, President Johnson did, President Nixon did, President Ford did, President Carter did, President Reagan did, former President Bush did, President Clinton did. So this is the first time in over 50 years that a President hasn't done that, and so obviously both Republicans and Democrats as Senators have asked to have the ABA background done so the nomination comes up here, and then we have to wait another several weeks to get the background. But we are doing the best we can, and as soon as the files get here, we will move more district court candidates.

Unfortunately, we had to wait over a month and a half before we could reorganize the Senate and be able to move on these nominations, and then we finally reorganized it in a way that could have

been done the first day of the change in the Senate. But then the Minority Leader objected on August 3rd to Senator Reid's unanimous consent request to avoid returning all pending nominations.

Again, this may sound like inside baseball, and I apologize, Judge, for delaying all this, but I just want to put this on the record. It has always been the way when the August recess comes up—and Congresswoman Norton knows this—that there will be a lot of nominations pending. Technically, under our rules, they have to be returned to the White House. We always ask unanimous consent to waive the rule and keep them here so that the staff and Senators, if they want to, can continue to work on those nominations. Senator Lott objected to that. So many judges—in fact, a number had just arrived about the day before—were all sent back to the White House.

Now, maybe it is coincidence, but as soon as they were sent back and we couldn't work on them, a group connected with the White House issued a condemnation saying we weren't moving on all of these nominations. Of course, none was even here anymore.

I have never known that to happen before, never known of nominations being sent back en masse to the President, ever, under either Republican or Democratic leadership. So we didn't have pending nominations. We didn't have the standing to either seek, receive, or continue review of sensitive FBI background checks about these nominees.

A letter I just received a few days ago from Judge Gonzales, the White House counsel, he asked that the Committee continue its work, notwithstanding our lack of standing due to the Republican Leader's action.

Some might think that we are getting caught in a "good cop/bad cop" routine, but I want to keep the process moving, and I agreed to that request even though I realized I was kind of setting myself up, because if any Republican objects to us moving forward to help the President's process go, I am actually not following the rules. By helping the President, I am having to assume that none of my Republican brethren will object to me not following the rules because of the kind of catch–22 that they set up when they went out.

Actually, it thwarted plans to hold nomination hearings over the August recess since the Committee virtually never holds hearings on nominees that are not before us. Technically, yours is not, Judge, but we will do it. I did this same thing for Attorney General Ashcroft. I held hearings for him even though his nomination wasn't here, and we voted on the Attorney General's nomination I think something like 48 hours after the nomination actually reached the Senate.

I also understand that no hearings have been held during the August recess. I am holding these, and let me tell you, much as I love the District of Columbia—and I really do. As Congresswoman Norton knows, I have always been one of the biggest fans of D.C. I went to school here at Georgetown. I think the world of this city. But much as I love the city, my house in Vermont during August was a more appealing place. And so I am trying to go the extra mile in coming back for hearings today and hearings next week, and I hope that at least some of the Republicans who complain why

don't we have more hearings will also get on an airplane and come back and join us.

But to move on to happier moments, we will consider the nomination of Judge Reggie Walton to serve on the U.S. District Court for the District of Columbia, and then we will hear from Richard Nedelkoff to serve as Director of the Bureau of Justice Assistance at the Department of Justice, both distinguished attorneys. Judge Walton currently serves on the Superior Court for the District of Columbia, a graduate of the American University's Washington College of Law, who began his legal career in Philadelphia as a staff attorney with the Defender Association of Philadelphia. He has seen both sides. He moved from public defender to become a Federal prosecutor. As I told the judge before we started, I always thought that being a prosecutor was the best job in the world. Why I ever gave it up for this, I don't know, but somehow they haven't been able to attract me to go back.

Judge Walton was named by President Reagan to serve on the D.C. Superior Court. After 8 years, he served the first President Bush as the Associate Director of the Office of National Drug Control Policy and senior White House adviser for crime. In 1991, he was reappointed to the D.C. Superior Court.

Richard Nedelkoff is President Bush's choice to serve as Director of the Bureau of Justice Assistance, a component of the Office of Justice Programs at DOJ, to provide leadership and assistance in support of local criminal justice strategies, achieving safe communities. Mr. Nedelkoff has a 21-year public service career focused on the administration of juvenile justice, criminal justice and victim services in five different States. He has worked directly with clients as a Child Protective Services caseworker, a foster care coordinator, a guardian ad litem, juvenile probation officer, detention care worker, executive director of the Florida Network of Youth and Family Services, and most recently in Texas, he worked on the development of nationally recognized programs including the Texas School Safety Center and others. And I think the President is to be commended for sending such a well-qualified person here, and I will put the rest of may statement in the record.

[The prepared statement of Senator Leahy follows.]

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

I am pleased to have been able to schedule this nominations hearing to consider one of President Bush's nominees to the United States District Court for the District of Columbia, as well as his nominee to be Director for the Bureau of Justice Assistance at the Department of Justice.

The Senate has been in session only four weeks since an agreement on reorganization was reached and I was able to schedule nominations hearings beginning in July. Despite this short time period, I have nevertheless been able to make progress on moving nominations for both the Department of Justice and the Judiciary. Unfortunately, there are those on the other side of the aisle who continue to make public comments about the nominations process that are designed to continue the rough partisan politics that plagued the last six years. Political cheap-shots are easy to make and are therefore, I suppose, to be expected. While harsh political rhetoric over nominations may be a habit that the White House and Republicans find hard to break, a review of the facts about the progress we have made should help set the record straight.

This is the sixth hearing I have held to consider Presidential nominations and the third hearing I have I have held to consider judicial nominations since July, the first month that as Chairman of this Committee I was able to do so. Including the short

period in January when I was privileged to serve as Chairman, today actually marks a total of seven nominations hearings that I have held as Chairman over the same total number of weeks—for five judicial nominations and eight executive branch nominations. By contrast, from January 20th until the reorganization of the Senate, or a period of almost five and one-half months, the Committee on the Judiciary held only four hearings for eight executive branch nominations and no judicial nominations. If this Chairman were interested in political payback, as some Republicans have suggested, the pace of moving nominations under my Chairmanship would be worse, not better, than the prior leadership of this Committee.

In fact, I have noticed a hearing next week for nominations to the United States Court of Appeals for the Federal Circuit and to the U.S. District Court for the District of South Carolina. While I attempted to schedule additional District Court nominees for the July 24th hearing, none of the files for nominees to the District Courts pending before the committee were then complete.

For those of us trying to restore dignity and regularity to the nominations process by making the process move smoothly, the bumps in the road created by the other side is especially frustrating. For example, President Bush's decision to delay the American Bar Association's evaluation of a judicial nominee's qualifications until the nomination is made public, has forced delays in the rest of the process as well. As a result of this break with precedent, the nominations of even the least controversial and most qualified candidates are now delayed by weeks. But we are doing the best we can, and we hope to move even more District Court candidates at nominations hearing in the near future.

The delay in processing nominations was only compounded by the Minority Leader's objection on August 3, 2001, to Senator Reid's unanimous consent request to avoid returning all pending nominations to the White House. As a consequence, all the pending nominations have been returned to the White House. Never before the Minority Leader's objection, have all pending nominations been returned to the President en masse during the August recess nor has the President been forced to resubmit all the nominations that were before the Committee.

This break in precedent had the result that our Committee was without pending nominations and therefore without standing to either seek, receive or continue review of sensitive FBI background reports or confidential information about nominees. By letter of August 9, Judge Gonzales, the White House counsel, requested that the Committee continue its work, notwithstanding our lack of standing due to the Minority Leader's action. In an effort to keep the process moving, I agreed to that request.

The Minority Leader's action also initially thwarted my plans to hold nominations hearings over the August recess since the Committee virtually never holds hearings on nominees whose nominations have not yet been forwarded by the White House. Yet, just as I did for Attorney General Ashcroft, for whom I held hearings before his nomination had been sent to the Senate, I decided to move ahead with hearings. Furthermore, I understand that no hearings have been held by the Senate Judiciary Committee during the August recess since at least 1980.

At today's hearing we will consider the nomination of Judge Reggie Walton to serve on the United States District Court for the District of Columbia and Richard Nedelkoff to serve as Director of the Bureau of Justice Assistance at the Department of Justice. They are both distinguished attorneys.

Judge Walton currently serves on the Superior Court for the District of Columbia. He is a graduate of the American University's Washington College of Law and began his legal career in Philadelphia as a staff attorney with the Defender Association of Philadelphia. He has seen both sides of the criminal practice, moving from the Public Defender's office to become a federal prosecutor from 1976 to 1981. Mr. Walton was named by President Reagan to serve on the D.C. superior Court and, after eight years, he served the first President Bush as the Associate Director of the Office of National Drug Control Policy and Senior White House Advisor for Crime. In 1991, he was re-appointed to the D.C. Superior Court where he has served since.

Richard Nedelkoff is President Bush's choice to serve as Director of the Bureau of Justice Assistance, which is a component of the Office of Justice Programs at the Department of Justice. The Bureau's mission is to provide leadership and assistance in support of local criminal justice strategies to achieve safe communities. Mr. Nedelkoff's 21-year public service career has focused on the administration of juvenile justice, criminal justice, and victim services in five different states. As a practitioner, he has worked directly with clients as a child protective services caseworker, a foster care coordinator, a guardian ad litem, a juvenile probation officer, and a detention care worker. As an administrator, he has served as the Executive Director of the Florida Network of Youth and Family Services, an association of non-profit

and government entities providing prevention services to troubled youth and families.

More recently, in Texas, Mr. Nedelkoff worked in the development of nationally recognized programs including: the Texas School Safety Center, a statewide training and technical assistance resource for schools; Project Spotlight, a community-based police-probation partnership in the seven largest counties in Texas; Texas Exile, a collaborative gun prosecution project with the Texas AG's Office, District Attorneys, and U.S. Attorneys; Project ChildSafe, a gun lock giveaway program; and Right Choices, initiatives to promote responsible fatherhood, mentoring, and character development.

In 1998, Mr. Nedelkoff was appointed to his current position by then-Governor Bush to direct the Texas Criminal Justice Division (CJD) which funds criminal justice, juvenile justice, delinquency prevention, and victim services projects. As head of CJD, he directed the state's administering agency for federal funds from the Office of Justice Programs, including Byrne Formula Grants and Local Law Enforcement Block Grants, Victims Against Women Act and all of the funds from the Office of Juvenile Justice and Delinquency Program.

BJA's mission is to reduce and prevent crime, violence, and drug abuse and to improve the functioning of the criminal justice system in all of America's communities. BJA emphasizes enhanced coordination and cooperation of federal, state, and local efforts at all stages of the development and implementation of comprehensive strategies to reduce and prevent crime.

BJA has four primary components: (1) the State and Local Assistance Division, which administers formula grant programs, such as Byrne Formula Grants and Local Law Enforcement Block Grants; (2) the Program Development Division, which administers Byrne Discretionary Programs including the Open Solicitation and a number of targeted funding programs; (3) the Office of Benefits, which administers the Public Safety Officer's Benefits, Denial of Federal Benefits and the Bulletproof Vest Partnership programs; and (4) the Office of Program Analysis and Communication which supports the evaluation and effectiveness of funded programs and disseminates program results.

My home state of Vermont has benefitted from grant programs administered by BJA, including the Byrne Formula Grant program and the Bulletproof Vest Partnership program. We still have a way to go in assisting our communities and I will be interested in hearing from Mr. Nedelkoff about his priorities if he is confirmed for this position.

Chairman LEAHY. Congresswoman Norton, I appreciate, as always, having you come over here. We have worked closely together for all these many years, and I also appreciate your taking the time to come by the other day so we could talk about how we will move forward on the needs of the justice system in the District. So, please, I am delighted to have you here, and go ahead.

PRESENTATION OF HON. REGGIE WALTON, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA BY HON. ELEANOR HOLMES NORTON, A DELEGATE IN CONGRESS FROM THE DISTRICT OF COLUMBIA

Delegate NORTON. Well, thank you very much, Senator Leahy. I must say that if I had been asked, I would have freely said I was the only Member of Congress in the entire District of Columbia. But anybody who knows Pat Leahy is not surprised that he is here beyond the call of duty, and we are particularly grateful that you are, Senator.

I am grateful to be able to introduce an especially distinguished nominee, President Bush's first nominee for a justice position in the District of Columbia to come before the Committee, and I am pleased that he is the first. May I, Senator, express my appreciation for your courtesy in consulting with me on this nominee and your intention to consult with me on future nominees. Far more than a personal courtesy to me, it is an important courtesy to the almost 600,000 residents of the District of Columbia who have no

representation in this body, and it is typical of the generosity and the professionalism of Pat Leahy that he would reach out to the only Federal representative District of Columbia residents have.

I have spoken to Judge Gonzales, the White House counsel who has come to visit me. I have informed him of our conversation, and he has indicated that he would also consult with me in light of your intention to do so.

Chairman LEAHY. If I might interrupt, Congresswoman, I have taken the same position, whether there has been a Republican or Democratic administration, that the elected representative of the District of Columbia must be consulted on judicial nominations. The people of the District of Columbia—there are slightly more people in the District of Columbia than there are in my State of Vermont—they look to you to protect their interests, and I can assure you as chairman of this Committee that it will be absolutely essential that they consult with you. And I want to be satisfied they have consulted with you before any nominees go on the agenda here, because you have such a responsibility to the District. And I think that, as I have told both Republican and Democratic Presidents—and they have all realized that—that they are supposed to consult with the representative of the District.

I am sorry to interrupt, but I just wanted to make that very clear.

Delegate NORTON. Thank you very much, Senator. Certainly the White House now realizes it because of your own action.

I am not surprised that President Bush's first judicial nominee for the district court would be Reggie Walton, who is a most distinguished judge of our own D.C. Superior Court. Many have considered him a Federal judge in waiting. He is considered so highly qualified for the work he has done, both in an administration preceding this one and on the bench.

His prior service, I think, prepares Judge Walton abundantly to serve as a district court judge. He has been the chief of the career criminal unit of the U.S. Attorney's Office here in the District of Columbia and has served as executive assistant to the U.S. Attorney for the District of Columbia. But, interestingly, and perhaps it is unusual that a man who has had such service on the U.S. Attorney side has also been a public defender. He was with the Public Defender Association of Philadelphia before coming here.

Judge Walton was first appointed to the Superior Court in 1981. He took 2 years out to serve as Associate Director of the very important Office of National Drug Control Policy and then as senior adviser to the White House on crime. He returned to the Superior Court in January 2000. His experience on that court has been both wide and deep. Not only does Judge Walton bring rich experience at the trial bar and traditional experience as a trial judge, Judge Walton has played a very special role on our court here and done a very special service in two divisions that are of utmost importance to the District of Columbia: the Family Division and the Domestic Violence Unit, where he headed both.

Senator we now have before the Congress—and expect it will be passed because we have gotten such good bipartisan, bicameral support—a bill to revise our Family Division for the first time in

30 years, and Judge Walton has played a leadership role in bringing us to a watershed moment for this special division of our court.

He is a graduate of the American University Washington College here in the District of Columbia and West Virginia State. He is the son of a steelworker from a steel town, Donora, Pennsylvania. His awards and services to the bar and to teaching and to the profession are so numerous I won't even try to pick out representative ones. But they range all the way from a full-out Governor's Proclamation in April of 1991, I think when he was serving in the White House, for declaring the State of—the State of Louisiana declared a Reggie B. Walton Day, so from something that might be considered lofty and statewide, especially to someone who doesn't even live in the State, to the service that Judge Walton has done to our own community at the most grass-roots level, from Big Brothers to the Hillcrest Children's Center.

It is a very proud service that I render in introducing and highly recommending to you Judge Reggie B. Walton to be a United States district court judge.

Chairman LEAHY. Well, thank you very much, and, Judge, you should know that she says these nice things about you when you are not here and the TV cameras are not running and you have all your family here.

Congresswoman Norton, I know you have got a million things to do. Unlike the rest of us, you can't kind of escape when there is a recess. You are on 24/7. But I appreciate your coming over and, again, I really want to thank you for taking the time you did a couple weeks ago to meet with me and talk about the judges here. It is very helpful, and I do appreciate it.

Delegate NORTON. Thanks really go to you, Senator. Thank you very much.

Chairman LEAHY. Thank you.

Chairman LEAHY. Judge, before I swear you in, I—and I have met some of them already, some of your family members, and someday in the Walton Library in your archives you will probably have a copy of all this because you won't get anybody to say these many nice things about you until you are unfortunately not going to be available to hear it. So their names will thus become part of the permanent records of the U.S. Senate. Would you be kind enough to introduce whoever is here with you?

Judge WALTON. Thank you very much, Senator Leahy. I welcome the opportunity to introduce my family, some of my family and some of my friends who have been gracious enough to come here today. Before I do that, however, I would like to acknowledge my mother, who, unfortunately, could not travel here from western Pennsylvania, and my deceased father. Without the two of them, I would have never been able to achieve anything in life. So I do want to recognize them.

I do have with me my wife, Dr. Debra Coats–Walton, and my daughter, Danon Walton. Also, I have with me a cousin, who really is like a big sister because we grew up together in Donora, Pennsylvania, Ms. Helen Jenkins; and also an aunt, who is my father's sister, Ester Fisher.

Also, she is like family because she has been my secretary now for over 20 years, Ms. Auntalene Queen. Also, I have with me a

cousin, Elmer Barksdale, from Baltimore. And also, I have with me my current law clerk, Mr. Aubrey Burton, Jr., and I have a special guest here, Chief Judge Rufus King, my current chief judge of the Superior Court. Also, Judge Lee Satterfield, one of my colleagues and a friend; also, Judge Anita Josey–Herring, a colleague and a friend; also, Judge Mary Terrell, also a colleague and a friend; a former judicial intern, Mr. James Beane; a former law clerk, Mr. James Towns; also, a former law clerk, Ms. Kathleen Brandon; and Mr. John Robinson, who is also a very good friend.

Chairman LEAHY. Thank you.

Judge King and the other judges, you do us honor in being here. I don't think we have ever had a nominee with so many other judges here. And, Ms. Fisher, I suspect it would be safe to say, if your brother were still with us, he would be very proud of his son being here. Every day when something happens here, I think of my parents and realize I wouldn't be here without them. I just wish they were still here to share it.

Judge would you please stand and take the oath? Do you swear that the testimony you are about to give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Judge WALTON. I do.

Chairman LEAHY. Judge, did you wish to make an opening statement?

STATEMENT OF HON. REGGIE WALTON, OF THE DISTRICT OF COLUMBIA, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA

Judge WALTON. No, Chairman. I would just like to thank you for giving me the opportunity to have this hearing today. I know it was an imposition for you to come back from Vermont, but I do appreciate your conducting these hearings.

Chairman LEAHY. Well, I was glad to do it. I have read your review, and actually the people who deserve a lot of credit are the staff on the Judiciary Committee. I have often joked that Senators are merely constitutional impediments to their staffs, but a lot of them took time from their vacations to help prepare for these, and one of the reasons why I made the comment I did before with the files going back and forth, we have been a little—it has been very difficult on them being jerked around the way they have, and I hope that the White House and the leadership of the other party in the Senate will correct that. I think sometimes it is probably easy for those of us who—I suppose that policymakers sometimes forget that the staff is down here until midnight and on weekends trying to make up for us.

Judge let me ask you this, and I am sure you anticipate this question, the question of stare decisis. Do you feel, if you are sworn in as a judge, if you are confirmed by the Senate and sworn in, do you feel that you must bind yourself to the doctrine of stare decisis?

Judge WALTON. Mr. Chairman, I do. I honor that principle of law, which is the fundamental foundation of our American system of government. I had the opportunity several years ago to travel to

Russia to do some instruction in Siberia. When I told people I was going to Siberia, they said, "What did you do?"

[Laughter.]

Chairman LEAHY. I was going to ask.

Judge WALTON. But the one thing that I learned is that they don't have that process, and I think it's important for any governmental system to have a system of laws that people can rely upon so that there's some reasonable degree of certainty that certain actions will result in certain results. So I think it's imperative for judges to apply the rule of law, and I think it's crucial that stare decisis be an integral part of our judicial system.

Chairman LEAHY. Incidentally, your trip to Russia, I appreciate that, too. Some of the judges from my own State of Vermont, both in the Vermont Supreme Court and State courts and then one of our Federal judges, Judge Sessions, former U.S. Attorney, and others, Charlie Tetzlaff, have gone to Russia on some of these programs. And I have met with a lot of people from the judiciary and the legal system in Russia, especially when the old Soviet Union first broke up. And I am still struck by a question asked by one, who said—this was a number of years ago, who said: We have heard that here in the United States there are cases where somebody would come in, would actually bring a suit against the Government in a State or Federal, a Government court, of course, and the Government could still lose? I mean, how is that possible?

You suddenly realize the enormous gap, and I think your equating the need to follow stare decisis with your experience there is so good because if you don't follow it, how can any litigant come forward?

But you might also, though, in your court be faced, for example, with a Supreme Court decision that you personally disagree with. And I think every one of us, if we searched from the time we left law school on, could find some cases we may disagree with the Supreme Court on. But now you have got a case on all fours before your court. You disagree with the Supreme Court's decision. Do you believe you would have any difficulty in following the Supreme Court decision even though you might disagree with it?

Judge WALTON. I would not, and I have done that throughout my judicial career.

Chairman LEAHY. Now, in your experience in the Superior Court and all the other experience that has been talked about, how will you prepare for the move over—well, physically not moving very far, but how would you prepare for the move over to the Federal court?

Judge WALTON. Well, I appreciate that I will be embarking on a new venture and that there will be a lot of new statutes that I will have to familiarize myself with. I pride myself on being an extremely hard worker, and I will embark upon the obligation of familiarizing myself with appropriate Federal statutes as diligently as possible to make sure that whenever a case appears before me that I will be prepared to make the appropriate decision. And, obviously, as a judge, you know that you're never going to know all of the law that comes before you, so at that point, you have to be willing to take the time to go back to the books and do the research

and do the hard work in order to familiarize yourself with the law so that you can make the appropriate decisions.

Chairman LEAHY. You know, it is interesting you say that, too. I have a lot of friends who have gone on the court, one a neighbor of mine, on various courts, from the district court level to the courts of appeals, and they have told me—they didn't expect this, but even with all the help of law clerks and all, when they have gone back in the library and started pulling the books out and really wrestling with something, it has turned out to be one of the most satisfying parts of the job. We all went through law school, and we know how hard we worked and the professors scared the devil out of us and everything else. But, with me, every so often I say I just want to look at that law a little bit more and go back. I like nothing better than going into courts and watching cases.

Well, Judge Walton, we have no questions. Nobody has submitted any. Notwithstanding the big Powerball day, I am not a big betting man, but I have a guess that you are probably not going to have an awful lot of trouble with the U.S. Senate, and I will make a preliminary congratulations. Your nomination will be before our Committee at our first executive meeting when we come back after Labor Day and be voted out of the Committee, because we are not in—as we are in recess, counsel has reminded me we have to leave the record open until Friday, August 31st, and I will. But I will urge the Committee to move your nomination to the floor as quickly as possible after we come back in.

Thank you very much.

Judge WALTON. Well, thank you for having me, Senator.

Chairman LEAHY. If you and your family and friends want to leave, you are welcome to, or stay, whatever works best for you.

[The biographical information of Judge Walton follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name (include any former names used).**

Reggie Barnett Walton

2. **Address: List current place of residence and office address(es).**

Washington, D.C.
(Residence)

Shady Side, Maryland
(Second Residence)

H. Carl Moultrie I Courthouse for the District of Columbia
500 Indiana Avenue, N.W., Suite 5630
Washington, D.C. 20001
(Business Address)

3. **Date and place of birth.**

February 8, 1949
North Charleroi, Pennsylvania

4. **Marital Status: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

Debra Ann Coats-Walton
Debra Ann Coats

Medical Doctor

Washington Hospital Center
110 Irving Street, N.W.
Room 2B-28
Washington, D.C. 20010

4000 Mitchellville Road
Suite B-320
Bowie, Maryland 20716

5. **Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**

West Virginia State College
Institute, West Virginia
August, 1967 to May, 1971
Bachelor of Arts (May, 1971)

The American University
Washington College of Law
Washington, D.C.
August, 1971 to May, 1974
Juris Doctor (May, 1974)

6. **Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

(A.) Employment

Chief Justice of Student Court
West Virginia State College
Institute, West Virginia
(1970 – 1971)

Assistant Supervisor of Circulation
American University Law School
Washington, D.C.
(1972 – 1974)

Staff Attorney
Defender Association of Philadelphia
Philadelphia, Pennsylvania
(1974 - 1976)

Assistant United States Attorney and Executive Assistant United States Attorney
United States Department of Justice
Office of the United States Attorney for the District of Columbia
Washington, D.C.
(1976 - 1981)

Associate Judge
Superior Court of the District of Columbia
Washington, D.C.

(1981 - 1989)

Associate Director
Office of National Drug Control Policy
Executive Office of the President
Washington, D.C.
(1989 to May, 1991)

Senior White House Advisor For Crime
The White House
Washington, D.C.
(May, 1991 to December, 1991)

Associate Judge
Superior Court of the District of Columbia
Washington, D.C. 20001
(1991 to Present)

(B.) Board of Director Positions

Big Brothers of the National Capitol Area
Board of Directors
(1990)

National Center for Missing and Exploited Children
(1990 – 1991)

Hillcrest Children's Center
(1994 – 1996)

Robert A. Shuker Scholarship Fund, Inc.
(1993 – Present)

Substance Abuse Articles Advisory Board,
American Bar Association Center on
Children and the Law
(2001 -)

7. **Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.**

I served four (4) years in the Army Reserve Officers Training Corps while attending West Virginia State College. I was never commissioned as an officer and never served on active duty because I was seriously injured playing college football. My injury prevented me from passing the physical examination

necessary to receive my commission. I was honorably discharged as a private on March 25, 1971. My serial number was 181-40-5338.

8. **Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.**

Grant-In-Aid Scholarship (football); West Virginia State College, Institute, West Virginia (1967 – 1971)

Academic Scholarship; The American University, Washington College of Law, Washington, D.C. (1971 – 1974)

Who's Who Among Students in American Universities and Colleges (I970-I97I)

Who's Who Among Greek Fraternities and Sororities in America (I970-I97I)

Achievement Award from the Eleventh District of O.E.O. - P.H.A. (I975)

The Attorney General Certificate of Award (I980)

Director's Award for Superior Performance as an Assistant United States Attorney, Department of Justice; Executive Office for the United States Attorneys (I980)

Who's Who Among Black Americans (I980-I98I)

Outstanding Young Men of America; U.S. Jaycees (!984)

Black Eagle Alumni Award; American University Black Alumni Association (I984)

Who's Who in American Law (I985)

Who's Who in Society (I986)

Men of Achievement; International Biographical Centre; Cambridge, England (I987)

Outstanding Alumnus Award; Ringgold High School (I987)

Who's Who of Emerging Leaders in America (I987)

The Dean's Award for Distinguished Service to the Washington College of Law; American University (I989)

Award for Distinguished Service to the Community and the Nation;

The Bar Association of the District of Columbia's Young Lawyers Section (1989)

The H. Carl Moultrie Award; National Association for the Advancement of Colored People (NAACP), District of Columbia Branch (1989)

Outstanding Service Award, Browne Junior High School, Washington, D.C. (1989)

Community Service Award; Alpha Phi Alpha Fraternity, Inc.; Iota Upsilon Lambda Chapter (1990)

Secretary's Award; Department of Veterans Affairs (1990)

President's Image Award; Madison County Indiana Urban League (l990)

The Arthur J. Holland Humanitarian Award; The Student Government Association of Junior High School #3; Trenton, New Jersey (l990)

Distinguished Service Award presented by the Cook County State's Attorney; The National Center for the Prosecution of Child Abuse and Blue Cross Blue Shield of Illinois (1990)

The West Virginia State College National Alumni Association James R. Waddy Meritorious Service Award (1990)

Who's Who in Law Enforcement (1990)

County Spotlight Award; National Association of Counties (1990)

Distinguished Service Award for Dedicated Community Service; The Southwest Neighborhood Assembly's Youth Activities Task Force and Drug and Crime Task Force; Washington, D.C. (1990)

The Distinguished Service Award; New Jersey State Association of Chiefs of Police (1990)

Pastor's Award for Dedicated Service in the War on Drugs; Park Road Community Church, Washington, D.C. (1990)

Governor's Proclamation declaring April 9, 1991 in the State of Louisiana, Judge Reggie B. Walton Day.

Citizen's Community Award; The City of Chesapeake, Virginia (1991)

75th Anniversary Paul Harris Fellow; The Rotary Foundation of Rotary International (1992)

The William H. Hastie Award; The Judicial Council of the National Bar Association (1993)

Alpha Man Of The Year; Alpha Phi Alpha Fraternity, Inc., New York Metropolitan Areas IV, V, VI (1994)

Outstanding Community Service Award; The Washington Area Council On Alcoholism and Drug Abuse, Inc. (1994)

Profiled in the book entitled "Black Judges On Justice: Prospectives From The Bench." Authored by Linn Washington (1995)

The Honorable Robert A. Shuker Memorial Award; Assistant United States Attorneys' Association (1997)

Special Achievement Award; Black Law Students Association Washington College of Law, American University (1997)

Friendship Award;The Best Friends Foundation (1998)

Distinguished Alumnus Award; Washington College of Law, American University (1999)

Who's Who in the World (2000)

North Star Award; Washington College of Law, American University (2000)

Angel Award; Sponsored by Bridging The Gap Tri-County, Inc., Mt. Sinai Baptist Church, Charleroi, Pennsylvania (2000)

Who's Who in America (2001)

Trailblazers Award; Donora Centennial Celebration, Donora, Pennsylvania (2001)

9. **Bar Associations: List all bar associations, legal or judicial-related committees 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.**

Member, The District of Columbia Court's Judicial Conference

Member, District of Columbia Bar (unified)

Member, Washington Bar Association

Former member, District of Columbia Bar Association

Former member, American Bar Association

Former member, National Institute of Trial Advocacy
Advocates Association

Former member, The Barristers

Master, Edward Bennett Williams
American Inn of Court (Former member)

Former member, American Bar Association Criminal
Justice Section Victims Committee

Former member, Pennsylvania Bar Association

Former member, National District Attorney's Association

Former member, District of Columbia Bar Association Criminal
Instructions Committee

Former member, American Bar Association Lawyer Competency
Committee

Former delegate, National Conference of State Trial Judges, American Bar
Association

Former member, Joint Committee on Judicial Administration for the District of
Columbia Courts

Panelist, United States Court of Appeals for the District of Columbia Circuit
Judicial Conference (1989)

Panelist, United States Court of Appeals for the Sixth Circuit Judicial Conference
(1991)

10. **Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.**

None.

11. **Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the**

same information for administrative bodies which require special admission to practice.

Bar of the Supreme Court of Pennsylvania
(admitted October 21, 1974)

United States District Court for the Eastern
District of Pennsylvania
(admitted December 18, 1975)

District of Columbia Court of Appeals
(admitted January 8, 1976)

United States Court of Appeals for the
District of Columbia Circuit
(admitted October 21, 1977)

Supreme Court of the United States
(admitted July 14, 1980)

United States District Court for the District of Columbia
(admitted April 6, 1981)

12. **Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.**

Law Review Article

Reggie B. Walton, Et Al., Pretrial Drug Testing – An Essential Component of the National Drug Control Strategy, 5 BYU J. Pub. L. 341 (1991).

Newspaper Articles and Op-Ed's

(Copies of the following articles are attached to the application)

(A). I wrote an article for a special section of the Washington Times on Dr. Martin Luther King's Birthday in 1989, which I would have entitled "Dr. King's Unfulfilled Dream" but without my permission the article was titled "Black Youngsters are still Threatened by Black Misdeeds"; January 13, 1989.

(B). "When Criminals are Permitted to Become Jailers"; Metro Chronicle; November 30, 1989.

(C). "Low Wages - No Justification for Selling Drugs"; The Washington Post; September 9, 1990 (this article appeared in a number of other newspapers throughout the country).

(D). "Making Life Easier for the District's Killers"; The Washington Post; October 21, 1990.

(E). "Decriminalization and Drug Violence"; The Legal Time of Washington; March 25, 1991 (this article appeared in a number of weekly legal newspapers throughout the country).

(F). "Urgency of Bush's Crime Bill"; The Washington Times; June 17, 1991.

(G). "Habeas Corpus Urgency"; The Washington Times; September 30, 1991.

Speeches and Testimony

Listed below are: (1) records or reports noting testimony I have given before Congress; (2) articles containing written copies of my speeches; (3) articles containing transcripts, exerts or summaries of my speeches; and (4) articles, reports or records containing transcripts or summaries of conferences, discussions, or hearings in which I have participated

In addition, I have given a number of other speeches from notes. While I do not possess transcripts of these speeches, some of them have been videotaped. If the Committee wishes to review these tapes, I will provide copies.

A. Record of Congressional Testimony

135 Cong. Rec. D507-01 (1989) available at 1989 WL 176790.
Noting testimony about violence by and against America's children.

136 Cong. Rec. D531-01 (1990) available at 1990 WL 56479.
Noting testimony about national drug control strategy.

H.R. Rep. No. 101-1006 (1991).
Noting testimony about national drug control strategy.

H.R. Rep. No. 101-1015 (1991).
Noting testimony about national drug control strategy.

H.R. Rep. No. 101-1019 (1991).

Noting testimony about national drug control strategy.

141 Cong. Rec. D775-01 (1995) available at 1995 WL 370670.
Noting testimony about combating crime in the District of Columbia.

H.R. Rep. No. 104-879 (1997).
Noting testimony about combating crime in the District of Columbia.

134 Cong. Rec. D754-02 (1988) available at 1988 WL 172600.
Noting testimony about drug abuse control policy.

147 Cong. Rec. D454-02 (2001) available at 2001 WL 521138.
Noting testimony about D.C. Family Division reform.

B. Written Speeches

Judge Reggie B. Walton, Utilization of Juvenile Records in Adult Criminal Proceedings—a Judge's Perspective, Address at the National Conference of Juvenile and Adult Records (June 28, 1988).

Our National Drug Policy – We Are On The Right Track, submitted as the text for a speech presented at a symposium on drug policy held in 1991 at the Virginia Polytechnic Institute in Blackburg, Virginia.

C. Transcripts, Exerts or Summaries of Speeches

Reggie B. Walton, Strategies for Controlling Drug Abuse, Address at Search Conference Entitled Criminal Justice in the 1990's: The Future of Information Management (Jul. 19, 1989).

Reggie B. Walton, National Drug Control Strategy, Address at Attorney General's Summit on Law Enforcement Responses to Violent Crime: Public Safety in the Nineties (Mar. 4, 1991).

Speech Delivered by Reggie Walton, Associate Director, Office of Drug Control Policy at the Crime Summit, Federal News Service, Mar. 4, 1991, available at LEXIS.

D. Transcripts or Summaries of Conferences, Discussions or Hearings

CB National League of Cities Human Development Policy Steering Committee Meeting, Federal News Service, Aug. 25, 1989, available at LEXIS.

CB Hearing of the Crime Subcommittee of the House Judiciary Committee: Drug Control Strategy, Sept. 7, 1989, available at LEXIS.

CB Heari of the Senate Judiciary Committee: Drugs and Drug Abuse, Federal News Service, Sept. 7, 1989, available at LEXIS.

CB Hearing of the Subcommittee on Legislation and National Security of the House Government Operations Committee: Drug Oversight, Federal News Service, Sept. 14, 1989, available at LEXIS.

CB Hearing of the House Select Committee on Narcotics Abuse and Control: National Drug Control Strategy, Federal News Service, Sept. 15, 1989, available at LEXIS.

CB The White House Washington, DC: Regular Briefing, Federal News Service, Sept. 21, 1989, available at LEXIS.

CB Press Conference Update on the Federal Drug Crime Emergency Assistance Program for the Washington, DC Metropolitan Area, Federal News Service, Oct. 19, 1989, available at LEXIS.

CB NCSL Conference Address by Reggie Walton, Federal News Service, Dec. 14, 1989, available at LEXIS.

CB Press Conference on National Drug Use Study, Federal News Service, Dec. 18, 1989, available at LEXIS.

CB News Conference with William Bennet, Director of the Office of National Drug Control Policy: District's Drug Control Progress, Federal News Service, Apr. 13, 1990, available at LEXIS.

CB Press Conference with William Bennet, Director Office of National Drug Control Policy Accompanied by Judge Reggie Walton and Stan Morris, Federal News Service, May 14, 1990, available at LEXIS.

President Bush in a Roundtable Discussion with Mayor Dirk Kempthorne and other City Leaders on the Subject of Fighting the Drub Problem, Federal News Service, Jul. 19, 1990, available at LEXIS.

Status of State Drug Control Efforts, Federal News Service, Nov. 15, 1990, available at LEXIS.

1990 Proceedings of the Fiftieth Judicial Conference of the District of Columbia Circuit, 219 F.R.D. 217 (1990).

Proceedings of the Fifty-seventh Judicial Conference of the District of Columbia Circuit, 191 F.R.D. 197 (1998).

13. **Health: What is the present state of your health? List the date of your last physical examination.**

Excellent; August 23, 2000

14. **Judicial Office: State (chronologically) and judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.**

Associate Judge and Deputy Presiding Judge of the Superior Court of the District of Columbia
Washington, D.C.
July, 1981 - June, 1989
(Appointed by President Ronald Reagan. The Superior Court is a general jurisdiction trial court).

Associate Judge, Presiding Judge of the Domestic Violence Unit and Presiding Judge of the Family Division
Superior Court of the District of Columbia
Washington, D.C.
1981 – 1989 and 1991 - Present
(Appointed by President George Bush to my second term on the Superior Court).

15. **Citations: If you are or have been a judge, provide:**
(1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

(1). (A). Price v. United States, 476 A.2d 644 (D.C. 1984).
(This is a District of Columbia Court of Appeals opinion I authored when I sat as an Associate Judge by designation on that Court).

(B). K.D.D. v. L.M.A., 128 Daily Wash. L. Rptr. 913 (D.C. Super. Ct. April 25, 2000).

(C). The Washington Post Co. v. The Metropolitan Police Department, 126 Daily Wash. L. Rptr. 2081 (D.C. Super. Ct. September 18, 1998).

(D). United States v. Farug, 123 Daily Wash. L. Rptr. 2357 (D.C. Super. Ct. September 5, 1995).

(E). United States v. Burton, 120 Daily Wash. L. Rptr. 1997 (D.C. Super. Ct. August 7, 1992).

(F). United States v. Harris, 117 Daily Wash. L. Rptr. 345 (D.C. Super. Ct. December 13, 1988). The conviction was affirmed by the District of Columbia Court of Appeals in an unpublished opinion on July 19, 1991.

(G). United States v. Settles, 116 Daily Wash. L. Rptr. 885 (D.C. Super. Ct. March 24, 1988).

(H). United States v. Peoples, 116 Daily Wash. L. Rptr. 1161 (D.C. Super. Ct. April 25, 1988).

(I). United States v. Settles, 116 Daily Wash. L. Rptr. 1733 (D.C. Super. Ct. June 24, 1988).

(J). Ozerol v. Howard University, 113 Daily Wash. L. Rptr. 1049 (D.C. Super. Ct. April 24, 1985). The case was affirmed on appeal by the District of Columbia Court of Appeals in a published opinion. 545 A.2d 638 (D.C. 1988).

(2). Over 300 appeals were filed in cases I handled as a judge. Seventy-nine (79) of the appeals resulted in the issuance of published opinions by the District of Columbia Court of Appeals. I have reviewed these opinions and do not believe that the court expressed "significant criticism" in any of the cases that were affirmed. I do not have access to the unpublished opinions which are all affirmances. I do not believe any of the unpublished opinions contain such criticism since the Court of Appeals decided they should not be published. The cases in which there were reversals, partial reversals or remands are listed below:

Reversed or Remanded

(A). Tate v. Equity Brokerage Corp., 506 A.2d 201 (D.C. 1986).

The Court of Appeals ruled that I erred in ruling that I was without jurisdiction to consider a post-trial motion that had been filed by the appellants.

(B). Worthy v. United States, 509 A.2d 1157 (D.C. 1986).

The defendant's conviction was affirmed in all respects except for the vacating of one of the two charges for which the defendant was

convicted because the Court of Appeals concluded that the two offenses merged.

(C). Johnson v. Edgewood Mgmt. Corp., 512 A.2d 287 (D.C. 1986).

Reversed because the Court of Appeals held that the plaintiff's eviction was unlawful because he had properly tendered the total rent owed prior to the eviction. I had ruled that the total amount due had not been paid. The opinion I authored in this can be found at 113 Daily Wash. L. Rptr. 1029 (D.C. Super. Ct. April 24, 1985).

(D). Shepard v. United States, 538 A.2d 1115 (D.C. 1988).

The defendant's conviction was affirmed but the case was remanded for resentencing. Resentencing was ordered because the government had incorrectly represented the defendant's prior record and the mistake had been the predicate for enhancing the defendant's sentence.

(E). Hamel v. Hamel, 539 A.2d 195 (D.C. 1988).

Reversed because the appellate court ruled that a motion to modify spousal support set by a court order is not an occasion to re-evaluate the equities between the parties and modify the amount of the spousal support. The opinion I authored in this can be found at 114 Daily Wash. L. Rptr. 1941 (D.C. Super. Ct. August 4, 1986).

(F). Franklin v. United States. 555 A.2d 1010 (D.C. 1989).

The conviction was reversed because the defendant was impeached during his testimony with a conviction for which he had not yet been sentenced.

(G). Parker v. Stein, 557 A.2d 1319 (D.C. 1989).

Reversed because the appellate court ruled that the plaintiff's requests for punitive damages and for emotional distress should have been submitted to the jury.

(H). Scott v. United States, 559 A.2d 745 (D.C. 1989).

I was not the trial judge in this case. However, I presided over the post-trial proceedings after the trial judge assumed senior status. The Court of Appeals ruled that I erred in refusing to grant the defendant's motion for a new trial due to an "insubstantial and fully

excusably. . ." ethical breach that was committed by the trial judge. Id. at 756.

(I). Belton v. United States, 581 A.2d 1205 (D.C. 1990).

The convictions in this multiple codefendant drug-murder conspiracy case was affirmed. However, the sentence in one of the defendant's cases was remanded for resentencing by another judge because ex parte representations about the defendant's character had been made in my presence.

(J). Lumpkin v. United States, 586 A.2d 701 (D.C. 1991)

The codefendant's convictions were affirmed but the case was remanded for me to vacate offenses that the defendant alleged merged with other offenses for which the defendants were also convicted. The Court of Appeals did not conclude that merger was required but remanded the cases for the challenged offenses to be vacated based on the government's concession that vacating the challenged offense was proper without acknowledging the correctness of the defendants' legal claims.

(K). Caldwell v. United States, 595 A.2d 961 (D.C. 1991).

The defendant's conviction was affirmed but the case was remanded for resentencing. The Court of Appeals ruled that the sentence I imposed of seven (7) to twenty-one (21) years imprisonment for contempt of court -- the defendant had violated a court order to stay away from his former girlfriend after viciously assaulting her, by waiting for her outside her apartment and trying to run her down with his automobile -- was too harsh.

(L). Prophet v. United States, 602 A.2d 1087 (D.C. 1992).

A jury convicted the appellant of first degree felony murder while armed, and of armed robbery. The appeals court affirmed the felony murder while armed conviction. Because the appellant's conviction for the underlying armed robbery merged with the felony murder conviction, the case was remanded to me, the sentencing court, with instructions to vacate the armed robbery conviction.

(M). McCormick v. United States, 635 A.2d 347 (D.C. 1993).

I summarily convicted the appellant of criminal contempt for standing, storming to the exit doors of the courtroom and then angrily pointing his finger at me after witnessing me sentence a

relative. The appeals court agreed with the appellant's contention that he should not have been held in summary contempt.

(N). Handon v. United States, 651 A.2d 814 (D.C. 1994).

The appeal was taken from an order revoking the defendant's probation and imposing a prison sentence. The appeals court found no error in my decision to revoke the probation, but remanded the case for me to consider whether the appellant would benefit from a Youth Rehabilitation Act sentence.

(O). Proctor v. United States, 685 A.2d 735 (D.C. 1996).

A jury found the appellant guilty on two counts each of enticing a minor and sodomy of a minor child and six counts of taking indecent liberties with a minor. All of the acts were alleged to have been committed on the same victim, seven-year-old L.B., in September and December of 1992. On appeal, the appellant contested both the sufficiency of the evidence which supported the sodomy convictions, and claimed reversible error in the combined effect of two changes I incorporated into the reasonable doubt instruction. The Court of Appeals accepted the appellant's position concerning the instructional error and reversed his conviction.

(P). Morris v. United States, 728 A.2d 1210 (D.C. 1999).

The appellant was convicted by a jury of involuntary manslaughter in connection with the death of a minor child. In the court of appeals, the appellant contended that I committed reversible error by denying his motion to suppress (1) an inculpatory statement he made prior to being advised of his Miranda rights; and (2) a videotaped confession which he made after he had invoked his right to counsel. The Court of Appeals affirmed the appellant's manslaughter conviction because his motion to suppress was properly denied. However, his cruelty to children conviction was vacated because it was the predicate offense for the manslaughter conviction, and the former merged into the latter under the misdemeanor-manslaughter doctrine. Accordingly, the case was remanded to me for resentencing.

(Q). Taylor v. United States, 601 A.2d 1060 (D.C. 1991); 661 A.2d 636 (D.C. 1995); 759 A.2d 604 (D.C. 2000).

This case was appealed three times. In the first appeal, the appellant raised issues relating to my post-trial rulings on the inadmissibility of the voice exemplar evidence he proffered at trial

and which another judge had also ruled inadmissible. Specifically, the appellant argued that I erred in (1) limiting my inquiry to the one voice exemplar format that the appellant had proffered at trial, and (2) finding that the proffered voice exemplar was not minimally reliable. The appeals court concluded that the appellant did not have a meaningful opportunity to proffer more than the one exemplar format at trial, and accordingly, that I erred in limiting my admissibility inquiry on remand to the one voice exemplar format suggested at trial. In the second appeal, the Court of Appeals held that I did not abuse my discretion in finding that the particular exemplar format proffered at trial would not have been minimally reliable; a ruling that the court found was firmly grounded in the testimony of appellant's own proffered expert. However, the court held that based on the record, the court could not properly assess the reliability of the alternate format that the appellant was apparently prepared to present at trial and proffered on remand, but which I, on remand, refused to consider. Accordingly, the court remanded the case a second time for me to evaluate the reliability of the alternate exemplar format which the appellant proposed at the first remand hearing. Ultimately, in the third ruling of the Court of Appeals, the court concluded that I had properly ruled that the alternative voice exemplar format was also inadmissible. The two opinions I authored in this case can be found at 121 Daily Wash. L. Rptr. 1685 (D.C. Super. Ct. July 21, 1993) and 124 Daily Wash. L. Rptr. 2069 (D.C. Super. Ct. August 1, 1996).

(R). Croley v. Republican Nat'l Comm., 759 A.2d 682 (D.C. 2000). The court of appeals affirmed my ruling denying the appellees/cross-appellants' post-trial motions for judgment on Mr. Croley's assault, battery and negligence claims, and for a new trial or remittitur. The court also affirmed my ruling regarding punitive damages, and the exclusion of evidence concerning Mr. Croley's head or brain injury claim. However, the court reversed my ruling that had set aside the jury's monetary award for lost future earnings and remanded this matter with instructions to reinstate the $600,000 award for lost future earnings.

(3). Monroe v. Monroe, 125 Daily Wash. L. Rptr. 1081 (D.C. Super. Ct. April 21, 1997).

United States v. Washington, 125 Daily Wash. L. Rptr. 1053 (D.C. Super. Ct. March 24, 1997).

In The Matter of D.E., 123 Daily Wash. L. Rptr. 1581 (D.C. Super. Ct. June 14, 1995).

In The Matter of D.K.S., 123 Daily Wash. L. Rptr. 1534 (D.C. Super. Ct. July 11, 1995).

United States v. Burton, 120 Daily Wash. L. Rptr. 1997 (D.C. Super. Ct. August 7, 1992).

United States v. Harris, 117 Daily Wash. L. Rptr. 345 (D.C. Super. Ct. December 13, 1988).

United States v. O'Brien, 116 Daily Wash. L. Rptr. 2117 (D.C. Super. Ct. September 12, 1988).

United States v. Settles, 116 Daily Wash. L. Rptr. 885 (D.C. Super. Ct. March 24, 1988).

United States v. McKnight, 116 Daily Wash. L. Rptr. 393 (D.C. Super. Ct. January 8, 1988).

United States v. Ridley, 115 Daily Wash. L. Rptr. 2485 (D.C. Super. Ct. October 19, 1987).

United States v. Honesty, 115 Daily Wash. L. Rptr. 25 (D.C. Super. Ct. December 11, 1987).

District of Columbia ex rel. M.L.D. v. W.H., 113 Daily Wash. L. Rptr. 2185 (D.C. Super. Ct. September 25, 1985).

United States v. Goddard, 113 Daily Wash. L. Rptr. 537 (D.C. Super. Ct. February 4, 1985).

United States v. McCoy, 113 Daily Wash. L. Rptr. 33 (D.C. Super. Ct. September 6, 1984).

16. **Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.**

Associate Director
Office of National Drug Control Policy
Executive Office of the President
(I was appointed to this position by President George Bush in June, 1989. I remained in this position until May, 1991, when I was detailed to the position as the Senior White House Advisor for Crime).

Senior White House Advisor for Crime

The White House
(I was appointed to this position in May, 1991 by President Bush, and I remained in this position until December, 1991).

Assistant United States Attorney and Executive Assistant United States Attorney
Office of the United States Attorney for the District of Columbia
United States Department of Justice
Washington, D.C.
(I was appointed as an Assistant United States Attorney in March, 1976 and served in that capacity until June, 1980. In June, 1980, I was elevated to the position of Executive Assistant United States Attorney).

17. Legal Career:

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

1. **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;**

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

3. **the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each:**

Staff Attorney
Defender Association of Philadelphia
121 North Broad Street
Philadelphia, Pennsylvania 19107
(1974 - 1976)
(I served as defense counsel for indigent criminal defendants at both trial and appellate court levels).

Assistant United States Attorney and Executive Assistant United States Attorney
United States Department of Justice
Office of the United States Attorney for the District of Columbia
555 4th Street, N.W.
Washington, D.C. 20001
(1976 - 1981)
(I served as a federal prosecutor in this capacity at both the trial and appellate court levels).

Associate Judge and Deputy Presiding Judge of the Criminal Division
Superior Court of the District of Columbia
500 Indiana Avenue, N.W.
Washington, D.C. 20001
(1981 - 1989)

(I served as a trial judge and also as the deputy presiding judge of the Court's Criminal Division).

Associate Director
Office of National Drug Control Policy
Executive Office of the President
1750 17th Street, N.W.
Washington, D.C. 20503
(1989 to May, 1991)

(In this capacity I was the liaison between the federal government and state and local government entities on drug control policies).

Senior White House Advisor For Crime
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500
(May, 1991 – December, 1991)

(I was engaged in efforts to assist the President in getting the administration's anti-crime proposals enacted into law by the United States Congress).

Associate Judge
Superior Court of the District of Columbia
500 Indiana Avenue, N.W.
Washington, D.C. 20001
(December, 1991 - Present)

(I serve as a trial judge and also as the presiding judge of the Court's Family Division. I previously served as the presiding judge of the Domestic Violence Unit).

b.1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

As a public defender, I devoted approximately 75% of my time performing appellate work and 25% doing trial work on behalf of indigent criminal defendants.

As an Assistant United States Attorney, the bulk of my work involved representing the United States government in

criminal prosecutions that were pursued in the Superior Court of the District of Columbia. I also represented the United States in criminal and appellate matters before the District of Columbia Court of Appeals and in criminal and civil appellate matters before the United States Court of Appeals for the District of Columbia Circuit.

As a Superior Court judge, I have served as a trial judge on two separate occasions. I have served in the Court's Criminal Division, Civil Division, Family Division and the Domestic Violence Unit. During my two tenures on the Superior Court I have served as the presiding judge of the Domestic Violence Unit and as the deputy presiding judge of the Criminal Division. I currently serve as the presiding judge of the Family Division. I also served by designation as an Associate Judge on the District of Columbia Court of Appeals in three cases and authored one published opinion.

As the Associate Director of the Office of National Drug Control Policy I was involved in the development of national drug control policy and efforts to have those policies adopted by state and local governments. I also worked with the private sector in an attempt to have it adopt policies consistent with the President's national drug control policies.

In the capacity as the Senior White House advisor for crime I was involved in efforts to encourage the United States Congress to adopt the President's anti crime legislative initiatives.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

As a public defender, I represented indigent criminal defendants. As an Assistant United States Attorney, I represented the United States government in criminal prosecutions and on several occasions in civil cases.

c.1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

As a public defender, I appeared in both trial and appellate courts on a frequent basis during my entire tenure between August 1974 and March 1976. As an Assistant United States Attorney, I also appeared frequently in both trial and

appellate courts between March 1976 and July 1981. As a trial judge, I have been in court on a daily basis. I have served as a trial judge between July 1981 and May 1989, and December 1991 to the present.

2. **What percentage of these appearances was in:**

   (a) **federal courts;** less than 1%
   (b) **state courts of record;** more than 99%
   (c) **other courts.** 0%

3. **What percentage of your litigation was:**

   (a) **civil;** less than 1%
   (b) **criminal;** more than 99%

4. **State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.**

   I do not have the ability to provide an exact number. However, I would estimate that the number is well over 100 cases. In two of the cases I was chief counsel, in one case I was associate counsel and in all other cases I was sole counsel.

5. **What percentage of these trials was:**

   (a) **jury;** approximately 90%
   (b) **non-jury,** approximately 10%

From the beginning of my professional career until I left the bench in June, 1989, I appeared in court regularly. After leaving the bench in 1989 until I was reappointed to the Superior Court bench in December, 1991, I did not make any court appearances because of the nature of my duties. After returning to the bench in 1991, I have appeared in court on a regular basis.

As a public defender in the Defender Association of Philadelphia from August, 1974 to March, 1976, all of my court appearances were before state trial and appellate courts of record in criminal cases in the State of Pennsylvania. I estimate that I tried approximately fifteen (15) to twenty (20) non-jury cases to verdict as a public defender. In all but one of the cases -- in which I acted as co-counsel -- I was sole counsel. I also argued approximately

five (5) appellate cases before the Pennsylvania Superior Court -- an intermediate appellate court -- and one (1) case before the Pennsylvania Supreme Court.

As an Assistant United States Attorney in the Office of the United States Attorney for the District of Columbia from March, 1976 to July, 1981, I argued one (1) criminal appellate case before the United States Court of Appeals for the District of Columbia Circuit and approximately five (5) criminal appellate cases before the District of Columbia Court of Appeals. The remainder of my court appearances were in criminal cases in the Superior Court of the District of Columbia. I estimate that I tried between fifty (50) to sixty (60) cases to verdict as an Assistant United States Attorney and at least ninety (90) percent of the cases were tried before juries.

As a judge on the Superior Court of the District of Columbia, I estimate that I have presided over at least five hundred (500) cases that went to verdict and that at least fifty (50) percent of the cases were tried before juries. I estimate that approximately seventy-five (75) percent of the cases I presided over that went to verdict were criminal cases and the remaining twenty-five (25) percent were civil and domestic relations cases. All of the domestic relations cases were non-jury trial and virtually all of the civil cases were jury trials.

I also sat by designation on three (3) criminal appellate cases as an Associate Judge of the District of Columbia Court of Appeals; I authored a published opinion in one (1) of the three (3) cases.

18. **Litigation: Describe the ten most significant litigated matters which you personally handled. 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.**

It is impossible at this time to reconstruct ten (10) cases in which I served as a litigator in the manner and detail requested. It has been approximately twenty (20) years since I last tried a case and I do not have access to the files in any of my cases at this time. However, in 1981, I outlined five (5) cases in the manner

requested when I was under consideration for a judgeship for the Superior Court of the District of Columbia. Those five (5) cases are outlined below.

(A). United States v. Harvey Lee Torain:

Court: Superior Court of the District of Columbia.
Judge: Edmond T. Daly (deceased)
Defense Counsel: Charles Halleck, Esquire
1825 K Street, N.W.
Washington, D.C. 20006
(Last known address. Mr. Halleck is no longer in practice. He has moved to California and his address is unknown to me).

Harvey Torain was charged in an indictment with second degree murder for allegedly asphyxiating his girlfriend during a domestic argument. There were no witnesses to the offense and the government's case against the defendant was entirely circumstantial. The case was tried before Judge Edmond T. Daly and the defendant was represented by former Judge Charles Halleck.

The defendant had been convicted of second degree murder in an earlier unrelated case. The victim in the first case had also been the defendant's girlfriend and the circumstances surrounding both deaths were remarkably similar. However, in a pre-trial ruling by the Court, Judge Daly ruled that the government could not introduce evidence about the first murder in the case involving the second victim.

The defendant's pre-trial motion for a bifurcated trial on the merits and for a separate insanity trial was granted and trial commenced on August 1, 1979. The government's case-in-chief established that the decedent's body had been discovered eight (8) days after her death in an advanced state of decomposition. Circumstantial evidence linked the defendant to the offense but there was no direct evidence that the government could present to establish the defendant's guilt. However, the jury found the defendant guilty of voluntary manslaughter. During the insanity phase of the trial, the defense sought to establish that only an insane person would kill two women that he obviously loved and then lay their bodies out in the ritualistic manner in which the bodies had been discovered in each case. The insanity defense was rejected by the jury and the defendant was subsequently sentenced to a five (5) to fifteen (15) years prison sentence. This case was appealed and the conviction was affirmed by the Court of Appeals.

I served as sole government counsel during the trial of this case.

(B). United States v. Melvin Downing; United States v. Ricardo Jefferson; and United States v. Herman Williams:

Court: Superior Court of the District of Columbia
Judges: Carlisle E. Pratt (deceased)
George H. Revercomb (deceased)
Defense counsel:

(1) O. B. Parker, Esquire (deceased)

(2) Judge Michael L. Rankin
Superior Court of the District of Columbia
500 Indiana Avenue, N.W.
Washington, D.C. 20001
(202) 879-1220

(3) John F. Lillard III, Esquire
Lillard and Lillard
8 Loudon Lane
Annapolis, Maryland 21401
(202) 624-8000

This case had added significance because this was the second time within several years that Melvin Downing had been charged with first-degree murder. In the first case, he was charged with participating in the famous Florida Avenue fish market murders. He was initially found guilty in that case, but received a new trial and was found not guilty when the case was retried.

In this case, the three defendants and two other men decided to drive to Northwest Washington and rob drug dealers. Thinking the decedent and his companion were drug dealers, Downing stopped the car and Williams and Jefferson got out and attempted to rob them. When the decedent refused to voluntarily relinquish his money, Jefferson took the gun Williams was holding and shot the decedent several times in the back. Downing then drove Jefferson and Williams away from the scene.

Seven (7) days after the murder, the three defendants were arrested after unsuccessfully attempting to rob a woman. The gun that was recovered in their car at the time of their arrests was ballistically matched to the bullets removed from the decedent's body.

Over the government's objection, the two cases which had been joined in a single indictment, were severed by Judge Revercomb. The murder case was tried before Judge Revercomb and Downing and Jefferson were convicted of first-degree murder and other related charges. Williams had previously pled guilty to second-degree murder and assault with intent to commit robbery, in return for his testimony against Jefferson and Downing.
Jefferson and Downing were also convicted of the attempted robbery in a separate trial. That case was tried before Judge Pratt in January, 1980.

I served as sole government counsel during the trials of these cases.
The two appellate opinions affirming the defendants' convictions can be found at 434 A.2d 409 (D.C. 1981) and 463 A.2d 681 (D.C. 1983).

(C). United States v. Stanley R. Rice:

Court: Superior Court of the District of Columbia
Judge: Carlisle E. Pratt (deceased)
Defense Counsel: John A. Shorter, Esquire
(deceased)

Over approximately a one (1) year period, at least twenty (20) elderly women were sexually assaulted in the Northwest section of the city. Finally, in July of 1979, the defendant was identified in three of the cases by his fingerprints that were recovered at the various scenes. He was subsequently charged with committing five (5) of the offenses. After approximately a two (2) week trial that commenced on March 1, 1980, the defendant was found guilty of committing all five (5) offenses. The defendant was sentenced to a lengthy prison sentence.
I served as sole government counsel during the trial of this case.

(D). United States v. Joseph Nicks and United States v. John Hart:

Court: Superior Court of the District of Columbia
Judge: Carlisle E. Pratt (retired)
Defense Counsel:

(1) Dennis M. O'Keefe, Esquire
Commodity Futures Trading Commission
2033 K Street, N.W.

Washington, D.C. 20581
(202) 418-5405

(2) Francis D. Carter, Esquire
1730 Rhode Island Avenue, N.W.
Suite 717
Washington, D.C. 20036
(202) 393-4330

(3) Mary Lou Sollier, Esquire
Miller and Chevalier
655 15th Street, N.W., Suite 900
Washington, D.C. 20005
(202) 626-5849

This case involved the street robbery and murder of a young man who was walking home during the early morning hours of November 27, 1979. He was shot in the back by John Hart after he refused to voluntarily turn over his money. This case was significant for two reasons. First, the gun used in the offense had been stolen one (1) week earlier from the National Rifle Association. Second, this was Nicks' second arrest for first-degree murder at the tender age of fifteen (15).

In the first case, he had been convicted as a juvenile of participating in a robbery, which resulted in the death of an elderly woman.

The trial in this case was held in October, 1980. Both defendants were convicted of first-degree murder and related charges.

I served as primary government counsel during the trial of this case.

(E). United States v. Michael Jordan:

Court: Superior Court of the District of Columbia
Judge: Carlisle E. Pratt (deceased)
Defense Counsel: Sarah E. Brown, Esquire
(520) 378-4601

Michael Jordan was charged with killing a night clerk and seriously injuring a security guard during a robbery attempt at a Georgetown hotel. The security guard survived his injuries and subsequently identified the defendant as the assailant. Jordan was classified as a career criminal because of his extensive criminal record. The

case was tried before a jury in June, 1980, and resulted in a guilty verdict on the lead charge of first-degree murder.

I served as sole government counsel during the trial of this case.

I have not practiced law in twenty years. In July 1981, I was first appointed as a judge of the Superior Court of the District of Columbia. I served in that position until I was appointed as the Associate Director of the Office of National Drug Control Policy in May 1989. From June 1991 to December 1991, I served as the Senior White House Advisor for Crime. In December 1991, I was reappointed to the Superior Court Bench, where I currently serve. Because of the extensive period of time that has elapsed since I last practiced law, I cannot reconstruct more cases than the five cases listed above.

Below, I have listed the names of ten individuals who are familiar with my work as a lawyer prior to my appointment to the bench in 1981.

(1.) The Honorable Darnell Jones
Philadelphia Court of Common Pleas
1301 Filbert Street, Suite 1207
Philadelphia, Pennsylvania 19107
(215) 683-7038

(2.) John Packel, Esquire
Defender Association of Philadelphia
70 North 17th Street
Philadelphia, Pennsylvania 19103
(215) 568-3190

(3.) Earl Silbert, Esquire
1200 19th Street, N.W.
Washington, D.C. 20036
(202) 861-6246

(4.) Carl Rauh, Esquire
1440 New York Avenue, N.W.
Washington, D.C. 20005
(202) 371-7000

(5.) Robert Ogren, Esquire
(301) 657-9782

(6.) The Honorable John Terry
Associate Judge
District of Columbia Court of Appeals
500 Indiana Avenue, N.W.

Washington, D.C. 20001
(202) 879-2780

(7.) The Honorable Harold Brazil
2020 K Street, N.W., Suite 500
Washington, D.C. 20006
(202) 822-1894

B. Barbara Corprew, Deputy Chief
Criminal Division/Fraud Section
U.S. Department of Justice
P.O. Box 28188
McPherson Square
Washington, D.C. 20038
(202) 514-0819

(9.) Cary Feldman, Esquire
1200 19th Street, N.W.
Washington, D.C. 20036
(202) 861-6251

(10.) The Honorable Steven Glickman
Associate Judge
District of Columbia Court of Appeals
500 Indiana Avenue, N.W.
Washington, D.C 20001
(202) 879-2740

19. **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 the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).**

I have already described virtually all of my significant legal activities that have involved litigation. I have also been actively involved in legally related teaching throughout most of my career. Below is a partial list of some of my teaching activities:

Faculty Member
National Judicial College
Reno, Nevada

I have been on the faculty since 1989 and I currently teach domestic violence, sentencing in domestic violence cases and sentencing.

Instructor
SEAK, Inc.
Annual Expert Witness and Litigation Seminar
In 1993 and 1997, I taught expert witnesses about the presentation of expert testimony to judges and juries.

Instructor
Criminal Practice Institute
Washington, D.C.
I taught general trial practice skills in this program on several occasions, including in 1996 and 1997.

Instructor
Judicial Training Workshop (Irkutsk, Russia),
Central and East European Law Initiative
American Bar Association
I taught Russian judges about the American judicial system in 1996. I also lectured law students enrolled in the law school in Irkutsk about the American judicial system.

Adjunct Faculty Member - Harvard University
Law School, Trial Advocacy Workshop
Since 1994, I have taught Harvard Law School students trial advocacy skills in this workshop.

Faculty Member - College of Trial Advocacy,
The George Washington University Law Center
I was on the faculty from 1992 to 1995 and I taught trial advocacy skills in this program on one occasion.

Instructor
National Institute of Trial Advocacy
Georgetown University Law School
Washington, D.C.
I have taught trial advocacy skills in this program since 1983.

Instructor
United States Department of Justice
Advocacy Institute
In 1993, I taught federal prosecutors trial advocacy skills.

Distinguished Guest Lecturer
Lincoln University
Jefferson City, Missouri
In 1991, I lectured students on substance abuse.

Distinguished Scholar Lecturer
Albany State College
Albany, Georgia
In 1991, I lectured students on substance abuse.

Instructor
American Bar Association Traffic Court Seminar
Washington, D.C. (1984)
Silver Spring, Maryland (1987)
On two occasions I lectured lawyers on constitutional issues related to drunk driving cases.

Instructor
Voir Dire, Opening Statement and Closing Argument
District of Columbia Bar Association
Criminal Practice Institute (1981)
I lectured members of the criminal defense bar on jury selection, opening statements and closing arguments.

United States Attorney's Office
Washington, D.C. (1979-1981)
I taught numerous classes on trial tactics and was in charge of attorney training in 1980-1981.

Instructor
Trial of a Homicide Case
District of Columbia Bar Association
Criminal Practice Institute
In 1980, I lectured criminal defense attorneys and prosecutors on how to investigate and litigate homicide cases.

Instructor - Inmate Law Clinic
Graterford State Prison
Graterford, Pennsylvania
From 1974 to 1976, I taught sentenced inmates about how to file pro se post-conviction petitions.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List 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. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

   (A.) If I am nominated and confirmed to be a United States District Judge, I will resign from my current position as an associate judge for the Superior Court of the District of Columbia and upon my fifty-fifth (55th) birthday, will start to receive retirement benefits I have earned during my 17-year tenure as a Superior Court judge.

   (B.) Four Kings, Inc., Fresno, California. (I invested $20,000 with Four Kings, Inc., a California corporation, which is involved in trading in the foreign commodities market. In return for my investment, I hold a promissory note for the repayment of the investment plus interest in the amount of 12% per annum and 15% default interest. In addition, I am entitled to receive on my investment a commission of 13.8% of a collective investment of $145,100 (which includes my $20,000 investment) that was made along with relatives and friends. The commission will be paid upon the resale of commodities by Four Kings, Inc., at the rate of $0.37 per metric ton.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

   I do not anticipate having any conflicts-of-interest because of financial circumstances, or otherwise. However, in the event any such conflict arises, I would advise the parties immediately upon learning of the conflict and would recuse myself from participation in the case if applicable ethical rules required recusal.

3. **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.

4. **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, patents, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).**

   See attached Financial Disclosure Report.

5. **Please complete the attached financial net worth statement in detail (Add schedules as called for).**

   The financial net worth statement is attached.

6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

   I made 1990 campaign appearances on behalf of Republican Congressional candidates Kenneth Blackwell (Ohio), Rick Hawks (Indiana) and Manny Hoffman (Illinois). I also made 1990 campaign appearances on behalf of Maryland Republican Attorney General candidate Edward Blanton, Arkansas Republican State Attorney General candidate Asa Hutchinson and Ohio Republican Secretary of State candidate Robert Taft.

AO-10 (w)
Rev. 1/2000

FINANCIAL DISCLOSURE REPORT
Nomination Report

Report required by the Ethics in Government Act of 1978, as amended (5 U.S.C. App. 4, Sec. 101-112)

rson Reporting *(Last name, first, middle initial)* Walton, Reggie B.	2. Court or Organization District Court D.C.	3. Date of Report 06/22/2001
4. Title *(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)* U. S. Dist. Ct. Judge- nominee	5. Report Type (check type) X Nomination, Date 06/20/2001 __ Initial __ Annual __ Final	6. Reporting Period 01/01/2000 to 06/01/2001
7. Chambers or Office Address 500 Indiana Avenue, NW Room 5630 Washington, D.C. 20001	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.

I. POSITIONS *(Reporting individual only; see pp. 9-13 of Instructions.)*

☐ NONE (No reportable positions.)

	POSITION	NAME OF ORGANIZATION / ENTITY
1	Member	Deans Advisory Counsel, American University- Washington College of Law
2	Member	Substance Abuse Articles Advisory Board, Center on Children and the Law
3	Member	The Best Men Advisory Board

II. AGREEMENTS *(Reporting individual only; see pp.14-16 of Instructions.)*

☐ NONE (No reportable agreements.)

	DATE	PARTIES AND TERMS
1	1994	District of Columbia Courts Judicial Retirement Plan, no control
2	1995	Four Kings, Inc. promissory note and commission on foreign commodities sales.
3		

III. NON-INVESTMENT INCOME *(Reporting individual and spouse; see pp. 17-24 of Instructions.)*

☐ NONE (No reportable non-investment income.)

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1	2000	District of Columbia Courts- judicial salary	140650.14
2	2001	District of Columbia Courts- judicial salary	66823.20
3	2000	Protestant Theological Seminary in Virginia- honorarium	500.00
	2000	Fran and Steve Rotler, M.D.- medical practice	

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Walton, Reggie B.	06/22/2001

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)

☐ NONE (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1	EXEMPT	
2		
3		
4		
5		
6		
7		

V. GIFTS

(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)

☐ NONE (No such reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
	EXEMPT		
2			
3			

VI. LIABILITIES

(Includes those of spouse and dependent children. See pp 33-35 of Instructions.)

☐ NONE (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE*
1	American Express	Credit Card	K
2	MBNA America	Credit Card	K
3	Sallie Mae	Student Loan	M
4			
5			
6			

* VAL CODES: J=$15,000 or less K=$15,001-$50,000 L=$50,001 to $100,000 M=$100,001-$250,000 N=$250,001-$500,000
O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Walton, Reggie B.

Date of Report: 06/22/2001

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions.)									
1 Bushmore IRA #1, Fund for Gov't Investors; Gas Index Fund	A	Interest	J	T					
2 Bushmore IRA #2, Fnd for Gov't Investors	A	Interest	J	T					
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									

1 Inc/Gain Codes: (Col. B1, D4) A=$1,000 or less; B=$1,001-$2,500; C=$2,501-$5,000; D=$5,001-$15,000; E=$15,001-$50,000; F=$50,001-$100,000; G=$100,001-$1,000,000; H1=$1,000,001-$5,000,000; H2=$5,000,001 or more

2 Val Codes: (Col. C1, D3) J=$15,000 or less; K=$15,001-$50,000; L=$50,001-$100,000; M=$100,001-$250,000; N=$250,001-$500,000; O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000; P3=$25,000,001-$50,000,000; P4=$50,000,001 or more

3 Val Mth Codes: (Col. C2) Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash/Market; U=Book Value; V=Other; W=Estimated

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Walton, Reggie B.	06/22/2001

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Use part of report.)

IX. Certification

I do not know if the honoraria listed in section III is in compliance with the applicable provisions of the United States Code because I was not subject to those statutory provisions as a District of Columbia Superior Court judge. However, acceptance of the honoraria was in compliance with the Code of Judicial Conduct for the District of Columbia Courts (1995), which governs the ethical conduct of District of Columbia Superior Court judges.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Walton, Reggie B.	06/22/2001

SECTION HEADING. (Indicate part of report.)

Information continued from Parts I through VI, inclusive.

PART 3. NON-INVESTMENT INCOME (cont'd.)

Line	Date	Source and Type	Gross Income
5	2000	Capitol Dermatology- medical practice	
6	2000	Corrections Corporation of America	
7	2000	Dermatology Associates- medical practice	
8	2001	Fran and Steve Rotler, M.D.- medical practice	
9	2001	Capitol Dermatology- medical practice	
10	2001	Corrections Corporation of America	
11	2001	Dermatology Associates- medical practice	
12	2001	Washington Hospital Center	
13	2001	Aesthetic Dermatology and Dermatologic Surgery- self employed	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Walton, Reggie B.	06/22/2001

CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature Reggie B. Walton Date 6/22/01

Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
One Columbus Circle, N.E.
Suite 2-301
Washington, D.C. 20544

Reggie Barnett Walton 181-40-5338

FINANCIAL STATEMENT
NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS	
Cash on hand and in banks	$6,200.00
U.S. Government securities-add schedule	0
Listed securities-add schedule	0
Unlisted securities--add schedule	0
Accounts and notes receivable:	
Due from relatives and friends	0
Due from others	$40,000.00
Doubtful	
Real estate owned-add schedule	$610,000.00
Real estate mortgages receivable	0
Autos and other personal property	$53,000.00
Cash value-life insurance	0
Other assets itemize:	
IRA	$15,424.00
Total Assets	$724,624.00
CONTINGENT LIABILITIES	
As endorser, comaker or guarantor	0
On leases or contracts(wife's medical practice office)	$29,906.00
Legal Claims	0
Provision for Federal Income Tax	0
Other special debt	0

Reggie Barnett Walton 181-40-5338

FINANCIAL STATEMENT (Continued-Page 2)

LIABILITIES	
Notes payable to banks-secured	$25,500.00
Notes payable to banks-unsecured	0
Notes payable to relatives	0
Notes payable to others	0
Accounts and bills due	$207,406.00
Unpaid income tax	0
Other unpaid income and interest	0
Real estate mortgages payable-add schedule	$438,033.00
Chattel mortgages and other liens payable	0
Other debts-itemize:	
Total liabilities	$670,939.00
Net Worth	$53,685.00
Total liabilities and net worth	$724,624.00
GENERAL INFORMATION	
Are any assets pledged? (Add schedule)	0
Are you defendant in any suits or legal actions?	No
Have you ever taken bankruptcy?	No

Real Estate Owned – Schedule

Washington, D.C. 20012
(Principle Residence)

Shady Side, Maryland 20764
(Second Residence)

Saint Maartin
(Time Share)

Real Estate Mortgage Payable – Schedule

Columbia National Incorporated
(Mortgage holder for Washington, D.C. 20012)

Homeq Servicing Corporation
(Mortgage holder for Washington, D.C. 20012)

Bank of America
(Mortgage holder for Shady Side, Maryland 20764)

III. GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence of 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.**

   While employed as a public defender in Philadelphia, I was an instructor in the Inmate Law Clinic at the Graterford State Prison in Graterford, Pennsylvania. I estimate I contributed eight (8) hours per month performing this service.

   After returning to Washington, D.C., I have been continuously involved in working with children. I have spoken at numerous area elementary and secondary schools and colleges. The substance of my speeches has related to the importance of education, career development, crime and substance abuse. It is impossible to reconstruct at this time the specific schools and events where I have spoken or the amount of time I have devoted. However, I can confidently say that the time commitment has been considerable.

   I served as a member of the Task Force on Interscholastic Programs for the District of Columbia Public Schools in 1987. The task force was in operation for a number of months and there was a three (3) or four (4) hour monthly commitment during that period.

   I served as a Big Brother from 1987 to 1995. The amount of time I spent with my little brother varied, but I saw him several times per month for four (4) to six (6) hours. I also served as a member on the Big Brothers of the National Capitol Area Board of Directors, which had periodic board meetings.

   I also served as a member of the National Advisory Committee for the National Institute for Citizens Education in the Law from 1987 to 1990. I attended two (2) annual board meetings.

   I previously served from 1990 to 1991 as a member of the National Center for Missing and Exploited Children Board of Directors. I attended several full day board meetings in that capacity.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership**

requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

The only organization which might fit into this category is the fraternity in which I am presently an inactive member --Alpha Phi Alpha Fraternity, Inc. The fraternity only has male members and I do not know whether the rules or by-laws previously or presently restrict membership to males. I have not been an active member in the fraternity since 1976. I joined the fraternity as a college student in 1967 and remained an active member until I graduated in 1971. I became active again in an Alumni Chapter in Philadelphia in 1974 and remained active until I left Philadelphia in 1976.

If there were policies restricting membership to males while I was an active member, I took no steps to change them. And, I never took any such action because the issue of male only fraternities was never raised as a concern when I was an active member.

As far as I know, all other organizations in which I am presently, or was formerly, a member, do not or did not invidiously discriminate on the basis of race, sex, or religion.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

No.

I was contacted in early April 2001 by someone from the White House Counsel's Office and asked about my interest in being considered for a judicial position on the United States District Court for the District of Columbia. I then was interviewed by the Counsel and the Deputy White House Counsel and four members of their staff. Thereafter, I was interviewed by a Federal Bureau of Investigations ("FBI") agent in preparation for the FBI background investigation. Finally, I was interviewed by two members of the Attorney General's staff.

The vetting process was thorough and challenging. I was probed about my legal experience and my involvement in community affairs. I was never asked how I would rule on a particular issue, but I was asked to explain my philosophy on

constitutional and statutory judicial interpretation. All of the judicial opinions I authored and the opinions issued by the District of Columbia Court of Appeals were reviewed by members of the Attorney General's staff.

I was asked by the Attorney General's staff and the FBI to provide names of individuals who can vouch for my good character and legal ability. A large number of individuals have reported to me that they were contacted by members of the Attorney General's staff and the FBI.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.**

No.

5. **Please discuss your views on the following criticism involving "judicial activism."**

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.
Some of the characteristics of this "judicial activism" have been said to include:

a. **A tendency by the judiciary toward problem-solution rather than grievance-resolution;**

b. **A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;**

c. **A tendency by the judiciary to impose broad, affirmative duties upon governments and society;**

d. **A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and**

e. **A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.**

What constitutes judicial activism will inevitably turn on one's interpretation of what the court's constitutional role is in our tripartite governmental system. Judges must be mindful of the fact that the Constitution does not give them the authority to judicially legislate a result which is not legislatively or constitutionally authorized. And, while the answer to this question also calls for interpretation, if support for a ruling cannot be found in the words of the Constitution or an applicable statute, or the legislative history which preceded the enacting of the statute, the ruling is in my opinion constitutionally flawed.

Unfortunately, legal remedies are not available to redress every problem brought before a judge. However, there are judges who attempt to provide relief where none was anticipated or intended by the Constitution or existing legislation. While I can appreciate the temptation to follow such a course, I firmly believe that to do so is wrong.

Moreover, judges should not necessarily expect to solve problems when they resolve a case which is before them. While problem solving is a desirable goal for a judge, if the facts as presented or the law in its existing state do not permit such a result, the problem must remain unresolved even though the case must be decided.

I also believe that it is inappropriate for judges to use the case of an individual plaintiff to reach a broader group of people. It is one thing if parties have joined together as a class and it has been judicially determined that the members of the class can legally proceed together. It is quite another matter when no such class has been formed and judicially sanctioned. Attempting to afford relief in the latter situation is injudicious because the effected individuals may not desire relief or the relief afforded may not be the remedy needed by the members of the broader group. Moreover, to force a defendant to defend against the potential of providing relief to individuals who are not before the court and whose particular circumstances are therefore unknown, is fundamentally unfair. Accordingly, judges must issue orders which limit their impact to the parties before them and which redress only the particular wrong which is the subject of the litigation.

Judges must also be cautious about usurping the administrative and operating responsibilities of other governmental entities. I believe it should be presumed that most government officials attempt to perform their functions in a responsible manner. When it is proven that this has not been the case, judges have the responsibility to ensure that Constitutional or legislative mandates are carried out by government officials. However, judges should cause this to occur with the least possible intrusion. And, they should not assume that they can do the job better than the individuals hired to perform those functions.

Having said all of this, I do believe that judges have a duty to tenaciously endeavor to force parties to perform their legal responsibilities and to redress injuries which have occurred when legal standards of responsibility have been breached. However, this must always be done with caution and an appreciation of the limited role judges play in our system of government.

Chairman LEAHY. We will take a 1-minute recess.

[Recess 10:44 a.m. to 10:47 a.m.]

Chairman LEAHY. You understand, Mr. Nedelkoff, the parliamentary reason for the 1- or 2-minute recess, besides rearranging the table. It allowed me to go out and get another cup of coffee, in case anybody wondered.

Mr. Nedelkoff, before we start, you had mentioned that there are members of your family here. In fact, I got a chance to meet them. Also for that same thing, for the Nedelkoff Library someday, would you, please?

Mr. NEDELKOFF. Yes, I would. I am so happy that my immediate family was able to be here today. I would like to introduce my wife, Kristen Nedelkoff, and my daughter, Brett Elaina Nedelkoff, and my son, Geoffrey Aaron Nedelkoff.

Chairman LEAHY. Good to have you. And I will bet you kids were just delighted at the chance to be here in a dark Committee room for the morning. But you should be very, very proud of your father because the President of the United States has nominated him for this position, so it is a pretty important thing.

Mr. Nedelkoff, why don't you stand and raise your right hand. Do you swear that the testimony you are about to give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. NEDELKOFF. Yes.

Chairman LEAHY. Thank you. And did you have an opening statement?

Mr. NEDELKOFF. Just a brief statement.

Chairman LEAHY. Please.

STATEMENT OF RICHARD R. NEDELKOFF, OF TEXAS, NOMINEE TO BE DIRECTOR OF THE BUREAU OF JUSTICE ASSISTANCE, DEPARTMENT OF JUSTICE

Mr. NEDELKOFF. I am humbled by the President's nomination of me for this position and also very appreciative of the Attorney General for his support of my nomination. But I'd also like to thank you, Mr. Chairman, for agreeing to conduct this hearing during the Senate's recess.

For the last 21 years, I have been a public servant and have felt very strongly that there was nothing more important or rewarding or sometimes challenging that one could do with their lives than to serve the public. So, consequently, I've dedicated my professional career to the administration of justice, working in criminal justice, juvenile justice, and victim services in five different States.

Most recently, I served as executive director of the Governor's Criminal Justice Division in Texas. That is the criminal justice planning and grant-making entity and the entity that administers many funds from the Office of Justice Programs and the Bureau of Justice Assistance.

My career, I believe, has been characterized by the ability to produce results quickly, to form critical and important partnerships and coalitions, and continually move forward in innovative strategies to combat crime and delinquency. I would consider it no greater honor than to continue to serve the public by becoming the Director of the Bureau of Justice Assistance.

So I appreciate your consideration of my nomination and will entertain any questions that you have.

[The biographical information of Mr. Nedelkoff follows.]

I.BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Richard Raymond Nedelkoff

2. Address: List current place of residence and office address(es).

Residence: Round Rock, Texas 78681

Work: Office of the Governor (until June 8, 2001)
Criminal Justice Division
P.O. Box 12428
Austin, Texas 78711

3. Date and place of birth.

May 15, 1959
East Liverpool, Ohio

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address)es).

Marital status: married

Spouse: Kristen Cherry Nedelkoff

Occupation: therapist

Employer: Integrated Mental Health Services
Austin, Texas

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Capital University School Of Law, Columbus, Ohio- 8/82 to 12/85, Juris Doctor- 1/86

University of Louisville, Louisville, KY- 12/80 to 12/81, Master of Science degree in the Administration of Justice- 1/82

Bowling Green State University- Ohio- 1/77 to 8/80, Bachelor of Science degree in Criminal Justice- 6/80

University of Georgia, Athens, GA - 8/78 to 12/78, no degree

Case Western Reserve University, Cleveland, Ohio- 9/76 to 12/76, no degree

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Executive Director
Office of the Governor- Criminal Justice Division
Austin, Texas
November 1998 to present

Executive Director
Florida Network of Youth and Family Services
Tallahassee, Florida
September 1996 to November 1998

I also served as Executive Director of the Florida Youth and Family Foundation, the fundraising arm of the Florida Network agencies during the same time period.

District Juvenile Justice Manager (District 2)
Florida Department of Juvenile Justice
Tallahassee, Florida
October 1995 to September 1996

District Juvenile Justice Manager (District 14)
Florida Department of Juvenile Justice
Bartow, Florida
November 1993 to October 1995

Operations Manager- Detention Division (full time)
Dallas County Juvenile Department
Dallas, Texas
June 1991 to November 1993

Director (part-time)
Dallas KIDS
Dallas, Texas
December 1991 to November 1993

Mediation Case Manager/Guardian Ad Litem
Travis County Juvenile Court
Austin, Texas
May 1990 to June 1991

I worked first as a mediation case manager (5 months) then received a promotion to the guardian ad litem position in the Domestic Division

---

Intake Hearing Officer/Coordinator
Alexandria Juvenile and Domestic Court
Alexandria, Virginia
August 1987 to May 1990

Instructor (part-time)
Capital University
Adult Degree Program
Columbus, Ohio
November 1986 to August 1987

Detention Manager (full time)
Franklin County Domestic Court- Detention Division
Columbus, Ohio
February 1983 to February 1987

Caseworker
Department of Human Services
Louisville, Kentucky
January 1982 to August 1982

Youth Program Leader (part-time)
Juvenile Detention Center
Louisville, Kentucky
January 1981 to December 1981 (during graduate education)

Area Coordinator
Ohio Youth Advocate Program
Columbus, Ohio
March 1980 to October 1980

---

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

   No

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Honoree at the Texas Association of Regional Councils of Governments Annual Awards Luncheon in August 2000.

Honored by the statewide crime victims community at the annual National Crime Victims Rights Week Banquet in April 2000.

Received a Child Advocate Award in 1999 from the Texas CASA Organization at their annual statewide conference.

Received award at the annual School Violence Conference in 1999 for efforts in the area of preventing school violence by the Central Texas Council of Governments.

Received an award for distinguished service in juvenile justice from the Florida Council on Crime and Delinquency in 1995.

Created the Delinquency Intervention Program and Churches Supporting Children Program which were selected as "best practices" at the statewide Intervention Services Conference in 1995.

9. Bar Associations: List all bar associations, legal or judicial-related committees 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.

- Member Crime Victims' Institute (Office of the Attorney General)- 1/99 to present
- Ex-officio member Texas Commission on Law Enforcement- 1/99 to present

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies.

- Member National Criminal Justice Association Advisory Council

Please list all other organizations to which you belong.

None

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

I have never been admitted to practice in any courts.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

The remarks at the following events were all delivered extemporaneously or with a brief outline of the subject matter. No texts were ever prepared. If there were press accounts, I have attempted to provide them to the committee.

- Addressed the American Correctional Association annual conference in San Antonio in August of 2000 regarding the Project Spotlight Program.
- Testified before the Texas House of Representatives Committee on County Affairs regarding at-risk youth programs in April 2000.
- Addressed the Texas Corrections Association on Project Spotlight in San Antonio in March 2000.
- Testified before the Texas House of Representatives Public Safety Committee regarding Texas Crime Stoppers Programs in February 2000.
- Presenter at the Texas School Safety Summit in Austin initiatives regarding school safety, Texas- November 1999.
- Addressed 1999 Juvenile Judges Conference in Austin regarding Project Spotlight, Texas- November 1999.
- Presenter at the National Violence Free Zone Conference in Dallas, Texas regarding state and federal funding opportunities January 1999.
- Presenter at the Florida Department of Education's 9th Annual Truancy Symposium in regarding statewide truancy initiatives - December 1997.
- Keynote speaker for the Florida Bar Association's annual luncheon in Orlando regarding CINS/FINS system- June 1997.
- Keynote speaker for the opening of the Hope House Runaway shelter in Okaloosa county- April 1997.
- Featured speaker at the Florida Grant Writers Association annual conference in Orlando regarding forming collaborations- February 1997.
- Selected presenter on prevention at the Governor's Children's Summit in Orlando regarding runaway services for teens- February 1997.
- Featured guest for the weekly broadcast of "Focus On" produced by Channel 6 News in Tallahassee regarding Florida juvenile justice system-- March 1996.
- Featured speaker at Gadsden County Juvenile Justice Council's annual community breakfast forum regarding juvenile justice-- March 1996.
- Featured speaker at the Tallahassee Urban League's "Drugs Destroy Dreams" rally-- March 1996.
- Interviewed by the Tampa Tribune and The Lakeland Ledger for feature stories on my appointment as District Juvenile Justice Manager--November 1993.
- Interviewed by the Dallas Morning News for a feature story on the federal Child Safety Act and the unique services provided by the Dallas Kids Services organization--July 1993.
- Addressed a legislative subcommittee of the Senior Citizens of Greater Dallas organization concerning various proposed legislative changes in juvenile justice--January 1993.

- Addressed the Council of Government Regional Training Center on the "Rights of Juveniles"--May 1992.
- Addressed the "Alternatives and Diversion Conference" in Virginia Beach, Virginia in August of 1989 on Law Related Education Programs.
- Interviewed on "Conversation with the League", on Washington, D.C.'s WMZQ and WKYS radio stations for a program featuring Alexandria's Street Law Program, aired May 1989.
- Provided commentary for National Public Radio's "Morning Edition" feature on law-related education programs, aired December 1988.
- Interviewed for the Washington Post's "Street Law Aims to Nip Criminal Behavior in the Bud"--November 1988.

13. Health: What is the present state of your health? List the date of your last physical examination.

    Good, March 1, 2001

14. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Executive Director (appointed by Governor)
Office of the Governor- Criminal Justice Division
November 1998 to present

Director, Texas Crime Stoppers (appointed by Governor)
Office of the Governor- Criminal Justice Division
November 1998 to present

Crime Victims Institute Advisory Board member, Texas Attorney General's Office (Governor's designee)
January 1999 to present

District Juvenile Justice Manager (District 2)
Appointed by the Secretary of the Florida Department of Juvenile Justice, approved by the Governor's Cabinet
Florida Department of Juvenile Justice
September 1995 to September 1996

District Juvenile Justice Manager (District 14)
Appointed by the Secretary of the Florida Department of Juvenile Justice, approved by the Governor's Cabinet
Florida Department of Juvenile Justice
October 1993 to October 1995

15. Legal Career:

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

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

I have not served as a clerk to a judge.

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

I have not been a sole practitioner.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

Executive Director
Office of the Governor- Criminal Justice Division
P.O. Box 12428
Austin, Texas 78711
November 1998 to June 8, 2001

Executive Director
Florida Network of Youth and Family Services
2728 Pablo Avenue
Tallahassee, Florida 32308
September 1996 to November 1998

I also served as Executive Director of the Florida Youth and Family Foundation, the fundraising arm of the Florida Network agencies during the same time period.

District Juvenile Justice Manager (District 2)
Florida Department of Juvenile Justice
525 Martin Luther King Blvd.
Tallahassee, Florida 32301
October 1995 to September 1996

District Juvenile Justice Manager (District 14)
Florida Department of Juvenile Justice
2020 East Georgia Avenue
Bartow, Florida 33830
November 1993 to October 1995

Operations Manager- Detention Division (full-time)
Dallas County Juvenile Department
2600 Lone Star Drive
Dallas, Texas 75212
June 1991 to November 1993

Director (part-time)
Dallas KIDS
4017 Wycliff
Dallas, Texas 75219
December 1991 to November 1993

Mediation Case Manager/Guardian Ad Litem
Travis County Juvenile Court
2515 S. Congress Avenue
Austin, Texas 78704
May 1990 to June 1991

I worked first as a mediation case manager (5 months) then received a promotion to the guardian ad litem position in the Domestic Division.

Intake Hearing Officer/Coordinator
Alexandria Juvenile and Domestic Court
520 King Street
Alexandria, Virginia 22314
August 1987 to May 1990

Instructor (part-time)
Capital University
Adult Degree Program
Columbus, Ohio 43209
November 1986 to August 1987

Detention Manager (full time)
Franklin County Domestic Court- Detention Division
50 E. Mound Street
Columbus, Ohio 43215
February 1983 to February 1987

Caseworker
Department of Human Services
216 S. 5th Street
Louisville, Kentucky 40202
January 1982 to August 1982

Youth Program Leader
Juvenile Detention Center
720 W. Jefferson Street
Louisville, Kentucky 40202
January 1981 to December 1981 (during graduate education)

Area Coordinator
Ohio Youth Advocate Program
145 N. High Street
Columbus, Ohio 43215
March 1980 to October 1980

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

I have never practiced law.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

I have always worked in direct service or management positions in the fields of juvenile justice, criminal justice or victim

services.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I have not appeared in court as an attorney practicing law.

2. What percentage of these appearances was in:
(a) federal courts;
(b) state courts of record;
(c) other courts.

None

3. What percentage of your litigation was:
(a) civil;
(b) criminal.

None

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

None

5. What percentage of these trials was:
(a) jury;
(b) non-jury.

None

16. Litigation: Describe the ten most significant litigated matters which you personally handled. 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 representations;
(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.

I have never practiced law.

17. 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 the nature of your participation in this question, please omit any information protected by the attorney client privilege (unless the privilege has been waived.)

I have devoted my 21-year career in public service to the administration of juvenile justice, criminal justice and victim services in five different states. As a practitioner, I worked directly with clients as a child protective services caseworker, a foster care coordinator, a guardian ad litem, a juvenile probation officer and a detention care worker. Later as a top-level administrator, I managed statewide agencies with budgets in excess of $140 million, created innovative multi-million dollar criminal justice projects, sited and opened large programs, and devised practices that served as statewide and national models.

In Texas, I played a key role in the development of numerous nationally recognized programs including: the Texas School Safety Center, a statewide training and technical assistance resource for schools; Project Spotlight, a multi-faceted community based police-probation partnership in the seven largest counties in Texas; Texas Exile, a collaborative gun prosecution project with the Texas Attorney General's Office, District Attorneys, and U.S. Attorneys; Project ChildSafe, a gun lock give away program designed to promote home safety measures; and a package of Right Choices initiatives that include programs to promote responsible fatherhood, mentoring, and character development.

Currently, I am the Texas Governor's appointee to direct the Criminal Justice Division, which funds over 140 million dollars each year in criminal justice, juvenile justice, delinquency prevention, and victim services projects in Texas. I direct the state's administering agency for many of the federal funds from the Office of Justice Programs. These funds include the Edward Byrne Memorial Fund, the Local Law Enforcement Block Grant, the Victims of Crime Act, Residential Substance Abuse Treatment, the Violence Against Women Act, and all of the funds from the Office of Juvenile Justice and Delinquency Prevention.

Previously, I served as the executive director of the Florida Network of Youth and Family Services, a statewide association of

over 30 non-profit and government organizations in Florida. The agencies provide prevention services to troubled youth and families in over 100 service sites in Florida. In 1993, I became one of the founding leaders of the newly created Florida Department of Juvenile Justice, a juvenile justice system that is considered to be the country's largest and most comprehensive.

I possess diverse experience and knowledge in many areas of juvenile justice, criminal justice, corrections, and victim services. Specifically, as an administrator, I possess extensive experience in strategic planning, program development and implementation, systems analysis, staffing deployment, and operational planning, standards development, training and staff development, grant writing, program evaluation, conducting management studies, and facility planning and design. As a lawyer, I possess a thorough knowledge of juvenile, criminal, family and administrative law issues. As a former mediator, I possess a great deal of experience in mediation and dispute resolution techniques. As a former educator and trainer, I possess experience in curriculum development, public speaking and adult education.

During the course of my career I have established a reputation as being very results oriented. I have gained many accolades for reorganizing several troubled organizations, resulting in more efficient and streamlined operations. My career in public service has been characterized by my ability to produce results quickly, fix problematic situations, implement innovative programs in a timely way, and continually move forward with creative ideas and strategies.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List 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. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

   State of Texas- Defined benefit plan- monthly annuity beginning at the age of 59 equal to .225% X years of service X final average salary. Current cash value is $11,548.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

In the event of a potential conflict of interest, I will consult the appropriate Department of Justice ethics officials.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

   No

4. 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, patents, honoraria, and other items exceeding $500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

   See financial disclosure report

5. Please complete the attached financial net worth statement in detail (add schedules as called for).

   See attached statement

QUESTIONNAIRE FOR NONJUDICIAL NOMINEES

FINANCIAL STATEMENT

SENATE COMMITTEE ON THE JUDICIARY

NOMINEE: Richard R. Nedelkoff

OFFICE: Bureau of Justice Assistance, Department of Justice

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including ba accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debt mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members your household.

ASSETS				LIABILITIES			
Cash on hand and in banks	6	502	00	Notes payable to banks—secured	14	053	00
U.S. Government securities—add schedule				Notes payable to banks—unsecured			
Listed securities—add schedule				Notes payable to relatives			
Unlisted securities—add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due	14	321	01
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid tax and interest			
Doubtful				Real estate mortgages payable—add schedule	125	900	0
Real estate owned—add schedule	145	900	00	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts—itemize:			
Autos and other personal property	78	250	00				
Cash value—life insurance				Student loan	37	293	0
Other assets—itemize:							
Merrill Lynch Investor Acct	8	233	00				
Merrill Lynch Investor Acct	8	233	00				
Defined benefit plan (retirement)	11	548	00	Total liabilities	191	567	
Defined contribution plan (wife)	2	641	00	Net worth	69	740	
Total assets	261	307	00	Total liabilities and net worth	261	307	

CONTINGENT LIABILITIES				GENERAL INFORMATION		
As endorser, comaker or guarantor		0		Are any assets pledged? (Add schedule.)	NO	
On leases or contracts		0		Are you defendant in any suits or legal actions?	NO	
Legal Claims		0		Have you ever taken bankruptcy?	NO	
Provision for Federal Income Tax		0				
Other special debt		0				

Financial Statement
Assets
Schedule A
Real estate Owned
Richard R. Nedelkoff

1.	current residence (single family home) Lot 2, Block D, Cat Hollow Section 7 Williamson County Round Rock, Texas 78681	$145,900

Financial Statement
Liabilities
Schedule B
Real estate mortgages payable
Richard R. Nedelkoff

1.	Loan on residence held by First Nationwide Mortgage	$125,900

Financial Statement
Assets
Schedule C
Other assets
Richard R. Nedelkoff

1.	Merrill Lynch- Individual Investor Account	$8233.00
2.	Merrill Lynch- Individual Investor Account	$8233.00
3.	State of Texas- Defined benefit plan- monthly annuity beginning at age 59 for Richard Nedelkoff	$11,548
4.	Defined Contribution (Kristen Nedelkoff-spouse) Employer- Integrated Mental Health Services Austin, Texas	$2641

III. GENERAL (PUBLIC)

1. 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.

   In my 21-year career in public service, I have continually been involved in the provision of services or creation of programs that target at risk youth and young adults including mentoring, tutoring, foster care, child protective services, delinquency prevention programs and runaway shelters. In my private time, I continue to serve the disadvantaged by volunteering at Holiday gift projects and adopt-a-family programs.

2. Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion - through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies.

   No

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No

AFFIDAVIT

I, Richard Raymond Nedelkoff, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

5/31/01
(DATE)

(NAME)

CHRISTINA L GRADY
NOTARY PUBLIC
State of Texas
Comm. Exp. 07-30-2002

Christina L. Grady
(NOTARY)

U.S. Department of Justice

Washington, D.C. 20530

JUN 6 2001

Ms. Amy L. Comstock
Director
Office of Government Ethics
Suite 500
1201 New York Avenue, NW
Washington, DC 20005-3919

Dear Ms. Comstock:

In accordance with the provisions of Title I of the Ethics in Government Act of 1978 as amended, I am forwarding the financial disclosure report of Richard R. Nedelkoff, who has been nominated by the President to serve as Director, Bureau of Justice Assistance, Department of Justice. We have conducted a thorough review of the enclosed report.

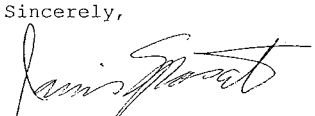
The conflict of interest statute, 18 U.S.C. § 208, requires that Mr. Nedelkoff recuse himself from participating personally and substantially in a particular matter in which to his knowledge, he, his spouse or anyone whose interests are imputed to him under the statute has a financial interest. We have counseled him to obtain advice about disqualification or to seek a waiver before participating in any particular matter that could affect his financial interests. Mr. Nedelkoff's continuing interest in the defined benefit plan of the State of Texas constitutes a financial interest. However, there is a regulatory exemption pursuant to 18 U.S.C. § 208(b)(2) found at 5 CFR 2640.201(c) under which Mr. Nedelkoff would be permitted to participate in particular matters of general applicability such as rulemaking which affect all states, including the State of Texas.

Upon confirmation, Mr. Nedelkoff will resign from his position as Executive Director of the Governor's Criminal Justice Division. At that time his tenure on the Advisory Board of the Texas Crime Victims Institute, the Texas Commission on Law Enforcement and the National Criminal Justice Association

Advisory Council will automatically cease. Because he will have a covered relationship with the State of Texas and with the National Criminal Justice Association under the standard of conduct on impartiality at 5 CFR 2635.502, he has agreed to seek advice before participating in a particular matter having specific parties, such as a grant, in which the State of Texas is or represents a party. Also, he will seek advice before participating in a particular matter having specific parties in which the National Criminal Justice Association is or represents a party.

Based on the above agreements and counseling, I am satisfied that the report presents no conflicts of interest under applicable laws and regulations and that you can so certify to the Senate Judiciary Committee.

Sincerely,



Janis A. Sposato
Acting Assistant Attorney General
for Administration
and Designated Agency Ethics Official

Enclosure

SF 278 (Rev.
5 C.F.R. Part
U.S. Office of Government Ethics

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved:
OMB No. 3209 - 0001

Date of Appointment, Candidacy, Election, or Nomination (Month, Day, Year)	Reporting Status (Check Appropriate Boxes)	Incumbent ☐	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate ☒	Termination Filer ☐ / Termination Date (If Applicable) (Month, Day, Year)
Reporting Individual's Name	Last Name: Nedelkoff			First Name and Middle Initial: Richard R	
Position for Which Filing	Title of Position: Director, Bureau of Justice Assistance			Department or Agency (If Applicable): Dept. of Justice	
Location of Present Office (for forwarding address)	Address (Number, Street, City, State, and ZIP Code): Office of the Governor, 1100 San Jacinto Austin, Texas 78701			Telephone No. (Include Area Code): 512 463 1952	
Position(s) Held with the Federal Government During the Preceding 12 Months (If Not Same as Above)	Title of Position(s) and Date(s) Held: none				
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination			Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No	
Certification: I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	Signature of Reporting Individual: [signature]			Date (Month, Day, Year): 4/4/01	
Other Review (If desired by agency)	Signature of Other Reviewer: [signature]			Date (Month, Day, Year): 4/27/01	
Agency Ethics Official's Opinion: On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).	Signature of Designated Agency Ethics Official/Reviewing Official: [signature]			Date (Month, Day, Year): 4/27/01	
Office of Government Ethics Use Only	Signature			Date (Month, Day, Year)	

Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)

Annotations per conversations w/ filer - [signature] - 4/24/01

(Check box if filing extension granted & indicate number of days _____) ☐

(Check box if comments are continued on the reverse side) ☐

Fee for Late Filing
Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a $200 fee.

Reporting Periods
Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

Nominees, New Entrants and Candidates for President and Vice President:

Schedule A--The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.

Schedule B--Not applicable.

Schedule C, Part I (Liabilities)--The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

Schedule C, Part II (Agreements or Arrangements)--Show any agreements or arrangements as of the date of filing.

Schedule D--The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Agency Use Only
APR 11

OGE Use Only

SF 278 (Rev. [illegible])
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: Richard R. Nedelkoff

SCHEDULE A

Page Number: 2

Assets and Income — BLOCK A

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse).

None ☐

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

	Assets and Income (Block A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples	Central Airlines Common				x												x						x										
	Dow Jones & Smith, Hometown, State			x																												Law Partnership Income $110,000	
	Kempstone Equity Fund					x								x										x									
	IRA: Heartland 500 Index Fund							x						x											x								
1	Office of the Governor Austin, Texas																															salary $108,256	
2	Integrated Mental Health Services, Austin TX																															spouse salary	
3	Merrill Lynch - Individual Investor Account *																																
4	Merrill Lynch - Individual Investor Account **																																
5	* Pimco Innovation Fund Munder Net Net Fund		X											X							X												
			X											X							X												
6	** Pimco Innovation Fund Munder Net Net Fund		X											X							X												
			X											X							X												

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: Richard R. Nedelkoff

SCHEDULE A continued
(Use only if needed)

Page Number: 2a

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gain	Amount: None (or less than $201)	Amount: $201 - $1,000	Amount: $1,001 - $2,500	Amount: $2,501 - $5,000	Amount: $5,001 - $15,000	Amount: $15,001 - $50,000	Amount: $50,001 - $100,000	Amount: $100,001 - $1,000,000	Amount: Over $1,000,000*	Amount: $1,000,001 - $5,000,000	Amount: Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	State of TX Defined Benefit Plan - Monthly annuity beginning at		X																		X												
2	age 59 equal to 2.25% X years of service X																																
3	final average salary																																
4	Defined Contribution																																
5	Plan - Integrated Mental Health Services		X																		Income not ascertainable												
	- Templeton Growth Fund - 13%	X												X																			
	- Janesson Dynamic Fund - 10%	X												X																			
6	- Am. Century Ultra Fund - 28%	X												X																			
	- IRT Stock Value Fund - 13%	X												X																			
7	- Davis Select Inc. Fund - 25%	X												X																			
	- Janesson Total Return Fund - 4%	X												X																			
8	- Legg Mason Value Trust Fund - 8%	X												X																			
9																																	

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot Be Used.

SF 278 (Rev. [illegible])
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Do not complete Schedule B if you are a new entrant, nominee, or Vice Presidential or Presidential Candidate

Reporting Individual's Name: Richard R. Nedelkoff

SCHEDULE B

Page Number: 3

Part I: Transactions

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

None ☐

	Identification of Assets	Transaction Type (x): Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	Amount of Transaction (x): $1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
Example	Central Airlines Common	x			2/1/99			x									
1																	
2																	
3																	
4																	
5																	

*This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260, and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☐

	Source (Name and Address)	Brief Description	Value
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty)	$500
	Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
1			
2			
3			
4			
5			

SF 278 (Rev. [illegible])
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: Richard R. Nedelkoff

SCHEDULE C

Page Number: 4

Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None ☐

	Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	$10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,001,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			x								
	John Jones, T.J. JSL, Washington, DC	Promissory note	1999	10%	on demand					x						
1	Central Texas Student Finance, St Paul, MN	student loan	1990	8%	15 yrs		X									
2																
3																
4																
5																

*This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None ☐

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1	State of Texas Defined Benefit Plan	State of Texas	11/98
2			
3			
4			
5			
6			

Prior Editions Cannot Be Used

SF 278 (Rev. 6/92)
5 C.F.R. Part 26.14
U.S. Office of Government Ethics

Reporting Individual's Name: Richard R. Nedelkoff

SCHEDULE D

Page Number: 5

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	Texas Crime Victims Institute Advisory Board - Office of Attorney General	state agency	member *	1/99	pres.
2	Texas Commission on Law Enforcement	state agency	ex offricio member*	1/99	pres.
3	Office of The Governor of Texas	State executive	Executive Director** Governor's Criminal Justice Division	11/98	pres.
4	National Criminal Justice Assn. Advisory Council	national association	member*	11/98	pres
5	*Tenure will end with resignation from The Governor's office.				
6	** Will resign upon confirmation				

Part II: Compensation in Excess of $5,000 Paid by One Source

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

Do not complete this part if you are an incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

None ☐

	Source (Name and Address)	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Hometown, State	Legal services in connection with university construction
1	Office of The Governor of Texas	Administers state & federal grants for justice related services
2		
3		
4		
5		
6		

Richard Nedelkoff
Index of Attachments

Project Spotlight, News In Brief, *Keynote Recap*, Winter 2001, Volume 1, No. 1.

Texas Governor Web Site, *Governor Announces Support for Fight Against Drunk Driving*, June 30, 2000.

Texas Governor Web Site, *Governor Bush Announces Funding to Fight Crime in Seven Counties*, January 25, 2000.

Texas Governor Web Site, *Governor Bush Announces Funding for Juvenile Intervention in Colonias*, January 5, 2000.

Texas SuperVision, *Project Spotlight: Teams Combat Crime*, not dated.

Heartbeat, Newsletter of Texas CASA, *New and Improved Governor's Criminal Justice Division*, not dated.

The Dallas Morning News, Death-Penalty Cases Can Strain Rural Budgets, May 23, 2000.

Texas Governor Web Site, *Governor Bush Announces Funding for a Texas School Safety Center*, May 20, 1999.

The Dallas Morning News, *Bush Announces Grant for Center to Offer Training on School Safety*, May 21, 1999.

The Tribune, *Official Who Revamped Local Juvenile Justice to Leave Post*, not dated.

The Tampa Tribune, Plan is Smart, and it Saves Money to Boot, not dated.

Criminal Justice Division, Office of the Governor, *Criminal Justice Division Strategic Plan, Our Vision of the Future*, not dated.

Criminal Justice Division, Office of the Governor, *Report to the 77th Legislature*.

Governor's Criminal Justice Division, *A Year for Change*, *1999 Annual Report*.

Criminal Justice Division, Office of the Governor, *Report to the 76th Legislature*.

Florida Network of Youth and Family Services, *1997 Annual Report*.

Florida Network of Youth and Family Services, *1996 Annual Report*.

The Ledger, *Juvenile Center Gets Part of Funds*, August 30, 1995.

The Tampa Tribune, *Juvenile Justice Awaits Funding*, July 11, 1995.

The Ledger, *Polk Hails Year-Old Juvenile Programs*, April 22, 1995.

The Tampa Tribune, *Escape Rate at Halfway House Down*, February 27, 1995.

The Ledger, *Polk Eyes U.S. Funds for Camp*, August 24, 1994.

The Ledger, *State Offers to Buy Polk Boot Camp*, June 29, 1994.

The Ledger, *New Bill Pleases Juvenile Workers*, May 19, 1994.

Chairman LEAHY. Thank you.

Mr. Nedelkoff, first off, I must say I appreciate your statement of pride in your career in public service. As the people understand, I don't consider that in any way bragging. I mean, it is not bragging when you talk about things you have done. But we have too often in this country—people seem to almost denigrate those who go into public service. And yet I have to think that there are an awful lot of children today who have a chance to grow up and be adults where they can be productive members of society because of some of the programs you have worked on. I have to think that there are some people who are already productive members of society who might not have been had you not been there. And I would say the same thing of your colleagues you have worked with.

I wish more people would adopt that attitude. Obviously it is not financially the most rewarding area to go to. I have read all your financial statements, and they look despairingly a lot like mine. But it is what you accomplish in life.

Look at your two children. They have got this whole century ahead of them, and look at the number of young children who look not at the kind of bright future they look to but look to the worst and most dismal future. And yet it has got to be people like you that can change that around.

Now, the Bureau of Justice Assistance, their open solicitation program has generated I think something like 150 grants, and one of the things I like about it as a Vermonter, it lets communities propose programs to address their problems instead of Washington designing them. And that is why I have strongly supported it over the years. The application process I find pretty simple and straightforward. It seems fair. Researchers working with these communities try to say, look, this is what worked best or this is what didn't work so that other communities can go to it and follow it.

Do you intend to maintain this program?

Mr. NEDELKOFF. Yes. I think it's very crucial that we continue to administer our grant programs in a very consistent and equitable manner. As you know, I was head of the State administering agency in Texas for the funds that flow from the Bureau of Justice Assistance, and I look forward to the opportunity to work with the rest of the executive management team of the Office of Justice Programs. And, again, the bottom line for me will be to serve the public and to be responsive to the needs of local communities. I think the communities, as you implied, know best potentially how to solve the problems, and I think it's an important role of Government to facilitate that.

Chairman LEAHY. Well, I agree. As a former prosecutor and Vermonter, I have a pretty good idea of some of the programs—and as a lifelong Vermonter, I have some idea of the programs that might or might not work in Vermont. I would have no ability to go down and suggest in Harris County, Texas, for example, what is the best way to carry out similar programs.

I know last year's appropriations bill had some language proposing to reorganize the Office of Justice Programs in a way that would have eliminated the BJA. Actually, it would have eliminated the job to which you have been nominated, as well as the Senate-

confirmed status of the Presidential appointees who direct these other Bureaus.

I think that is a mistake. I think Senators gets a chance to get to know through the confirmation process your philosophy and where you are going. After all, you are going to be responsible for a lot of the Federal resources going into the community. Do you think these Bureau Directors should be Senate-confirmed appointees?

Mr. NEDELKOFF. Well, I am aware of, as a spectator, the last several—

Chairman LEAHY. I am not trying to put you on the spot, but I am just curious of your idea.

Mr. NEDELKOFF. Well, I am aware of the efforts of Congress to reorganize the Office of Justice Programs. Its initial goals of reducing duplication and avoiding fragmented service delivery are very good. I look forward to working, with the Senate's consent, with the next Assistant Attorney General for the Office of Justice Programs, and with the rest of the executive management team to move forward in that arena and determine how best to organize that office that has a huge amount of responsibility in administering almost $4 billion of funds.

Chairman LEAHY. Well, let me talk to you about some of the specific things that have been done there. This is one I am well familiar with in my home State of Vermont. I actually went and visited it a couple times, and the former Attorney General came and visited this program, in fact, got so interested in it that it completely ruined her schedule for the afternoon because she just wanted to stay and ask more questions. It is a statewide restorative justice program. You have non-violent offenders come before a board of local citizens, and they work out arrangements where they can pay back the community for their offense. And if they successfully work out this agreement and successfully do what they are obliged to do under the agreement, they can avoid regular probation.

It lets the community say here is what we think is the penalty that fits it. It also makes the offender learn as a consequence for their actions. I mean, they sometimes sit there and the people are there and say, but, I mean, you did this much damage to this person's business or to this individual, you know, what you thought was a lot of fun made them lose work, or whatever it might be. And so citizens become more involved, but the person who perpetrated it said, "oops," there is a consequence to this.

Now, others are using similar innovative measures. I think in Wichita, Kansas, they have a problem-solving court, the neighborhood environmental court. They work on environmental violations. They have got a lot of drug courts in Ohio and other States. In fact, Senator DeWine on this Committee has told me about those. You have got the community courts in parts of New York City, which I understand, as well as in other cities, are working very well.

You have collective problem-solving work involving churches, community organizations, police and prosecutors to address juvenile homicide in Boston with Operate Ceasefire. It used to be every time you would pick up a Boston newspaper, some kid had been killed. They finally came together, designed a program that worked best for them, and these homicides stopped. But it gets the commu-

nity involved in the system, and it is not just somebody in the court, the prosecutor.

Now, some of them were establishing funds for these programs, but most of them had technical assistance from BJA. I would hope that, one, you could continue this kind of technical assistance and that you will look at and have your Department look at these that work. This one in Boston is an amazing thing because people were dying, youngsters, 15-year-olds in gang warfare and things like this. And they stopped that. And in a lot of other places around the country they have done that. So please look at them and please continue them.

Mr. NEDELKOFF. Well, Mr. Chairman, you have, I think, highlighted two of the fundamental roles of the Bureau of Justice Assistance. When you speak of, number one, technical assistance, I think that's hugely important. One of our main goals should be to provide leadership in that area, provide local communities with resources to do their jobs better.

The other thing was highlighting model programs. We're looking at the big picture in BJA, and it's important for us to be cognizant of the programs that work, share those programs, and the designs and the implementation of those programs with other communities. So I do wholeheartedly agree with your statement.

Chairman LEAHY. I have introduced a thing called the Innocence Protection Act, which speaks to a whole lot of things, everything from making available to both sides all the evidence that is there, whether it is fingerprint evidence, DNA evidence, or anything else. It is bipartisan. We have 24 cosponsors in the Senate and 211 in the House. But among the other things it would do is to establish a commission to develop standards for appointing qualified legal representation for defendants facing a death sentence. And it would establish a grant program to help States implement standards at the State level and improve their quality of legal representation.

Now, there has been a lot in the press in the past few years about the system in Texas, but now I see recent legislation in Texas would revamp the indigent defense system there. A number of Texas legislators in both parties have expressed concern.

BJA has done a lot of work trying to help local governments improve the quality of representation that they give to indigents in criminal cases. Can you continue this work? Will you encourage the Attorney General and others in the Department to work with State courts and bars and prosecutors and defense attorneys to improve the quality?

Mr. NEDELKOFF. I am not familiar with a lot of the specifics of the initiatives regarding indigent defense in BJA. But I can tell you that it is an important principle of mine to ensure, no matter what position I am holding, the fair administration of justice. And in your Innocent Protection Act, for instance, the primary goal of ensuring that no innocent person is sentenced to death is so important. And however we can, whether it is in the courts, prosecution, defense, judiciary, however we can ensure that fundamental due process is applied and the rights of appeals are always upheld, I think, again, looking at the big picture, anything that our office and the bureau can do to continue that, I want to continue that.

Chairman LEAHY. Actually, I think it would make a lot of sense. I have prosecuted a lot of murder cases, and the thing that I was most terrified about was having incompetent counsel on the other side, because I knew eventually if that happened, I might get a conviction where 6, 7, 8 years down the road it is going to be overturned and we have to be trying the case again. And no prosecutor wants to try a case a second time, certainly not 6 or 7 years later. It is virtually impossible. And so what we tried to do is make sure it was done right in the first place.

Now, the BJA has done some pioneering work on community prosecution. In the administration's budget request, part of the money previously allotted to community prosecution is now slated for gun prosecutions. Does that mean we are cutting back on community prosecutions, or is this considered to be part of community prosecutions?

Mr. NEDELKOFF. Well, at this point in the process, in deference to the selection process, I haven't been involved in discussions with the administration or the Justice Department regarding the specifics.

Chairman LEAHY. Well, I have to ask the question. I know you are going to take a look at it when you get back there.

Mr. NEDELKOFF. I sure will. But community justice, as you mentioned earlier, including prosecution, again, as you can see by my background and resume, is something that has been important to me. And I realize the importance of communities being part of the solution.

So, for that reason, I want to continue to work to provide that kind of leadership.

Chairman LEAHY. The State Criminal Alien Assistance Program, SCAAP, reimburses the States for some of their costs for incarcerating illegal aliens. That is a big part of your budget. Is this an appropriate Federal role? Is it the best way to—is it a good use of Federal dollars to continue to fund SCAAP on an almost indeterminate basis?

Mr. NEDELKOFF. Well, I think whatever level, whether it's Federal or State or local community level, I think when you're in the business of administering money, it's important to continually reassess priorities. And I do believe that the SCAAP program has served a very good purpose, filled a gap in services in some communities where certain criminal aliens were incarcerated. So I think it's a matter of continually on an annual basis assessing needs and determining the level of support and determining which priorities in which areas these limited funds should be directed.

Chairman LEAHY. Well, I want to submit a couple other questions for the record because we will keep the record open until the end of the month. We are not in session, anyway. They are more technical and I would like you to take a look at them.

Let me ask you this: You have had a long and, I want to note, very respected career in State and local criminal justice. So in some ways, you were a consumer of State and Federal programs during that time. Are you going to be able to kind of bring your views as a consumer here? And I think you know what I am leading up to. You must have had some times when you said this program doesn't

make any sense or I am really going to have to massage it to fit in this. Are you going to bring some of those experiences to us?

Mr. NEDELKOFF. Most definitely. I think that's a strength I would bring to the office, that experience at the local—at virtually every level, the local and the State level. And I have worked with Federal Government all my life, and I have to admit there were times when I shook my head and said this doesn't seem right, this could be perhaps less complicated. I think that was one of the important things I tried to do in Texas, was to really streamline and simplify the process. I think a fundamental goal and principle during my tenure in Texas was to try to make—or an important role of Government was to make things easier for communities, not harder. And we did a lot of things like streamlined our rules and simplified our grant application process and created a pocket guide to grants for grantees to learn important rules and so forth. And I think I can bring some of those things and ideas to this position.

Chairman LEAHY. Well, don't hesitate to drop me a line if you think there are some programs that we are designing here that could be made to work better. I really would love to have the input.

Senator Ben Nighthorse Campbell of Colorado and I put together a program a few years ago to provide money for bulletproof vests for State and local police. And as you know, in a lot of the small police departments, they don't have any money for them. These things cost $500 or $600 apiece, and they wear out.

And so we put together a pretty straightforward program to do that. Senator Campbell and I both began our careers in law enforcement. We understand some of the needs.

Then I started—I would get home to Vermont on the weekends, and I had police officers come up and say, hey, you know, I really like that program, but you ought to see some of the paperwork. And so we got it down, really streamlined it down, so you could do applications online, you could get it down—because everybody knew what we wanted. There was never any question there. We just wanted to make sure that it was done, and as you do the usual tracking, that is where the money went. But it brings some of those practical things to us. We are always looking for it, and I know the Attorney General is.

With that, Mr. Nedelkoff, I again—I don't always want to be able to predict things. I have a feeling that you are not going to have a very difficult time before our Committee, and I will, unless there are objections on the other side—and I hope there would not be—I would put your name on our next executive meeting, and I wish you and your wife and those two lovely children all the best.

Mr. NEDELKOFF. Thank you very much.

Chairman LEAHY. With that, we stand in recess.

[Whereupon, at 11:09 a.m., the Committee was adjourned.]

[Submissions for the record and questions and answers follow.]

QUESTIONS AND ANSWERS

Responses of Richard R. Nedelkoff to questions submitted by Senator Charles Grassley

Question 1: Last month, several Iowa enforcement agencies had tremendous difficulty in submitting applications for State Criminal Alien Assistance Program (SCAAP) grants. These problems were due to technical incompatibilities with com-

puter systems. The staff at the Bureau of Justice Assistance (BJA) and the Office of Congressional Affairs were very helpful in working through thus problem, but we need to make sure something like this does not happen again. Could you please tell us, if you are confirmed as the Director of the Bureau of Justice Assistance, how you plan to snake it easier for rural law enforcement to learn of and apply for BJA grants?

Response 1: I plan to address thus issue immediately. Communication and simplifying our processes will be a top priority for BJA. I take pride in what we accomplished in Texas, developing better more streamlined computer systems, publishing user friendly guides and informational documents, and increasing training. If confirmed by the Senate, one of my first actions will be to work with the Office of Justice Programs, Office of Budget and Management Services to thoroughly analyze and revise our online systems with a focus on simplification and consistency across programs. In the meantime, we will recognize the shortcomings of our online system and allow for paper submission for programs that have trouble accessing our systems. Once our system is perfected, we will offer waivers to allow for paper submission by those rural jurisdictions that may not have access to the Internet. Additionally, if I air confirmed, we will work to revise our information mailers and our website to make them easier to understand.

Question 2: As I understand it, the Bureau of Justice Assistance conducts some oversight for the Byrne grants BJA awards. Could we get a commitment from you to increase the program monitoring conducted on grants awarded by this program?

Response 2: I strongly believe that we must administer the taxpayers' dollars with care and we must hold those to whom we pass the money accountable for it. In Texas, we completely changed the quality assurance program to a risk-based model that allowed us to monitor virtually all of our 1,500 grants each year. If confirmed, I plan to explore thus model at BJA. Thus type of program will allow BJA to find problems early on and to focus technical assistance and training where it is needed. I commit to focusing significant attention on this issue to not only ensure fiscal responsibility and stop any abuses but to give will-meaning programs the help they need to flourish and to show positive results.

Question 3: Because the Bureau of Justice Assistance plays a principle role in conducting program monitoring for Byrne grants, what is the relationship between the Office of Justice Programs and BJA? Also, how much interaction should there be?

Response 3: The Bureau of Justice Assistance is a component of the Office of Justice Programs. Our missions and operations are inextricably linked and as a result, the only effective way to manage BJA is to coordinate with OJP closely and to work under their auspices. I commit to strong coordination and communication with OJP and to doing my level best to ensure a positive working relationship.

Currently, BJA staff monitor the grants in coordination with OJP's Office of the Comptroller (OC). If confirmed by the Senate, I plan to quickly meet with those involved and to work with the Assistant Attorney General to ensure appropriate coordination and to make sure that we come to agreement on the purpose, tone, and manner of monitoring reviews.

SUBMISSIONS FOR THE RECORD

Statement of Hon. Orrin G. Hatch, a U.S. Senator from the State of Utah

First, I would like to thank the Chairman, Senator Leahy, for holding this hearing during the Senate's August recess to consider two outstanding nominees. Our only judicial nominee today is the Honorable Reggie Walton, who has been nominated for a seat on the United States District Court for the District of Columbia. Judge Walton has devoted his life to public service and to improving the criminal justice system. He began his career as a public defender in Philadelphia and then became an Assistant United States Attorney in the District of Columbia, eventually rising to hold the position of Executive Assistant U.S. Attorney. From 1981 to 1989, Judge Walton served as a judge of the District of Columbia Superior Court. He then spent more than two years serving in the Administration of President George H.W. Bush, first as Associate Director of the Office of National Drug Control Policy and then as Senior Advisor to the President for Crime. In 1991, he resumed his service on the D.C. Superior Court bench. His eighteen years of judicial experience have demonstrated that he has the capacity, integrity, and temperament to serve with distinction as a federal district court judge.

I would be remiss if I did not take a moment to note that, in addition to his exceptional judicial qualifications, Judge Walton has rendered invaluable service to the community. He has been instrumental in helping at-risk youth in Washington, D.C., through his service as a Director of Big Brothers of the National Capital Area. He has also received numerous- awards, including the William H. Hastie Award from the Judicial Council of the National Bar Association, the Shuker Memorial Award from the Assistant United States Attorneys Association, and the H. Carl Moultrie Award from the NAACP's District of Columbia branch. I applaud Judge Walton's admirable record of service, and commend President Bush for nominating him to the federal bench.

Our Department of Justice nominee is Richard Nedelkoff, whom we have the pleasure of considering for the position of Director of the Bureau of Justice Assistance. The Bureau of Justice Assistance helps deliver grants for initiatives and partnership programs across the country that help improve adjudication components of the justice system, aid state and local police agencies in fighting crime, modernize the technology and information sharing capabilities of law enforcement, and assist communities in reducing crime.

By his 21 year career in public service, Mr. Nedelkoff has proven himself more than equal to the task of leading the Bureau of Justice Assistance. Over the course of his career, Mr. Nedelkoff has served in both management and direct service positions in the fields of juvenile justice, criminal justice, and victim services. Most recently, he has served as the Executive Director of the Criminal Justice Division in the Office of the Governor of the State of Texas. His work has been marked by innovation and creativity, particularly in his leadership of local juvenile justice programs such as Texas's Project Spotlight, a new program geared towards reducing juvenile delinquency and recidivism rates by providing enhanced supervision to juvenile probationers living in high-crime areas. Mr. Nedelkoff has proven himself to be a credit to the state of Texas and the other state and local jurisdictions that have been fortunate enough to benefit from his leadership. I anticipate that he will do just as well at the Department of Justice.

Again, it is a pleasure to welcome both Mr. Nedelkoff and Judge Walton to the Committee. I look forward to working with Chairman Leahy and others to ensure that the Committee and the full Senate hold timely votes on your nominations.

Statement of Hon. Kay Bailey Hutchison, a U.S. Senator from the State of Texas

Mr. Chairman, distinguished members of the Committee:

I am pleased to offer my support for the nomination of my fellow Texan, Mr. Richard R. Nedelkoff, to be the Director of the Bureau of Justice Assistance.

The Bureau of Justice Assistance's main mission is to combat violent and drug-related crime and to help improve the criminal justice system. Mr. Nedelkoff's experience as an administrator in five different states, where he created juvenile justice and criminal justice programs that serve as models for agencies across the country, clearly illustrates why he is very well qualified to be the Justice Department's next Director of the Bureau of Justice Assistance.

With degrees in Criminal Justice from Bowling Green State University, the University of Louisville, and the Capital University Law School, he not only has a wealth of knowledge concerning the administration of justice, but as his stellar resume proves, he also has the experience.

Prior to his present position in the Criminal Justice Office of Texas, Nedelkoff served as the Executive Director of the Florida Network of Youth and Family Services from 1996 to 1998 and was a District Juvenile Justice Manager with the Florida Department of Juvenile Justice from 1993 to 1996. Previous to his efforts in Florida, he gained useful experience working with the court systems in Virginia, Texas, Ohio and Kentucky to improve the administration of justice, as well as working in the child protective services and foster care areas. He also taught criminal justice and juvenile justice classes at Capital University.

Clearly he knows the criminal justice system, and has a reputation for being an effective, savvy and hard worker. Throughout his career he gained the respect of others by consistently producing quick results, implementing innovative programs, reducing bureaucracy, and finding solutions to problem situations.

Therefore, Mr. Chairman, I would like to reiterate my strong support for Mr. Nedelkoff's nomination, and I urge its swift approval by this distinguished committee and by the full Senate.

NOMINATION OF SHARON PROST, OF THE DISTRICT OF COLUMBIA, TO BE CIRCUIT JUDGE FOR THE FEDERAL CIRCUIT AND TERRY L. WOOTEN, OF SOUTH CAROLINA, TO BE DISTRICT JUDGE FOR THE DISTRICT OF SOUTH CAROLINA

MONDAY, AUGUST 27, 2001

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 10:00 a.m., in Room SD–226, Dirksen Senate Office Building, Hon. Patrick Leahy, chairman of the committee, presiding.

Present: Senators Leahy, Thurmond, and DeWine.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. Good morning, and I welcome everybody to the committee. I thank my good friend, Senator DeWine of Ohio, for coming back, and we are, of course, honored by having the presence of not only the senior member of this committee, but the senior member of the Senate, Senator Thurmond, who is here with us. While we are holding another hearing today on people the President has indicated he intends to nominate to be federal judges next month, we are doing this notwithstanding the fact that the nominations are not presently before the Senate, and I think the only precedent for this hearing that we were able to find was one of last week, and seeing Congresswoman Norton here, she was at that hearing. Otherwise, I think hearings in August are unprecedented, but I am trying to show I am trying to go the extra mile to fill the vacancies in the federal courts with qualified consensus nominees.

This is the fourth hearing involving judicial nominations we have held since the Senate reorganized the Judiciary Committee's membership seven weeks ago. There were no members of the Republican Party able to join us last week, but I am glad that Senator DeWine, who is the former chairman of the Antitrust Committee, is here to be the ranking member today. We had set this hearing date to accommodate Senator Hatch's schedule. I understand it is a date we had worked out with the staff. Unfortunately, I learned from the Senator on Friday that he could not be here. However, I know that he will have a statement for the record and I know the very, very high regard he has for both of the nominees.

Sharon Prost has been on Senator Hatch's staff for a number of years. She is the highest-ranking member of the Republican staff of this committee. She is our Republican chief counsel. Ms. Prost is highly respected by Senators on both sides of the aisle, and it is a delight to have her here today with her two sons. They probably hate to hear comments like this, but I have seen them from the time they were little boys, and now they have grown up to be handsome young men. The strong and loving relationship they share with their mother is especially impressive in light of the challenges that people face when they are raising children and pursuing a public career. Sharon Prost has done both very well, and the proof is in those two beautiful children.

Now there is one disappointment that perhaps Jeffrey and Matthew will have, and that is the fact that had we not expedited this, we would be doing it fully into the school year and they would have a real excuse to cut school. So it is like, what do you mean I am sick on a snow day? Of course, Judge Terry Wooten was on Senator Thurmond's staff before becoming a federal magistrate in South Carolina, and Senator Thurmond has made it very clear to me, Judge, from the day you were nominated that I can kind of move along here, and when Senator Thurmond tells you to move along, you move along. Even though your nomination is not technically before the committee, we are doing this to accommodate Senator Thurmond.

I say "not technically before" because we had a strange thing happen before the August recess. I have been here with Republican leaders, Senator Scott, Senator Baker, Senator Dole and Senator Lott, Democratic Leaders, Senator Mansfield, Senator Byrd, Senator Mitchell and now Senator Daschle, and it has always been that, even though Rule 31 of the Senate requires all nominations not acted upon to be returned to the President before a recess, all the leaders, Republican or Democrat, no matter who the President was, Republican or Democrat, especially at the beginning of his term, have always made a unanimous consent request to keep those nominations before the Senate. The reason for that is so that staff and Senators, during the recess, could actually work on them, go through the paperwork and so on.

For some reason, in a totally unprecedented move, Senator Lott required every single nomination to go back. I think there were two that were originally supposed to go back because they probably were not going to be acted upon, but he required all to go back, including all of the judicial nominations. This created a bit of a problem for the Judiciary Committee, because we were put in the difficult situation of not being able to work on the FBI reports. We actually had to start boxing up everything to send it back to the White House. Staff members who could handle classified material had to take time to start doing that. At some point during the August recess, Judge Gonzalez wrote to me and said that all of these nominations were going to come back up, so would we please keep working on it. I felt in a way caught between a rock and a hard place, because a Republican organization associated with the White House had sent out a big broad-side saying why were we out, why weren't we working on all the judicial nominations before the Senate, knowing full well, of course, there were none there. I want to

work on them, and I am getting sort of a good cop/bad cop thing here: one blasting us for not working on them, while others saying please work on them even though they are not there. Be that as it may, I am taking Judge Gonzalez at his word, that we will not hear further criticism for going forward on these hearings, even though they are not here, and we are doing that.

We have been held up a bit, of course, because this administration, instead of following the procedure followed by President Eisenhower, President Kennedy, President Johnson, President Nixon, President Ford, President Carter, President Reagan, and the first President Bush, is not sending the nominations first to the ABA, where we have to wait till the nominations come up, then delay them for another couple of months to go to the ABA. In any event, we are doing it. There is one thing I should point out, though. We are also trying to follow normal Senate procedures. The distinguished senior Senator from Nebraska, Senator Hagel, and his colleague, Senator Nelson, who has had a distinguished reputation as Governor of Nebraska, came to me and told me they had a Nebraskan nominated by President Bush for the Court of Appeals, needed to move him quickly because of a problem. I said, "Of course," and we accommodated them. I think we moved them within a couple of days of the time the paperwork was ready.

Similarly in Montana, the distinguished senior Senator, Senator Baucus, and his Republican colleague, Conrad Burns, came to me and told me they had a real problem in Montana. They did not have any judges. They were all on senior status. So we quickly moved forward on those. In fact, when we report another nominee to a Court of Appeals vacancy, we are going to report as many Court of Appeals nominees since July of this year, just in the last two months, as this committee did all of last year on Court of Appeals judges, when, as you recall, President Clinton had quite a few before us. So we are moving.

We announced the first hearing 10 minutes after our reorganization. What I am urging Senators to do—and I will put the rest of my statement on the record—I am urging Senators who have situations in their State to contact me, and we will try to move them forward first. Senator DeWine has contacted me about a situation in his state, and we are trying to work out something with him on the Court of Appeals with the White House and Democratic Senators within that circuit. In that regard, of course, I am following the precedent established by former members like Senator Gorton and Senator Ashcroft and Senator Abraham and others with the Clinton administration, and we are trying to follow the same rule here, and that is that the White House should consult with the Senators, because ultimately the Senators in the area are the ones who know best who is going to serve best in those areas, and they are the ones I am going to refer to first.

[The prepared statement of Chairman Leahy follows:]

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Today, during the Senate's August recess, the Judiciary Committee is holding another hearing regarding people the President has indicated he intends to nominate to be federal judges next month. The only precedent for this hearing of which I am aware is the hearing I convened last Wednesday. A judicial confirmation hearing

during the August recess is otherwise, as far as I am aware or can recall, unprecedented. This is another indication that I am attempting to go the extra mile to help fill the vacancies on the federal courts with qualified, consensus nominees.

This is the second hearing involving judicial nominations we have held during this recess and the fourth hearing involving judicial nominations since the Senate reorganized and the Judiciary Committee's membership was set on July 10, barely seven weeks ago. I regret that no Republican Senators were available to participate at the hearing last week. I welcome the participation of Senator DeWine, the Ranking Republican on the Antitrust Subcommittee and its former Chairman, who I understand will be serving as the Republican representative at this hearing today.

I am sorry that Senator Hatch is not with us today. This hearing was scheduled for this day after extensive consultation with his staff in which they indicated this was a day that he would be able to attend. Apparently, circumstances changed.

Both of the prospective nominees that we will hear from today served as part of the Republican staff of this Committee. Sharon Prost has been on Senator Hatch's staff for a number of years and currently serves as the highest ranking member of the Republican staff of this Committee. She is our Republican Chief Counsel. I am happy to be able to welcome Ms. Prost in another capacity today.

I know that if Senator Hatch were here he would acknowledge her young sons, as well. We have seen them grow up before our eyes. Their strong and loving relationship shows how well Ms. Prost has met the challenge so many must face as they pursue public service careers while also raising their children. I hope Jeffrey and Matthew are not too disappointed that by proceeding in this expedited fashion before school resumes next week, we have cost them what would have been a pretty good excuse to be absent from class.

Judge Terry Wooten was on Senator Thurmond's staff before becoming a federal magistrate in South Carolina. I know that Senator Thurmond will have a statement in support of Judge Wooten. Senator Thurmond has pressed for this day since President Bush first indicated that he would be nominating Judge Wooten. As a courtesy to our former Chairman and a valued Member of this Committee and the Senate, we are proceeding even though the nomination is not technically before the Committee.

This points up another way in which this hearing is without precedent. Besides taking place during the August recess, a hearing on a judicial nomination would not normally be scheduled in advance of the Senate receiving the nomination and its pendency before the Committee. Just before the Senate recessed in early August, the Senate leadership requested that nominations, including the nominations of Ms. Prost and Judge Wooten, be retained through this August recess notwithstanding the Senate rule that nominations be returned to the President when the Senate recesses for a period of more than 30 days. In the wake of the objection of the Republican Leader to the unanimous consent request, Rule 31, paragraph 6 of the Standing Rules of the Senate required that all pending nominations on which final action was not taken before the recess be returned to the President. That objection by the Republican Leader, like the month-long delay in reorganizing the Senate, serves to complicate and delay consideration of nominations.

I commented last week that for those of us trying to restore dignity and regularity to the nomination and confirmation, the bumps in the road created by the other side are especially frustrating. For example, President Bush's decision to delay the American Bar Association's evaluation of a judicial nominee's qualifications until the nomination is made public, has forced delays in the rest of the process, as well. As a result of this Administration's break with the 50-year-old precedent established under President Eisenhower, the confirmation process of even the least controversial and most qualified candidates is necessarily delayed by several weeks. Likewise this Administration's failures early on to consult with Senators from both parties and to seek nominees who would enjoy broad bipartisan support is a source of concern.

I have alluded to another example—the Republican Leader's objection on August 3, 2001, to Senator Reid's unanimous consent request to avoid returning all pending nominations to the White House. This Republican objection has resulted in the strict application of the Senate rules contributing to needless paperwork and more unnecessary delay.

In order to proceed last week and today we are doing so in a highly unusual manner, without a nomination pending before this Committee. I do so with a high level of concern about this unusual procedure. I do not think that these exceptional hearings should be viewed as precedent. We proceed as a courtesy to our Senate colleagues, Senator Thurmond and Senator Hatch, who so strongly support the nominees here today. In addition I am responding to the request from the White House counsel that the Committee staff continue reviewing files on nominees, even though

the Republican Leader's objection had resulted in all those nominations being returned to the President.

This is the seventh hearing I have held since July 11 to consider presidential nominations and the fourth that includes judicial nominations. Our first hearing was noticed within 10 minutes of the adoption of the reorganization resolution and held the day after the Committee membership was set.

When this Committee reports another nominee to a Court of Appeals vacancy, it will have reported as many Court of Appeals nominees since July of this year as this Committee did under Republican control during all of last year. When the Senate next confirms a Court of Appeals nominee, it will have confirmed as many as were confirmed in the entire first year of the Clinton Administration.

When we confirmed Judge Roger Gregory to the Fourth Circuit on July 20 we had confirmed more Court of Appeals judges than a Republican-controlled Senate was willing to confirm in all of 1996—a year in which not a single nominee to the Courts of Appeals was confirmed.

Although until I became Chairman and began holding hearings last month, no judicial nominations had hearings or were confirmed by the Senate, we are now ahead of the pace of confirmations for judicial nominees in the first year of the Clinton Administration and the pace in the first year of the first Bush Administration.

In the first year of the Clinton Administration, 1993, without all the disruptions, distractions and shifts in Senate majority that we have experienced this year, the first Court of Appeals judge was not confirmed until September 30.

In the entire first year of the first Bush Administration, 1989, without all the disruptions, distractions and shifts of Senate majority that we have experienced this year, the third Court of Appeals nominee was not confirmed until October 24.

For that matter, the record shows that during recent years under a Republican Senate majority, there were no Court of Appeals nominees confirmed at any time during the entire 1996 session, and the first Court of Appeals nominee was not confirmed in 1997 until September 26.

During the more than six years in which the Senate Republican majority scheduled confirmation hearings, there were 34 months with no hearing at all, 30 months with only one hearing and only 12 times in almost six and one-half years did the Judiciary Committee hold as many as two hearings involving judicial nominations during a month.

I held two hearings in July involving judicial nominations and this is our second hearing involving judicial nominees in August, during the traditional recess. A fair assessment of the circumstances of this year would suggest that the work we have done since July, in this shortened time frame of only a few weeks in session should be commended, not criticized.

In light of the bipartisan support for Judge Roger Gregory and the strong interest of Senator Warner and Senator Allen, the two Republican Senators from Virginia, in seeing that nomination proceed to confirmation, I included him in our hearing on July 11.

We proceeded with the nominations of Judge Cebull and Judge Haddon to be District Court Judges in Montana in light of the strong bipartisan support they had from Senator Baucus and Senator Burns, one a Democrat and the other a Republican, and having heard from the Chief Judge of that District that he was "home alone"—the only active Judge left in that Court.

At our July 24 hearing we included the nomination of Judge William Riley to the Eighth Circuit. He, too, had strong bipartisan support that included the endorsements of Senator Hagel and Senator Nelson, one a Republican and the other a Democrat. In addition, as I noted at that hearing, the Eighth Circuit is one of those with multiple vacancies.

Working with Representative Norton, we scheduled for last week the hearing involving Judge Reggie Walton, who President Bush has indicated he will nominate to the District Court for the District of Columbia. Representative Norton was gracious in her endorsement of Judge Walton at his hearing, a Democrat endorsing a Republican President's nomination.

Before recognizing Senator DeWine for any opening remarks he may choose to make, I want to note that Senator DeWine has talked with me about certain nominations that he supports. I invite all Senators, Republicans and Democrats, who have a strong interest in a particular nomination pending before this Committee to contact me. To the extent I can accommodate those Senators whose courts have pressing needs or who have other concerns, I will endeavor to do so. Those are important factors to me in determining the schedule of confirmation hearings.

In spite of unfair and unfounded criticism, I will endeavor as best I can to proceed with additional hearings and press ahead as best I can to have the Committee work to fulfill its role in the confirmation process.

Senator DeWine?

STATEMENT OF HON. MIKE DEWINE, A U.S. SENATOR FROM THE STATE OF OHIO

Senator DEWINE. Mr. Chairman, let me thank you first for holding this hearing. It is a pleasure to be here with two such really extremely well-qualified candidates. Let me congratulate both of you on your selection by the President. You have both distinguished yourselves with hard work and great skill and great intellect, and it is clear to me that you will be of great service to the citizens of this country upon confirmation. Of course, all the Senators who serve on the Judiciary Committee know Sharon, but before I say anything specific about her background, I want to relate just how strongly Senator Hatch feels about her, her intellect and her suitability for the bench.

Senator Hatch wanted very much, as Senator Leahy said, to be here today, but he is in Utah and simply could not find any way around his other obligations there in his home State. But he personally asked me to publicly convey to Chairman Leahy his sincere appreciation for scheduling this hearing. Mr. Chairman, we do appreciate that.

Senator Hatch also made a point of telling me just how much he admires and appreciates the great work that Sharon has done through many, many years. He has known her since 1989 and has worked with her on a variety of legislative battles, both big and small. They have worked together on labor issues and on judiciary matters in the minority, the majority, and now back again on the minority side once again. Through it all, Senator Hatch always has trusted her work, her judgment, her fairness. He told me that he was quite emotional about Sharon's nomination, certainly had mixed feelings about it, very happy for her, but also very sad to see her leave our committee.

As I said, everyone on the committee knows her great work and how hard she has worked for this committee, but they might not know much about her background, how hard she worked to get where she has been here in the Senate. Sharon was born in Massachusetts. She is the daughter of two refugees from Europe. Both of her parents survived incarceration in Hitler's concentration camps. They were taken there at such young ages that they were unable to complete high school because of the war. They were both devout Orthodox Jews. When Sharon was six years-old, the family moved to Hartford, Connecticut. Tragically, her father died of cancer in 1965, when Sharon was only 13. Sharon worked her way through high school and college as a waitress. Sharon earned her undergraduate degree from Cornell in 1973 and moved here to Washington because of her interest in government and in public policy. She began her government career that year, but that did not end her education. In fact, she went on to earn three additional advanced degrees—a J.D.; an MBA; and an LM in tax law—in the evenings.

Sharon's work experience is varied and impressive. She has spent 15 years in the executive branch in five different federal agencies, including the IRS and the GAO, which eventually led to her appointment as Acting Solicitor of the National Labor Relations

Board. She began her career on Capitol Hill in 1989 as chief labor counsel for the minority of the then–Labor and Human Resources Committee, where she handled labor, employment and pension legislation. In 1993, she moved to the Senate Judiciary Committee, where she has since served as both deputy chief counsel and minority and majority chief counsel. She was the first woman chief counsel for the Republicans on this committee. As the members of this committee know well, her wide experience on the committee ranges from immigration to religious liberty, to patent law and numerous other matters that cover the broad reach of our jurisdiction.

Sharon's proudest accomplishment, however, is being the mother of the two wonderful sons who we see in the audience today, Matthew, 14, and Jeffrey, 10. Jeffrey is a graduate of our local Senate day-care facility, and both children attend D.C. public schools. Matthew and Jeffrey are avid sports players and fans, just like their mother. Sharon, in fact, has served as the coach of Jeffrey's soccer team for six seasons. I know I speak for all of the Judiciary Committee members when I thank you, Sharon, for your service to this committee and congratulate you on your nomination to the federal circuit.

Terry Wooten also has made his career in public service, including service to this committee as minority chief counsel. His distinguished career began at the University of South Carolina, where he earned a bachelor of arts degree in 1976 and a law degree in 1980. His scholastic achievements there include being a magna cum laude graduate and a member of Phi Beta Kappa. From 1980 to 1982, the judge was an associate and partner in the law firm of Mann, Wooten, a two-person firm focusing on criminal defense and personal injury cases. From there, he became assistant solicitor in the Richland County Solicitor's Office in Columbia, South Carolina, where he handled hundreds of felony criminal cases. In 1986, Judge Wooten left that office and moved to Washington to serve as minority chief counsel for the Senate Judiciary Committee. In 1992, the judge returned to South Carolina and joined the U.S. Department of Justice as an Assistant U.S. Attorney for the District of South Carolina. There, he prosecuted white-collar offenders, drug offenders and violent offenders. He rose in the ranks to become deputy chief of the General Criminal Section and he also served as lead task force attorney of the Major Drug and Violent Crime Division. Since 1999, Judge Wooten has served as a U.S. magistrate judge in Florence, South Carolina, a position he was selected for by the judges of the Federal District Court in South Carolina.

Again, it is a great pleasure to welcome both of you to the committee and to this hearing today, and I look forward to this hearing and to working with Chairman Leahy and others to make sure the committee and the full Senate hold timely votes on your nominations.

Chairman LEAHY. Thank you, Senator DeWine. Again, I appreciate you coming back and joining us, and I know Senator Thurmond wishes to introduce Judge Wooten, and Congresswoman Norton, if you do not mind, we would go first to Senator Thurmond.

You wanted to introduce Terry Wooten. Go ahead, Senator.

PRESENTATION OF TERRY L. WOOTEN, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF SOUTH CAROLINA BY HON. STROM THURMOND, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Senator THURMOND. Mr. Chairman, I am very pleased that we are holding this hearing today on two of President Bush's fine nominees for the federal court. It is with great pleasure that I introduce to the committee one of the candidates, Judge Terry Wooten—would you stand up, Judge? Thank you—who I recommended to President Bush for the district court in South Carolina. Judge Wooten is well-qualified for this important position. He has served ably and diligently as a U.S. magistrate judge since 1999. Prior to that, he worked as an Assistant U.S. Attorney for seven years, where he was the lead task force attorney for major drug and violent crime prosecutions. Moreover, he has personal experience with this committee. He worked on the Judiciary Committee for about six years, four of which as minority chief counsel while I was ranking member. This provides him in-depth knowledge of the legislative process, which is important for judges to understand. In fact, both of our outstanding nominees today, Judge Wooten and Sharon Prost, have extensive legislative experience. Judge Wooten is a man of high character and integrity. I am confident he will make an excellent addition to the District Court.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you, and I think I could almost predict how the votes are going to go by both Senator DeWine and Senator Thurmond. Congresswoman Norton, I almost think we should give you an office over here. You seem to be having to spend so much time, but as I said last week when you were here, I do appreciate it. You do us a great honor in coming by, and I appreciate your thoughts. Please go ahead.

PRESENTATION OF SHARON PROST, NOMINEE TO BE CIRCUITY JUDGE FOR THE FEDERAL CIRCUIT BY HON. ELEANOR HOLMES NORTON, A DELEGATE IN CONGRESS FROM THE DISTRICT OF COLUMBIA

Delegate NORTON. Thank you very much, Mr. Chairman. It is a pleasure once again to appear in August before the hardest-working committee of the Senate. It is a particular pleasure to introduce Sharon Prost, a Washingtonian, but if I may say so, it is no cliche to say that this nominee needs no introduction to this committee or its staff. Sharon Prost has spent the better part of her legal career serving the Senate itself, and therefore the American people, in this very body and, indeed, most of it in this very committee. By all rights, I know Senator Hatch would be competing with me to introduce Ms. Prost, even though Ms. Prost has the good sense to live in the District of Columbia. But the fact is that she has served him, first as his minority chief labor counsel and then as the chief counsel to this committee, since 1993. So the rights really do belong to him, and I know that he feels deeply about this nomination.

However, Ms. Prost got her legal education and her MBA and her masters in tax law all here in the District of Columbia, all at night; her law degree at American University, her MBA and her masters in tax law at George Washington Law School. She has

lived here most of the last three years, is a member of the local bar. Her involvement in the life of the city is the kind we admire most, promoting and strengthening activities for children and the public schools of the District of Columbia, where her two boys attend. Sharon Prost has spent her entire career in the federal service. She is deeply familiar with the full panoply of federal law. She is particularly well-qualified, in my judgment, to serve as a judge on the Court of Appeals for the Federal Circuit. I am privileged to recommend her to you.

Chairman LEAHY. Well, thank you very much, Congresswoman Norton, and I appreciate what you have said and I thank you for coming by. I know that, unlike those of us who are in Washington and our constituents are not knocking on the door, you do not have that luxury, and I know you have other places you are supposed to be. But thank you very much for being with us.

Delegate NORTON. Thank you, Senator.

Chairman LEAHY. We will bring Ms. Prost up first, please. Before we begin this, before we swear you in, did you have any opening statement you wished to make?

STATEMENT OF SHARON PROST, OF WASHINGTON, D.C., NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE FEDERAL CIRCUIT

Ms. PROST. Just to thank you so much, Mr. Chairman, for this extraordinary act in scheduling this hearing during recess, and also to thank Senator DeWine, Senator Thurmond, and, of course, Senator Hatch, who has been my teacher and mentor for all of these many years. Thank you again, Mr. Chairman.

[The biographical information of Ms. Prost follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full Name (include any former names used.)**

Sharon Prost

2. **Address:**

Residence: Washington, DC

Office: Room 244
Senate Dirksen Office Building
Senate Judiciary Committee
Washington, DC 20510

3. **Date and Place of Birth:**

May 24, 1951 in Newburyport, Massachusetts.

4. **Marital Status:**

Divorced

5. **Education: List each college and law school you have attended, including dates of attendance, degree received, and dates degrees were granted:**

- Cornell University, Ithaca, NY - September 1969 - May 1973
  Degree: BS, May 1973
- George Washington University, Graduate School of Business Administration - September 1973 - May 1975
  Degree: MBA, May 1975
- American University, Washington College of Law - Sept. 1976 -Dec. 1979
  Degree: JD (evening program), December 1979
- George Washington University Law School (evening division)
  September 1982- May 1984
  Degree: LLM (tax law), May 1984

6. **Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, proprietor, partner, or employee since graduation from college.**

- December, 1973 - March, 1976; U.S. Civil Service Commission, Washington, D.C. (Currently Office of Personnel Management); Labor Relations Specialist.
- March, 1976 - January, 1980; U.S. General Accounting Office, Washington, D.C.;

Labor Relations Specialist/Auditor.

- January, 1980 - February, 1983; Federal Labor Relations Authority, Washington Regional Office; Field Attorney.
- February, 1983 - May, 1984; Department of Treasury, Office of the General Counsel, Internal Revenue Office; Attorney.
- May, 1984 - March, 1989; National Labor Relations Board, Washington D.C.; Assistant Solicitor, Associate Solicitor, Acting Solicitor.
- March, 1989 - January, 1993; U.S. Senate, Senate Committee on Labor and Human Resources; Chief Labor Counsel (Minority).
- January, 1993 - Present; U.S. Senate, Committee on the Judiciary; Minority Chief Counsel, Deputy Chief Counsel, Chief Counsel (1/7/01).

7. **Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.**

I have not served in the military.

8. **Honors and awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.**

N/A

9. **Bar Associations: List all bar associations, legal or judicial-related committees 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.**

Member of the District of Columbia Bar, 1980 - present. Member of Labor Law Section for several years.

10. **Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies.**

- Lafayette Elementary School Home School Association (HSA), Washington D.C.
- Deal Junior High School PTA, Washington, D.C.
- Jelleff Boys and Girls Club, Washington, DC.

Please list all other organizations to which you belong.

None

11. **Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any membership lapsed. Please explain the reason for any lapse in membership. Give the same information for administrative bodies which require special admission to practice.**

- Active member, District of Columbia Bar 1980 -present
- District of Columbia Superior Court
- District of Columbia Court of Appeals (Suspended: lapsed for non-payment of late fee on 10/31/2000. Reinstated 2/13/01.)

12. **Published writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there are press reports about the speech, and they are readily available to you, please supply them.**

N/A

13. **Health: What is the present state of your health? List the date of your last physical examination.**

Good. Last physical in 2001

14. **Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each court.**

I have not served as a judge.

15. **Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.**

N/A

16. **Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.**

N/A

17. <u>Legal Career</u>:

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

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

I did not serve as a law clerk.

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

I did not practice alone.

3. **the dates, names, addresses of law firms or offices, companies, governmental agencies with which you have been connected and the nature of your connection with each.**

Following my graduation from law school, I practiced law as a Field Attorney in the Washington Regional Office of the Federal Labor Relations Authority (currently located at 607 14th Street, NW, Washington DC) for approximately three years (January, 1980 - February, 1983). In that capacity, I represented the government in the investigation and litigation of unfair labor practices before an administrative law judge. The cases ranged from discharge and discrimination cases based on union activity to cases involving the refusal to bargain in good faith.

In February, 1983, I joined the Office of General Counsel, Department of the Treasury as an attorney for the Internal Revenue Service (currently located at 12th and Constitution Ave., Washington, DC 20002). I served as the legal advisor to the Internal Revenue Service in nationwide contract negotiations for its service centers and other locations and represented the IRS in proceedings before the Merit Systems Protection Board, the Federal Labor Relations Authority, and the U.S. District Court for the District of Columbia.

In May, 1984, I joined the National Labor Relations Board (currently located at Franklin Court Building, Suite 5530, 1099 14th Street Washington, D.C. 20570) as its Assistant Solicitor. During five years at the Board, I was promoted to Associate Solicitor and then to Acting Solicitor until March, 1989. In that capacity, I served as chief legal advisor to the five-member Board regarding compliance with applicable statutes, regulations, and executive orders. My responsibilities also included being the primary advisor to the Board on whether to authorize the General Counsel to petition for injunctive or contempt relief in federal court and/or whether to seek Supreme Court review of cases lost at the appellate level. I was also responsible for reviewing appellate briefs filed on behalf of the Board, and the processing of settlement agreements and petitions for rulemaking.

I began my service in the United States Senate in March, 1989 as chief labor counsel (minority) for the Senate Committee on Labor and Human Resources, now known as the HELP Committee (currently located at 428 Dirksen Senate Office Building, Washington, DC 20510) and served in that position until January, 1993. In that capacity, I was principal legal advisor and legislative strategist to the Committee's Ranking Member, Senator Orrin G. Hatch and to other Republican members of the Committee. My responsibilities included the drafting of legislation, speeches, floor statements, Senate Committee Reports, and Conference Reports. The legislative agenda that I worked on included numerous labor bills including amendments to the National Labor Relations Act; legislation regarding ERISA, the Americans with Disabilities Act, and the Civil Rights Act of 1991; child care legislation; the Older Workers Benefit Protection Act (amendments to the ADEA), and legislation to resolve nationwide rail strikes.

I joined the Senate Committee on the Judiciary (currently located at 224 Senate Dirksen Building, Washington, DC 20510) in January, 1993, where I served as chief counsel to the Minority until January, 1995. At that time, I became Deputy Chief Counsel to the Majority, and more recently Chief Counsel to the Committee. In those capacities, I have served as a primary legal advisor and legislative strategist to the Committee's Chairman, Senator Orrin Hatch, in the development of the Committee's legislative, executive, and oversight agenda. My responsibilities have included legislative drafting, hearings and investigations on Committee issues including: the judicial nominations process; intellectual property law; internet policy issues; property rights and regulatory reform; anti-trust law; immigration law; civil justice reform; crime and drug control policy (including the Violence Against Women Act); and oversight of the Executive and Judicial Branch.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed.

In the first decade of my legal career (1980-1989) I served in a number of different departments and agencies of the Executive Branch and represented the government in litigation and as a legal and policy advisor. In 1989, I joined the legislative branch and have served in lead staff positions on two major Senate Committees, Labor and Judiciary. In those capacities, I have been extensively involved in the drafting and passage of legislation within the jurisdiction of those committees, as well as in the examination and confirmation of numerous Executive Branch and judicial nominees.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

While serving in the Executive Branch, my client in most instances was the Government of the United States or the Department which I represented. In the Solicitor's office, my clients were the five Presidentially appointed members of the Board. My legal specialty while in the Executive Branch were labor and employment law.

As a staffer on two Senate Committees, my clients have been the Chairman or Ranking member of those committees as well as other committee members. While on the Senate Labor Committee, I specialized in labor and employment law as well as tax and pension law. On the Senate Judiciary Committee, I have specialized in patent and trademark law, criminal law, antitrust law, and immigration law.

c. 1. **Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.**

I only appeared in the Federal District Court of the District of Columbia representing the U.S. government in obtaining a Temporary Restraining Order against the strike of the Professional Air Traffic Controllers Association in 1981.

2. **What percentage of these appearances was in:**

(A)	**federal courts:**	**100%**
(B)	**state courts of record:**	**0%**
(C)	**other courts:**	**0%**

N/A

3. **What percentage of your litigation was:**

(A)	**civil:**	**100%**
(B)	**criminal:**	**0%**

4. **State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.**

N/A

5. **What percentage of these trials was:**

(A) jury;
(B) non-jury.

N/A

18. **<u>Litigation</u>: Describe the ten most significant litigated matters which you personally handled. 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. a. 1981
   b. U.S. v. PATCO. A Temporary Restraining Order to enjoin the strike by the Professional Air Traffic Controllers in Federal District Court for the District of Columbia..
   c. Co-counsel to Bruce Rosenstenstein, then Regional Attorney, Federal Labor Relations Authority, and Peter Robb, then Supervising Attorney

2. a. 1983-1984
   b. Served as Legal Counsel to the Internal Revenue Service in contract negotiations between the IRS Service Centers and the National Treasury Employees Union
   c. Richard Milelcic, Internal Revenue Service
      Address: 1111 Constitution Ave, NW
      Washington, DC 20224
      Phone: 202-622-5000

3. a. 1980-1982
   b. Served as the trial attorney in a number of unfair labor practice proceedings before administrative law judges of the Federal Labor Relation's Authority. These included litigating the unfair labor practice complaints on behalf of the U.S. government in representing the claims of labor organizations and individuals against their employers. Cases involved the Department of Defense (overseas teachers); the National Treasury Employees' Union, and the American Federation of Government Employees.
   c. Susan Shinkman, Supervisory Attorney, Federal Labor Relations Attorney and currently Assistant U.S. Attorney in Philadelphia, Pennsylvania
      Address: 615 Chestnut Street
      Suite 1250
      Philadelphia, PA 19106
      Phone: 215-861-8521

19. <u>Legal Activities</u>: **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 the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).**

As noted above, a major portion of my legal career has been spent as a lead staffer on two major committees of the Senate, including the Committee on the Judiciary. My most significant legal activities as a chief legal advisor and legislative strategist have included involvement in the review and confirmation of three Supreme Court Justices and numerous other federal court nominations. I have worked on all major legislation approved by the Judiciary Committee since 1995 including patent reform legislation, the Digital Millennium Copyright Act, religious liberty legislation, the Violence Against Women Act and the Immigration Reform Act of 1996. My work on legislation has included the drafting of legislative proposals, floor statements, committee reports, and conference reports.

Among the many intellectual property matters which I have overseen during my service on the committee, I would highlight three patent bills. I oversaw parts of the legislative process on these important patent matters, which included managing staff who were researching and drafting legislation, and organizing hearings where Senators could hear from experts and interested parties and ask questions. These patent issues involved especially long negotiation and debate, and intensive staff work, given their complexity.

Some of the important patent measures considered by the Committee included:

The American Inventors Protection Act. This legislation contains the most significant reforms to our nation's patent code in half a century and represents one of the most important high-tech reform measures to come before the Senate. The bill provides protections for inventors against fraud by invention promotion firms, creates annual savings for inventors of $30 million by reducing patent fees for only the second time in history, restores the pre-GATT guarantee of a 17-year term of patent protection for diligent patent applicants, protects American businesses who use innovative business methods under trade secret protection from being put out of business by later inventors, it provides patent owners a viable alternative to costly patent litigation, it improves the operations and efficiency of Patent and Trademark Office and provides inventors a greater say in the management or the PTO, and makes a number of other miscellaneous but important changes to patent law. The bill was also included in the omnibus budget package enacted in Nov. 1999, culminating four years of work in the Senate led by the Committee Chairman, Senator Orrin Hatch.

The Patent Fee Integrity and Innovation Protection Act. This bill was designed to help the Patent Trademark Office (PTO) to better serve American innovators and trademark owners by allowing the PTO to generate the fee revenue it needs to operate as a self-funded agency and to retain those fees for use in its patent and trademark operations, without being subject to fee diversions or new surcharges to subsidize unrelated federal programs. The bill was signed into law in August, 1999.

The Biotechnology Process Patent Act. This bill updated the Patent Act to eliminate barriers to the patenting of biotechnological processes, thus stimulating the development of important new biological products and processes. Significantly, this legislation protects U.S. biotechnology industries from unfair competition from domestic and foreign competitors who, in the past, successfully circumvented U.S. patent laws by utilizing unpatented processes on patented host cells overseas in order to obtain an unpatentable final product (e.g., insulin) that is later imported to the United States. This bill put an end to this practice by preventing the importation of unpatentable end products that are created through infringement of a patented biotechnological process. Under Senator Hatch's leadership, this legislation was passed by the Senate in the 102nd, 103rd, and 104th Congresses and finally signed into law on Nov. 1, 1995.

1. **List 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. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

   I have 27 years vested in the Civil Service Retirement Fund. I understand I will not be eligible to receive any benefits from that plan until and if I retire from the bench were I to be confirmed. I intend to leave all amounts accrued in that fund until retirement.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

   I shall be vigilant in my efforts to detect any conflicts or potential conflicts of interest that would require my disqualification under 28 U.S.C. section 455. Full compliance with that section, as well as other applicable codes of judicial conduct, is indispensable to maintaining public confidence in the impartiality of judicial decision making.

2. **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

3. **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, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)**

   See attached Financial Disclosure Report

4. **Please complete the attached financial net worth statement in detail (Add schedules as called for).**

   See attached Net Worth Statement

AO-10 (w)
Rev. 1/2000

FINANCIAL DISCLOSURE REPORT
Nomination Report

Report required by the Ethics in Government Act of 1978, as amended (5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting *(Last name, first, middle initial)* Frost, Sharon	**2. Court or Organization** US Ct of Appeals, Fed Circuit	**3. Date of Report** 05/21/2001
4. Title *(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)* Nominee - Circuit Judge	**5. Report Type (check type)** X Nomination, Date 05/21/2001 __ Initial __ Annual __ Final	**6. Reporting Period** 01/01/2000 to 04/30/2001
7. Chambers or Office Address 3275 Beech Street NW Washington, DC 20015	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.** **Reviewing Officer** _____ **Date** _____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.

I. POSITIONS *(Reporting individual only; see pp. 9-13 of Instructions.)*

	POSITION	NAME OF ORGANIZATION / ENTITY
[X]	NONE (No reportable positions.)	
1		
2		
3		

II. AGREEMENTS *(Reporting individual only; see pp.14-16 of Instructions.)*

	DATE	PARTIES AND TERMS
[X]	NONE (No reportable agreements.)	
1		
2		
3		

III. NON-INVESTMENT INCOME *(Reporting individual and spouse; see pp. 17-24 of Instructions.)*

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
[X]	NONE (No reportable non-investment income.)		
1			
2			
3			
4			

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Prost, Sharon	Date of Report 05/21/2001

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)

☐ NONE (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1	Exempt	
2		
3		
4		
5		
6		
7		

V. GIFTS

(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)

☐ NONE (No such reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1	Exempt		
2			
3			

VI. LIABILITIES

(Includes those of spouse and dependent children. See pp 33-35 of Instructions.)

☐ NONE (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE*
1	First Union Mortgage Corporation - PO Box 900001 1100 Corporate Center Drive, Raleigh, NC 27607	1774 East West Highway Silver Spring, MD 20910 Mortgage on Rental Property Part VII	K
2			
3			
4			
5			
6			

* VAL CODES: J=$15,000 or less K=$15,001-$50,000 L=$50,001 to $100,000 M=$100,001-$250,000 N=$250,001-$500,000
O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Prost, Sharon

Date of Report: 05/21/2001

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions

(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
[ ] NONE (No reportable income,assets, or transactions.)									
1 Municipal Bonds (110,000) Chicago, IL Class RFDG	A	Interest	L	T	Exempt				
2 Municipal Bond (120,000) Oklahoma City, MIA WTR	A	Interest	L	T	Exempt				
3 Merrill Lynch Fundamental Growth Mutual Fund	A	Interest	L	T	Exempt				
4 Stock: May Dept. Store (75 Shares)	A	Dividend	J	T	Exempt				
5 Stock: Payless Shoes (8 shares)	A	Dividend	J	T	Exempt				
6 Stock: AOL (50 Shares)	A	Dividend	J	T	Exempt				
7 Stock: CISCO (80 Shares)	A	Dividend	J	T	Exempt				
8 Stock: DELL (125 Shares)	A	Dividend	J	T	Exempt				
9 Stock: General Electric (150 Shares)	A	Dividend	J	T	Exempt				
10 Stock: IDT Corp (35 Shares)	A	Dividend	J	T	Exempt				
11 Stock: INTEL (60 Shares)	A	Dividend	J	T	Exempt				
12 Stock: Pioneer II Inc. (1,163 Shares)	B	Interest	K	T	Exempt				
13 Stock: Small Cap World Fund (123 Shares)	A	Dividend	J	T	Exempt				
14 Stock: Sun Microsystems (160 Shares)	A	Dividend	J	T	Exempt				
15 Stock: Valence Tech Inc. (100 Shares)	A	Dividend	J	T	Exempt				
16 Stock: Verizon Comm. (218 Shares)	A	Dividend	J	T	Exempt				
17 Stock: Washington Gas (250 Shares)	A	Dividend	J	T	Exempt				

1 Inc/Gain Codes: A=$1,000 or less; B=$1,001-$2,500; C=$2,501-$5,000; D=$5,001-$15,000; E=$15,001-$50,000
(Col. B1, D4) F=$50,001-$100,000; G=$100,001-$1,000,000; H1=$1,000,001-$5,000,000; H2=$5,000,001 or more

Val Codes: J=$15,000 or less; K=$15,001-$50,000; L=$50,001-$100,000; M=$100,001-$250,000; N=$250,001-$500,000
(Col. C1, D3) O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000; P3=$25,000,001-$50,000,000; P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash/Market
(Col. C2) U=Book Value; V=Other; W=Estimated

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Frost, Sharon	05/21/2001

VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions.)									
18 Stock: WorldComm (372 Shares)	A	Dividend	J	T	Exempt				
19 Rental Property 1774 East West Highway Silver Spring, MD	D	Rent	L	W	Exempt				
20									
21									
22									
23									
24									
25									
26									
27									
28									
29									
30									
31									
32									
33									
34									

1 Inc/Gain Codes: (Col. B1, D4) A=$1,000 or less; B=$1,001-$2,500; C=$2,501-$5,000; D=$5,001-$15,000; E=$15,001-$50,000; F=$50,001-$100,000; G=$100,001-$1,000,000; H1=$1,000,001-$5,000,000; H2=$5,000,001 or more

2 Val Codes: (Col. C1, D3) J=$15,000 or less; K=$15,001-$50,000; L=$50,001-$100,000; M=$100,001-$250,000; N=$250,001-$500,000; O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000; P3=$25,000,001-$50,000,000; P4=$50,000,001 or more

3 Val Mth Codes: (Col. C2) Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash/Market; U=Book Value; V=Other; W=Estimated

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Prost, Sharon	Date of Report 05/21/2001

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Prost, Sharon	Date of Report 05/21/2001

IX. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature Sharon Prost Date 5-21-01

Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
One Columbus Circle, N.E.
Suite 2-301
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement whtich itemizes in detail all assets (including bank accounts, realestate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks	$59,267			Notes payable to banks – secured			
U.S. Government securities – add schedule				Notes payable to banks – unsecured			
Listed securities – add schedule	$291,011			Notes payable to relatives			
Unlisted securities – add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due	$4,000		
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid tax and interest			
Doubtful				Real estate mortgages payable – add schedule	$223,892		
Real estate owned – add schedule	$286,500			Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts – itemize:			
Autos and other personal property	$2,000						
Cash value – life insurance							
Other assets – itemize:							
Retirement / IRA Accounts	$98,616						
				Total liabilities	$227,892		
				Net Worth	$509,502		
Total Assets	$737,394			Total liabilities and net worth	$737,394		
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor	$0			Are any assets pledged? (Add schedule)	No		
On leases or contracts	$0			Are you defendant in any suits or legal actions?	No		
Legal Claims	$0			Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax	$0						
Other special debt	$0						

SUPPLEMENT TO FINANCIAL WORTH STATEMENT

1. Cash on Hand
   a. Money market account - Senate Federal Credit Union - $56,700
   b. Money market account - Merrill Lynch - $1,067
   c. Checking account - Senate Federal Credit Union (Approximate balance) $1,500

   Total $59,267

2. LISTED SECURITIES - Itemize -Grand total of Equities, Bonds, and Mutual funds $291,011

   Municipal Bonds - $155,726
   - Quantity 110,000 Chicago Ill, Class-RFDG
   - Quantity 120,000 Oklahoma City MIA WTR SWR RV SRC

   Mutual funds - $62,963
   - Merrill Lynch - ML Fundamental Growth D

   EQUITIES (estimated values as of May 2, 2001)

- May Dept Store (75 shares)	$2,418
- Payless (8)	$376
- AOL (50)	$2,000
- Cisco (80)	$1,265
- DELL (125)	$2,909
- General Electric (150)	$6,300
- IDT Corp (35)	$708
- INTEL (60)	$1,578
- Pioneer II Inc (1,163)	$24,599
- Smallcap World Fd Inc (123)	$2,795
- Sun Microsystems (160)	$2,459
- Valence Tech Inc (100)	$456
- Verizon Comm. (218)	$10,708
- Washington Gas (250)	$6,800
- Worldcomm (372)	$6,951
Total Stock	$72,322

3. OTHER ASSETS Itemize

Retirement

- Thrift Savings Plan	$86,000
- IRA's	
Roth 1998 (CD)	$2,370
Roth 1999 (CD)	$2,133
Roth 2000 (CD)	$2,060
CD - Allfirst	$6,113

TOTAL RETIREMENT OTHER THAN CSRA- $98,616

4. REAL ESTATE - ASSETS AND MORTGAGE LIABILITIES

A. Personal Residence (primary residence - Joint ownership with former spouse)
Mortgage held by: HSBC Mortgage Corporation (USA)
PO Box 4552 Buffalo
New York 14240-8851
Liability (mortgage) $150,655 Mortgage payable
FMV $315,000 (60 percent - 189,000)

B. Rental Property (purchased in 1977)
Silver Spring, MD
Mortgage held by: First Union Mortgage Corporation
PO Box 900001
1100 Corporate Center Drive
Raleigh, NC 27607
Liability $19,237 Mortgage payable
FMV $65,000

C. Maternal Family Residence [Joint ownership with Ester Prost (mother) who resides there]
Silver Spring, MD
Mortgage held by: HSBC Mortgage Corporation (USA)
PO Box 4552 Buffalo
New York 14240-8851
Liability $54,000 Mortgage payable
FMV $65,000 (50 percent - $32,500)

Total Mortgage liabilities - $223,892
Total fair market value of property shares - $286,500

5. * Life Insurance . I am in the process of ascertaining what, if any, face value exists on three life insurance polies I own. Information will be provided promptly.

5. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

My only role was in July 1999, when on my own time, and at my own expense, I traveled to Ames, Iowa to volunteer, for several days, to accompany Senator Orrin Hatch and his wife at several events, such as the Iowa State Fair.

III. GENERAL (PUBLIC)

1. **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.**

   I have served as a room parent at Lafayette Elementary School in the District of Columbia for school years 1994-1995 and 1995-1996.

   I have served as a helper in Sunday school classes at Temple Sinai Synagogue in Washington D.C. in 1995-1996.

   I served as soccer coach for Stoddard Soccer League for six seasons beginning in 1994.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex or religion. Do you currently belong, or have you belonged, to any organization which discriminates – through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?**

   No.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination?**

   N/A

   Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

   In February, 2001, I met with several representatives of the White House Counsel's Office, and in April, 2001, I met with representatives of the Department of Justice. I also completed a variety of forms and documents.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.**

   No.

5. **Please discuss your views on the following criticism involving "judicial activism."**

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of the other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. **A tendency by the judiciary toward problem-solution rather than grievance-resolution;**

b. **A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;**

c. **A tendency by the judiciary to impose broad, affirmative duties upon governments and society;**

d. **A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and**

e. **A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.**

Our federal system of justice is based on the Constitution and federal statutes. In our system of government each of the three branches has a clear and distinct role. The role of the judiciary is to interpret and apply the law, whether it is the Constitution or a statute. In exercising judicial discretion, the courts should be mindful of the limited judicial role and avoid unnecessarily broad pronouncements in written opinions and should avoid playing an unnecessary role in the supervision of continuing government operations.

Clearly, a judge is constrained by certain hallmarks of judicial decision making, including: (1) the judge must limit his or her decision to the grievance presented; (2) the judge must apply the appropriate law to the facts of the case, and (3) he or she must justify a decision, and any judicial remedy, consistent with the doctrine of stare decisis.

Chairman LEAHY. So that someday, in what I call the "Prost Library," that your family will be able to see this, did you want to introduce for the record—it has already been done by both Senator DeWine and myself—your two sons and anybody else who is here with you?

Ms. PROST. Thank you, Mr. Chairman. Yes, the joys of my life—I would like to introduce Matthew, my 14-year-old, who is, as Congresswoman Norton stated, an honor student at Deal Junior High School, and my youngest, Jeffrey, who is at Lafayette Elementary School. You were correct, Mr. Chairman, that I am owing them big-time for not giving them a day of school off and your having scheduled the hearing during this summer break.

Chairman LEAHY. Well, probably the day of the swearing in, assuming all goes as one might expect, they will get a chance to come down. It is a nice place. Would you please stand to be sworn? Do you swear that the testimony you will give before this committee will be the whole truth and nothing but the truth, so help you, God?

Mr. PROST. Yes.

Chairman LEAHY. First off, I should note, as just a personal note, in the years that I have been here, both in the minority and the majority, I have always enjoyed working with you. I have respected very much both your legal ability, but also your sense of what the Senate is, and that means a lot. Going, from the legislative side to the judicial side requires the obvious changes from a legislative to a judicial life. Let me ask you the question that you have heard so many times. How strongly should judges bind themselves to the doctrine of stare decisis and does that adherence to stare decisis change from court to court?

Ms. PROST. Thank you, Mr. Chairman. As you well know, the rule of law has as its core the doctrine of stare decisis. It is a doctrine that judges are bound by and ought to be bound by. It provides the necessary stability and order to our system of justice and it is absolutely pivotal.

Chairman LEAHY. You obviously have the flexibility of being on the Court of Appeals, and the district courts are looking at something that might come within your jurisdiction, of course—are bound by the Federal Circuit Court of Appeals. In that court, though, you have some flexibility if you have a case of first impression, which still happens, especially in the high-tech area. But if you have a case where it comes down on all fours from something from the Supreme Court, you have no question that the Supreme Court, being the higher court, you are going to have to follow their decisions; is that correct?

Ms. PROST. Absolutely, Mr. Chairman.

Chairman LEAHY. Let me ask you this. We have all looked at a lot of Supreme Court decisions since you have come out of law school. I am sure there are some you have seen, like I have, where you say you really disagree with that ruling. It is the Supreme Court. I disagree with it. Suppose you had a case where you personally disagree with the decision of the Supreme Court. Would you have any difficulty, though, as a Court of Appeals judge, in following that decision?

Ms. PROST. No, Mr. Chairman. I understand that my personal views are not relevant and I would follow the Supreme Court's precedent.

Chairman LEAHY. Do you have any difficulty, at least philosophically, understanding that as the Court of Appeals, especially the very specialized area as that the Federal Circuit Court of Appeals is, that there may be cases where you are going to have to establish a precedent, where your decisions, whether it is done with a three-judge panel or done *en banc*, your decisions may up being precedental in themselves. Does that create any problem for you?

Ms. PROST. No, Mr. Chairman. If that is the necessary course to take, I would, of course, look at the statutes. This Congress has been very involved in the patent law area and I would go into the statutes, as well as to the precedents of the Supreme Court and the precedent of the circuit.

Chairman LEAHY. Well, I am asking about that, too. You look at what we have been here—and a lot of what goes before that court really does ultimately fall on the interpretation of statutes that we have passed, and some you may find even that you helped write. But your experience has been as a government lawyer; a lot of it has been here in the Senate—as I have said, and as Senator DeWine and certainly Senator Hatch have said, very valuable experience, very helpful experience to the Senate. There are those who might say you have had that experience here and not out as a litigator for a law firm or whatever else. Do you feel that this experience, the base of your experience, hampers you or helps you in going before that court?

Ms. PROST. I think my experience helps me tremendously. It has been an honor to serve in the executive branch and it has been an honor to serve in the Senate. I have had the opportunity to understand the legislative process and to work through the legislative process. I think that gives me a special appreciation, in fact, for the separation of powers and for the judicial branch and what its role is in contrast to the legislative branch.

Chairman LEAHY. Thank you.

Senator DeWine?

Senator DEWINE. If I could just follow up on that, you are in a unique position. You spent about 15 years in the executive branch now, about 15 years in the legislative, and if you are confirmed, you will spend 15 years, maybe a lot more than that, in our third branch of government, the judicial branch. Let me ask you this. As you leave one branch and get ready to go to another branch, how do you think the system of checks and balances that have been established by our Constitution is really functioning today? Is it working pretty well, or not?

Ms. PROST. I think it works extraordinarily well. I think that there is an understanding—this body understands, certainly, its role as a legislative body, and I think the judicial branch understands its roles, and I hope to, if I am fortunate enough to be confirmed, to adhere to the role of the judiciary under the separation of powers doctrine.

Senator DEWINE. What is it about this position that from a personal and a professional point of view appeals to you? It is going

to be different. In a sense, you have been an advocate in the past. Why do you want to do this?

Ms. PROST. Well, Senator DeWine—

Senator DEWINE. Lifetime employment is good, but besides that, what appeals to you about this?

Ms. PROST. Well, you mentioned in your opening statement a little about my background, and I think that despite my parents' lack of education, based on the circumstances of their life, they taught me every day of my life the love of country and the love of God and the love of family. This country means a great deal to me because of their experiences, and that is why it has been my commitment and my goal to serve the public and to work towards the administration of justice, and while I have had a wonderful experience in the executive branch and certainly in the legislative branch, I think being in the judicial branch gives me a wonderfully unique opportunity to serve the public and the administration of justice, which has been one of my long-term, life-long goals.

Senator DEWINE. Thank you. Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

Senator Thurmond, did you have any questions?

Senator THURMOND. I do not have any questions of Ms. Prost, but I think she will make an excellent addition to the Federal Circuit.

Chairman LEAHY. Ms. Prost, in answer to one of your questions, one of the questions by Senator DeWine, you spoke of the love of country that your parents instilled in you, and after all they went through in coming to this country. I am sure they could never have imagined that you would be where you are now, but what a sense of pride that would have if they could see you now. I think of my maternal grandparents. They came to this country not speaking any English, and yet the love of country was obvious to those around them. I did not know my maternal grandparents, who died before my parents met. My father, who had to go to work as a teenager to support the rest of the family after my grandfather died as a stone cutter, shared the sense of the love of country that began with my grandparents.

I know you have instilled this in your two sons, but we sometimes forget, those of us who are born here take it for granted, may have everything handed to us, and you certainly have not. We take this country almost for granted. You are a demonstration of those who do not, and I applaud your sense of this country, and we will, of course, keep the record open until the end of the week, but I intend to have your nomination before the committee on our first exec. Thank you very much.

Ms. PROST. Thank you, Mr. Chairman. Thank you.

Chairman LEAHY. Now, Judge Wooten, if you might join us, and if you would—I know earlier you introduced me to some who were with you, and also for the Wooten legal libraries, if you can introduce who is here.

I should also mention, Ms. Prost, do not feel you and your sons have to stay. They have been so good, I do not want to impose further on them. If you want to leave, please feel free, because the school doors are beginning to open.

Ms. PROST. Thank you.

Chairman LEAHY. Mr. Wooten?

Judge WOOTEN. Thank you, Senator. Behind me, on the second row, I have my father, John Wooten; my mother, Lisa Wooten; my friend, Susan Crawford; and my nephew, Will Wooten.

Chairman LEAHY. Well, we are glad to have all of you here, and before I swear you in, do you have an opening statement?

STATEMENT OF TERRY L. WOOTEN, OF SOUTH CAROLINA, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF SOUTH CAROLINA

Judge WOOTEN. Senator, let me first say that I am most appreciative that you would hold this recess hearing. I certainly know that is an unusual procedure. I would also thank you very much for having me here today, because there is no guarantee as to who gets here, and I certainly do appreciate that very much. Let me also thank Senator Thurmond for his kind remarks. Senator Thurmond gave me the opportunity to work for this committee for some six years. I would say it was a most rewarding experience and I appreciate Senator Thurmond for giving me that opportunity. I also want to thank Senator DeWine for being here, for his very kind remarks that he made on my behalf.

[The biographical information of Judge Wooten follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name (include any former names used.)**

   Terry Lynn Wooten

2. **Address: List current place of residence and office address(es).**

   Office address: McMillan Federal Building
   401 West Evans Street
   Florence, SC 29501

   Home address: Florence, SC 29501

3. **Date and place of birth.**

   Louisville, Kentucky
   January 20, 1954

4. **Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

   Divorced.

5. **Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**

   University of South Carolina 1972-1976 Bachelor of Arts (May 1976)

   University of South Carolina 1977-1980 Juris Doctorate (May 1980)

6. **Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

   United States Magistrate Judge 1999-present

   United States Attorney's Office for the District of South Carolina.
   Assistant United States Attorney 1992-1999

U.S. Senate Judiciary Committee	Chief Counsel 1986-1991 (minority)
Richland County Mann and Wooten	Assistant Solicitor 1982-1986 Associate/Partner 1980-82
University of South Carolina	Student Advocate 1979-1980
Cheese Shop of Vail, Colorado	Store Clerk May 1979-August 1979
Rhett Eleazer, Esquire	Law Clerk 1978-1979
James Q. Seigler, Esquire	Clerk 1976-1977
University of South Carolina	Hall Advisor September 1975-May 1976

7. **Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.**

No military service.

8. **Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.**

a) Phi Beta Kappa Honor Society
b) Phi Eta Sigma Freshman Honor Society
c) Magna Cum Laude Honor Graduate
d) President's Honor Roll
e) Dean's List Honor Roll

9. **Bar Associations: List all bar associations, legal or judicial-related committees 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.**

U.S. Supreme Court Bar	Date of Admission: May 1991
S.C. Bar	Date of Admission: November 1980
Richland County Bar	Date of Admission: November 1980
Florence County Bar	Date of Admission: June 1999

(Approximate dates)

I have held no offices in these bar associations.

10. **<u>Other Memberships</u>: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.**

McLeod Health and Fitness Center

11. **<u>Court Admission</u>: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.**

U.S. Supreme Court	Date of Admission: May 1991
U.S. District Court	Date of Admission: January 1992
U. S. Fourth Circuit Court of Appeals	Date of Admission: January 1992
S.C. Courts	Date of Admission: November 1980 (Approximate dates)

12. **<u>Published Writings</u>: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.**

1. *Law Enforcement Coordinating Committee Today* publication-article entitled "All For One" drug investigation as an example of local, state, and federal cooperation (Vol. 3 no. 1-Spring 1997).

2. Handouts for training-Handouts located are attached. These handouts were prepared for use when remarks were made in connection with training for law enforcement, defense attorneys, or new assistant U.S. attorneys. While relevant criminal cases were discussed, these training sessions were not speeches "on issues involving constitutional law or legal policy."

13. **Health: What is the present state of your health? List the date of your last physical examination.**

Excellent. My last physical examination was in April 2001

14. **Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.**

I have served as a United States magistrate judge since June 1999. I was chosen for this position by the judges of the federal District Court in South Carolina. Federal magistrate judges handle preliminary criminal matters in felony cases related to bond and detention and certain pretrial matters when directed to do so by a district judge. Misdemeanor criminal matters are assigned to federal magistrate judges for plea or trial. Federal magistrate judges handle pretrial civil matters in three general areas. Those areas are employment/labor law litigation, social security appeals, and pro se and prisoner litigation. Federal magistrate judges rule on the pretrial motions in these cases and prepare reports and recommendations for district judges on dispositive motions. Federal magistrate judges also handle pretrial motions in a range of other cases when directed to do so by a district judge. Federal magistrate judges also handle civil trials when parties consent to a trial before a magistrate judge.

15. **Citations: If you are or have been a Judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.**

QUESTION 15(1)
COPIES ATTACHED

1. Birt v. State of South Carolina, et. al.
Case number 4:99-3725-22BF

2. State v. McWee
Case number 4:00-3865-20BF

3. Atkinson v. Catoe, et. al.
Case number 4:99-3926-23BF

4. Ellison v. Catoe, et. al
Case number 4:99-4222-20BF

5. Nance v. Dove and the United States
Case number 4:00-3371-20BF

6. Rogers v. Abraham, et. al.
Case number 4:99-3349-10BF

7. Cassidy v. Rollerbearing Inc.
Case number 4:99-3976-23BF

8. McKissick v. J.C. Bradford Co.
Case number 4:00-0512-23BF

9. Gause v. Director of South Carolina Department of Corrections, et. al.
Case number 4:99-0334-23BF

10. Thomason v. State of South Carolina
Case number 4:99-2989-06BF

QUESTION 15(2)

As noted, I currently serve as a United States magistrate judge. Magistrate judges prepare reports and recommendations in civil cases that are submitted to district judges. These reports and recommendations are prepared when a dispositive motion (motion to dismiss, motion for summary judgment) is filed in a case. A District Court is not bound by the recommendation and makes a de novo determination regarding the dispositive motion. There is no standard that applies requiring deference to a magistrate judge's recommendation.

Since becoming a federal magistrate judge in June 1999, I have filed approximately 500 reports and recommendations. While I am not certain that failure to follow a recommendation is a reversal of a ruling, out of an abundance of caution I will summarize the cases in which my

recommendations were not followed:

1. Emma Wright v. Kwik Fill
Case number 4:99-3558-12BF

Plaintiff was employee of Kwik Fill, Inc. Kwik Fill operates convenience stores in South Carolina. She filed a lawsuit alleging racial discrimination and retaliation for pursuing a discrimination claim. The recommendation was that summary judgment be granted in favor of the defendant on the racial discrimination claim. The District Court agreed. I also recommended that her retaliation claim survive summary judgment. The District Court chose to grant summary judgment in favor of the defendant and dismiss the retaliation claim.

2. Estridge v. Willie Weldon, et. al.
Case number 4:98-2754-18BF

Estridge was an inmate in the state prison system. He alleged he was the victim of excessive force by prison guards. The recommendation was summary judgment in favor of the defendants. The District Court agreed with my recommendation. Without expressing any opinion as to the merits of the claim, the Fourth Circuit (unpublished opinion 232 F.3d 887) reversed in part finding that genuine issues of material fact existed in regards to the use of excessive force by some of the defendants.

3. Vann v. AVX Corporation
Case number 4:98-3481-24BF

The plaintiff filed a Title VII discrimination claim against his employer alleging he was denied a promotion and terminated based on his race and retaliated against for filing a discrimination charge. The report and recommendation concluded that (i) the plaintiff did not perform his job satisfactorily nor met the legitimate expectations of his employer, and (ii) that the plaintiff could not establish the alleged protected activity of filing a charge was causally connected to his termination. The District Court chose to follow the recommendation in part, concluding that the motion for summary judgment was appropriate on the harassment claim

and the discriminatory failure to promote claim. The District Court chose to deny summary judgment on the discriminatory and retaliatory discharge claims.

4. McAbee v. Apfel, Commissioner of Social Security
Case number 4:99-1508-20BF

This was a social security disability case. The claimant had been denied disability coverage by the administrative law judge. The recommendation was a remand to the administrative law judge so that he could consider new medical evidence favorable to the plaintiff. The plaintiff could not afford to pay for the cost of the medical treatment that generated the new reports prior to the hearing before the Administrative Law Judge (ALJ). The District Court did not accept the recommendation, finding that the plaintiff did not show good cause for failing to incorporate the evidence when the case was on appeal, even though the ALJ did not consider it.

5. Charlie Lee Hicks v. William Catoe, et. al.
Case number 4:99-2471-23BF

The plaintiff was an inmate in state custody. He filed a lawsuit alleging improper treatment for a medical condition. The plaintiff received extensive medical treatments. He was told a heart transplant was necessary. The state prison system was unable to provide a heart transplant and at one point placed him in a cell with a smoker. The recommendation was summary judgment in favor of the defendants as substantive medical treatment was provided for the defendant and because the plaintiff only raised the smoking issue generally in his lawsuit. The District Court agreed with my recommendation in part and dismissed the Warden, the State of South Carolina, and one doctor from the lawsuit. A prison employee and a second doctor had certain claims dismissed. The District Court did allow claims to go forward against the second doctor and the prison employee based on exposure to second hand smoke and the lack of effort by the doctor in trying to get a heart transplant for the plaintiff prisoner.

6. Bentley v. Apfel, Commissioner of Social Security
Case number 4:98-2704-22BF

The plaintiff had been found totally disabled by the Social Security Administration. Based on one doctor's determination that the plaintiff was no longer disabled, the Social Security Administration stopped disability payments. The report and recommendation concluded the one doctor's report was insufficient to stop the payments. The District Court concluded that it was sufficient to find the plaintiff was no longer disabled.

7. Donnie H. Allen v. Apfel, Commissioner of Social Security
Case number 4:98-2786-23BF

The plaintiff had a shoulder injury. The Administrative Law Judge for Social Security determined that the shoulder injury was not sufficient to make a finding of total disability. The report and recommendation concluded there was sufficient evidence to support the decision that the claimant was not disabled. The District Court found there was sufficient evidence to make a finding of total disability.

8. Gasque v. Henderson
Case number 4:98-3240-12BF

A plaintiff filed a Title VII discrimination claim and a retaliation claim against the U.S. Postal Service. The recommendation was that summary judgment be granted in favor of the U.S. Postal Service on both claims. The District Court agreed that summary judgment was appropriate on the discrimination claim, but found that it was premature to rule on the retaliation claims until the defendants moved for summary judgment on that specific claim. Ultimately, the District Court granted summary judgment in favor of the defendants on the retaliation claim.

9. Smith v. City of Loris and Chief Russell
Case number 4:99-3754-23BF

The plaintiff filed a lawsuit alleging racial harassment and hostile working environment. The report and recommendation recommended summary judgment in favor of the defendants. The District Court agreed that all claims against the city of Loris should be dismissed and that the discrimination claim against Russell should be dismissed. The District Court allowed the plaintiff to proceed on the hostile working environment claim

against defendant Russell.

QUESTION 15(3)

This question asks for "significant opinions on federal or state constitutional issues." As noted, federal magistrate judges handle prisoner litigation. This litigation involves lawsuits filed by state inmates primarily alleging violation of their rights under Title 42, United States Code, Section 1983. Many of these lawsuits raise constitutional claims related to excessive force, cruel and unusual punishment, right to counsel, right to practice religion, and right to medical care. While these reports discuss constitutional claims, they are not significant in regards to constitutional issues. These reports and recommendations are not published and are prepared to assist district judges in resolving the claims in a case.

Magistrate judges also prepare reports and recommendation in death penalty cases for district judges. These reports do discuss numerous claims that raise constitutional questions in death penalty prosecutions. These reports and recommendations are for the benefit of the District Court and are not published. I have prepared one report and recommendation in a death penalty case. While constitutional issues are discussed, again, they are not "significant" interpretations of constitutional law.

16. <u>Public Office</u>: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None.

17. <u>Legal Career</u>:

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

1. 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;

Have not served as a clerk to a judge.

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

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

My law practice since graduation from law school is as follows:

Mann and Wooten, attorneys-at-law, 1527 Richland Street Columbia, South Carolina 29201: Associate/Partner 1980-82
This law practice was a two-man firm focusing on criminal defense and personal injury cases.

Richland County, State of South Carolina. Richland County Solicitor's Officer 1701, Main Street Columbia, South Carolina 29201: Assistant Solicitor 1982-1986
This position involved the prosecution of felony offenders at the local level. A solicitor's office is synonymous with a district attorney's office.

United States Senate Judiciary Committee, 225 Dirksen Senate Office Building Washington D.C. 20510: Minority Chief Counsel 1986-1991
This position involved handling federal legislation and nominations.

United States Attorney's Office, 1441 Main Street suite 500 Columbia, South Carolina 29201: Asst. U.S. Attorney 1992-1999
This position involved prosecution of white collar offenders, drug offenders, and violent offenders who violated federal law.

b. 1. What has been the general character of your law practice dividing it into periods with dates if its character has changed over the years?

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

As noted, I currently serve as a United States magistrate judge for the District of South Carolina.

I previously, served from 1992-1999, as an assistant United States Attorney with the U.S. Department of Justice. I was assigned to the major drug and violent crime section of the United States Attorney's Office. I was head of this division, serving as lead task force attorney for both major drug and violent crime prosecutions. This section prosecuted violations of federal drug and violent crime statutes. My primary responsibility was to supervise assistants and support staff assigned to this section and to ensure that major drug and violent crime defendants are appropriately prosecuted. I ensured that the policies of the U.S. Attorney's Office and the U.S. Department of Justice were implemented and followed. I supervised approximately 12 attorneys and 12 support staff employees. In addition to prosecutorial and trial responsibilities, I assisted lesser experienced assistant U.S. Attorneys in the trial of major drug and violent crime defendants. The supervisory responsibilities required that I review and approve plea agreements and indictments, motions for downward departure, and all motions to dismiss. I also provided advice to assistants in regard to a wide range of matters such as legal questions, trial strategies, and indictment issues. Additionally, I conducted case reviews with assistants.

As well, I was the chief liaison between the relevant federal investigative agencies for drug and violent crime cases including the FBI, DEA, ATF, IRS, Customs, and the U.S. Marshal's Service. I was also the liaison with the Southeast Regional Organized Crime and Drug Enforcement Task Force (OCDETF) Division in Atlanta, Georgia. I reviewed and certified all major drug investigations submitted to Atlanta for approval.

The OCDETF section and violent crime section pursued civil and criminal forfeiture, especially in major drug cases. I ensured that these actions were appropriately pursued. I also reviewed death penalty protocol memoranda which were sent to the Department of Justice by the U.S. Attorney.

Prior to serving as lead task force attorney, I served in the general criminal division with the U.S. Attorney's Office. I primarily handled white collar crime. I prosecuted a number of cases ranging from public corruption and insurance fraud to murder-for-hire. While serving in the general criminal division, I was appointed to the position of Deputy Chief of the General Criminal Section. That supervisory position required that I implement certain office guidelines and U.S. Department of Justice policy. In addition to trying my own cases, I also assisted less experienced assistant U.S. Attorneys in the trial of cases. Additionally, I served on an appellate review committee. This committee reviewed and approved all briefs prepared by assistants before filing in the Fourth Circuit Court of Appeals. While serving as Deputy Chief of the Criminal Division, I carried a full caseload.

This question also asks "what has been the general character of your law practice . . . if its character has changed over the years." Prior to service with the U.S. Attorney's Office, I was counsel to the United States Senate Judiciary Committee in Washington, D.C., from 1986-1991. I served as Minority Chief Counsel to the Senate Judiciary Committee for four years. My primary responsibilities were to consult with committee members and staff regarding Judiciary Committee matters related to major federal civil and criminal legislation, federal judicial nominations, and coordination of hearings on legislation and nominations. I managed a staff of approximately 15 to 20 attorneys and support staff. This position required long hours and substantial judgment in handling a number of different, difficult matters, both civil and criminal. This position also required excellent writing skills. I wrote and reviewed numerous legislative reports and summaries regarding legislative proposals. The position also required being even-tempered in dealing with a wide range of personalities and individual approaches to difficult tasks. I worked on complicated proposals and issues and applied reasoned judgment to reach a fair result.

From 1982-1986, I served as an assistant solicitor in the Richland County Solicitor's Office in Columbia, South Carolina. As an assistant, I handled hundreds of cases including murders, criminal sexual conduct, robberies, drug offenses, burglaries, DUI and felony DUI, forgeries, and many other offenses

prosecuted at the local level.

Prior to serving as an assistant solicitor, I was in the private practice of law from 1980-1982. That practice was primarily a civil trial practice focusing on personal injury cases, worker's compensation, domestic relations, business incorporation, estate work, and contract disputes. I tried a car wreck case, worker's compensation cases, and domestic relations cases. I filed lawsuits in a wide range of areas from wrongful death to contract disputes to medical malpractice. I argued summary judgment motions and a case before the master-in-equity. I also represented individuals charged with state and local criminal offenses. Additionally, I represented some 500 juveniles before the state juvenile parole board.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

As a federal magistrate judge, I have frequent appearances in court handling preliminary criminal matters (arraignments, initial appearances, detention hearings, preliminary hearings, guilty pleas, etc.). I am also frequently in court holding hearings on a wide range of civil motions (discovery, motions for summary judgment, general motions, etc.). As an assistant U.S. Attorney, I was in court frequently handling trials, guilty pleas, motions, contested sentencing, etc., at the federal level. I handled these same responsibilities as an assistant solicitor. In private practice, I was frequently in court in contested civil matters. I also appeared in court representing criminal defendants in a wide range of cases.

2. What percentage of these appearances was in:

(a) federal courts;

100% the last 10 years as an assistant U.S. Attorney and United States magistrate judge.

(b) state courts of record;

100% as an assistant solicitor from 1982-1986.

(c) other courts.

In private practice, I was in state civil courts, state domestic courts, state criminal courts, county probate courts, and county magistrate courts. About 75% of the cases in private practice were civil.

3. What percentage of your litigation [since graduation form law school] was:

(a) civil;

30%

(b) criminal.

70%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I would roughly approximate that I have taken some 150-200 cases to trial. I was the sole counsel in the overwhelming majority of these cases. At times, while an assistant United States Attorney, I tried cases with other assistant United States Attorneys.

5. What percentage of these trials was:
(a) Jury;

Virtually 100%

(b) non-jury.

I tried a small number of juvenile criminal cases and abuse and

neglect cases before family court judges while in the solicitor's office. These cases were non-jury.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. 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) U.S. vs. Drew Brinson- Drew Brinson and his brother Robert robbed a bank in Santee, South Carolina. Robert pled guilty. Drew went to trial. He was convicted. Both had extensive records and were sentenced to long prison terms. (Chief Counsel). Judge: Charles E. Simmons. Defense counsel: John D. Elliott, P.O. Box 607, Columbia, South Carolina 29202- telephone number 803-252-9236. Trial date: 1993(?).

2) U.S. vs. Danny Powell- Powell was a City of Columbia police officer who sold drugs on Fort Jackson and possessed a pistol. Powell pled to the drug charges and went to trial on the gun charge. He was convicted. Powell was sentenced to 8 years. (Chief Counsel). Judge: Joseph Anderson. Defense Counsel: Creighton Coleman, P.O. Box 1006, Winnsboro, South Carolina 29180-telephone number 803-635-6884. Trial date: 1992(?).

3) Stanley Weirick vs. *_____- This trial arose out of an automobile wreck. The primary issues at trial were who ran the stop sign causing a serious car accident and damages. The jury returned a verdict for the defendant. (Sole counsel). Judge: John Grimball (deceased). Defense Counsel: John Wilkerson III, P.O. Box 2219 Charleston, South Carolina- telephone number

843-576-2801. Trial date: 1982(?).

4) U.S. vs. Carl Eubanks- Eubanks robbed a bank in Summerville, South Carolina. A teller was shot in the chest by Eubanks. He was convicted at trial. Eubanks was sentenced to three life sentences. He had two prior violent robbery convictions. Eubanks was the first "three strikes" defendant convicted in South Carolina. (Co-Counsel). Judge: David Norton. Defense Counsel: Dale Cobb P.O. Box 71121, Charleston, South Carolina 29415-telephone number 843-554-4291. Trail date: 1998.

5) U.S. vs. Elmore Moncrief and Albert Shaw Nelson- These defendants were major cocaine dealers. Moncrief was a local dealer from Bamberg, South Carolina, and Nelson was the supplier from Miami, Florida. After a trial lasting approximately two weeks, both were convicted. Each received a life sentence. (Co-Counsel). Judge: Charles E. Simmons. Defense Counsel: Jerry Screen 1337 Gregg St., Columbia, SC 29201-phone number 803-252-7757. Lourie A. Salley 101 East Main Street Lexington, South Carolina 29072-phone number 803-648-4213. Trial date:1997.

6) * vs. * - This case was a worker's compensation case. The claimant was a heater/furnace repairman with a local company. He was killed in an automobile accident on the way home after working overtime to repair a broken furnace. Generally, employees are not covered going to and from work. However, there is an exception for critical or extraordinary work performed beyond normal working hours. I assisted James L. Mann, my law partner, in the trial of this case before a worker's compensation judge. The judge ruled in favor of the employee who was killed. (Co-counsel). Judge: Commissioner Trask. Defense Counsel: Edward E. Poliakoff P.O. Box 11070 Columbia, South Carolina 29211-telephone number 803-733-9412. Trial date: 1982(?).

7) U.S. vs. Marcus Brown- Brown was a drug dealer charged with selling drugs and possessing cocaine with the intent to distribute it. He was convicted on all charges and sentenced to approximately 10 years in prison. (Co-Counsel). Judge: Dennis Shedd. Defense Counsel: Henry McMaster 1400 Main Street, 4th Floor, Columbia, SC 29201-telephone number 803-799-

4499. Trial date: 1997(?).

8) U.S. vs. Otis Salley- Salley was an alleged drug dealer who tampered with a jury chosen to try him on drug charges. He was tried on drug charges before a new jury and acquitted. However, a subsequent jury convicted him for jury tampering and he was sentenced to 8 years. (Co-Counsel). Judge: Charles E. Simmons. Defense Counsel: Richard Harpootlian PO Box 1090, Columbia, South Carolina 29202-telephone number 803-252-4848. Trial date: 1996(?).

9) U.S. vs. Charles Byrd- This defendant pled guilty to drug offenses in federal court. He challenged a previous state conviction used to enhance his sentence as unconstitutional. This previous state conviction was used to establish career offender status for Byrd. The Fourth Circuit Court of Appeals upheld the conviction and set narrow parameters for attacking a previous state conviction as unconstitutional at a federal sentencing. This published opinion is reported at 995 F.2d 536(4th Cir.1993). Fourth Circuit Panel: Wilkins, Hall, Kiser. Defense counsel: Allan B. Burnside 1901 Assembly Street, Columbia, South Carolina 29201- telephone number 803-765-5073.

10) State vs. Raymond Patterson- Patterson was tried on armed robbery charges. He pled guilty after the state's case and was sentenced to approximately 25 years. Subsequently, he was tried on armed robbery and murder charges in Lexington County and sentenced to death. (Sole Counsel). Judge: Ralph King Anderson. Defense Counsel: John Delgado P.O. Box 1359, Columbia, SC 29202-phone number 803-254-7745. Doug Strickler 1701 Main Street, Columbia, South Carolina 29201-telephone number 803-765-2592. Trial date: 1986.

19. 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 the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

Generally, all the litigation I have handled as an assistant U.S. Attorney,

assistant solicitor, and as an attorney in private practice progressed toward trial. Many cases proceeded to trial while a number of cases were settled prior to trial. A number of those trials are set forth in answers to previous questions. I also, as noted, represented juveniles before the juvenile parole board in private practice. As best I remember, this position was funded by the state. I probably represented some five hundred (500) juveniles before the juvenile parole board. These matters did not progress to trial. I also undertook a number of long-term grand jury investigations while an assistant U.S. Attorney. While most investigations led to indictments, some did not based on insufficient evidence of wrong doing. As a federal magistrate judge, I have, in addition to my other responsibilities, participated in settlement conferences at the request of district judges.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List 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. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

   At future date, would receive benefit under Federal Employee Retirement System (FERS).

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

   As a magistrate judge, I have a recusal list, which I would continue if confirmed as a District Judge. If there were any question of a conflict, I would review the Code of Judicial Conduct and if I felt necessary, consult with my colleagues, and possibly others whose integrity is unquestioned and whose judgment I value. I would never knowingly do anything to bring the impartiality of the law or my own impartiality into question, so if there were any potential problem, I would recuse myself. In the past, I have notified the parties on the record of any potential conflict. I will continue to notify, on the record, all counsel of any connection to a case, even if it is not a conflict.

3. **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.

4. **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, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).**

See attached financial disclosure report (AO-10).

5. **Please complete the attached financial net worth statement in detail (Add schedules as called for).**

See attached net worth statement.

6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

No.

AO-10 (w)
Rev. 1/2000

FINANCIAL DISCLOSURE REPORT
Nomination Report

Report required by the Ethics in Government Act of 1978, as amended (5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting *(Last name, first, middle initial)* WOOTEN, TERRY L.	**2. Court or Organization** DISTRICT COURT OF SC	**3. Date of Report** 06/20/2001
4. Title *(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)* US DISTRICT JUDGE NOMINEE	**5. Report Type (check type)** X Nomination, Date 06/18/2001 __ Initial __ Annual __ Final	**6. Reporting Period** 01/01/2000 to 06/15/2001
7. Chambers or Office Address MCMILLAN FEDERAL BUILDING 401 W. EVANS STREET FLORENCE, SC 29501	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.** Reviewing Officer _____ Date _____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.

. POSITIONS *(Reporting individual only; see pp. 9-13 of Instructions.)*

	POSITION	NAME OF ORGANIZATION / ENTITY
X NONE (No reportable positions.)		
1		
2		
3		

I. AGREEMENTS *(Reporting individual only; see pp.14-16 of Instructions.)*

	DATE	PARTIES AND TERMS
X NONE (No reportable agreements.)		
1		
2		
3		

II. NON-INVESTMENT INCOME *(Reporting individual and spouse; see pp. 17-24 of Instructions.)*

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
X NONE (No reportable non-investment income.)			
1			
2			
3			
4			

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	WOOTEN, TERRY L.	06/20/2001

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)

☐ NONE (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1	EXEMPT	
2		
3		
4		
5		
6		
7		

V. GIFTS

(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)

☐ NONE (No such reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1	EXEMPT		
2			
3			

VI. LIABILITIES

Includes those of spouse and dependent children. See pp 33-35 of Instructions.)

☒ NONE (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE*
1			
2			
3			
4			
5			
6			

VAL CODES: J=$15,000 or less K=$15,001-$50,000 L=$50,001 to $100,000 M=$100,001-$250,000 N=$250,001-$500,000
O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: WOOTEN, TERRY L.

Date of Report: 06/20/2001

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions.)									
1									
2 JANUS MUTUAL FUND	C	Dividend	L	T	EXEMPT				
3 JANUS WORLDWIDE FUND	B	Dividend	J	T	EXEMPT				
4 VANGUARD 500 MUTUAL FUND	C	Dividend	K	T					
5 SCANA UTILITY STOCK	A	Dividend	J	T	EXEMPT				
6 COLUMBIA TEACHERS CU	B	Interest	L	T					
7 FIRST UNION NATIONAL BANK	D	Interest	L	T					
8 WACHOVIA BANK	C	Interest	L	T					
9 NATIONAL BANK OF SC	D	Interest	L	T					
10 Dell stock	A	Dividend	J	T	EXEMPT				
11									
12									
13									
14									
15									
16									
17									

1 Inc/Gain Codes: A=$1,000 or less B=$1,001-$2,500 C=$2,501-$5,000 D=$5,001-$15,000 E=$15,001-$50,000
(Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

2 Val Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000 N=$250,001-$500,000
(Col. C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market
(Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting WOOTEN, TERRY L.	Date of Report 06/20/2001

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	WOOTEN, TERRY L.	06/20/2001

IX. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature Terry L. Wooten Date June 20, 2001

Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
One Columbus Circle, N.E.
Suite 2-301
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		59,	000	Notes payable to banks—secured			0
U.S. Government securities—add schedule			0	Notes payable to banks—unsecured			0
Listed securities—add schedule (1) DELL STOCK		5	400	Notes payable to relatives			0
Unlisted securities—add schedule (2) JANUS MUTUAL FUND		60,	000	Notes payable to others			0
Accounts and notes receivable (3) JANUS WORLDWIDE MUTUAL FUND		12,	000	Accounts and bills due			0
Due from relatives and friends (4) VANGUARD MUTUAL FUND		30,	000	Unpaid income tax			0
Due from others			0	Other unpaid tax and interest			0
Doubtful			0	Real estate mortgages payable—add schedule			0
Real estate owned—add schedule			0	Chattel mortgages and other liens payable			0
Real estate mortgages receivable			0	Other debts—itemize:			0
Autos and other personal property		25,	000				
Cash value—life insurance			0				
Other assets—itemize: CD-FIRST UNION		92,	000				
CD-WACHOVIA		75,	000				
CD-FEDERAL CREDIT UNION		85,	000				
CD-NATIONAL BANK OF SC		55,	000	Total liabilities			0
THRIFT SAVINGS		215,	000	Net Worth		713,	400
Total Assets		713,	400	Total liabilities and net worth		713,	400
CONTINGENT LIABILITIES			0	GENERAL INFORMATION			
As endorser, comaker or guerantor			0	Are any assets pledged? (Add schedule.)			NO
On leases or contracts			0	Are you defendant in any suits or legal actions?			NO
Legal Claims			0	Have you ever taken bankruptcy?			NO
Provision for Federal Income Tax			0				
Other special debt			0				

III. GENERAL (PUBLIC)

1. **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.**

I was a Pro Bono volunteer for the U.S. Attorney's Office. A program was in place to provide legal advice to individuals who were indigent. This program was of limited success since few indigent individuals sought legal advice about federal criminal law. I also worked on civil justice reform legislation when employed by the U.S. Senate Judiciary Committee. Certain components of this legislation were ultimately enacted into law. Additionally, I have always treated criminal defendants/witnesses/clients equally without regard to socio-economic status, race, or ethnic background. I have also sought to be fair to those charged with criminal offenses and sought to treat those charged with similar crimes uniformly. I have also worked diligently to see that crime victims are treated fairly and with respect.

In addition, I have had other experiences which warrant mention: Tutored underprivileged children as senior at the University of South Carolina; Have spoken to church youth groups and Boy and Girl Scouts about dangers of drug use and alcohol abuse; Have spoken to high school civics class about the American justice system and criminal procedures; Spoke to high school class on Law Day in conjunction with South Carolina Bar Program; I also have participated in mock criminal proceedings and served as a judge in high school and law school mock trial competitions.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?**

I have never belonged to any organization that discriminates on the basis of race, sex, or religion.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

There is no formal judicial selection commission that recommends candidates for nomination to the federal courts of which I am aware. After a previous individual indicated he did not wish to be nominated for a federal judgship, I was notified by Senator Strom Thurmond's office that my name was under consideration for recommendation. I provided background information to Senator Thurmond's office. Shortly thereafter, I was notified that Senator Thurmond would recommend me to the President for nomination as a federal district judge. I was interviewed by the White House Counsel's Office and by the Department of Justice. My name was formally sent from the White House to the United States Senate on June 18, 2001.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.**

No one has discussed any matter with me that could reasonably be interpreted as asking how I would rule on such case, issue, or question.

5. **Please discuss your views on the following criticism involving "judicial activism."**

The role of the Federal Judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped, many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. **A tendency by the judiciary toward problem-solution rather than grievance-resolution;**

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals.

c. A tendency by the judiciary to impose broad affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the Judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The role of the judiciary is to resolve specific cases within the limitations placed upon the courts by the Constitution and its Separation of Powers. Courts are charged with resolving disputes in ripe, justiciable cases which have arisen between specific entities which have the requisite standing. A court should resolve these disputes narrowly, while ensuring protection of rights which exist pursuant to statutory law and judicial decisions.

The role of reaching consensus on political and social questions is one which is rightfully left to the Executive and Legislative branches, which are responsive to the people through elections. It is the role of the Legislative branch to enact statutes, and the courts should be guided by the intent of the Legislature when interpreting those statutes.

Chairman LEAHY. Thank you very much. Now, will you please stand to be sworn? Do you solemnly swear the testimony you will give will be the truth, the whole truth, and nothing but the truth, so help you, God?

Judge WOOTEN. I do.

Chairman LEAHY. Judge Wooten, you are aware over the weekend that there was an article in the Los Angeles Times that raised some questions about your role in this committee's investigation and consideration of Clarence Thomas to be a member of the United States Supreme Court. Now, after the article came up in the Los Angeles Times, both the Democratic and Republican counsels, following our usual procedure in this committee, spoke to you about this. You and I had a brief conversation prior to the hearing, and because this matter is before us and knowing that other Senators would also want answers to it, let me ask you first, what was your role in the committee's consideration of the Thomas nomination?

Judge WOOTEN. At that time, Senator, I was the chief counsel of the committee, I think maybe I had the title as well of staff director, minority chief counsel or staff director, and I simply proceeded with that as we did with other nominations and other matters, and had a role of representing the committee, being a part of the committee. I actually worked for Senator Thurmond on the committee at that time.

Chairman LEAHY. Now, in that role, you would have access to confidential material obtained by the committee, would you not, as part of the overall background investigation of the nominee?

Judge WOOTEN. Yes, sir, I would have access to material.

Chairman LEAHY. Not only have access, but you would have seen a lot of the confidential material; would you not?

Judge WOOTEN. Senator, I cannot say that I really remember ever seeing any FBI files. There were two investigators. There was actually an investigator on the committee that worked for Senator Thurmond, and she would have seen the files in the process you went through to see them. She would have seen those files and she would maybe have briefed me on those files. There was another individual who worked on the committee for a number years as chief investigator, Mr. Short, and he may have talked to me about matters in those files. But as a matter of routine, I did not see the FBI files, and I frankly do not remember ever seeing an FBI file unless somebody had one in their possession maybe when they came to talk to me. But I did not, as a matter of routine, review FBI files. I left that to the investigators.

Chairman LEAHY. Well, let me ask you this. During the years you were there—if you were to go into the FBI file, if you had reason to go into it, and assuming appropriate access and so on, would you be apt to discuss that with anybody other than Senator Thurmond or Mr. Short, who was the chief investigator at the time?

Judge WOOTEN. Absolutely not. Those files were confidential. I would absolutely not discuss that information with anybody, other than Senator Thurmond or Mr. Short.

Chairman LEAHY. The committee rules were pretty tough at that time on releasing any confidential material?

Judge WOOTEN. Yes, sir.

Chairman LEAHY. But the rules would allow you to discuss them with Senator Thurmond or Mr. Short, within the context of any nomination?

Judge WOOTEN. Yes, sir, and I would only discuss it as chief counsel with them.

Chairman LEAHY. Do you recall the committee rules at that time governing the confidentiality of materials obtained by the FBI or any FBI materials?

Judge WOOTEN. Senator, in terms of rules, those were tightly controlled, the files were. I believe they had to be signed out. They were tightly controlled and there was no question that those who had access to those files knew that the information in those files was not to be discussed beyond with members and appropriate staff who may be working on a nomination. But the rules were that these files were carefully controlled and clearly confidential.

Chairman LEAHY. You have actually two sets of files. You have the FBI file, which come under one particular set of rules, and we also have confidential files within the committee that go beyond the FBI file; do we not?

Judge WOOTEN. Yes, sir.

Chairman LEAHY. Sometimes they may overlap, but sometimes they might be entirely different; is that correct?

Judge WOOTEN. Yes, sir.

Chairman LEAHY. Do you recall the rules about the confidential materials? Would they be similar?

Judge WOOTEN. They were similar rules, and again, confidential information was treated just as that. It was confidential information and none of that information was to be released to anybody other than those who had access to it, and again, staffers who had access to it may discuss it with their members or the investigators on the committee.

Chairman LEAHY. Let me go down through the specific allegations made in the L.A. Times story. One is an allegation you had access to FBI information regarding one of the potential witnesses during the time of the Clarence Thomas hearing, an Angela Wright, and that you shared that information with a writer. Is that a factual allegation? Well, it is factual that the allegation was made, but is that something you did?

Judge WOOTEN. No, sir. Senator, I want to say that that allegation is absolutely, 100-percent untrue. There is not one scintilla or one iota of truth to that allegation.

Chairman LEAHY. Did you ever have any communication with David Brock regarding the Thomas nomination?

Judge WOOTEN. Mr. Brock, at some point, called me after Justice Thomas had been confirmed and asked me if I would talk to him. He was writing a book. Out of a courtesy to him, I talked to him. At that time, he did not mean anything to me. I did not know who Mr. Brock was. I knew very little about him, but as a courtesy to him I had a very brief conversation with him. If others wanted to ask me something about the process, if they were writing a book, I would have talked to them. It was a very brief conversation, a very brief conversation and meeting with him.

Chairman LEAHY. For the record, did you ever disclose to Mr. Brock committee confidential materials?

Judge WOOTEN. Senator, I did not. Again, any allegation that I did so is 100-percent untrue.

Chairman LEAHY. And did you ever disclose to Mr. Brock information obtained by the FBI regarding the nomination?

Judge WOOTEN. No, sir. Senator, I never released any information to him from any FBI file. That would be 100-percent untrue.

Chairman LEAHY. Did you ever have communications with Mr. Brock about Angela Wright?

Judge WOOTEN. Senator, when he came by to talk to me about his book—that was some 10 years ago. It would have been in late 1991. I cannot remember the details of the conversation I had with him. It was very brief, again, as a courtesy to him. Whether or not her name came up, I cannot say it did or did not. It may have, but I can assure you that any information, any discussion or mention of her name, there was no confidential information that was released or made available to him. There was nothing out of an FBI file that was made available to him.

Chairman LEAHY. Did you give him any written material regarding Ms. Wright?

Judge WOOTEN. Senator, I do not remember giving him any written material. I would not give him any written material. I cannot imagine why there would be any reason to do that. My answer to that would be I do not remember giving him any written material. It just would not have been the procedure I followed. There was no reason for me to give him anything in writing.

Chairman LEAHY. You would not have given him any materials obtained from FBI interviews with Ms. Wright or interviews about Ms. Wright?

Judge WOOTEN. Absolutely not.

Chairman LEAHY. And you would not have given Mr. Brock any copies of committee reports regarding Ms. Wright or interviews about Ms. Wright?

Judge WOOTEN. Absolutely not.

Chairman LEAHY. On pages 260 and 261 of his book, "The Real Anita Hill," and I believe you have—I will make sure you have seen this.

Judge WOOTEN. Senator, I have reviewed that very quickly.

Chairman LEAHY. And I realize it is quickly—and, obviously, feel free to look at it more, but, basically, I thought in light of your questions you probably would not need a long review of it. Brock quotes at length from—he describes information derived from an interview conducted by the FBI with regard to Ms. Wright. Now, without going into whether his quoting of the FBI report is accurate or not, did you play any role in providing this quoted information to Mr. Brock?

Judge WOOTEN. Absolutely not. I do not know if this is out of an FBI file or not. I do not know. I am sure—

Chairman LEAHY. No, and I am not—I certainly have no intention of confirming whether it is or not, but is anything in that material—was it provided by you?

Judge WOOTEN. Absolutely not, Senator.

Chairman LEAHY. Thank you. Now, to go to the more traditional questions, let's go to the question of stare decisis. Does the commit-

ment to stare decisis vary depending upon the court or is the doctrine of stare decisis the same whatever court you are in?

Judge WOOTEN. Senator, I would think it was the same, whatever court that you are in. If I am fortunate enough to be confirmed for this position—as a trial judge, as a district judge, I am bound by Supreme Court precedent and I am bound by the Fourth Circuit precedent. The doctrine of stare decisis binds me and I am bound by those decisions and I believe strongly in the doctrine of stare decisis.

Chairman LEAHY. Let's assume that you have got a case and it comes in as basically on all fours with a decision of the Fourth Circuit or a decision of the Supreme Court; you do not like that decision; you happen to disagree with it or you have a personal problem with it. Are you going to have any trouble following it, however, in your trial court?

Judge WOOTEN. Senator, I would have no problem following a decision of the Supreme Court or the Fourth Circuit. My personal views do not enter into it. It is my responsibility to apply the law as it is written, and to apply the cases that interpret the law as written.

Chairman LEAHY. Now, Judge Wooten, you have had a chance to serve in all three branches. You have been here in the Senate, and I recall your service here, as an Assistant U.S. Attorney—as some of us think of the days of being prosecutors as the best part of one's life—and now in the judicial branch as a U.S. magistrate. Any thoughts on that, having had a chance to be in all three?

Judge WOOTEN. Well, let me say that I think most of the times since I have been out of law school, I have been a public servant. The opportunities that I have had are opportunities that very few people ever have the opportunity to get. Every experience that I have had in public service has been most rewarding. I think after being in all three branches of government, there is no question that there is a true majesty to our system of government. I have had the opportunity to read cases that are many, many years old, 100 years old, 150 years old, and it is amazing the majesty of the system that we have. I am truly blessed to have had the opportunity to serve in all three branches and to be a part of public service in all three branches.

Chairman LEAHY. During your years here with Senator Thurmond, you heard him ask a question, and I have many, many times complimented Senator Thurmond for asking this question, because I think it is critical for somebody who may soon take a lifetime position as a judge, and that goes to judicial temperament. The judge is by nature the most powerful person in the court room, and I am sure you have seen judges that can abuse the power and those who use it right. I believe a judge, of course, should run his or her court room, but I do not hold any brief for a judge who would unnecessarily berate litigants or counsel or use their position other than in the ends of justice.

So this is not really a question, but sort of the admonition that Senator Thurmond and others have given other judges. You are going to be in a tremendous position, assuming you do go through this committee, but never forget, those are human beings, plaintiff and defendant, before you. Know that even if you are exasperated

or having a bad day, just a word from you can hurt or hinder their life for years. Judges have to exercise restraint, even though sometimes it could try the patience of a saint, and none of us are—well, you may be, but none of us up here are. So I just pass on that. Remember the people there. It is also part of that majesty and glory of our system that you talk about.

When somebody walks into a federal court, there is automatically this aura of the majesty of our government, and people many times are going to make up their mind about what our government is. They are not going to meet the President, they are not going to meet members of Congress, but in their litigation they are going to see the federal judge. And for the rest of their life, whether they win or lose, their whole few of our government is going to be based on that. So that is an added responsibility you will carry.

Judge WOOTEN. Thank you, Senator. I think that is a very important responsibility. I have had the great luxury to spend two years as a federal magistrate judge and I have had many parties in front of me. I have had many lawyers in front of me. I have had many defendants in front of me. I believe it is important for a judge to show respect for the parties, to show respect for the issues that are before that court. Many people come to court and it is not something they do routinely. So it is a very important experience for them and I believe it is important that they get a fair hearing, that they get their issues fairly considered and that they get a fair result.

I will say I have spent some 14 years in the court room and there have been times where I have been on the end of a judge who maybe was not having a very good day. I know that I remember the few times that that happened, and I have subsequently had contact with some of those judges, just in passing, and I do not think they ever remembered they said something harsh to me at all. It is not something that they remember, but it is something that I remember. I know the parties who would be before me, assuming I am confirmed, if I have that luxury, they would remember anything that a judge does that is temperamental or shows an improper temperament toward them. So I appreciate those remarks.

Chairman LEAHY. Well, you and I have the same view on that and I appreciate that.

Senator DeWine?

Senator DEWINE. Judge, I noticed in your answer to our committee questionnaire on page five, that you have written approximately 500 reports and recommendations since becoming a magistrate judge in 1999. I wonder if you could just comment on the relationship between the magistrate judge and how you think the district judge should use the magistrate judge?

Judge WOOTEN. Well, it has been my experience in South Carolina—there are currently nine district judges and they are very busy. From time to time, I hear about the moderate case load of federal judges. I have not seen that in South Carolina. They are very busy. There are three areas that magistrate judges work in, in South Carolina: prisoner litigation; pro se litigation; Social Security appeals; and employment litigation. The reports and recommendations that I prepared—they are roughly some 20 to 30

pages usually—that sets out the issues in a case and it makes a recommendation on contested issues in a case to the district court.

I believe magistrate judges can provide a great service to the district court and help them with the issues in a case and the law in a case. I see the position of magistrate judge as somebody who provides that support for the district court and I think it is very helpful. I think magistrate judges maybe have taken on a greater load in the recent past, and that makes it a little bit easier for the district court to deal with the case loads that they have. I think it is an important relationship. In South Carolina, it has worked well.

Senator DEWINE. You do not see a problem with the magistrate judges taking on a greater load—has not posed a problem, you think, in the administration of justice? You are going to have an opportunity of being on both sides of the issue, of seeing it is a magistrate judge; now you will see it as the district court judge.

Judge WOOTEN. Well, if you are talking about a greater case load in terms of the types of issues that magistrate judges deal with, the reports and recommendations that I have done simply make a recommendation to the district court. We all hope, as magistrate judges, that those recommendations are accepted by the district court, but the ultimate decision as to how a matter will be resolved is up to the district court, and it should be left to the district court to make the ultimate decision in a case.

Senator DEWINE. And your job as a magistrate judge is to set it up so that that judge can make that rational decision. You make a recommendation, but you supply the facts, you supply the pertinent law. Basically, you are teeing it up. You are making a recommendation, and if things work right, in most cases, your recommendation is going to be followed.

Judge WOOTEN. That is correct. I have tried very, very hard to analyze the issues in detail in all of the reports and recommendations that I have done, in cases—the major cases—and all cases are major cases. It is just a question of how you prioritize.

Senator DEWINE. If it is your case, it is major; right?

Judge WOOTEN. Sir?

Senator DEWINE. If you are the litigant, it is major.

Judge WOOTEN. If you are the litigant, every case is major. Every case is major for every litigant. It is a question of how you prioritize all that is major, and I have tried, in certainly as many cases as I can, to read every case cited in the briefs. Now, some briefs cite hundreds of cases, but I certainly read all the major cases, and I try to outline the major cases in these reports and recommendations. On every contested issue in the reports and recommendations, if at all possible, I try to find a case that has somehow dealt with that issue, again, for the benefit of the district court and also for the benefit of the litigants. If lawyers are going to take time to submit briefs—and I see some very, very fine briefs in my court—I am going to read those cases and I am going to look at them, and I am going to analyze them for the district court, for the benefit of the court, but also for the benefit of the lawyers and the litigants in those cases.

Senator DEWINE. You and Senator Leahy have already explored the whole issue of judicial temperament, which is certainly something that is difficult to define. But it is certainly something that

those of us who have practiced much law certainly have observed in judges, whether it be a trial court judge in a State court or whether it be a district court judge in a federal court, very, very important. But I would like to ask about another issue, and that is the whole question of how you keep your docket moving, how you manage that docket, what have you observed and what have you learned as a magistrate judge about that, that would be of assistance to you as you take on that task?

Judge WOOTEN. Well, the most important thing in terms of moving the docket is working hard. That is the number one place to start. When I started as a federal magistrate judge, there was a big backlog of cases that I had to deal with, not because judges in South Carolina were not working. They were all working very hard. Both Senator Thurmond's recommended judges and Senator Hollings' recommended judges worked very hard. But you come in with an immediate case load. There were times when I worked seven days a week to deal with that case load. You simply have to continue to do the work. Again, it was important to me in doing the reports and recommendations and dealing with motions, was to get it right, to be sure the decision I made was the best decision that could be made. It is simply hard work. It is good to have some support staff, some good support staff, if you can get that, but it is hard work.

I had come out of the U.S. Attorney's Office and I had the great luxury of being the supervisor of one of the major divisions in that office, and you simply have to work hard as a supervisor, and you have to expect hard work from those people who work with you. But it is primarily hard work, and that is just it. I felt like I worked very hard. The Civil Justice Reform Act has certain time frames in it, and this was legislation that this committee dealt with, I believe. I focused on it some when I was here. I think Senator Biden may have introduced the bill—I think it was Senator Biden. I am not absolutely sure. But those time frames are good, because it ensures that cases, as much as humanly possible, can move through the system. But it is simply hard work, and the time and the hours that it takes—if it is seven days a week, then it ought to be seven days a week. But it is primarily hard work.

Senator DEWINE. Thank you very much. Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

Senator Thurmond, did you have any questions?

Senator THURMOND. Judge Wooten, how has your experience as a magistrate judge helped prepare you for the district court?

Judge WOOTEN. Senator, I have had a little over two years now as a federal magistrate judge, and I have been a judge for two years, and I have learned very quickly that, as a judge, you have to have a sense of fairness, you have to have some ability, and you have to have a unquestioned integrity. It is important, as well, that you have respect for the parties that come before you and respect for the issues. I have had criminal defendants who have been before me. I had detention hearings in many cases. I have motions in civil cases. I have hearings in civil cases. So it has been a good chance for me to do the things as a magistrate judge, a number of the same type things that I would do as a district judge. I have

also sentenced people in misdemeanor cases and taken pleas in a number of cases, as well. So it is just doing the things that a judge would have to do, a number of things that a district judge would have to do to analyze issues, to make decisions, and to move cases forward.

Senator THURMOND. I do not have any further questions. I am pleased to note that Judge Wooten received a unanimous rating of well-qualified from the American Bar Association.

Chairman LEAHY. Well, thank you very much, and I, again, will keep the record open for the appropriate time for further questions. I frankly do not expect any, and will move this as quickly as we can. In fact, I would note, and I have no further questions, Judge Wooten, of you. I was going to make a couple closing remarks, and you are welcome to stay and be subjected to them, if you would like.

I do want to point out the Committee's first hearing was noticed within 10 minutes of the adoption of the reorganization resolution. It was held the day after the committee membership was set. So we tried to move quickly. When this committee reports another nominee to a Court of Appeals vacancy, it will have reported as many Court of Appeals nominees since just July of this year as this committee did under the control of the other party in all of last year.

When we next confirm a Court of Appeals nominee, as I expect soon, we will have confirmed as many as were confirmed in the entire first year of the Clinton administration. I mention this for those who keep score of such things to point out what we are accomplishing. When we confirmed Judge Roger Gregory to the Fourth Circuit on July 20th, we confirmed more Court of Appeals judges than a Republican-controlled Senate was willing to confirm in all of 1996. When I became chairman and began holding hearings, no judicial nominations had hearings or were confirmed by the Senate, but we are now ahead of the pace of confirmations for judicial nominees of either the first year of the Clinton administration or the first year of the first Bush administration. In the first year of the Clinton administration, which did not have all of the disruptions and distractions that we have had this year, the first Court of Appeals judge was not confirmed till September 30th. In the entire first year of the first Bush administration, without all of the distractions that we have had, the third Court of Appeals judge was not confirmed until October 24th.

The record shows that during recent years, the last six years, under a Republican Senate majority, there were no Court of Appeals nominees confirmed at any time during the entire 1996 session. The first Court of Appeals nominee was not confirmed in 1997 until September 26th. During the six years in which my friends on the other side held the majority, there were 34 months that we had no hearings at all, 30 months with only one hearing, and only 12 times in almost six-and-a-half years that the Judiciary Committee held as many as two hearings involving judicial nominations within a month, something we have done during a recess month. I just mention that for those who are interested. I know sometimes some at the other end of Pennsylvania Avenue and elsewhere seem to have overlooked some of these.

I was happy to come back—well, no. I cannot say that. I am never happy to come back from Vermont, certainly not during August, but I had heard from the Senators and, in one case, from the Congresswoman, about the need to move forward on nominations, including yours, Judge Wooten, and so I was willing to do this. And I might indicate, just as a personal matter, I suspect you are going to be confirmed and I expect your experience as a magistrate is going to allow you to come in with really a leg-up. I was glad to hear what you said to both Senator DeWine and Senator Thurmond. I think a lot of people forget how extraordinarily important the magistrate judges are to the whole system. I can think of a lot of areas around the country where it would literately break down without the magistrate. I know how important Judge Nedermeyer is to the courts in Vermont, and I hear over and over again from lawyers, plaintiffs, defendants, prosecution, defense, how extremely important it is to get the justice system moving because of the magistrate. So I think you have had a great experience and you do come there with a leg-up in the whole system.

Senator DeWine, did you have anything?

Senator DEWINE. Just briefly, Mr. Chairman. I again thank you very much for holding this hearing. Thank you for holding the other hearing. I am not going to get into a statistics battle. I will leave that up to Senator Hatch, when he gets here.

Chairman LEAHY. And he will willingly take on the challenge, let me tell you.

Senator DEWINE. You and Senator Hatch have a mastery of these statistics, which is certainly far beyond my experience, and I will let the two of you hassle over that, and we can all watch that. Let me just make one comment in regard to your earlier statement about sending all names back to the White House. It is my understanding that what you said was true, but one additional fact, and that is that the Democrats would only agree to the unanimous consent to keep all the nominations up here if two of the names, two of the nominations, were excluded. So you would have had the situation of two names being sent back to the White House and the other ones kept here, which I think was just certainly an unacceptable situation. Again, I want to thank you for holding this hearing. We do have some issues that we have to resolve, and you mentioned earlier today about the Sixth Circuit. We have several nominations which are pending and which we certainly would like to get moving on, and I know that you and I will have further discussion about this, and hopefully we can get things worked out, and I thank you very much.

Chairman LEAHY. I thank you. I would note, for what it is worth, that it is not unprecedented to send back one or two, but I think it was unprecedented to send them all back. But, be that as it may, the White House assures us they are all coming back up in another week, and we will move forward.

Senator Thurmond, I thank you for coming here.

Judge Wooten, I thank you and your friends and family, and I know your parents are extremely proud, as you should be. With that, we stand in recess.

[Whereupon, at 11:14 a.m., the committee was adjourned.]

[Submissions for the record and questions and answers follow.]

QUESTIONS AND ANSWERS

Responses of Judge Terry L. Wooten to questions submitted by Senator Richard J. Durbin

The FBI recently completed an investigation into allegations that you leaked confidential files following the 1991 hearings on. Justice Clarence Thomas's nomination to the Supreme Court. I was briefed on the FBI's findings. I have a series of questions about your conduct at an earlier stage, when Justice Thomas was still before the Judiciary Committee.

Question 1: According to Jane Mayer, a senior reporter for The Wall Street Journal, you "played a key but almost entirely behind-the-scenes role" in the Thomas hearings. At the time, you served as the chief counsel to Senator Strom Thurmond, the Ranking Member of the Senate Judiciary Committee.

(a) When and under what circumstances did you first learn of accusations, from Anita Hill, or others, that Justice Thomas had sexually harassed his employees or had engaged in crude sexual, behavior at the work place?

(b) Did you pass along this information to anyone, prior to the public revelation of these accusations by the news media? If so, to whom?

(c) At that time, did you discuss with anyone what to do about these accusations? If so, with whom? What opinion (if any) did you express?

(d) What steps did you or other aides to Senator Thurmond, to your knowledge, take to investigate or verify the accusations?

Please be as specific as possible.

Response:

1. (a) It is difficult for me to say exactly when I was made aware of Ms. Hill's accusations. My memory is that either Duke Short (Former Judiciary Committee Chief Investigator and Staff Director, and current Chief-of-Staff to Senator Thurmond) or Melissa Riley, investigator for the Committee, informed me that the accusations had been made. I do not recall when I learned of the allegation. As best I can recall, I did not focus on this allegation until after the nomination of Thomas was returned to the Judiciary Committee for additional hearings': The nomination was returned from the floor to the Committee for additional hearings after Ms. Hill's allegation became public. I would note that Ms. Mayer's comments reflect a lack of understanding as to how the Judiciary Committee operated. Each staffer on the Committee reported to his or her individual member and was responsible to that member.

(b) I did not pass this information along to anyone other than Senator Thurmond. It would have been a violation of Committee rules to provide it to anyone else not authorized to receive it. I am certain Senator Thurmond was briefed on these allegations. To the best of my recollection, Mr. Short initially briefed Senator Thurmond regarding these accusations. At some point, I am certain I had conversations with Senator Thurmond about this issue.

(c) Once the allegations were made public, the issue arose regarding how the Senate would then proceed with the nomination. That matter was left to the Senate leadership and the Judiciary Committee members. The Thomas nomination was referred back to the Committee for additional testimony. I am certain there were discussions among staff as to how the process would work after the nomination came back to Committee. I am certain I discussed the procedures with Chairman Biden's staff and with the staff of other Judiciary Committee members. Chairman Biden and other Committee members decided to hear testimony from Justice Thomas and Ms. Hill and then take testimony from additional witnesses. The decision about how to proceed in light of the allegations was left to Chairman Biden, Senator Thurmond, and the Committee members. It was clear to everyone that the allegations had to be treated seriously and addressed by the Committee.

(d) The investigation of the allegations was left to the FBI. Senator Thurmond's staff did not conduct an independent investigation.

Question 2. In an article published this summer in the American prospect, Jane Mayer offered the following account of events:

> [W]hen staffers for Delaware Senator Joseph Biden, the Democratic chairman of the committee, first alerted Thurmond's office of [Anita] Hill's explosive allegations, Wooten and another Thurmond aide decided on their own not to share the specifics of her statement with their boss. Equally surprising, they also decided on their own not to inform the other Republican's on the committee of Hill's charges.

(a) Is the first sentence accurate? If not, please explain how it differs from your recollection. If it is accurate, please explain the reasoning behind the decision. For example, did you have, reason to believe that Anita Hill was not credible?

(b) If not the specifics, did you discuss the nature of Anita Mill's allegations with Senator Thurmond? Did other aides, to your knowledge? Why or why not?

(c) Is the second sentence above accurate? If not, please explain how it differs from your recollection. If it is accurate, please explain the reasoning behind the decision.

Response:

2. (a) The first sentence is inaccurate. I am certain that Senator Thunnond was fully briefed on Ms. Hill's allegations. He was the ranking minority member on the Committee and was made aware of Ms, Hill's allegations. It is nor realistic to suggest that the specifics of Ms. Hill's allegations were not shared with Senator Thurmond by his own staff.

(b) At some point during the reconsideration of the Thomas nomination, I fully expect that I had discussions with Senator Thurmond about Ms. Hill's allegations. Mr. Short also briefed Senator Thurmond about Ms. Hill's statements. Again, it was certainly important that Senator Thurmond be fully briefed on Ms. Hill's allegations.

He was briefed on the allegations so he could consult with Chairman Biden and other members about how Ms. Hill's allegations would he handled by the Judiciary Committee.

(c) The second statement is not accurate. As chief minority counsel reporting to Senator Thurmond, my obligation and the obligation of Mr. Short was to be sure that he was aware of the Thomas-Hill matter. It was up to Senator Thurmond to decide how and when other Senators would be briefed. It would be beyond the authority of a staff person and a violation of Committee rules to decide to convey FBI or confidential information to anyone not authorized to receive it.

Question 3. Mayer's account continues:

As time ticked by and ,agents of the Federal Bureau of Investigation formally interviewed both Hill and Thomas about the allegations, Wooten kept the other Republican members completely in the dark. A Judiciary Committee rule required that all members to be informed within 24 hours of any matter involving the FBI, but it was inexplicably ignored.

(a) Is her statement accurate? If not, please explain how it differs from your recollection.

(b) To your knowledge, was there a Committee rule that required all members to be informed with 24 hours of any matter involving the FBI? Were your aware of such a rule at the time?

(c) If there was such a rule, slid you take steps or direct others to take steps to notify Committee members that the FBI was conducting an investigation? Did you circulate Hill's affidavit to Republican Committee members? Why or why not?

Response:

3. (a) Again, the statement is not accurate and shows a misunderstanding of the role of the Committee staff. It would be inappropriate for a staff person to convey FBI or confidential information to anyone not authorized to receive it. To the best of my knowledge, there was no "24 hour rule." I am aware that Committee rules prohibited conveying FBI or confidential information to anyone not authorized, which was the practice of the Committee.

(b) No.

(c) To my knowledge, there was no "24 hour rule."

Question 4. According to Mayer, at least two Republican senators voted for Justice Thomas in Committee without any knowledge of Anita Hill or her allegations. Reportedly, Senator Hank Brown, a Committee member from Colorado, was furious that he learned about Hill after casting his vote. Others learned of Hill by happenstance, and voted for Thomas without having seen Hill's affidavit.

(a) Is this account accurate' 1f not, please explain how it differs from your recollection,

(b) In your judgment, did members of the Judiciary Committee have sufficient information about Justice Thomas to cast a vote on the nomination at the time of the Committee vote? Please explain your reasoning.

Response 4: (a) I do not know what Senator Brown knew at the time lie voted in the Committee.

(b) That is a difficult question for me to answer. However, to the best of my knowledge, yes they did.

Question 5: In Strange Justice, a book about the Thomas-Hill hearings, Moyer and her co-author characterize the reasoning of Senator Thurmond's staff at the time

when Anita Hill's, allegations first surfaced; "the more people who are told about Hill's statement, the more likely it was that her charge would leak out and damage Thomas." You ate quoted in the book as explaining, "Washington is the rumor mill of the world. It didn't look like it was going to develop into a big deal. There was an effort to control the damage."

(a) Are the quotations above a fair characterization of your own reasoning at the time? Why or why not?

(b) Assuming the direct quotation attributed to you is accurate, why did you think Anita Hill's allegations were not going to develop into a "big deal"? Did you consider her allegations to be serious? Did you believe then and do you believe now that her allegations, if true, call into question Justice Thomas's suitability to serve on the Supreme Court?

Response 5: (a) I think those quotations are a fair characterization of my reasoning at the time. However, these quotations simply state the obvious.

(b) To the best of my recollection, when Ms. Hill made her allegations, there was a question as to whether or not she was willing to appear before the Committee and to proceed further with her allegations. At that time, there was uncertainty as to how this matter would develop,

I considered Ms. Hill's allegations to be serious.

If true, I do believe Ms. Hill's allegations would raise questions about Justice Thomas' nomination.

Question 6: After Anita Hill's charges against Justice Thomas became public, the Judiciary Committee learned of Angela Wright—a second woman who allegedly witnessed crude sexual behavior by Thomas in the workplace. Wright was deposed by you and other Committee staff members, but she was never called to testify during the televised Committee hearing. Regarding Wright, you are quoted in Strange Justice as saying: "Any time you had a second allegation, it was going to be a big problem."

(a) Did you play any. role in the Committee's's decision not to call Wright as a witness? If so, please describe the role you played and the reasoning behind your conduct.

(b) Is the direct quotation attributed to your in Strange justice accurate? If so, please explain what you meant by that statement. Why would a second allegation create a big problem? Did you view Angela Wright as a big problem four Justice Thomas's nomination?

(c) During the deposition, you asked several questions about Wright' s troubled employment history. Did you pursue this line of questioning, in whole or in part, to discourage Wright from testifying at the hearing? At: the outset of the deposition, was it your intention to discredit Wright?

Response:

6. (a) I played no role in the Committee's decision not to call. Ms. Wright as a witness. That was a decision made by Chairman Biden and Members of the Committee, not staff.

(b) To the best of my recollection, that quotation is accurate. A second credible allegation of misconduct by Justice Thomas would have been a problem for his nomination. A second credible allegation of misconduct by Justice Thomas would constitute additional evidence from which Senators could conclude improper behavior had occurred.

(c) Let me assure you that no questions were asked by me to discourage Ms. Wright from testifying or to discredit her. My questions and questions by other staffers were asked in an effort to get to the truth whether it helped Justice Thomas or not. I would also note that the telephone interview was set up by Chairman Biden's staff and my questions were primarily follow-lip questions asked by Senator Biden's staff.

SUBMISSIONS FOR THE RECORD

Statement of Hon. Orrin G. Hatch, a U.S. Senator from the State of Utah

I would like to take just a moment to talk about an extraordinary woman who is before us today as a nominee for the U.S. Court of Appeals for the Federal Circuit, who also happens to serve as the Republican Chief Counsel to the Senate Judiciary Committee: Sharon Prost. Let me first thank the Chairman, Senator Leahy, for taking the extraordinary step of calling a hearing during the August recess for Sharon and a few other nominees. Thank you.

Sharon grew up in an Orthodox Jewish home, where the values of faith, family, and country were instilled in her. Simply put, Sharon embodies the American dream. Her parents were concentration camp survivors who arrived in this country from Poland in 1948. The pursuit of their own educations was derailed by the war, but they nonetheless emphasized to Sharon the importance of education and hard work in achieving success—advice Sharon has followed throughout her life.

Tragically, Sharon's father died when she was only 13 years old. Upon his death, she had to support herself, and worked her way through high school and college. But despite the obstacles life placed before her, Sharon persevered. She became the first in her family to graduate from high school, and went on to attend an Ivy League University. Perhaps one of the best-educated individuals ever to have worked in the Senate, Sharon holds four degrees, including a bachelor of science, a law degree, an LLM in tax, and an MBA. She got three of her degrees at night while working full-time.

A labor lawyer at heart, Sharon first came to work for me twelve years ago, after serving as Acting Solicitor of the NLRB. I sought Sharon out to work for me on the Senate Labor Committee and handle ERISA issues, because I learned of her intellect, her exceptional combination of legal skills, her knowledge of tax law, and her background in finance. In her role as my Chief Counsel on the Judiciary Committee, she has been responsible for everything on the Committee agenda, including matters of antitrust and patent law.

Sharon truly is something of a modern Renaissance woman, with a breadth and depth of knowledge in a variety of areas. Her background and education make her uniquely suited for service on the Federal Circuit, which, as you know, handles myriad issues ranging from veterans matters to patent cases to employment cases.

It has been said that "[t]he value of government to the people it serves is in direct relationship to the interest citizens themselves display in the affairs of state." Sharon has proved herself to be a valuable asset to our nation, having devoted much of her life to public service.

I know that Sharon holds the other members of this Committee in the highest regard, and that those who have worked with her have the utmost respect for her as well. Sharon has been the primary counsel working for me on a number of bipartisan initiatives, including the Violence Against Women Act, as well as the Religious Liberty bill that was passed last year. And, Sharon has worked closely with Senator Kennedy's staff over the years on Labor Committee and Immigration issues.

I would be remiss in talking about Sharon Prost and her many accomplishments without mentioning the role she considers most important of all: that of being the mother of her terrific sons, Matthew and Jeffrey. And if we have been in Sharon's office, we have seen the pictures of Matthew with President Clinton and Senator Kennedy, and know that Sharon heads a bipartisan household. Yes, Matthew is a Democrat, despite my best efforts.

But more seriously, let me close by noting that Sharon is not only an able counsel and wonderful mother, but she is a person with a good heart. As Robert Traver wrote more than four decades ago, "Judges, like people, may be divided roughly into four classes: judges with neither head nor heart—they are to be avoided at all costs; judges with head but no heart—they are almost as bad; then judges with heart but no head—risky but better than the first two; and finally, those rare judges who possess both head and a heart." Thankfully for all of us, we know that Sharon will serve this country as a judge with head and a heart.

Thank you Sharon for your service to this me, to this Committee and to this nation. I look forward to your confirmation. Thank you Mr. Chairman.

Statement of Hon. Joseph R. Biden, Jr., a U.S. Senator from the State of Delaware

Mr. Chairman, I want to commend you for holding this judicial hearing today.

In particular, it is a great honor for me to express my support for the nomination of Sharon Prost to the United States Court of Appeals for the Federal Circuit.

Sharon is a dedicated public servant of the highest order. She has devoted herself to serving our government for almost 30 years and we will be fortunate to see her continue to do so from the bench.

Her vast experience in government will undoubtedly serve her well as a judge. It is one of the qualities that makes her a superior candidate. She has mastered the workings of our government at the Civil Service Commission, the General Accounting Office, the Federal Labor Relations Authority, the Internal Revenue Serv-

ice, the National Labor Relations Board and finally here on Capitol Hill in the Senate.

I have had the pleasure and the privilege of getting to know Sharon well in her time working for the Judiciary Committee. Although we have been on opposite sides of the aisle, I have always enjoyed working with Sharon. In particular, Sharon played a critical role in crafting legislation in the area of violence against women. I am personally grateful for her contributions in this area, and the entire country owes her a debt of gratitude for the instrumental role she has played in working to protect victims of domestic abuse.

Sharon is also a dedicated mother of two wonderful young sons. She has always been devoted to seeking the best for them. I have had the pleasure of meeting Matthew and Jeffrey, and I can say without reservation that Sharon has raised children that would make any parent extremely proud.

Sharon has a keen legal mind, superior personal character, and an admirable devotion to public service. She has proven her abilities as a lawyer time and again and she will be an outstanding addition to the Federal Circuit.

NOMINATION OF BARRINGTON D. PARKER, JR. TO BE CIRCUIT JUDGE FOR THE SECOND CIRCUIT; MICHAEL P. MILLS TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF MISSISSIPPI; AND JOHN W. GILLIS TO BE DIRECTOR, OFFICE FOR VICTIMS OF CRIME, DEPARTMENT OF JUSTICE

THURSDAY, SEPTEMBER 13, 2001

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Committee met, pursuant to notice, at 2:15 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy and McConnell.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. Thank you all for being here.

The Judiciary held a business meeting this morning. We expedited consideration of a dozen U.S. Attorney nominees for districts around the country, and we will expedite others as they come up here from the White House.

We are holding the fifth nominations hearing, including judicial nominees, since the Judiciary Committee's membership was set back on July 5th. It is the fifth one—I think the most active record certainly in recent years of this Committee.

I will put my full statement in the record, but I would note that among those who are today will be Michael Mills, to be U.S. District Judge for the Northern District of Mississippi, and, of course, John Gillis, to be Director of the Office for Victims of Crime.

Mr. Gillis, Attorney General Ashcroft called me at home last night and talked about this. I told him we would go forward.

[The prepared statement of Senator Leahy follows:]

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

This afternoon the Committee is resuming its hearing schedule. Having postponed hearings on Tuesday and Wednesday, the Senate Judiciary Committee is back at work. We held a business meeting this morning and expedited consideration of a dozen U.S. Attorney nominees for districts around the country.

This afternoon, we are holding the fifth nominations hearing including judicial nominees since the Senate reorganized and the Judiciary Committee's membership

was set on July 10. The work of the Committee and of the Senate is continuing and I hope by being here and proceeding with this hearing we are helping to establish that reality. I want to commend the nominees for the extraordinary efforts they made to be available here today.

I was able to proceed with judicial nominations as soon as the Committee membership was set following reorganization and we have continued to hold hearings at a record pace, including two that I chaired during the August recess.

Just as we expedited Committee consideration of a dozen U.S. Attorney nominees to those Federal law enforcement positions and pressed for the necessary paperwork so that we could proceed with those nominations today. Similarly, we are pressing forward with this hearing today on important nominations to the judicial branch, which is so important to our democratic system, and with the President's nominee to head the Office for Victims of Crime at the Department of Justice.

Until today witnesses have been unable to fly to Washington. I commend Judge Parker and Justice Mills for making the efforts they have made over the last difficult days to be here with us. I understand that Justice Mills drove all night to get here from Mississippi and that Judge Parker drove down from the New York-Connecticut area.

I regret that another nominee, Laurie Smith Camp of Nebraska, could not be with us today. We will reschedule her hearing and work with both Senators from Nebraska to have her nomination considered by the Committee as soon as possible. Mr. Gillis came from California, but fortunately arrived here before Tuesday's tragic events.

The Senior Senator from New York, a respected Member of this Committee, cannot be with us. I will make his strong statement in support of Judge Parker a part of the record. Senator Schumer has volunteered to chair this hearing and had planned to do so until the tragic events of Tuesday required him to redirect his attention to the immediate needs of the people of New York.

Likewise, other Senators who had planned to be with us to introduce these nominees and endorse their nominations are attending to important business in the aftermath of the attacks on Tuesday morning. I will include their statements in the record, thank them for their support of these nominees and for bringing that support to my attention so that we could proceed by consensus this afternoon.

Chairman LEAHY. We are first going to hear from the senior Senator from Mississippi, Senator Cochran. Senator Cochran and I are friends of well over 20 years, and Senator Cochran has talked to me about the need for a judge in the Northern District and mentioned his strong support for Mr. Mills. I suspect that Senator Cochran has strong support for you is why the President has strong support for you. There is a coincidence there, but this worked out well.

Senator Cochran and I, like Senator Lott, who will be here later, and others, have just come from a really unprecedented joint caucus luncheon of the Republicans and Democrats. Senator Schumer and Senator Clinton are still there talking to the appropriators, for obvious reasons. I know Senator Cochran, as one of the senior appropriators, has to go back to it.

So, Senator Cochran, let me yield to you.

PRESENTATION OF MICHAEL P. MILLS, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF MISSISSIPPI BY HON. THAD COCHRAN, A U.S. SENATOR FROM THE STATE OF MISSISSIPPI

Senator COCHRAN. Mr. Chairman, thank you very much for convening this hearing, and thank you for scheduling the confirmation hearing of Judge Mike Mills, from Mississippi, who has been nominated by the President to be United States District Judge for the Northern District of Mississippi.

Mike Mills is someone who is well-known in our State for his intelligence, his integrity, his ability as a lawyer, first, and then as

a member of the Mississippi Supreme Court in the State of Mississippi.

He is well-educated. He earned bachelor's and law degrees at the University of Mississippi, then went on to the University of Virginia, where he earned a master's of law degree. He had a successful private practice of law in the State of Mississippi. He was elected to the Mississippi Legislature and served with distinction for 12 years. He chaired the Judiciary Committees in the House. He was the author of some very important and major reform acts relating to criminal law issues and the procedures of our judiciary system, both the circuit and chancery courts.

He was then selected for membership on the Mississippi Supreme Court. He was appointed and then elected to a full term in a popular election in our State. He is well-known for his volunteer work in support of education programs. He has been involved in a number of efforts to improve our public education system in Mississippi.

As a lawyer, he was respected and asked to serve as a commissioner on the National Conference of Commissioners of Uniform State Laws. He was also invited to be a founding member of the Board of Directors of the University of Mississippi Institute for Racial Reconciliation.

I am pleased to say that I have known Mike personally for a number of years and have come to respect him not only for his political skills, but his legal acumen and his good judgment, sense of fairness, and integrity. He is an intellectual with a common touch. He is a person that I can recommend to this Committee without any qualification at all, to my recommendation that he be confirmed, because I am confident he will serve our State with great distinction and will be a credit to the Federal judiciary.

One of the newspapers that commented on his nomination, I think, said it best when they concluded—this is the Northeast Mississippi Daily Journal; it covers all of north Mississippi. It says, "Mills' education, experience and intellect equip him well for a Federal judgeship. His sharp analytical mind, keen knowledge of history and precedent, and innate sense of fairness and justice, demonstrated as a legislator and jurist throughout his 18-year career in public life, make him a good fit for the job."

Mr. Chairman, I appreciate very much your inviting us to be here today, and I would like for Judge Mills to know that we appreciate the attendance of his wife, Mona. They have four children, too, who couldn't come up here; they have got other responsibilities.

You might expect that getting a flight up here was kind of difficult, like impossible, today. When they heard the hearing was scheduled and they couldn't get a flight, they got in their car—or maybe it is a truck; I have heard them refer to it as a truck—and they drove all night last night. They got in this morning, into Washington, at five o'clock.

I am real proud of Mike. That is an indication of his dedication and his commitment to this new job and new challenge in his life, and I hope the Committee will be able to act promptly on his confirmation.

Chairman LEAHY. Well, thank you, Senator.

I might say to Justice Mills he has two things going for him. One, of course, is the endorsement of Senator Cochran, his Senator, who is enormously respected on both the Republican and Democratic side of the aisle; and, secondly, your perseverance and driving through this. Please understand, we have actually had another nominee scheduled today who was so far away out in the country they couldn't get here by driving. I apologize that you had to do that.

None of us knows when the session is going to end this year, and I appreciate that you did drive the 15 hours to get here because we would have had reschedule things to do it. I would hope you would spend some time here and get some rest before you go back, although I have a feeling that unless something we don't understand happens, you will probably have a lifetime to rest up from this. But that is a long trip, even with both of you driving. It is a terrible situation our Nation finds itself in and I am sure you understand that.

I see that while the Senator from Connecticut is here, the other Senator from Mississippi is here, the Republican Leader. Following our normal protocol, of course, we will go to him.

As I mentioned before you came in, Trent, you and Senator Daschle and the appropriators have been meeting throughout this time trying to figure out how we put together the money for this.

I would just make also a personal comment about Senator Lott. As the Republican Leader, he has been meeting very closely with the Democratic Leader, Senator Daschle. Senator Lott and Senator Daschle are showing the country comes first in a situation like this. The two of them have worked extremely hard and in a way that brings credit on not just their States, but on the whole United States for the way they have been doing this to rally Senators together in a grief-stricken Nation.

Senator Lott?

PRESENTATION OF MICHAEL P. MILLS, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF MISSISSIPPI BY HON. TRENT LOTT, A U.S. SENATOR FROM THE STATE OF MISSISSIPPI

Senator LOTT. Thank you very much, Mr. Chairman, for your comments just then, and also for going forward with scheduling this hearing, as you had indicated you would do. It would have been very easy to have delayed it or deferred it. At the same time, these are very important nominees, and so I appreciate it. I am glad to see Senator McConnell, from Kentucky, is here as well.

I want to thank Justice Mills for being here. It wasn't easy to get here today. He drove from Mississippi, and I know from firsthand experience that is probably about 15 hours, isn't it, Thad, from where he started off. We are glad to have him and his wife here today.

I know that my senior colleague has already outlined the tremendous credentials of Justice Michael Mills to be confirmed to be District Court Judge for the Northern District of Mississippi. I have known him for many years. I have always been impressed with his abilities, his character; in fact, his sheer intellect. It is a little scary sometimes. I have always thought he was maybe a little too smart

for the things he was doing, like when he was in the State legislature. He was an active leader there on the Judiciary Committee—I am sure Thad noted that—Judiciary "A" and Judiciary En Banc Committees.

He has outstanding educational qualifications, having gone to Ole Miss both for his undergraduate degree and his law degree. Then, wanting to give others an opportunity to experience his brilliance, he also went to the University of Virginia School of Law, Joe, where he got his LLM.

Of course, he was an outstanding leader in the legislature and that is where I really got to know him, and now he has been a member of the supreme court. He was appointed first in 1995 and then elected to a full 8-year term in his own right in 1996.

He has been willing to take on the tough issues that are not easy sometimes in Mississippi. He has shown leadership in some of his judicial rulings. He also has been a member of the board of directors of the University of Mississippi Institute for Racial Reconciliation. He was awarded the 2001 Award for Distinguished Service presented by Chief Justice Pittman of the Mississippi Supreme Court.

In short, Mr. Chairman, he will be a credit to the Federal judiciary. He has broad support in north Mississippi. He is from a part of the State where there is a real desire to have a Federal judge. The other one, recently confirmed, is from the other part of the State and then there is one from the Tupelo area that Senator Cochran shepherded through years ago.

His support includes a lot of Democrats and Republicans, and even leaders of the Mississippi Trial Lawyers Association. I know of not a single person that has raised the slightest question about his nomination, and it is a pleasure for me to be here and to support his nomination and ask for his expeditious consideration by the full Committee and the Senate.

Chairman LEAHY. Well, thank you very much.

Justice Mills, you come here with two highly respected and powerful members of the Senate on your behalf. I know that Senator Lott, who is continually working to craft legislation responsive to the terrible incidents of this week, has other things to do. And Senator Cochran, of course, who is one of the most senior members of the Appropriations Committee and the one who is carrying most of the burden on his shoulders does, too. I know both of you gentlemen have to go. Thank you for taking the time to come over here.

Senator LOTT. Thank you, Mr. Chairman.

Senator COCHRAN. Thank you, Mr. Chairman.

Chairman LEAHY. I would also note that Judge Parker drove down here, too. While not as far to go, he had to drive. Lori Smith Camp, from Nebraska, was the one who was too far away, and I have assured both Senator Hagel and Senator Nelson that we will try to find time to reschedule her.

Senator Lieberman, of course, is another who carries a powerful and respected voice in the Senate. If I might just, though it has nothing to do with this hearing, make one comment, this Committee deals with hate crimes and deals with the rights of all Americans. Senator Lieberman made a very powerful and good

statement that in these terrible times Americans not turn against Americans, whatever their nationality or background might be.

If evidence points to some in the Arab world, Senator Lieberman noted correctly and positively that we should not respond against somebody because of their Arab-American background. I concur with him so much in that. I remind everybody of the terrible mistake we made in World War II when we interned Japanese-Americans whose only crime was their nationality, and a very political Supreme Court upheld what was an egregious breach of our Constitution. It didn't help us win that war and it didn't make us any stronger. It actually weakened our democracy.

Senator Lieberman is absolutely right and all the Senators who say this are absolutely right. We are all Americans here, 260 million of us, and we don't fight this terrorism from abroad and we don't bring back people who have died and we do not repair our Nation by turning against each other, whatever religion, whatever faith, whatever nationality. We are a Nation of immigrants and we should remember that and we should hold together.

Senator Lieberman?

PRESENTATION OF BARRINGTON D. PARKER, JR., NOMINEE TO BE CIRCUIT JUDGE FOR THE SECOND CIRCUIT BY HON. JOSEPH LIEBERMAN, A U.S. SENATOR FROM THE STATE OF CONNECTICUT

Senator LIEBERMAN. Mr. Chairman, thanks very much for that statement. I couldn't agree with you more, and coming from you as the chairman of the Judiciary Committee it is particularly powerful because there could be nothing more unjust in this country where the law rules than to impose what is collective guilt and to blame, if you will, all of our fellow Americans who may be either Arab or Muslim, if that is the direction that this investigation takes, for the sins of a very few. So I appreciate your statement. I think if we yielded to those emotions, we would make the terrorist attack even more effective, dreadfully effective than it has already painfully been because they would divide American from American.

This has been a very sad, difficult week and so I must say I appreciate your holding this hearing because it gives me great personal pleasure to introduce to you and this Committee Judge Barrington Parker as a nominee for the United States Court of Appeals for the Second Circuit.

I have known Judge Parker for longer than either of us cares to remember, nearly four decades, since we met at an institution that Senator Lott might refer to as "Ole Yale." Judge Parker and I have agreed that anything that either of us did at college or law school is privileged. Therefore, we will not answer questions.

Chairman LEAHY. Claiming the statute of limitations, are you? [Laughter.]

Senator LIEBERMAN. But I want to state quickly in the interest of full disclosure, though, I have generally said that we were at college and law school together, but you can see obviously by looking at the two of us that he is much younger than I am, at least by a year or a couple of years.

From all this personal knowledge—and we have really kept in touch, fortunately, over the years since then—I can attest not only

to Judge Parker's impeccable professional credentials as a lawyer, a litigator with three distinguished firms in New York, but also his outstanding service as a jurist since he was appointed to the district court in 1994.

Probably, and perhaps most important, I can testify from personal knowledge to his extraordinary character and quality as a human being. He has been a credit to the district court and I have no doubt he will be a wonderful addition to the Second Circuit.

Judge Parker is, in fact, exactly the kind of person who should be serving on the Federal bench. He is thoughtful, he is intelligent, he is wise, he is honorable, and he is hard-working. You will see from his resume and biography that he has devoted himself not only to the law, but to community service in a broad array of institutions and organizations, from serving on the corporation which is the trustees of our alma mater, to working for the Harlem School for the Arts, the Central Park Conservancy and the NAACP Legal Defense and Education Fund, among others.

You will have a sense when you hear him, and you would feel it even more deeply if you knew him as long as I have, that if anyone—fortunately, there are many people who do, but if anyone has what can be described as a judicial temperament, it is Judge Barrington Parker. He is someone who we all can take pride in because he is, in his own conduct and carriage, the embodiment of what we want our system of justice to be. Perhaps that comes to him genetically because his father was a distinguished member of the Federal judiciary here in the District of Columbia.

So I both congratulate and thank President Bush for nominating Judge Parker. Back at Yale, we used to call him "Danny." As a member of the circuit court, he is going to be just plain "Judge Barrington Parker."

I thank the Committee, Mr. Chairman, Senator McConnell and all the members for holding this hearing on the nomination and, of course, I would ask the Committee and hopefully the full Senate to confirm Judge Parker as soon as possible.

Thank you.

Chairman LEAHY. Thank you very much.

I neglected to mention Senator McConnell, of Kentucky, who is here, another member of the Appropriations Committee who has enormous other obligations and I appreciate him taking the time to come and help with these hearings.

PRESENTATION OF JOHN W. GILLIS, NOMINEE TO BE DIRECTOR OF OFFICE FOR VICTIMS OF CRIME BY HON. MITCH MCCONNELL, A U.S. SENATOR FROM THE STATE OF KENTUCKY

Senator MCCONNELL. Thank you, Mr. Chairman. I don't know the two judicial nominees. I do wish them well and intend to support them both. But I did want to say a word about John Gillis, who is before us also today to be Director of the Office for Victims of Crime. His mother had the good judgment to be in Kentucky when he was born and he started off his career in the Commonwealth, and it has been a distinguished one at that.

John Gillis, as you all know, is the President's nominee to be the Director of the Office for Victims of Crime. He has worked in law

enforcement for most of his life and has focused on victims' rights by founding and participating in a variety of victims' rights organizations.

He began his career in the Los Angeles Police Department in 1962, and he worked up the ranks and served in many different capacities. From 1990 to 1999, he served as the Commissioner for the California Board of Prison Terms, and he served as chairman of the board for several years. Mr. Gillis has been very involved with a variety of non-profit boards relating to victims of crime.

He is a founder of Justice for Homicide Victims, Victims and Friends United, and the Coalition on Victims' Equal Rights. He also serves on the boards of Parents of Murdered Children and the Fight Crime Invest in Kids organization. He was awarded the presidential Victims Services Award in 1991.

Also worthy of note, even though he spent his professional career in California, I was proud to learn during our meeting that not only was he originally from the Commonwealth of Kentucky, but he and a handful of fellow students were among the first African American Kentuckians admitted to the University of Kentucky at a time when that institution was at last being integrated. I want to congratulate him for the good judgment to be among that group and suggest that I wish you had stayed there to graduate rather than moving on, but I know you then went in the military and then after that ended up in California.

California's gain was certainly our loss, but for purposes of today's hearing I intend to adopt you as a Kentuckian and am very pleased to have had the opportunity to be here today for your hearing.

Thank you very much, Mr. Chairman.

Chairman LEAHY. Thank you, Senator McConnell. I appreciate you being here. I also should note that Mr. Gillis arrived here in D.C. prior to the terrible tragedy, so was here, and another reason why I wanted to move forward with these hearings.

So, Judge Parker, you and I have talked. Judge Walker has called me about you, Judge Cabrenas has called me about you. Please come forward, sir, and take the witness table. I wonder before we start if you might want to note—I know you have members of the family here, and someday when they have the Parker library they will want to have the transcript of this hearing. So I want to have in there the names of whoever is here with you.

Would you mind, Judge, telling us who is here?

Judge PARKER. Certainly. My wife, Toni Parker; my three daughters, Christine, Kathleen and Jennifer Parker; and my two aunts, Carolyn Troupe and Grace Davis.

Chairman LEAHY. Thank you.

Judge PARKER. And also my former and present clerks, John Cronin and Vesper Mai.

Chairman LEAHY. Thank you. Would you please raise your right hand?

Do you solemnly swear that the testimony you shall give shall be the truth, the whole truth and nothing but the truth, so help you God?

Judge PARKER. I do.

Chairman LEAHY. I appreciate all of you being here. Of course, Judge, you probably remember when your distinguished late father was a judge and also went through this, and you have to imagine how very proud he would have to be today.

Did you have any opening statement you wished to make?

STATEMENT OF BARRINGTON D. PARKER, JR., NOMINEE TO BE CIRCUIT JUDGE FOR THE SECOND CIRCUIT

Judge PARKER. I didn't, Senator. I would be pleased to answer any questions that you or Senator McConnell might have.

Chairman LEAHY. Well, you know, I told Judge Walker, of course, you are going to have a lot of fun now as chief judge when something comes up and you say get Judge Parker for me, and they will say, of course, which one, because there is already a Judge Parker on there, Fred Parker, from Vermont, whom I think the world of, a longtime friend. We had actually been schoolmates at Georgetown.

I am thinking about the court you are going to be coming from, Judge. That has to be one of the busiest trial courts anywhere. It has got to have one of the most interesting dockets in the country. Are you going to miss the excitement? I mean, this is going from a very, very active trial court to what is really a different type of court as an appellate judge.

Judge PARKER. I don't think. I hope not. I have enjoyed my years on the district court immensely. I have been fortunate to have a group of wonderful colleagues, many of whom you and your colleagues had the responsibility of reviewing and ultimately sending to our court. We have a wonderful U.S. Attorney's office up there with many just extraordinarily capable lawyers doing the people's work, doing the Government's work, and a fine, fine bar.

I believe, and I hope that my new responsibilities, if I am fortunate enough to be confirmed, will be equally as exciting, perhaps, in different ways. The Second Circuit is a wonderful institution. I am immensely proud to even be considered for a position on that court.

The work will be different; it will be somewhat more cloistered, but I anticipate and hope that the constellation of intellectual and professional challenges that I face will give me the same sense of deep personal satisfaction that I have gained through the 7 years of judicial service I have been privileged to render.

Chairman LEAHY. Judge, as a district judge you are making decisions that are fairly easy on this part anyway of legal decisions, stare decisis. You look at the Second Circuit, you look at the Supreme Court. Now, you will be a member of the Second Circuit Court of Appeals. What is your commitment then to stare decisis?

I would assume it is easy on the Supreme Court level. I mean, the Second Circuit would be bound by any decision if you have a case on all fours from the Supreme Court. Would you agree me that is an easy question? You have to follow the Supreme Court.

Judge PARKER. Yes.

Chairman LEAHY. How do you make decisions, though, one maybe a case of first impression to the Second Circuit or it is a legal principle already decided by the Second Circuit?

Judge PARKER. Well, I firmly believe that my main function and primary responsibility as an Article III judge is to identify and apply rules of law. In the first instance, as a member of the Second Circuit, unless, of course, there is an en banc matter which raises slightly different types of considerations, I am bound by prior precedent in our circuit.

Three-judge panels, of course, are not at liberty, nor should they rewrite the law of the circuit. We are bound by that. I think the vast majority of the matters we face—guidance from other opinions in the circuit will be the major source of what we look at in crafting new decisions.

Chairman LEAHY. The Supreme Court, though, has struck down a number of Federal statutes, several of them designed to protect the civil rights and prerogatives, I believe, of our most vulnerable citizens. They said that is beyond Congress' power under section 5 of the 14th Amendment. They actually have struck down statutes as being outside the authority granted Congress by the Commerce Clause, and some of these cases have been described as creating a new power for State governments because Federal authority is being diminished.

At the same time, the Court has issued several decisions, most notably in the environmental area, that grant States significant new authority over the use of land and water, even though we have had Federal regulatory authority in place for decades.

Some of the cases they have raised questions about the limitations imposed on congressional authority. I believe, taken collectively, they show some kind of a new federalism crafted by the Supreme Court that could dramatically change our structure of Government.

Without going into particular cases, as a principle, do you have any views on this?

Judge PARKER. Well, as a court of appeals judge, my obligation is to understand and faithfully apply Supreme Court precedent, and if I am fortunate enough to be confirmed that is what I would hope I would do, and I can assure you that I would do that to the best of my ability

Chairman LEAHY. Senator McConnell?

Senator MCCONNELL. Just one question, Judge. Do you believe that a 10, 15, or even 20-year delay between conviction of a capital offender and an execution is too long?

Judge PARKER. I firmly believe that justice delayed is justice denied. We are greatly aided by the Speedy Trial Act that Congress passed a number of years ago. We are obligated to, and we do move criminal matters to the top of our docket.

I believe that any type of lengthy delay in criminal proceedings, especially in capital matters where the interest of the litigants, the victim and the public is paramount, are inappropriate. This should not occur. I believe that our court, like other Federal courts around the country, is mindful of the instructions that Congress has given us in that regard that these delays are wrong and they should be eliminated.

Senator MCCONNELL. Thank you. I don't have any other questions, Mr. Chairman.

Chairman LEAHY. Judge Parker, thank you very much and you are excused. I don't know whatever time you want to spend with family here or you have to drive back, but it is a gorgeous day outside. Please enjoy it. I know you have gone through the rigors of this searching and difficult hearing with aplomb, and I thank you for being here.

We will keep the record open for one week to accommodate the Jewish holidays.

Senator Schumer, who had asked me to have this hearing and have you here, again sends his apologies. I will put his full statement in the record.

I think you especially, coming from such a tragic area, know why neither the Senators from New York are here.

Judge PARKER. I certainly do. I thank you, Senator Leahy and Senator McConnell, for affording me this opportunity, and I thank your colleagues for making this opportunity possible for me.

Chairman LEAHY. Thank you.

Judge PARKER. Thank you.

Senator MCCONNELL. Congratulations, Judge.

Judge PARKER. Thank you very much. Thank you.

[The biographical information of Judge Parker follows:]

BARRINGTON DANIELS PARKER, JR.

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Barrington Daniels Parker, Jr.

2. Address: List current place of residence and office address(es).

Residence

Stamford, Connecticut

Office

United States Court House
300 Quarropas Street
White Plains, NY 10601

3. Date and place of birth.

August 21, 1944
Washington, D.C.

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Toni Trent Parker - my wife operates two companies: Black Books Galore and Kids Cultural Books from our home. These organizations put on multi-cultural children's book fairs and promote and distribute African-American children books.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Yale College B.A. 1965 (September 1961 - June 1965)
Yale Law School LL.B. 1969 (September 1966 - June 1969)

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

9/94 - Present
Judge, United States District Court (S.D.N.Y.)
United States Courthouse
White Plains, New York

10/87 - 9/94
Morrison & Foerster, Partner
New York, New York

6/77 - 10/87
Parker Auspitz Neesemann & Delehanty P.C., Partner
New York, New York

10/70 - 6/77
Sullivan & Cromwell, Associate
New York, New York

7/69 - 9/70
Hon. Aubrey E. Robinson, Jr., Law Clerk
Washington, D.C.

6/68 - 8/68
D.C. Corporation Counsel, Summer Intern
District Building
Washington, D.C.

6/67 - 8/67
NAACP Legal Defense Fund, Summer Intern
New York, New York

7/66 - 8/66
Yale University Summer High School, Teacher
New Haven, Connecticut

7/65 - 7/66
Phillips Exeter Academy, Teacher
Exeter, New Hampshire

1980-1985
Partners' Investment Group, Partner

Board Memberships
The Yale Corporation (1999-date)
The Governance Institute (1991-date)
Greenwich Academy (1998-date)
St. Paul's School (1993-1998)
Harlem School for the Arts (1978-1994)
Central Park Conservancy (1981-1999)
The New School University (1985-1999)
The Visiting Nurse Association of New York (1978-1984)
NAACP Legal Defense and Education Fund Inc. (1980-1994)
Lawyers Committee for Human Rights (1983-1990)
Southern African Legal Services and Legal Education Project (1994-2000)

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

None.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

None.

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

Judicial Conference Committee on Security and Facilities

Second Circuit Space and Facilities Committee

Southern District of New York Committees:
Magistrate Judges
Bar Liaison
House and Space
Library

Federal Bar Council, Trustee

American Bar Association

Association of the Bar of the City of New York
Vice President 1995-1996

Committee to Enhance Professional Opportunities for Minorities 1990 - 1992
Nominating Committee 1987 - 1988
Executive Committee 1982 - 1986
Judiciary Committee 1978 - 1982

Second Circuit Judicial Conference Planning and Program Committee

New York State Bar Examination Validation Study, Member (1992)

10. Other memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Lobbying Organizations:

None.

Other Organizations

The Council on Foreign Relations

The Governance Institute
The Century Association

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Court	Date
New York State Bar	**10/71 (retired 9/94)**
United States District Court for the Southern District of New York	**11/14/72**
United States District Court for the Eastern District of New York	**12/06/72**
United States Court of Appeals for the Second Circuit	**12/27/72**
Supreme Court of the United States	**3/03/75**
United States Court of Appeals for the Tenth Circuit	**1974**
United States Tax Court	**3/28/80**
United States Court of Appeals for the Fifth Circuit	**1979**
United States Court of Appeals for the Eleventh Circuit	**1982**
United States District Court for the Northern District of California	**10/31/89**
United States District Court for the District of Connecticut	**3/19/92**

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Hon. Robert A. Katzmann, editor The Law Firm and Public Good.
The Brookings Institute/The Governance Institute (Washington, D.C. 1995)
pp. 158-171

The texts for two speeches discussing legal issues are submitted herewith. I am unaware of any press coverage of these speeches.

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent. March 12, 2001

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Judge, United States District Court (S.D.N.Y.), 9/94-date
Article III jurisdiction

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

SIGNIFICANT OPINIONS

(1) Trinity United Methodist Parish v. Board of Educ. of the City of Newburgh, 907 F.Supp. 707 (S.D.N.Y. 1995).

United States v. Pirro, 96 F.Supp.2d 279 (S.D.N.Y.), aff'd 212 F.3d 86 (2d Cir. 2000).

Waldman v. Village of Kiryas Joel, 39 F.Supp.2d 370 (S.D.N.Y.), aff'd 207 F.3d 105 (2d Cir. 2000).

Innovative Health v. White Plains, 931 F.Supp. 222 (S.D.N.Y.), aff'd 112 F.3d 37 (2d Cir. 1997).

Tonnesen v. Yonkers Constructing Co., 82 F.3d 30 (2d Cir. 1996).

Town of New Windsor v. Tesa Tuck, 935 F.Supp. 317 (S.D.N.Y. 1996); 935 F.Supp. 315 (S.D.N.Y. 1996); 935 F.Supp. 310 (S.D.N.Y. 1996); 935 F.Supp. 305 (S.D.N.Y. 1996) ; 935 F.Supp. 300 (S.D.N.Y. 1996); 919 F.Supp. 662 (S.D.N.Y. 1996).

United States v. Lundwald (Texaco), 1 F.Supp.2d 249 (S.D.N.Y. 1998).

In re Nine West Shoes Anti-Trust Litigation, 80 F.Supp.2d 181 (S.D.N.Y. 2000).

United States v. Gluzman, 953 F.Supp. 84 (S.D.N.Y.), aff'd 154 F.3d 49 (2d Cir. 1998), cert. denied, 526 U.S. 1020, 119 S.Ct. 1257, 143 L.Ed.2d 353 (1999).

Mitchell v. Washingtonville Central School District, 992 F.Supp. 395 (S.D.N.Y.), aff'd 190 F.3d 1 (2d Cir. 1999).

(2) Judgments Reversed* Notices of Appeal were filed from 266 judgments (or appealable orders) I entered, resulting in 2 reversals.*

Buckley v. Consolidated Edison
934 F. Supp. 104 (S.D..N.Y. 1996)
Rev'd. 127 F.3d 270 (2nd Cir. 1997),
Panel decision vacated en banc, judgment
affirmed 155 F.3d 150 (2nd Cir. 1998)

Plaintiff, a substance abuser required to submit to random drug tests, was fired for refusing to submit a urine specimen. He sued under the Americans with Disabilities Act claiming that a faulty bladder which prevented him from urinating on command was a disability which his employer failed to accommodate. I dismissed the complaint. A divided panel of the Court of Appeals reversed. After a rehearing en banc, my judgment was reinstated.

M.S. v. Board of Education of Yonkers
231 F.3d 96 (2nd Cir. 2000) reversed

I held that parents of a learning disabled student were entitled, under the Individuals with Disabilities in Education Act, to tuition reimbursement in an out-of-district private placement. The Court of Appeals held that the state review officer's determination that the student's current placement was the "least restrictive" was entitled to deference.

---

* West Publishing Co. inaccurately reports me as the District Judge in Frank v. United States, 78 F.3d 815 (2d Cir. 1996), vacated 521 U.S. 1114 (1997), on remand 129 F.3d 273 (2d Cir. 1997). The judge was

actually the Hon. Frank Parker, now U.S.C.A., then Chief Judge, District of Vermont.

Judgments Vacated or Remanded (not Reversed)

Todaro v. Norat, 112 F.3d 598
(2nd Cir. 1997) vacated and remanded

Gubitosi v. Kapica, 154 F.3d 30
(2nd Cir. 1998) vacated and remanded

Williams v. Edwards, 195 F.3d 95
(2nd Cir. 1999) remanded

White v. ABCO, 221 F.3d 293
(2nd Cir. 2000) affirmed in part, vacated and remanded in part

United States v. Joseph Andrews, 229 F.3d 1136
(2nd Cir. 2000) affirmed in part, vacated and remanded in part

John O'Neil v. Yield House, et al., 91 Civ. 2051 (BDP), copy supplied. Vacated and remanded (2nd Cir. Oct. 8, 1996)

Westchester County Correctional Officers Benevolent Association v. County of Westchester
2001 WL 40826 (2nd Cir. 2001)
Copy supplied. Vacated and remanded

(3) Opinions on federal or state constitutional issues.

J.L.B. Equities, Inc. v. Ocwen Financial Corp., --- F.Supp.2d ----, 2001 WL 209811 (S.D.N.Y. 2001).

TCG New York, Inc. v. City of White Plains, N.Y., 125 F.Supp.2d 81 (S.D.N.Y. 2000).

Santorelli v. Cowhey, 124 F.Supp.2d 853 (S.D.N.Y. 2000), aff'd. 2001 WL 167583 (2d. Cir. 2001).

Gluzman v. U.S., 124 F.Supp.2d 171 (S.D.N.Y. 2000).

Donna Lee Williams, Ins. Comm'r of the State of Delaware v. Pfeffer, 117 F.Supp.2d 331 (S.D.N.Y. 2000).

Kittay v. Giuliani, 112 F.Supp.2d 342 (S.D.N.Y. 2000).

T & A's, Inc. v. Town Bd. of Town of Ramapo, 109 F.Supp.2d 161 (S.D.N.Y. 2000).

Community Health Care Ass'n of New York v. Mahon, 106 F.Supp.2d 523 (S.D.N.Y. 2000).

Cahill v. O'Donnell, 75 F.Supp.2d 264 (S.D.N.Y. 1999).

Richter v. Artuz, 77 F.Supp.2d 385 (S.D.N.Y. 1999).

Ayala v. Portuondo, 75 F.Supp.2d 194 (S.D.N.Y. 1999).

Community Health Care Ass'n of New York v. DeParle, 69 F.Supp.2d 463 (S.D.N.Y. 1999).

Fernandez v. City of Poughkeepsie, 67 F.Supp.2d 222 (S.D.N.Y. 1999).

Davis v. Carey, 63 F.Supp.2d 361 (S.D.N.Y. 1999).

Sprint Spectrum, L.P. v. Mills, 65 F.Supp.2d 148 (S.D.N.Y. 1999).

Anobile v. Pelligrino, 66 F.Supp.2d 472 (S.D.N.Y. 1999).

Collins v. Christopher, 48 F.Supp.2d 397 (S.D.N.Y. 1999).

U.S. v. Gotti, 42 F.Supp.2d 252 (S.D.N.Y. 1999).

Waldman v. Village of Kiryas Joel, 39 F.Supp.2d 370 (S.D.N.Y.), aff'd. 207 F.3d 105 (2d Cir. 2000).

Eisberg v. Dutchess County Legislature, 37 F.Supp.2d 283 (S.D.N.Y.), aff'd. 181 F.3d 82 (2d Cir. 1999).

Kalb v. Wood, 38 F.Supp.2d 260 (S.D.N.Y. 1999).

Roberts v. Superintendent, Groveland Correctional Facility, 26 F.Supp.2d 684 (S.D.N.Y. 1998).

Hill v. Keane, 28 F.Supp.2d 850 (S.D.N.Y. 1998).

Herring v. Artuz, 28 F.Supp.2d 852 (S.D.N.Y. 1998).

Linden v. Artuz, 26 F.Supp.2d 686 (S.D.N.Y. 1998).

National Telephone Director Consultants, Inc. v. Bellsouth Advertising & Pub. Corp., 25 F.Supp.2d 192 (S.D.N.Y. 1998).

Palmer v. City of Yonkers, 22 F.Supp.2d 283 (S.D.N.Y. 1998).

Farrington v. Senkowski, 19 F.Supp.2d 176 (S.D.N.Y.), aff'd. 214 F.3d 237 (2d Cir. 2000).

Atkins v. Miller, 18 F.Supp.2d 314 (S.D.N.Y. 1998).

Muller Tours, Inc. v. Vanderhoef, 13 F.Supp.2d 501 (S.D.N.Y. 1998).

Green v. U.S., 9 F.Supp.2d 413 (S.D.N.Y. 1998).

Mele v. Christopher, 7 F.Supp.2d 419 (S.D.N.Y.), aff'd. 173 F.3d 845 (2d Cir. 1999).

Johnson v. U.S., 10 F.Supp.2d 390 (S.D.N.Y. 1998).

U.S. v. Gotti, 996 F.Supp. 321 (S.D.N.Y.), aff'd 155 F.3d 144 (2d Cir.1998).
Related case: 9 F.Supp.2d 320 (S.D.N.Y. 1998).

In re Wright, 220 B.R. 543 (S.D.N.Y. 1998).

Cahill v. O'Donnell, 7 F.Supp.2d 341 (S.D.N.Y. 1998).

Mishk v. Destefano, 5 F.Supp.2d 194 (S.D.N.Y. 1998).

A. Tarricone, Inc. v. U.S., 4 F.Supp.2d 323 (S.D.N.Y. 1998).

Diederich v. County of Rockland, 999 F.Supp. 568 (S.D.N.Y.), aff'd. 166 F.3d 1200 (2d Cir. 1998).

U.S. v. Lundwall, 1 F.Supp.2d 249 (S.D.N.Y. 1998).

Demilo-Fytros v. City of Mount Vernon, 993 F.Supp. 221 (S.D.N.Y. 1998).

Gomez v. Pellicone, 986 F.Supp. 220 (S.D.N.Y. 1997).

Lewis v. City of Mount Vernon, Mount Vernon Police Dept., 984 F.Supp. 748 (S.D.N.Y. 1997).

Foxhall Realty Law Offices, Inc. v. Telecommunications Premium Services, Ltd., 975 F.Supp. 329 (S.D.N.Y.), aff'd. 156 F.3d 432 (2d Cir. 1998).

Szoke v. Carter, 974 F.Supp. 360 (S.D.N.Y. 1997).

Riedinger v. D'Amicantino, 974 F.Supp. 322 (S.D.N.Y. 1997).

Bell by Bell v. Lennon, 971 F.Supp. 830 (S.D.N.Y. 1997).

WMW Machinery, Inc. v. Werkzeugmaschinenhandel GmbH IM Aufbau, 960 F.Supp. 734 (S.D.N.Y. 1997).

Federico v. Board of Educ. of Public Schools of Tarrytowns, 955 F.Supp. 194 (S.D.N.Y. 1997).

U.S. v. Gluzman, 953 F.Supp. 84 (S.D.N.Y.), aff'd. 154 F.3d 49 (2d Cir.1998).

Cole v. Delio, 946 F.Supp. 283 (S.D.N.Y. 1996).

Mazza v. Hendrick Hudson Cent. School Dist., 942 F.Supp. 187 (S.D.N.Y. 1996).

Taylor v. Mitchell, 939 F.Supp. 249 (S.D.N.Y. 1996).

Frankos v. Sendowski, 937 F.Supp. 227 (S.D.N.Y.), aff'd. 116 F.3d 465 (2d Cir. 1997).

Fischmann v. VisionTel, Inc., 934 F.Supp. 115 (S.D.N.Y. 1996).

Town of New Windsor v. Tesa Tuck, Inc., 935 F.Supp. 317 (S.D.N.Y.1996).

Nielsen v. Stepping Stones Associates, L.P., 930 F.Supp. 910 (S.D.N.Y.1996).

Innovative Health Systems, Inc. v. City of White Plains, 931 F.Supp. 222 (S.D.N.Y.), aff'd. 117 F.3d 37 (2d Cir. 1997).

Todaro v. Norat, 920 F.Supp. 66 (S.D.N.Y. 1996).

Lancaster v. Zufle, 165 F.R.D. 38 (S.D.N.Y. 1996).

Fickling v. New York State Dept. of Civil Service, 909 F.Supp. 185 (S.D.N.Y. 1995), aff'd. 108 F.3d 1369 (2d Cir. 1997).

Trinity United Methodist Parish v. Board of Educ. of the City of Newburgh, 907 F.Supp. 707 (S.D.N.Y. 1995).

Kounitz v. Slaatten, 901 F.Supp. 650 (S.D.N.Y. 1995).

HBP Associates v. Marsh, 893 F.Supp. 271 (S.D.N.Y. 1995).

U.S. v. Strawberry, 892 F.Supp. 519 (S.D.N.Y. 1995).

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None.

17. Legal Career:
a. Describe chronologically your law practice and experience after graduation from law school including:

1. 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;

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

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of you connection with each;

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each

such variance, giving dates.

2. What percentage of these appearances was in:
   (a) federal courts;
   (b) state courts of record;
   (c) other courts.

3. What percentage of your litigation was:
   (a) civil;
   (b) criminal.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

5. What percentage of these trials was:
   (a) jury;
   (b) non-jury.

a. 1. I served as law clerk to the Hon. Aubrey E. Robinson, Jr. of the United States District Court for the District of Columbia from August 1969 to August 1970.

2. I have not practiced alone.

3. November 1970 - March 1977.
Sullivan & Cromwell - Associate
125 Broad Street
New York, New York 10004

[When I practiced at Sullivan & Cromwell the firm was located at 48 Wall Street, New York, New York]

March 1977 - October 1987
Parker Auspitz Neesemann &
Delehanty P.C. - Partner
415 Madison Avenue
New York, New York 10017

In October 1987 the firm merged with Morrison & Foerster. All partners at Parker Auspitz became partners at Morrison & Foerster

1987 - 1994
Morrison & Foerster - Partner
1290 Avenue of the Americas
41st Floor
New York, New York 10104

b. **Prior to assuming the bench, I specialized in general commercial litigation. Early, particularly at Sullivan and Cromwell, my practice emphasized antitrust litigation for entities such as Kennecott Copper, securities litigation, principally defense work, for brokers and dealers such as Kidder Peabody & Co. and labor matters primarily for Babcock and Wilcox. I tried approximately 20 labor arbitrations. When I moved to my own firm, I continued to do securities work but spent more time on products liability work and automobile dealer termination work. I also did federal habeas corpus work on a pro bono basis. More recently at Morrison & Foerster, for two years I spent a substantial proportion of my time as RICO Trustee in U.S. v. Paccione. I have done Title VII defense work, professional responsibility and intellectual property litigation.**

c. **1.** **Frequently, during the first 15 years of my practice, less frequently since then, although I appeared frequently during 1990-1992 when I was a R.I.C.O. Trustee in United States v. Paccione, et al.**

2. **Federal courts - 66%**
State courts - 33%

3. **Civil - 85%**
Criminal - 15%

4. **Six cases, two as sole counsel, three as lead counsel and one as associate counsel.**

5. **Two were jury trials, four were non-jury trials.**

16. Litigation:
Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if

Mitchel Field, N.Y. 11553
(516) 745-5700
Counsel for Co-Defendant Carl Myers

2. Violetta Puterman v. Knitgood Workers Union Local 155 of ILGWU et al. 78 Civ. 6000 (MJL) See 36 CCH Empl. Prac. Dec. ¶ 35,086 (February 19, 1985)

This case was an Equal Pay Act claim brought against the ILGWU by the senior member of its organizing staff. I represented the defendant Union as trial counsel making the jury arguments and examining and cross-examining the principal witnesses. The case raised important public relations concerns for the Union since the claims were, in effect, civil rights claims brought by the Union's own employees. The suit was closely followed in the New York City garment industry. The jury returned a verdict in favor of the plaintiff.

a. June 20 - July 1, 1983

b. United States District Court for the Southern District of New York
Hon. Mary Johnson Lowe (deceased)

c. Burton H. Hall, Esq.
2109 Broadway
New York, New York 10023
(212) 431-9114
(Defendant's counsel)

3. United Skates of America v. Sally Kaplan
468 N.Y.S. 2d 642; 95 A.D. 232 (2nd Dept. 1983)

My client, United Skates, entered into a lease for a recreational facility with an option to purchase the leased property at the end of the lease term. The offer to purchase was rejected on the grounds that the tendered lease documents did not comply with the terms of the option-purchase agreement. Summary judgment in favor of the landlord was granted. On appeal, the case was reversed and our motion for summary judgment was granted. The case expanded New York law on "substantial performance" of real estate contracts. I briefed and argued the case at all phases.

a. Summary Judgment - May 18, 1982

b. Hon. Harold Hyman
Supreme Court, Queens County

c. Fred Plotkin, Esq.
551 Fifth Avenue
New York, New York 10176
(212) 972-2300

4. In the Matter of Gerald J. Garner
580 N.Y.S. 2d 59 (2nd Dept. 1992)

The Respondent, a lawyer and bank president, was charged with professional misconduct in connection with an application to the Comptroller of the Currency. The case, I thought, raised novel federal procedural and due process issues such as (a) the circumstances under which documents, the confidentiality of which was authorized by federal law when submitted to a federal agency, could sua sponte be provided by the agency to state bar officials, and (b) the extent to which Fourth and Fifth Amendment protections applied in disbarment proceedings. I tried the case on behalf of Respondent who did not prevail.

a. April 12, May 10, 1991

b. Hon. W. Bernard Richland
Special Referee
U.S. Courthouse
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 12201

c. Sandra Holt, Esq.
Grievance Committee for the Ninth Judicial District
399 Knollwood Road, Suite 200
White Plains, New York 10603
(914) 949-4540

5. United States v. Angelo Paccione, et al. (2nd Cir. 1991); 949 F.2d 1183; 948 F.2d 851

Between June 1990 and May 1992 I served as RICO Trustee for two Brooklyn, New York, area garbage carting concerns that controlled a

substantial proportion of the Brooklyn market and that were convicted of one of the largest environmental crimes prosecuted in the Southern District. Following the guilty verdicts but prior to the forfeiture presentations to the jury, the defendants agreed to pay $22 million to the U.S. government in lieu of forfeiture. I was appointed R.I.C.O. Trustee to collect the fines and to operate and to attempt to sell the companies when the defendants defaulted. Numerous problems arose in connection with the operation of the companies and our efforts to keep them profitable, necessitating frequent Court appearances. I worked very closely with the Major Crimes Unit of the U.S. Attorney's office. I also worked very closely with the Asset Forfeiture Unit, during a period in which other Brooklyn carters attempted to drive us out of business, and with agents of the Federal Bureau of Investigation.

a. numerous appearances (June 1990, May 1992)

b. United States District Court for the Southern District of New York
Hon. Constance Baker Motley

c. Jeffrey B. Sklaroff, Esq.
Greenberg Traurig, LLP
885 Third Avenue
New York, New York 10022
(212) 801-9200
(Formerly of the Major Crimes Unit)

Elliot R. Peters, Esq.
Keker & Van Nest
710 Sansome Street
San Francisco, CA 94111
(415) 391-5400
(Formerly of the Major Crimes Unit)

6. Muriel E. Kraszewki et al. v. State Farm General Insurance Co., et al. (N.D. Cal.) C-79-1261 (THE). See 38 Fair Empl. Prac. (BNA) Case 197 (N.D. Cal. 1985)

Our firm represented State Farm in the damage phase of what was the largest Title VII case brought. The case involved claims of sex discrimination in the hiring and promotion of State Farm insurance agents in the State of California. Prior to our firm's appearance, State

Farm had lost at the liability phase of the proceedings. A Consent Decree had been entered which contemplated extensive discovery followed by as many as 1,000 one week damage trials before special masters in which approximately $400,000 to $500,000 was at stake in each of the early trials. Our firm represented State Farm and I was in charge of a trial team trying cases. After fifteen months of discovery and hearings, the case settled. The individual claims proceedings abated and a quite large monetary settlement was made with the plaintiffs.

a. Hearing Dates:
February 12 - 16 1991;
May 4-9, 1991;
July 9-13, 1991;

b. Kathy Kelly, Esq.
Chief Special Master
Kagel & Kagel
544 Market Street
San Francisco, California 94102
(415) 482-1438

c. Barry Goldstein, Esq.
Saperstein, Goldstein, Demchak & Baller
300 Lakeside Drive
Oakland, California 94612
(510) 763-9800
Counsel for plaintiffs

7. Litton Wynn Jr. v. Checker Motors Corp. v. General Motors, 82 Civ. 1801 (Wexler, J.)

In this design defect case, an energy absorbing steering column was claimed to have malfunctioned in a collision that caused injury to the driver and the death of a passenger. Loss of the case would have raised serious collateral estoppel issues in a companion wrongful death case pending in state court brought on behalf of the passenger killed during the collision. It would also have exposed the client to potentially massive damage claims since the design in question was widely used and licensed. I was lead trial attorney for General Motors. Defendants prevailed at trial.

a. June 24 - June 28, 1985

b. United States District Court for the
Eastern District of New York
Hon. Leonard D. Wexler

c. Saul Wilensky, Esq.
Lester Schwab Katz and Dwyer
120 Broadway
New York, New York 10271
(212) 964-6611
Counsel for Checkers Motors

d. Stanley Fremont, Esq.
Eppinger Ringold & Fremont
131 Larchmont Avenue
Larchmont, New York 10538
Counsel for Plaintiff
(914) 833-0500

8. New York v. Bernard Harris
495 U.S. 14 (1990)

This Fourth Amendment case considered whether the attenuation analysis of Brown v. Illinois, 422 U.S. 590 (1975) should be applied to warrantless home arrests made in violation of Payton v. New York, 445 U.S. 573 (1980). Harris, acting pro se, won in the New York Court of Appeals, 72 N.Y.2d 614 (1988). When New York's application for certiorari was granted, I briefed and argued the case as amicus curiae in support of the judgment below by special invitation of the United States Supreme Court. The Supreme Court reversed 5-4. On remand, however, the New York Court of Appeals declined to follow the Supreme Court and adhered to its earlier decision granting Respondent a new trial. 77 N.Y.2d 434 (1991)

a. January 10, 1990

b. United States Supreme Court

c. Peter Coddington, Esq.
Chief, Appeals Bureau
Bronx County District Attorney's Office
215 East 161 Street
Bronx, New York 10451
(212) 590-2494

9. **Department of the Air Force v. Michael Rose, Lawrence P. Pedowitz and Charles P. Diamond**
425 U.S. 352 (1976); 495 F.2d 26 (2nd Cir. 1974)

In this Freedom of Information Act case, my clients, members and editors of the New York University Law Review sought documents from the Air Force Academy concerning its disciplinary procedures. The District Court granted the government's motion for summary judgment. The Second Circuit reversed. The government's petition for certiorari was granted. The Supreme Court affirmed, curtailing the discretion of Agencies to withhold documents not clearly covered by FOIA exemptions. On remand, the documents sought were released to the Law Review. I briefed and argued the case at all stages of the proceedings.

a. **October 8, 1975 (Oral argument in the Supreme Court)**

b. **Hon. Lloyd F. MacMahon (deceased)**
United States District Court for the
Southern District of New York

United States Court of Appeals
United States Supreme Court

c. **William R. Bronner, Esq.**
(Former) A.U.S.A. handled proceedings in the
District Court
Currently:
V.P. General Counsel & Sec., Rheox, Inc.
Wyckoff Mill Road
Hightstown, NJ 08520
(609) 443-2000

Deputy Solicitor General (now the Honorable Daniel M. Friedman)
Senior Circuit Judge for the Federal
Circuit argued for the Government in the Supreme Court
(202) 633-5836

10. **Becton Dickinson & Co. v. Sun Company et al; Morton Pupko v. Fairleigh S. Dickinson Jr. et al.; Securities and Exchange Commission v. Sun Company et al.; Rubin Polne v. Sun Company Inc.**
475 F. Supp. 783 (S.D.N.Y.) 1979

The cases involved a contest for control of the Becton Dickinson Co. The primary issue tried was whether a program of negotiated purchases of Becton Dickinson shares by the Sun Co. constituted a tender offer in violation of the Williams Act. This case involved one of the few contested tender offers tried to judgment. My firm (Parker Auspitz) represented Becton family members who held large positions in Becton Dickinson. I was active in the extensive pre-trial discovery that occurred and examined one of the main defendants at trial. The Court held that the acquisition program violated the Williams Act.

a. November 13 to December 8, 1978

b. Hon. Robert L. Carter
United States District Court for the
Southern District of New York

c. Robert B. Smith, Esq.
Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, New York 10019
(212) 836-8000
(Counsel for Becton Dickinson)

Peter M. Fishbein, Esq.
Kaye Scholer Fierman Hays & Handler
425 Park Avenue
New York, N.Y. 10022
(212) 836-8000
(Counsel for the Sun Co.)

Sheldon H. Elsen, Esq.
Orans, Elsen and Lupert
1 Rockefeller Plaza
New York, New York 10020
(212) 586-2211
(Counsel for Fairleigh S. Dickinson Jr.)

Marvin Schwartz, Esq.
Sullivan & Cromwell
125 Broad Street
New York, New York 10004
(212) 558-4000
(Counsel for F. Eberstadt & Co.)

Following are names, addresses and telephone numbers for members of the legal community who have appeared before me as a judge.

Gary P. Naftalis, Esq.
Kramer Levin Naftalis & Frankel, LLP
919 3rd Avenue
New York, NY 10022
(212) 715-9100

Cathy Seibel, Esq.
United States Attorney's Office
300 Quarropas Street
White Plains, NY 10601
(914) 993-1900

Deirdre Daly, Esq.
Gage & Pavlis
One Gorham Island
Westport, CT 06880
(203) 255-6700

Gerald L. Shargel, Esq.
570 Lexington Avenue
New York, NY 10022
(212) 446-2323

Robert J. Giuffra Jr., Esq.
Sullivan & Cromwell
120 Broad Street
New York, NY 10004
(212) 558-4000

Jeffrey B. Sklaroff, Esq.
Greenberg Traurig, LLP
885 Third Avenue
New York, NY 10022
(212) 801-9200

Ronald S. Rolfe, Esq.
Cravath Swaine & Moore
825 8th Avenue
New York, NY 10019
(212) 474-1000

Andrew A. Rubin, Esq.
Mancuso Rubin & Fufidio
1 North Broadway
White Plains, NY 10601
(914) 791-8200

Vincent R. Fontana, Esq.
Wilson Elser Moskowitz Edelman & Dicker LLP
150 E. 42nd Street
New York, NY 10017
(212) 490-3000

Leon Friedman, Esq.
148 East 78th Street
New York, NY 10021
(212) 737-0400

Kimberly Rea, Esq.
Bleakley Platt & Schmidt
1 North Lexington Avenue
White Plains, NY 10602
(914) 287-6100

Daniel A. Pollack, Esq.
Pollack & Kaminsky
114 West 47th Street
New York, NY 10036
(212) 575-4700

19. 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 the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

In addition to the matters listed in Item no. 18, while in private practice I had extensive products liability, real estate and automotive dealer franchise litigation experience. Between the late 1970's and late 1980's, I handled or supervised more than 50 major products liability cases, principally for General Motors. In addition, I also handled many of the contested dealer termination cases in the New York area for General Motors and Chrysler. I tried approximately 20 labor law arbitrations and I had other labor law

experience. I also had significant securities litigation experience for accountants and for brokers and dealers in securities.

In August 1993, I participated in a mission to South Africa sponsored by the United States Information Service and the Ford Foundation teaching United States constitutional law to public interest lawyers throughout South Africa. I taught the protections afforded criminal defendants under the United States Constitution.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List 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. Please describe the arrangements you have made to be compensated in the future for any financial or business interests.

   After I was appointed to the Court I rolled pension funds from my firm into an IRA from which I can draw without penalty after age 59 ½.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

   As an Article III Judge I am obligated to follow the Code of Judicial Ethics. I would resolve any conflicts in accordance with the requirements and spirit of the Code.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during you service with the court? If so, explain.

   No.

4. 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, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

   See attached Financial Disclosure Report.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See attached net worth statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No, except that I have participated in political fund raising events.

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		1	000	Notes payable to banks—secured			
U.S. Government securities—add schedule				Notes payable to banks—unsecured			
Listed securities—add schedule				Notes payable to relatives			
Unlisted securities—add schedule		25	000	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid tax and interest			
Doubtful				Real estate mortgages payable—add schedule		350	000
Real estate owned—add schedule (PERSONAL RESIDENCE)	1	000	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts—itemize:			
Autos and other personal property							
Cash value—life insurance							
Other assets—itemize: IRA-ROLLOVER	1	150	000				
MISC. PERSONAL PROPERTY		100	000				
				Total liabilities		350	000
				Net Worth	1	926	000
Total Assets	2	276	000	Total liabilities and net worth	2	276	000
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor NO				Are any assets pledged? (Add schedule.) NO			
On leases or contracts NO				Are you defendant in any suits or legal actions? NO			
Legal Claims NONE				Have you ever taken bankruptcy? NO			
Provision for Federal Income Tax ALL TAXES CURRENT							
Other special debt NONE							

AO-10 (w)
Rev. 1/2000

FINANCIAL DISCLOSURE REPORT
Nomination Report

Government Act of 1978, as amended
(5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
Parker, Jr., Barrington D.	U.S. Court of Appeals, 2nd Cir	05/14/2001

4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	5. Report Type (check type)	6. Reporting Period
U.S. Circuit Judge (Nominee)	X Nomination, Date 05/09/2001 Initial Annual Final	01/01/2000 to 05/11/2001

7. Chambers or Office Address	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.
U.S. District Court 300 Quarropas Street White Plains, NY 10601	Reviewing Officer _____ Date _____

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.

I. POSITIONS *(Reporting individual only; see pp. 9-13 of Instructions.)*

☐ NONE (No reportable positions.)

	POSITION	NAME OF ORGANIZATION / ENTITY
1	Trustee	The Yale Corporation
2	Trustee	The Governance Institute
3	Member	Council on Foreign Relations

II. AGREEMENTS *(Reporting individual only; see pp.14-16 of Instructions.)*

☒ NONE (No reportable agreements.)

	DATE	PARTIES AND TERMS
1		
2		
3		

III. NON-INVESTMENT INCOME *(Reporting individual and spouse; see pp. 17-24 of Instructions.)*

☐ NONE (No reportable non-investment income.)

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1			
2	2000-01	Self-Employed	
3			
4			

FINANCIAL DISCLOSURE REPORT | Parker, Jr., Barrington D. | 05/14/2001

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)

☐ **NONE** (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1	Exempt	
2		
3		
4		
5		
6		
7		

V. GIFTS

(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)

☐ **NONE** (No such reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1	Exempt		
2			
3			

VI. LIABILITIES

(Includes those of spouse and dependent children. See pp 33-35 of Instructions.)

☒ **NONE** (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE COD
1			
2			
3			
4			
5			
6			

* VAL CODES: J=$15,000 or less K=$15,001-$50,000 L=$50,001 to $100,000 M=$100,001-$250,000 N=$250,001-$500,000
O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

AFFIDAVIT

I, BARRINGTON DANIELS PARKER, JR., do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

May 14, 2001
(DATE)

B. Daniels Parker
(NAME)

Gina Sicora
(NOTARY)

GINA SICORA
NOTARY PUBLIC, State of New York
No. 4872408
Qualified in Westchester County
Term Expires October 14, 2002

VII. Page 1 INVESTMENTS and TRUSTS-- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions.)									
1 Brokerage Acct.#1									
2 Abbott Laboratories		None							
3 AT&T Corp.		None							
4 Berkshire Hathaway		None							
5 C R Bard Inc.		None							
6 Fannie Mae		None							
7 H&R Block		None							
8 Harcourt General		None							
9 Hershey Foods Corp.		None							
10 Industrial Bank of Washington		None	J	T					
11 Kimberly Clark		None							
12 McDonalds Inc.		None							
13 NTL Inc.		None							
14 On Line Resources		None	J	T					
15 Wells Fargo & Co.		None							
16									
17 Brokerage Acct.#2 (IRA)									

1 Inc/Gain Codes: A=$1,000 or less B=$1,001-$2,500 C=$2,501-$5,000 D=$5,001-$15,000 E=$15,001-$50,000
(Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

Val Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000 N=$250,001-$500,000
(Col. C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market
(Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT | Parker, Jr., Barrington D. | 05/14/2001

VII. Page 2 INVESTMENTS and TRUSTS-- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income,assets, or transactions.)									
18 Agilent Technologies		None							
19 American Home Products		None							
20 AMR-Corp. Del		None							
21 AM-FM Inc. (Name change to Clear Channel Communications)		None							
22 Amer International Group Inc.		None							
23 Andarko Petroleum Corp.		None							
24 Anheuser Busch Companies Inc.		None							
25 Apple Computer Inc.		None							
26 Bell Atlantaic Corp. (name change to Verizon)		None							
27 Carnival Corp.		None							
28 CBS Corp. (merged w/Viacom Inc.)		None							
29 Chase Manhattan Corp. (now JP Morgan & Chase)		None							
30 Cisco Systems Inc.		None							
31 Citigroup Inc.		None							
32 Clear Channel Communications Inc.		None							
33 Coastal Corp.		None							
34 Colgate Palmolive Co.		None							

1 Inc/Gain Codes: (Col. B1, D4) A=$1,000 or less; B=$1,001-$2,500; C=$2,501-$5,000; D=$5,001-$15,000; E=$15,001-$50,000; F=$50,001-$100,000; G=$100,001-$1,000,000; H1=$1,000,001-$5,000,000; H2=$5,000,001 or more

2 Val Codes: (Col. C1, D3) J=$15,000 or less; K=$15,001-$50,000; L=$50,001-$100,000; M=$100,001-$250,000; N=$250,001-$500,000; O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000; P3=$25,000,001-$50,000,000; P4=$50,000,001 or more

3 Val Mth Codes: (Col. C2) Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash/Market; U=Book Value; V=Other; W=Estimated

FINANCIAL DISCLOSURE REPORT | Parker, Jr., Barrington D. | 05/14/2001

VII. Page 3 INVESTMENTS and TRUSTS – income, value, transactions

(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions.)									
35 Comcast Corp. Cl. A		None							
36 Dell Computer Corp.		None							
37 Diageo PLC-Sponsored ADR		None							
38 Dynegy Inc.		None							
39 El Paso Energy Corp. (Cash in lieu of)	A	Dividend	J	T					
40 Eli Lilly & Co.		None							
41 EMC Corp.		None							
42 Enron Corp.		None							
43 EOG Res Inc.		None							
44 Exelon Corp.		None							
45 XL Ltd.Cl. A		None							
46 Federal Natl Mtg Assn. (AKA Fannie Mae)		None							
47 Firsthand FDS Technology Leaders FD		None	J	T					
48 Firsthand FDS Technology Leaders FD		None	J	T					
49 Firsthand FDS E-Commerce FD		None	J	T					
50 Firsthand FDS Technology Value Fund	A	Dividend	J	T					
51 Firsthand FDS Communications FD		None	J	T					

1 Inc/Gain Codes: (Col. B1, D4) A=$1,000 or less; B=$1,001-$2,500; C=$2,501-$5,000; D=$5,001-$15,000; E=$15,001-$50,000; F=$50,001-$100,000; G=$100,001-$1,000,000; H1=$1,000,001-$5,000,000; H2=$5,000,001 or more

Val Codes: (Col. C1, D3) J=$15,000 or less; K=$15,001-$50,000; L=$50,001-$100,000; M=$100,001-$250,000; N=$250,001-$500,000; O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000; P3=$25,000,001-$50,000,000; P4=$50,000,001 or more

3 Val Mth Codes: (Col. C2) Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash/Market; U=Book Value; V=Other; W=Estimated

FINANCIAL DISCLOSURE REPORT | Parker, Jr., Barrington D. | 05/14/2001

VII. Page 4 INVESTMENTS and TRUSTS-- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions.)									
52 General Motors Corp.		None							
53 General Electric Corp.		None							
54 Hewlett Packard		None							
55 Intel Corp.		None							
56 JP Morgan & Chase (formerly Chase Manhattan Corp.)		None							
57 Johnson & Johnson		None							
58 Lucent Technologies		None							
59 Marsh & McLennan Com. Inc.		None							
60 MBIA Inc.		None							
61 McDonalds Corp.		None							
62 McGraw Hill Companies		None							
63 MCI Worldcom Inc. (now Worldcom)		None							
64 Mediaone Group Inc.		None							
65 Merck & Co. Inc.		None							
66 Microsoft Corp.		None							
67 Minnesota Mining & Mfg. Co.		None							
68 Monsanto Co.		None							

1 Inc/Gain Codes: (Col. B1, D4) A=$1,000 or less; B=$1,001-$2,500; C=$2,501-$5,000; D=$5,001-$15,000; E=$15,001-$50,000; F=$50,001-$100,000; G=$100,001-$1,000,000; H1=$1,000,001-$5,000,000; H2=$5,000,001 or more

2 Val Codes: (Col. C1, D3) J=$15,000 or less; K=$15,001-$50,000; L=$50,001-$100,000; M=$100,001-$250,000; N=$250,001-$500,000; O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000; P3=$25,000,001-$50,000,000; P4=$50,000,001 or more

3 Val Mth Codes: (Col. C2) Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash/Market; U=Book Value; V=Other; W=Estimated

FINANCIAL DISCLOSURE REPORT Parker, Jr., Barrington D. 05/14/2001

VII. Page 5 INVESTMENTS and TRUSTS-- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
69 Morgan Stanley Dean Witter & Co.		None							
70 Motorola Inc.		None							
71 New York Times Cl. A		None							
72 Nike Inc. Cl. B		None							
73 Nokia Corp.		None							
74 Nortel Networks		None							
75 Northern Trust Corp.		None							
76 Philip Morris Companies Inc.		None							
77 Pfizer Inc.		None							
78 Radio Shack Corp.		None							
79 Ralston-Purina Group		None							
80 Royal Dutch Petroleum Co. NY Registry		None							
81 Safeway Inc.		None							
82 SAP AG-Sponsored ADR		None							
83 Schering Plough Corp.		None							
84 Schlumberger Ltd.		None							
85 Sun Microsystems Inc.		None							

1 Inc/Gain Codes: A=$1,000 or less B=$1,001-$2,500 C=$2,501-$5,000 D=$5,001-$15,000 E=$15,001-$50,000
(Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

2 Val Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000 N=$250,001-$500,000
(Col. C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market
(Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT | Parker, Jr., Barrington D. | 05/14/2001

VII. Page 6 INVESTMENTS and TRUSTS-- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
86 Tandy Corp. (now Radioshack Corp.)		None							
87 Texas Instruments Inc.		None							
88 Time Warner		None							
89 Tyco International Ltd.		None							
90 United Parcel Svc. Inc.		None							
91 United Technologies Corp.		None							
92 Verizon Communications Inc.		None							
93 Viacom Inc. Cl. B (merged w/CBS)		None							
94 Vodafone Airtouch PLC		None							
95 Wal-Mart Stores Inc.		None							
96 Warner Lambert Co.		None							
97 Worldcom Inc. (See MCI)		None							
98									
99 Brokerage Acct. #3 (IRA)									
100 Automatic Data Processing	B	Dividend	K	T					
101 Autozone Inc.		None							
102 CVS Corp.	A	Dividend	L	T					

1 Inc/Gain Codes: (Col. B1, D4) A=$1,000 or less; B=$1,001-$2,500; C=$2,501-$5,000; D=$5,001-$15,000; E=$15,001-$50,000; F=$50,001-$100,000; G=$100,001-$1,000,000; H1=$1,000,001-$5,000,000; H2=$5,000,001 or more

2 Val Codes: (Col. C1, D3) J=$15,000 or less; K=$15,001-$50,000; L=$50,001-$100,000; M=$100,001-$250,000; N=$250,001-$500,000; O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000; P3=$25,000,001-$50,000,000; P4=$50,000,001 or more

3 Val Mth Codes: (Col. C2) Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash/Market; U=Book Value; V=Other; W=Estimated

FINANCIAL DISCLOSURE REPORT | Parker, Jr., Barrington D. | 05/14/2001

VII. Page 7 INVESTMENTS and TRUSTS– income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions.)									
103 Dell Computer Corp.		None							
104 Dollar General Corp.	A	Dividend	J	T					
105 Eli Lilly & Co.	A	Dividend	K	T					
106 EMC Corp.-Mass		None	J	T					
107 First Data Corp.	A	Dividend	K	T					
108 Gateway Inc.		None							
109 General Electric Co.	A	Dividend	J	T					
110 IMS Health Inc.		None							
111 Intel Corp.	A	Dividend	K	T					
112 Johnson & Johnson	A	Dividend	K	T					
113 MC Data Corp.		None	J	T					
114 McDonalds Corp.		None							
115 Merck & Co. Inc.	A	Dividend	K	T					
116 Microsoft Corp.		None	K	T					
117 National City Corp.		None							
118 New York Times Cl. A	A	Dividend	K	T					
119 Nokia Corp.	A	Dividend	K	T					

1 Inc/Gain Codes: (Col. B1, D4)	A=$1,000 or less	B=$1,001-$2,500	C=$2,501-$5,000	D=$5,001-$15,000	E=$15,001-$50,000
	F=$50,001-$100,000	G=$100,001-$1,000,000	H1=$1,000,001-$5,000,000	H2=$5,000,001 or more	
2 Val Codes: (Col. C1, D3)	J=$15,000 or less	K=$15,001-$50,000	L=$50,001-$100,000	M=$100,001-$250,000	N=$250,001-$500,000
	O=$500,001-$1,000,000	P1=$1,000,001-$5,000,000	P2=$5,000,001-$25,000,000	P3=$25,000,001-$50,000,000	P4=$50,000,001 or more
3 Val Mth Codes: (Col. C2)	Q=Appraisal	R=Cost (real estate only)	S=Assessment	T=Cash/Market	
	U=Book Value	V=Other	W=Estimated		

FINANCIAL DISCLOSURE REPORT | Parker, Jr., Barrington D. | 05/14/2001

VII. Page 8 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions.)									
120 Northern Trust Corp.	A	Dividend	K	T					
121 Pfizer Inc.	A	Dividend	K	T					
122 Safeway Inc.		None	K	T					
123 Viacom Inc.		None	J	T					
124 Walgreen Co.	A	Dividend	K	T					
125 WM Wrigley Jr. Co.	A	Dividend	J	T					
126 Xilinix Inc.		None							
127									
128 Brokerage Acct. #4 (IRA)									
129 Mutual Fund	D	Dividend	O	T					
130									
131 Other Assets									
132 Black Books Galore		None	K	W					
133									
134									
135									
136									

1 Inc/Gain Codes: A=$1,000 or less B=$1,001-$2,500 C=$2,501-$5,000 D=$5,001-$15,000 E=$15,001-$50,000
(Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

2 Val Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000 N=$250,001-$500,000
(Col. C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market
(Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT	Parker, Jr., Barrington D.	05/14/2001

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

'l brokerage accounts are common stock transactions.

All securities transactions reported were transacted in managed accounts in which I played no role in selection (purchase or sale) of any security.r

FINANCIAL DISCLOSURE REPORT	Parker, Jr., Barrington D.	05/14/2001

SECTION HEADING. (Indicate part of report.)

Information continued from Parts I through VI, inclusive.

PART I. POSITIONS (cont'd.)

Line	Position	Name of Organization/Entity
4	Trustee	The Greenwich Academy

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting: Parker, Jr., Barrington D.	Date of Report: 05/14/2001

IX. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature B. D. Parker Date May 14, 2001

Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
One Columbus Circle, N.E.
Suite 2-301
Washington, D.C. 20544

III. GENERAL (PUBLIC)

1. 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.

I am a member of the Yale Corporation and I serve on the Corporation's Educational Policy, Institutional Policy, Audit and Honorary Degrees Committees.

I did pro bono work throughout my career in private practice. The work included civil and criminal indigent work and in most years was at least 5-15% of my professional time. I appeared twice in the U.S. Supreme Court on pro bono matters. In addition, for more than 10 years, I served as the President of the Harlem School of the Arts, one of New York's leading community based arts institution. I also served for 10 years as a Trustee of the New School University sitting on its Executive Committee and chairing its Institutional Policy Committee. I also served on the Board of the NAACP Legal Defense and Educational Fund, Inc. I serve on the Board of Trustees of the Greenwich Academy. I formerly served on the Board of Trustees of St. Paul's School.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

No

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, for beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

In February 2001 I received an invitation from the Office of White House

Counsel to attend an interview concerning a Second Circuit vacancy. I filled out a variety of forms and was also interviewed by representatives of the F.B.I. and the Department of Justice. I was formally nominated on May 9, 2001.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No

5. Please discuss your views on the following criticism involving "judicial activism."
The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and level of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

My role as a District Court Judge obligates me to correctly identify and apply controlling law, not to formulate or to develop public

policy. My oath and my responsibilities require the resolution of controversies as defined by the pleadings for the benefit of the parties before me. My principal objective is the just and efficient resolution of controversies that come before me on the basis of facts properly adduced by litigants. I have no competence in, or inclination towards, formulating solutions to general social problems. For the same reason, I, as a District Judge, am reluctant to order, and indeed have never ordered, relief which required my assumption of administrative responsibilities more appropriately suited to other governmental institutions. I believe that courts should refrain from imposing broad affirmative duties on other institutions or agencies of government. I do not have an academic (faculty) background and I do not work or write with any particular academic or political constituency in mind. Finally, as a District Judge, controlling law requires that I clearly understand my limited jurisdiction and that I carefully apply jurisdictional requirements such as standing and ripeness. I believe that my work as a District Judge has reflected fidelity to each of these concepts.

Chairman LEAHY. Justice Mills, please come forward. Before we start, for the same reason, for the archives, I know you have already introduced to me your wife, but do you want to introduce her for the record?

Justice MILLS. Thank you, Senator. This is my wife, Mona, who came up with me. We had planned to have our four children here—Alysson, Chip, Rebekah and Penn—but due to the inability to fly, they were unable to attend, as were other friends and relatives from Mississippi. But we are very grateful to be here, and thank you for having this hearing.

Chairman LEAHY. Would you raise your right hand?

Do you solemnly swear that the testimony you will give in this matter will be the truth, the whole truth and nothing but the truth, so help you God?

Justice MILLS. I do.

Chairman LEAHY. Please be seated.

In mentioning your children, when you get back—I don't need to tell you this, but this can go for all parents here—spend a lot of time with your children these days. It is a terrible, terrible time.

Did you have an opening statement you wished to make, Justice Mills?

STATEMENT OF MICHAEL P. MILLS, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF MISSISSIPPI

Justice MILLS. I do not, Mr. Chairman.

Chairman LEAHY. I know both Senator Cochran and Senator Lott have said some very positive things about you, obviously, here today on the record, but also previous to this time in their discussions with me.

In the State Supreme Court, you have a great deal of flexibility on issues of stare decisis, assuming there is not a U.S. Supreme Court case or a previous case of our court. But as a district judge for the Northern District of Mississippi, how do you feel about the doctrine of stare decisis?

Justice MILLS. Mr. Chairman, I think I will have less conflict with that doctrine on the Federal court at a trial court level than I have had on the Mississippi Supreme Court. I have deep respect for the doctrine of stare decisis. I have a profound respect for the United States Constitution.

I think my record on the Mississippi Supreme Court shows that I have been anxious to support prior rulings of the United States Supreme Court even when a decision otherwise might have been more popular. And I think stare decisis is a very important part of the independence of the judiciary envisioned by Alexander Hamilton in the Federalist Papers, particularly Federalist Paper 78, when he talked about the independence of the judiciary.

It is important to have an independent judiciary, but it must discipline itself, and one way the judiciary disciplines itself is through the doctrine of stare decisis.

Chairman LEAHY. Well, Justice Mills, you could also have a decision of your circuit which I think we would both agree would be controlling, especially if it is on all fours in the district court of something with your circuit. That is controlling, or a Supreme Court case is.

But let's say that you have a strong personal disagreement with that decision. Are you still bound by that decision?

Justice MILLS. I think I am if it is a decision of my circuit and/or the United States Supreme Court. I think part of the separation of the wheat from the chaff among trial court judges particularly is the ability to separate your personal opinions. We simply should have none when ruling from the bench.

I think trial court judges, more so than appellate court judges, are there to resolve disputes, and we should not be policy-oriented to the extent that appellate courts are. And I hope to set aside my own personal views and limit my rulings to the parties and the dispute before me.

Chairman LEAHY. But you can accept, can you not, the fact that there may well be a case, even today when you think all the law has been written, where you may have to make a legal decision on a factual situation where there may not be stare decisis either in the Supreme Court or your circuit?

Justice MILLS. I think that is not only likely, but I think it is very likely it will occur. I continue to be amazed at the new issues that can develop quite frequently in the legal field.

Chairman LEAHY. Just give people long enough and they will think up a novel legal theory.

But you have had experience. Do you feel you would have any difficulty, then, based on your past experience, if you do have such a novel issue to sit down and decisively make a decision?

Justice MILLS. I don't think I would have any problem. I think my experience in life has been to have a profound respect for the individual. I think that any good that comes in society comes ultimately not from institutions, but individuals, and I think I would keep that uppermost in my mind. And if it were a novel, new issue and there were not reliable precedents to follow, I would then look to what impact my ruling would have on the rights of individuals and whether or not it would limit individual freedom, and that would be the pole star consideration for me.

Chairman LEAHY. Thank you. I have one other question similar to what I asked Judge Parker, but I am going to submit that in writing to you only because I know what the time schedule is from the floor.

Senator McConnell?

Senator MCCONNELL. Mr. Chairman, I want to say as a native of north Alabama who was taken to Kentucky as a teenager by his father—

Chairman LEAHY. By force?

Senator MCCONNELL. By force, and his grandfather was disturbed that we were moving to Yankee territory.

It is a pleasure to have someone before the Committee who speaks without an accent.

Justice MILLS. Well, thank you.

[Laughter.]

Senator MCCONNELL. Obviously, I intend to support your nomination. Both of your Senators have mentioned your background to me and your qualifications. I really would just ask you the same question I asked Judge Parker.

Do you believe that a 10-, 15- or 20-year delay between conviction of a capital offender and execution is too long?

Justice MILLS. I frankly do, and on the Mississippi Supreme Court we have had continued delays. Some of those delays are self-inflicted. By that I mean we only recently created an office of counsel for death row inmates, and I think 10 to 15 years is much too long. I also think that people on death row making appeals, post-conviction appeals, should also have counsel.

I think we need to work not only from the judicial standpoint, but also from the executive and legislative branches to ensure that we protect rights in order to speed up the process. I don't know of any death row inmates on a Federal level from Mississippi, but I think anything over maybe one or two appeals all the way to the highest court in the land is more than sufficient, and that a period of time of 15 to 20 years is far too long.

Senator MCCONNELL. Thank you, Justice Mills. As I said, I look forward to supporting your nomination, and congratulations.

Thank you.

Chairman LEAHY. Thank you.

[The biographical information of Justice Mills follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).

   Michael Paul Mills

2. Address: List current place of residence and office address(es).

   Residence: Fulton, MS

   Office: Mississippi Supreme Court
   450 High Street (39201)
   P. O. Box 117
   Jackson, MS 39205

3. Date and place of birth.

   8/25/56
   Charleston, South Carolina

4. Marital Status: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

   Married to former Ramona Jean Robinson. Mona is employed as controller at the Northeast Mississippi Daily Journal. Her business address is:
   Northeast Mississippi Daily Journal
   P. O. Box 909
   Tupelo, Mississippi 38802

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

   6/99 - 8/00 University of Virginia School of Law
   LLM - May, 2001

   6/78 - 8/80 University of Mississippi School of Law
   J.D. - August, 1980

   9/76 - 5/78 University of Mississippi
   B.A. - May, 1978

9/74 to 5/76 Itawamba Community College
A.A. - May, 1976

9/72 to 5/74 Itawamba Agricultural High School
Diploma - May, 1974

6. Employment Record: List (by year) all business or professional corporations, companies, firms or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

	Firm	Position held
12/95 - present	Mississippi Supreme Court	Justice
8/94 - 12/95	Mills and O'Neal	Attorney/ Partner
1/84 - 12/95	Mississippi House of Representatives	Representative
4/91 - 8/94	Michael P. Mills, Attorney	Attorney/Sole Practitioner
est. 6/85 - 3/91	Navarro, Mills and Davis	Attorney/Partner
8/80 - est. 6/85	Patterson and Patterson	Attorney/Associate
est./77 - 7/80	Pat's Package Store	Store Clerk
5/78 - 8/78	MS Dept. of Transportation	Survey Crew Member
5/77 - 8/77	MS Dept. of Transportation	Survey Crew Member
1983-84	Mississippi First, a non-profit corp.	Member/Chairman
1982-85	Monita Production Co., Inc.	Minority Stock Holder/ Secretary
1984-94	Ten Men, Inc., a non-profit corp.	Member/Chairman
1988-93	The Anteater Corp.	Member/President
1989-91	The Du-Mil Corp.	Member/Vice-President
1989-92	Advanced Control Systems, Inc.	Minority Stock Owner/VP
1997-2001	Itawamba H.S. Foundation for Excellence	Member/Secretary

7. Military Service: Have you had any military service? If so, give particulars, including dates, branch of service, rank or rate, serial number and type of discharge received.

I have had no military service.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

-1987 Graduate of Leadership Mississippi

-1994 Guardian of Small Business Award from the National Federation of Independent Businesses

-Chairman Moot Court Board, University of Mississippi Law School, 1980

-Mississippi Bar Distinguished Service Award, 1995

-Dean Parham Williams Distinguished Service Award, University of Mississippi, 1980

-Fellow, Mississippi Bar Foundation, 2001

-"AV" rating by Martindale-Hubbell

9. Bar Associations: List of all bar associations, legal or judicial-related committees 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.

Member, American Bar Association
Member, Mississippi Bar Association
Former President, Golden Triangle Young Lawyer's Association - early 1980's
Former Member, Federalist Society
Former Member, Mississippi Trial Lawyer's Association
Member, First District Bar Association of Mississippi
Director, Institute for Racial Reconciliation, University of Mississippi

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Other than minimum lobbying by bar associations, I belong to no organizations which lobby before a public body. I am a member of the following organizations:

Itawamba High School Foundation for Excellence
Mississippi Historic Preservation Conference
Fulton United Methodist Church
Mississippi Institute for Racial Reconciliation

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission practice.

Court:	Date of Admission:
United States Supreme Court	08/90
United States Fifth Circuit Court of Appeals	08/82
Federal Circuit Court of Appeals	1987
United States Court of Federal Claims	11/87
United States District Courts	08/80
For Northern and Southern Districts of Mississippi	
Mississippi Courts	08/80
Mississippi Supreme Court	08/80

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published materials you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

The Right to a "Minimally Adequate Education" as Guaranteed by the Mississippi Constitution, 61 Alb. L. Rev. 1521 (1998).

Slave Law in Mississippi from 1817 - 1861; Constitutions Codes and Cases
This article is to be published in 2002 in the University of Mississippi Law Journal

Judicial Independence in Mississippi
This article is to be published in the fall of 2001 in the Quinnipiac Law Review

The Three Kings of Tombigbee County
Volume 18, July 2001, Tombigbee County Magazine, Aberdeen, Mississippi

13. Health: What is the present state of your health? List the date of your last physical examination.

My health is excellent. My last physical examination was on May 8, 2001.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I was appointed by Governor Kirk Fordice to the Mississippi Supreme Court in 1995 and elected to the same position in 1996 for an eight-year term. The Mississippi Supreme Court is the highest appellate court in the State of Mississippi.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

(1)
1. *Byron De La Beckwith, VI, v. State of Mississippi*, 707 So.2d 547 (Miss. 1997)
2. *Treneite Boone and Johnny Staten v. Wal-Mart Stores, Inc.*, 680 So.2d 844 (Miss. 1996)
3. *Forrest Co. Gen. Hosp., et al. v. Ronnie Conway, et al.*, 700 So.2d 324 (Miss. 1997)
4. *Dorothy Coleman v. Paul Rice, M.D. and Carl Reddix, M.D.*, 706 So.2d 696 (Miss. 1997)
5. *Roger Thorson a/k/a Roger Eric Thorson v. State of Mississippi*, 721 So.2d 590 (Miss 1998)
6. *Greyhound Lines, Inc. v. Gerald Sutton, et al.*, 765 So.2d 1269 (Miss. 2000)
7. *Smith Barney, Inc. and Marty Sudder v. Gertrude Henry*, 775 So.2d 722 (Miss. 2001)
8. *T. Doe, Individually and in her capacity as one of the wrongful death beneficiaries of D. Doe v. Mississippi Blood Service*, 704 So.2d 1016 (Miss. 1997)
9. *William B. Sligh and Lucy M. Sligh v. First National Bank of Homes Co., Trustee; Virginia Tate and William C. Bardin*, 704 So.2d 1020 (Miss. 1997)
10. *Charles Sylvester Bell v. State of Mississippi*, 726 So.2d 93 (Miss. 1998)

(2) The only case I have written that has been reversed is *Daniel F. Goss v. State of Mississippi*, 721 So.2d 144 (Miss. 2000) wherein I had to literally interpret a legislative statute. I found the partial suspension of the defendant's sentence erroneous. *Goss* was subsequently overruled by our court, incorrectly in my opinion, in *Carter v. State*, 754 So.2d 1207 (Miss. 2000). Copies of these cases are enclosed. It would have been my preference for the legislature to have corrected *Goss* since the statutory language was the pernicious irritation causing the confusion. The Legislature failed to act and, due to the confusion engendered from our ruling in *Goss*, the court as a whole decided to make a policy determination and essentially re-write the statute. I dissented. In summary, I feel that any tendency of the judiciary toward problem-solution rather than grievance-

resolution borders on the judiciary acting in a legislative fashion. As a former legislator, I understand this conflict and feel that the judiciary should exercise self-restraint.

(3) *Byron De La Beckwith, VI, v. State of Mississippi*, 707 So.2d 547 (Miss. 1997)
Charles Sylvester Bell v. State of Mississippi, 726 So.2d 93 (Miss. 1998)

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

1984-1995 - I served three four-year terms as an elected member of the Mississippi House of Representatives for District 21 which includes portions of Itawamba and Monroe Counties. From 1992 through 1995, I was Chairman of the Judiciary "A" and Judiciary En Banc committees

I have never run unsuccessfully for any other office.

17. Legal Career:

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

1. 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;

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

3. the dates, names and addresses of law firms of offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.

1980 - 1985	Patterson & Patterson 304 East Jefferson St. Aberdeen, MS	Associate
1985 - 1991	Navarro, Mills & Davis 102 West Commerce St. Aberdeen, MS	Partner
1991-1995	Began practice as sole practitioner at the same address and associated in 1994 with Raymond G.	

O'Neal and Don Baker opening a second office in Fulton, MS

1995 - 2001 Mississippi Supreme Court, Justice

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

I was graduated from the University of Mississippi School of Law in August 1980.

I have never clerked for any judge or court.

During the first seven years, my practice was primarily oil and gas related. From the late 1980's until I went on the Supreme Court, I would describe my practice as a very general practice with significant litigation.

I was hired by the firm of Patterson and Patterson in Aberdeen, Mississippi, located at 304 East Jefferson Street, where I practiced until 1985. Most of my work in this office was related to oil and gas law where I wrote drilling opinions and division orders. I also handled the title work on the first secondary unitization project of an oil and gas field in Alabama called the North Blowhorn Recovery Unit. During this time, I also tried a few civil and criminal cases in the Northern District Federal Courts and local circuit and chancery courts. I was often appointed by the local state and federal judges to represent indigent criminals. The practice in Monroe County was to appoint the newest lawyer in town to represent indigents since Mississippi had no state-wide public defender system and Monroe County had only one lawyer to represent indigent defendants. During this period of time, I defended Ogden Management Company in one of my first jury trials and Zach McKinney in a criminal jury trial. I was primary counsel in both of these cases and both cases were reversed on appeal.

In 1985, I left Patterson and Patterson, which had evolved into Patterson, Tollison, Alexander, Powers and Mills, under amicable circumstances and formed the firm of Navarro, Mills and Davis in Aberdeen with Jeffery M. Navarro and Deborah S. Davis. Our offices were located at 102 West Commerce Street in Aberdeen, Mississippi. My practice at this location was a typical small-town practice. Our firm represented the City of Aberdeen and the Aberdeen School District. A typical case from this time period is *Fyfe v. Aberdeen School District*, a case I won in a jury trial in the Northern District Federal Court but lost on appeal to the Fifth Circuit. Other cases I

recall during this period include litigation to put air conditioners in Aberdeen Public Schools and my increasing involvement in federal takings cases as a result of private property being taken by the federal government because of construction of the Tennessee-Tombigbee Waterway and the U.S. Army Corp of Engineers channelization projects which flooded or destroyed thousands of acres of privately owned riparian lands. I tried some of the first federal cases in the nation which resulted in successful judgments against the United States government for taking private property without just compensation in violation of the 5th Amendment to the United States Constitution. Representative cases from this time are the *Turner v. United States* cases.

In 1991, my partners in Navarro, Mills and Davis and I amicably divided the firm and I began practicing as a sole practitioner in the same building at 102 West Commerce Street in Aberdeen, Mississippi. Around 1994, I formed a partnership with Raymond G. O'Neal and opened a second office in Fulton, Mississippi, and also hired Don Baker to assist me in my Aberdeen office. This relationship with O'Neal and Baker continued until 1995 when I was appointed to the Mississippi Supreme Court. Baker took over my Aberdeen practice and O'Neal took over my Fulton office.

During my time as a sole practitioner, and continuing through my Mills and O'Neal period, I began specializing in two areas. I represented a company named Communigroup in Public Service Commission proceedings to force the Baby Bell companies to allow intra-state long distance telephone service competition. A representative case from this time is *In Re: Order Implementing Intralata Competition*, Docket No. 92-UA-0227 before the Mississippi Public Service Commission of the State of Mississippi. I also began defending companies in products liability and toxic tort cases in federal courts during this period of time. I was usually associated as local counsel in these cases. Representative clients include Nissan, General Motors Corporation and Conoco. During all of this time, I also carried out the usual small firm practice of preparing deeds, wills, contracts and generally trying to take care of whatever case came in the door.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

My typical former clients ranged from impoverished individuals to big corporations. Communigroup, a reseller of long distance telephone service would be an example of a corporate client.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

From 1980 through 1985, I appeared in court infrequently, since my practice was generally limited to oil and gas title work. From about 1985 to 1995, I appeared in court frequently, representing all manner of clients.

2. What percentage of these appearances was in:
(a) federal courts;
25%
(b) state courts of record;
60%
(c) other courts.
15%

3. What percentage of your litigation was:
(a) civil;
85%
(b) criminal.
15%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I can only estimate the answer to this question. I estimate I tried 45 or 50 cases to verdicts as sole counsel or chief counsel. I would estimate I tried maybe 5 or 10 cases to verdicts as associate counsel.

5. What percentage of these trials were
(a) jury;
est. 50%
(b) non-jury.
est. 50%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. 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.

I. *Ogden Management Co., Inc. v. Thompson*, 420 So. 2d 1366 (Miss. 1982)
No. 53,458

(a) 1982
(b) Monroe County, Mississippi, Circuit Court
Neal Biggers, Judge
(c) Robert D. Patterson (co-counsel)
Patterson and Patterson
304 Jefferson
P.O. Box 663
Aberdeen, MS 39402
(662) 369-2476

Michael Malski (opposing counsel)
Carnathan and Malski
208 Main Street
Box 543
Amory, MS 38821-4218
(662) 256-2697

Tim Ford (opposing counsel)
Riley Ford Caldwell and Cook
207 Court Street
P.O. Box 1836
Tupelo, MS 38802-1836
(662) 842-8945

SUMMARY OF CASE:

Ogden Management Co. represents the first jury trial in which I was the counsel primarily responsible for preparing for the case and trying it. My co-counsel in this case was my now-deceased former partner, Robert D. Patterson, who must have wondered

what he had gotten himself into when this case was over. We were opposed by excellent trial lawyers, namely Mike Malski and Tim Ford. Tim is now the Speaker of the House of Representatives in Mississippi.

Our clients were accused of wrongfully cutting the timber of Ms. Thompson. Rather than urging my corporate clients to settle the case, I was bound and determined to prove that they did no wrong. Unfortunately, I have always felt that I let them down, since the jury returned a verdict against them. This case, my first jury trial, was appealed to the Mississippi Supreme Court where it was reversed and remanded. Duly chastened, we did manage to settle the case after remand.

2. ***McKinney v. State***, 482 So. 2d 1129 (Miss. 1986).

(a) 1986
(b) Monroe County Circuit Court
Neal Biggers, Judge
(c) Jeffrey M. Navarro (co-counsel)
Presently at:
Navarro and Barkley
P.O. Box 532
Aberdeen, MS 39720-0532
(662) 369-7073

Edwin L. Pittman, Atty Gen. by Carolyn B. Mills, Asst. Atty. Gen. (opposing counsel)
Office of the Attorney General
450 High Street
P.O. Box 220
Jackson, MS 39205-0220
(601) 359-3680

SUMMARY OF CASE:

McKinney v. State is an example of a criminal jury trial in which I was lead counsel. In this case, our client was charged with armed robbery. I was appointed to represent him as an indigent defendant. We duly filed discovery requests under the then-new criminal discovery rules in Mississippi. We received no response from the State until the day before the trial when the State produced its list of witnesses and evidence against my client. My co-counsel and I moved for a continuance in order to have time to prepare a response to the State's evidence. Then-Circuit Judge Biggers denied our request and sent us to trial with basically one day to prepare for the case.

Needless to say, the jury convicted our client. This case was appealed to the Mississippi Supreme Court, where I argued that reasonable responses to discovery requests should certainly be defined as more than one day's production before trial. The Mississippi Supreme Court agreed and reversed and remanded.

3. ***Clark v. Burlington Northern R.R.***
United States District Court for the Northern District of Mississippi, No. EC 86-201-LS-O

(a) 1987
(b) David Orlansky, U.S. Magistrate; L.T. Senter, District Court Judge
(c) Taylor B. Smith (opposing counsel)
Presently at:
The Kullman Firm
P.O. Box 827
Columbus, MS 39703-0827
(662) 244-8824

SUMMARY OF CASE:

In this case, my client and her daughter had been seriously injured when they were hit by a Burlington Northern Railroad train at a Monroe County crossing. I duly filed my thirty interrogatories on the defendant. Several of the interrogatories contained subparts, all of which were related to the primary questions. Taylor Smith, an excellent Columbus attorney, who represented the defendant, refused to answer my interrogatories stating that I had gone beyond the 30-question limit. I then had to file a Motion to Compel against Mr. Smith. Magistrate Orlansky, who ruled in my favor, published his decision in this case, thereby settling the question of how to count interrogatories in northern district cases.

4. ***In re the Last Holographic Will and Testament of Herman Cordie Kilgo, Deceased***
No. 17084

(a) 1989
(b) Monroe County Chancery Court
George F. Adams, Chancellor
(c) Richard Booth (attorney for the estate of Doris M. Kilgo, deceased)
P.O. Box 256
Aberdeen, MS 39730
(662) 369-2652

SUMMARY OF CASE:

This case is an example of some of the rather interesting cases I tried in chancery court. Here, Mr. Kilgo, had left his estate "one-half to my folks and one-half to her folks" meaning, according to my client, his wife's relatives. Much squabbling ensued over the interpretation of the holographic will but I was finally able to convince the chancellor that "folks" simply meant heirs. The other folks were represented ably by Mr. Dick Booth of Aberdeen, who appealed the case. This case was per curiam affirmed and finally settled in favor of my clients.

5. ***Dodds v. Blue Cross/Blue Shield of Mississippi, Inc.***
No. 25,260

(a) 1988-90
(b) Monroe County Circuit Court
Frank Russell, Judge
(c) John S. Hill (opposing counsel)
Mitchell McNutt Threadgill Smith and Sams
105 South Front Street
P.O. Box 7120
Tupelo, MS 38802-7120
(662) 842-8450

SUMMARY OF CASE:

Kay Dodds, an Aberdeen school teacher, had to have a liver transplant. Blue Cross Blue Shield, her insurance company under the State school teacher's policy, denied coverage for her transplant, stating that it was "new procedures". We filed suit against Blue Cross alleging breach of contract and established through discovery that Ms. Dodds had asked the agent if liver transplants were covered when the contracts were entered into. The agent stated, "If Ms. Dodds says I said so, then I don't question her." We went through extensive discovery in this case and I handled all matters from the drafting of the complaint to fighting off motions for summary judgment, taking depositions, etc. We finally settled the matter to the satisfaction of Ms. Dodds, on the courthouse steps.

6. ***Turner v. United States***, 23 Cl.Ct. 447 (1991)

(a) 1990-91
(b) United States Claims Court
Turner, Judge
(c) Glen R. Goodsell (opposing counsel)

9747 South Park Circle
Fairfax Station, VA 22039-2943
(703) 866-9415

SUMMARY OF CASE:

The *Turner v. U.S.* cases represent the earliest cases in the nation, as far as I know, dealing with successful litigation against the United States Corp of Engineers for flooding riparian lands. In this case, the Corp of Engineers had been involved in a channelization project on Twenty Mile Creek in Itawamba County since the early 1960's. As the Corp continued to straighten the meandering streams of the county, the streams gained velocity and caused severe erosion in the northern parts of the county and dumped thousands of tons of sand on valuable crop lands in the southern part of the county. Neal Turner was one of the farmers put out of business by this governmental action. At the time I filed my complaint, federal statutes stated that the government was immune from lawsuits dealing with damages caused by channelization projects. I argued that the takings clause of the Fifth Amendment should trump the federal statutes. The trial court judge initially ruled against me and granted the government's motion for summary judgment. I appealed this matter to the Federal Circuit Court of Appeals in Washington, D.C. where my argument was successful and the case was reversed and remanded for trial, thus establishing that private property owners have a cause of action against the federal government to redress damages caused by federal actions, even when statutory immunity is otherwise stated. The trial of this case, in which I was the only lawyer for my clients, lasted about a week in Oxford, Mississippi, and a substantial verdict was ultimately rendered in favor of my clients.

7. ***Holliman v. Cherry & Assoc., Inc.***, 569 So. 2d 1139 (Miss. 1990)

(a) 1990-91
(b) Monroe County Chancery Court
Chancellor James Bost (now deceased)
(c) Michael Malski (opposing counsel)
Carnathan and Malski
208 Main Street
Box 543
Amory, MS 38821-4218
(662) 256-2697

SUMMARY OF CASE:

Holliman v. Cherry & Assoc., Inc., represents a case in which my client, the Hollimans, fought off adverse claims to a six-acre tract of land lying in the middle of the

Tombigbee River which their family had owned for many, many years. The oil company had a lease from the other parties and stood to lose substantially if the Hollimans were successful in defending their title. The case was tried in chancery court where I again faced my old nemesis, Mike Malski from Amory who, as usual, represented his clients well. However, the court found for us and I was successful in establishing good title in my clients to this property. The case was appealed to the Supreme Court where a per curiam affirmance was rendered.

8. *Fyfe v. Curlee*, 902 F.2d 401 (5th Cir. 1990)

(a) 1989-90
(b) U.S. District Court, Northern District of Mississippi
Neal Biggers, Judge
(c) Deborah S. Davis (co-counsel)
Presently at:
Social Security Administration
Office of Hearings and Appeals
2620 Traceland Drive
Tupelo, MS 38801
(662) 842-0011

Jim Waide (opposing counsel)
Waide and Chandler
332 N. Spring St.
P.O. Box 1357
Tupelo, MS 38802-1357
(662) 842-7324

SUMMARY OF CASE:

In this case, Ann Fyfe sued the Aberdeen School District for putting her on administrative leave because she had placed her child in a private school. The Aberdeen School District at that time had a policy of discouraging its employees from sending their children to private institutions for education. The nearest private school was in a neighboring town of West Point. During this period of time, race relations in Aberdeen were not as good as one would have hoped. I represented the school board, which was at various times boycotted by certain concerned citizens groups, and we faced constant attacks and threats from members of the minority community. Needless to say, our backs were to the wall, and we felt that Mrs. Fyfe should be placed on administrative leave, with pay, until the question of whether she could send her children to a private school was answered. At the time, U. S. District Court Judge Keady had written a

federal opinion in the northern district finding it reasonable to allow public schools to require their employees to send their children to public schools. This case was tried in Oxford before United States District Court Judge Biggers and a six-person jury. The jury found unanimously for the school district in the trial. On appeal to the United States Fifth Circuit Court of Appeals, however, the case was reversed and rendered and the Fifth Circuit ruled that Mrs. Fyfe was entitled to at least One Dollar in damages and that she had a constitutional right to send her child wherever she wished to school.

9. ***In Re: Order Implementing Intralata Competition***
Before the Public Service Commission of the State of Mississippi
Docket No. 92-UA-0227

(a) 1992-95
(b)
(c) Opposing Counsel:
Bruce McKinley
MPSC
P.O. Box 1174
19th Floor, Walter Sillers Building
Jackson, MS 39215-1174

George M. Fleming
General Counsel–Public Utilities Staff
P.O. Box 1174
17th Floor, Walter Sillers Building
Jackson, MS 39215-1174

Newt P. Harrison
Brunini Grantham Grower and Hewes
1400 Trustmark Building
P.O. Drawer 119
Jackson, MS 39205

John M. McCullouch
General Attorney
South Central Bell Telephone Co.
P.O. Box 811
790 Landmark Center
Jackson, MS 39205

Robert M. Arentson, Jr.
Watkins Ludlam and Stennis
P.O. Box 427
Jackson, MS 39205-0427

Frank Spencer
Special Assistant Attorney General
P.O. Box 22947
Jackson, MS 39225-2947

SUMMARY OF CASE:

This docket is an example of proceedings in which I represented Communigroup and other resellers of long distance telephony services in efforts to open up competition in the long distance telephone market. Many parties and proceedings were represented in these hearings. The only real parties opposing more competition were the South Central Bell companies, who were ably represented by Mr. John McCullouch who is now the President of BellSouth in Mississippi. These cases were highly technical and consisted of enormous amounts of preparation and presentation of expert witnesses. In the original proceedings, I served as lead counsel for the resellers association, which consisted at the time primarily of Communigroup and LDDS, which is now known as WorldCom.

We were successful in these proceedings to the extent that we gained Public Service Commission approval of the certificates of authority to allow resellers to operate as legitimate businesses in Mississippi, allowing this then-dormant industry to grow.

10. ***Clower v. Nissan Motor Corp. in USA and Nissan of North America***
United States District Court for the Northern District of Mississippi, No. 1:94 CV 172-S-D

(a) 1994

(b) Northern District of Mississippi
L.T. Senter, Judge

(c) William L. Kirk, Jr. (co-counsel)
Rumberger, Kirk, Caldwell, et al.
P.O. Box 1873
Orlando, FL 32802

Grady Tollison (opposing counsel)
100 Courthouse Square
P.O. Box 1216
Oxford, MS 38655-1216
(662) 234-7070

SUMMARY OF CASE:

Clower v. Nissan is an example of the kind of cases in which I served as local counsel in product liability cases. In *Clower*, I participated in the taking of depositions, prepared briefs and letters regarding local Mississippi law, and made such needed appearances as were necessary prior to actual trial. This particular case was ongoing when I was appointed to the Supreme Court, and I understand that it was later amicably settled.

19. 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 the nature of your participation in this question. Please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

I was very active in developing the law through my position as a member of the Mississippi Legislature. In 1993, as Chairman of the Judiciary "A" Committee, I was able to have enacted into law certain pieces of legislation which significantly advanced judicial fairness in Mississippi. Significantly, I handled the legislation which created the 10-member Court of Appeals to serve as a deflective court to handle appeals to the Mississippi Supreme Court. At the time of the legislation, the Mississippi Supreme Court was approximately three years behind in its caseload. As a result of the establishment of the secondary Court of Appeals, I am proud to say that today both the Mississippi Supreme Court and the Court of Appeals are current in their cases.

I also handled the legislation dealing with the creation of an Administrative Office of Courts in Mississippi to place greater accountability on the trial courts in the state and to enable the trial courts and appellate courts to function as one system. Finally, I handled the 1993 court redistricting act which redrew the existing circuit and chancery court districts, in compliance with federal law, but also created several new minority chancery and circuit court districts, therefore increasing substantially the number of minority chancellors and circuit court judges in the State of Mississippi. I also personally appeared before the civil rights division of the United States Justice Department to obtain approval of this plan.

I suspect the most significant case I have written while on the Mississippi Supreme Court is the case of *Byron DeLa Beckwith v. State of Mississippi*, 707 So.2d 547 (Miss. 1997). This case dealt with the appeal of De La Beckwith for the murder of civil rights leader, Medgar Evers, in the early 1960's. The issue on appeal was whether constitutional speedy trial rights had been violated, or whether any statutes of limitations had run, since prior proceedings against Mr. Beckwith had been dismissed in the 1960's. This case developed the rule of law that murder enjoys no statute of limitations. Also, the Mississippi Supreme Court, through my majority opinion, ruled that speedy trial objections do not attach, absent indictment of the defendant.

I also was a member of the National Conference of Commissioners on Uniform State Laws. In my role as a member of this commission, I learned of the paucity of uniform acts in Mississippi. The national conference operates under the premise that it is better for the states to voluntarily develop uniform acts among themselves, rather than to wait for the federal government to enact legislation in any given area of law. Mississippi had seriously trailed the rest of the nation in the adoption of certain acts. I surveyed the most critical areas and during my tenure as Chairman of Judiciary "A", sponsored and steered to passage nearly twenty uniform acts, bringing Mississippi into alignment with the rest of the nation. These acts dealt with subject matters as diverse as amendments to the Uniform Commercial Code, state securities legislation, and uniform gifts to minors acts.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List 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. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

   I do not expect to derive any future benefits from previous business relationships, professional services, firm memberships, former employers, clients, or customers. I do have a modest annuity contract with Allstate Life Ins. Co. from which I am presently receiving approximately $1500 annually and which will begin paying approximately $80 per month in 2003. This annuity will also make various lump sum payments through the year 2032.

   I am also vested in the Public Employees Retirement System of Mississippi and the State legislative retirement program. Each of these retirement funds will begin making payments to me at such time as I acquire the cumulative years or reach the appropriate age to draw retirement benefits. I have made no arrangements to be compensated in the future for any financial or business interest.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will following in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

   I will handle any potential conflict of interest by asking for reassignment of any case which comes to me in which I perceive that I have a conflict. In the event that the conflict is of a very minor nature, I will announce to counsel for the parties at the earliest point of learning of my conflict and ask them to decide whether the conflict is substantial enough to bias my participation in the case. I presume the only categories of litigation in financial arrangements likely to present potential conflicts of interest during my initial service in the position would be the small interest I have in certain stocks. I do not own more than 75 shares of stock in any publicly held corporation and own no interest in any privately held corporations. However, I will make ownership of all public stocks public record and will seek to avoid participating in any case dealing with such companies. I am not aware of any particular category of litigation which would give me a conflict. I will follow the Judicial Code of Conduct in resolving any conflicts.

3. Do you have any plans, commitment, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

   At this time, I have no plans, commitments or agreements to pursue outside employment, with or without compensation, during my service with the court. I would like to occasionally teach or lecture on the law at the junior college or college level. At the present time, I have no commitment to do so.

4. 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, patents, honoraria, and other items exceeding $500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

   See copy of financial disclosure report required by the Ethics in Government Act of 1978 attached hereto.

5. Please complete the attached financial net worth statement in detail. (Add schedules as called for.)

   See attached Financial Net Worth Statement

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

   I have never held a position or played a role in a political campaign other than as a candidate. I ran for the Mississippi Legislature as a candidate in 1983, 1987, 1991 and 1995. I was successfully elected in each of these elections. I also ran for the Mississippi Supreme Court in 1996 and was elected. I have held no title or other responsibilities in any other campaign.

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks	5	000	00	Notes payable to banks—secured			
U.S. Government securities—add schedule				Notes payable to banks—unsecured			
Listed securities—add schedule	6	949	29	Notes payable to relatives			
Unlisted securities—add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due	3	000	00
Due from relatives and friends	9	500	00	Unpaid income tax			
Due from others				Other unpaid tax and interest			
Doubtful				Real estate mortgages payable—add schedule	349	000	00
Real estate owned—add schedule	893	000	00	Chattel mortgages and other liens payable	15	000	00
Real estate mortgages receivable				Other debts—itemize:			
Autos and other personal property	30	000	00	Credit Card Est.	25	000	00
Cash value—life insurance							
Other assets—itemize:							
Personal Furnishings	50	000	00				
Oil and Gas Interests	5	000	00				
Vehicles	40	000	00	Total liabilities	392	000	00
PERS Retirement Fund	45	000	00	Net Worth	702	449	29
Total Assets	1,094	449	29	Total liabilities and net worth	1,094	449	29
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor Aberdeen Prop. Est.	50	000	00	Are any assets pledged? (Add schedule.) No			
On leases or contracts Note to Bancorp for Relative	19	000	00	Are you defendant in any suits or legal actions? No			
Legal Claims None				Have you ever taken bankruptcy? No			
Provision for Federal Income Tax Paid							
Other special debt							

Attachment "A"
To Financial Statement
Schedule of U.S. Government Stocks and Bonds Owed

	Description	In Name Of	Market Value
(1)	Microsoft Corp.	Michael Mills	$710.20
(2)	Yahoo Inc.	Michael Mills	$330.99
(3)	BellSouth Corp.	Michael Mills	$1,531.18
(4)	J.P. Morgan Chase and Co.	Michael Mills	$723.60
(5)	Bancorp South Inc.	Michael Mills	$1,078.92
(6)	General Motors Corp.	Michael Mills	$559.50
(7)	Dell Computer Corp.	Michael Mills	$504.00
(8)	Intel Corp.	Michael Mills	$628.60
(9)	Siebert	Michael Mills	$50.90
(10)	Delphi	Michael Mills	$101.29
(11)	World Com	Michael Mills	$54.03
(12)	Johnson and Johnson	Michael Mills	$681.45

Attachment "B"
To Financial Statement
Schedule of Real Estate Owned and Mortgages Owed

	Description	Name Of	Market Value	Mortgage Amount	Mort-gagor
(1)	Residential 2 acres	Michael Mills	$300,000	$194,000	Bancorp South and Peoples Bank
(2)	Speculation House	Michael Mills	$158,000	$115,000	Trustmark
(3)	Cabin and 125 acres	Michael Mills	$150,000	$73,000	Trustmark
(4)	Approximately 15 acres, Tenn-Tom Properties	Michael Mills	$200,000	$0	
(5)	Manship House	Michael Mills	$85,000	$67,000	Magnolia Bank

AO-10 (w)
Rev. 1/2000

FINANCIAL DISCLOSURE REPORT
Nomination Report

Report required by the Ethics in Government Act of 1978, as amended (5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting *(Last name, first, middle initial)* Mills, Michael P.	**2. Court or Organization** US District Court, MS, N	**3. Date of Report** 07/16/2001
4. Title *(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)* U.S. District Judge, nominee	**5. Report Type (check type)** X Nomination, Date 07/10/2001 __ Initial __ Annual __ Final	**6. Reporting Period** 01/01/2000 to 06/30/2001
7. Chambers or Office Address MS Supreme Court P. O. Box 117 Jackson, MS 39205	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.** Reviewing Officer _____ Date ____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.

I. POSITIONS *(Reporting individual only; see pp. 9-13 of Instructions.)*

☐ NONE (No reportable positions.)

	POSITION	NAME OF ORGANIZATION / ENTITY
1	Director	Institution for Racial Reconciliation, University, Mississippi
2	Secretary - Director	Itawamba High School Foundation for Excellence
3	Justice	Mississippi Supreme Court

II. AGREEMENTS *(Reporting individual only; see pp.14-16 of Instructions.)*

☐ NONE (No reportable agreements.)

	DATE	PARTIES AND TERMS
1	01/01/00	MS Public Employees Pension Fund; pension upon 25 years
2	01/01/00	MS State Legislative Retirement Plan; pension upon 25 years
3		

III. NON-INVESTMENT INCOME *(Reporting individual and spouse; see pp. 17-24 of Instructions.)*

☐ NONE (No reportable non-investment income.)

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1	01/01/00	Allstate Life Insurance Annuity	1,666.66
2	01/01/00	(spouse) newspaper, controller	
3	12/31/99	Mississippi Supreme Court	118,216.40
4	12/31/00	Mississippi Supreme Court	111,051.10

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Mills, Michael P.

Date of Report: 07/16/2001

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)

	SOURCE	DESCRIPTION
NONE (No such reportable reimbursements.)		
1	Exempt	
2		
3		
4		
5		
6		
7		

V. GIFTS

(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)

	SOURCE	DESCRIPTION	VALUE
NONE (No such reportable gifts.)			
1	Exempt		
2			
3			

VI. LIABILITIES

(Includes those of spouse and dependent children. See pp 33-35 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
NONE (No reportable liabilities.)			
1	Trustmark Bank	Mortgage on spec. house	M
2	MBNA	Credit Card	K
3			
4			
5			
6			

* VAL CODES: J=$15,000 or less K=$15,001-$50,000 L=$50,001 to $100,000 M=$100,001-$250,000 N=$250,001-$500,000
O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Mills, Michael P.

Date of Report: 07/16/2001

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

	A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
	NONE (No reportable income, assets, or transactions.)									
1	JR Pounds-Stoval 3-11 Unit, Monroe, MS	A	Royalty	J	T	Exempt				
2	Pruet Production Co. Dobbs 29-12 Monroe, MS	A	Royalty	J	T	Exempt				
3	Pursue Energy Prod. Unit, Monroe, MS	A	Royalty	J	T	Exempt				
4	Hunt Oil Co., Cooperwood 27-7 #1	A	Royalty	J	T	Exempt				
5	Microsoft Corp. common stock	A	Dividend	J	T	Exempt				
6	Yahoo, Inc., common stock	A	None	J	T	Exempt				
7	BellSouth, common stock	A	Dividend	J	T	Exempt				
8	J. P. Morgan Chase, common stock	A	Dividend	J	T	Exempt				
9	Bancorp South, common stock	A	Dividend	J	T	Exempt				
10	General Motors Corp., common stock	A	Dividend	J	T	Exempt				
11	Dell Computer, common stock	A	Dividend	J	T	Exempt				
12	Intel Corp., common stock	A	Dividend	J	T	Exempt				
13	Siebert, common stock	A	Dividend	J	T	Exempt				
14	Delphi, common stock	A	Dividend	J	T	Exempt				
15	WorldCom, common stock	A	Dividend	J	T	Exempt				
16	Johnson and Johnson, common stock	A	Dividend	J	T	Exempt				
17	Speculation house, Fulton, MS		None	M	R	Exempt				

1 Inc/Gain Codes: (Col. B1, D4) A=$1.000 or less; B=$1.001-$2.500; C=$2.501-$5.000; D=$5.001-$15,000; E=$15.001-$50.000; F=$50,001-$100,000; G=$100,001-$1,000,000; H1=$1.000.001-$5.000,000; H2=$5,000.001 or more

2 Val Codes: (Col. C1, D3) J=$15,000 or less; K=$15.001-$50.000; L=$50.001-$100.000; M=$100.001-$250,000; N=$250,001-$500.000; O=$500,001-$1,000.000; P1=$1.000.001-$5,000,000; P2=$5,000.001-$25.000,000; P3=$25.000.001-$50,000.000; P4=$50.000.001 or more

3 Val Mth Codes: (Col. C2) Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash/Market; U=Book Value; V=Other; W=Estimated

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Mills, Michael P.

Date of Report: 07/16/2001

VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions

(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
18 15 acres on Tenn-Tom waterway, MS		None	M	R	Exempt				
19 Note from Don Dulaney	A	None	J	V	Exempt				
20 Sam B. Martin Joint Ventures, MS		None	J	V	Exempt				
21									
22									
23									
24									
25									
26									
27									
28									
29									
30									
31									
32									
33									
34									

1 Inc/Gain Codes: A=$1,000 or less B=$1,001-$2,500 C=$2,501-$5,000 D=$5,001-$15,000 E=$15,001-$50,000
(Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

2 Val Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000 N=$250,001-$500,000
(Col. C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market
(Col. C2) U=Book Value V=Other W=Estimated

	Name of Person Reporting	Date of Report
FINANCIAL DISCLOSURE REPORT	Mills, Michael P.	07/16/2001

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

Name of Person Reporting	Date of Report
Mills, Michael P.	07/16/2001

FINANCIAL DISCLOSURE REPORT

SECTION HEADING. (Indicate part of report.)

Information continued from Parts I through VI, inclusive.

PART 3. NON-INVESTMENT INCOME (cont'd.)

Line	Date	Source and Type	Gross Income
5	07/16/01	Mississippi Supreme Court	62,253.00

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Mills, Michael P.	07/16/2001

IX. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature Michael P. Mills Date July 16, 2001

Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
One Columbus Circle, N.E.
Suite 2-301
Washington, D.C. 20544

III. GENERAL (PUBLIC)

1. 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.

I have not practiced law for nearly six years. However, during the last two years, I have served as a founding director of the Institute for Racial Reconciliation at the University of Mississippi. This institution seeks to bring racial harmony to all our people. I feel that the time I have put into this institute will be of great assistance to the disadvantaged.

I also was the founding chairman of two organizations designed to support our public schools. Ten Men, Inc. is a charitable corporation I founded in the 1980's. The purpose of this organization is to raise scholarship funds for disadvantaged students who graduate from the Aberdeen public high school and who wish to attend college. Ten Men, Inc. has provided thousands of dollars in scholarship funds to needy students over the course of the last fifteen years or so.

The Itawamba High School Foundation for Excellence, which I started, raises money to bring educational enhancements to the students at Itawamba Agricultural High School. Many of our students are very disadvantaged, and this foundation has been very active in helping bring additional cultural and positive social events to our school children.

In my private practice, I often represented clients who simply could not pay for legal representation. I would estimate that I spent approximately 150 hours per year during my years in private practice helping people get social security benefits, preparing simple wills, and generally trying to be of service in my community to people who could not afford to pay for a lawyer.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates--through either formal membership requirements or the practical implementation of membership policies. If so, list, with dates of membership. What have you done to try to change these policies?

I do not hold membership in any organization that invidiously discriminates on the basis of race, sex or religion. I was a member of the Aberdeen Country Club in the late 1980's and do not know if it had any discriminatory practices. I am also a member of the Fulton Country Club in Itawamba County. I have inquired of the officers whether there are any formal membership requirements or membership policies which discriminate. I am told that anyone can join this club. I see people of all races playing golf at the course. I am not a golfer but do belong to the club so that my children may go to the swimming pool. We do not have a public swimming pool in Itawamba County.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

We have no selection commission in my jurisdiction to recommend candidates for nomination to the federal courts.

United States Senators Thad Cochran and Trent Lott first talked to me about my availability for submission to the President in teh late summer of 2000. I believe it occurred in July after word of Judge Biggers' taking senior status became public. I was then contacted by Senator Cochran in the second or third week of January 2001 about submission to the President as a judicial nominee. A day or two after Senator Cochran called me, I received a telephone call from Senator Trent Lott. They gave a press release regarding my submission and I believe the first articles in the newspapers about their announcement came out on January 24, 2001. I did not hear from anyone else regarding my appointment until April 2001 when a member of the White House Office of Counsel called me and asked me to be in Washington on April 30th to meet with Mr. Gonzales in the West Wing of the White House. I met with Mr. Gonzales on April 30, 2001; and discussed with him my availability to serve as a United States District Court Judge for the Northern District of Mississippi. It was a very pleasant meeting, and I also talked with other members of his staff. After this meeting, I did not hear anything else about the appointment until Ms. Sheila Joy contacted me in early May regarding questionnaires which I received from the White House. She advised me on how to complete the questionnaires and who to send them to. I believe I mailed all of these questionnaires to the appropriate offices in the first or second week of May. Thereafter, around May 24th, I received a call from investigators with the Federal Bureau of Investigation who asked to meet with me. I met with the investigators at my home in Fulton on May 29, 2001. After this, some time went by before I heard back from anyone. Someone with the American Bar Association contacted my offices during the

week of July 9th regarding my investigation by the ABA. Also, on July 12, 2001, the President of the United States of America called and thanked me for accepting his nomination. I believe the word of the official nomination had gone out to the public on Monday, July 9, 2001. Other than my interview with Mr. Gonzales and his staff in the White House and my interview with investigators with the Federal Bureau of Investigations, I have not been interviewed by anyone else regarding this position.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully?

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The rule of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

I agree with the statement of our founding fathers in Federalist Paper 78, written by Alexander Hamilton, who explained the need for an independent federal judiciary insulated from popular politics and from legislative and executive interference.

Likewise, I believe the judiciary should be hesitant to interfere with legislative or executive matters. Consequently, I believe that a trial court judge should decide the issue before him as fairly as possible. Rulings should be limited to the pending issues.

I served twelve years in the Mississippi Legislature and developed a profound respect, and wary caution, for legislative enactments. I am well aware that the democratic experience percolates most actively in legislative bodies. Our democratic process is an imperfect though necessary experiment. I am hesitant to go behind the will of the Legislature even if their enactments might appear foolish, absent clear constitutional violations. I think it is best left to the people to decide on the propriety of legislation just as it is best left to the courts to rule on constitutionality. As a former legislator, I understand this conflict and feel that the judiciary should exercise self-restraint. I realize that stare decisis, by its very nature, dictates that all orders of the court will have far reaching effects on broad classes of individuals. Nevertheless, I believe that judicial opinions should be limited, to the extent possible, to the parties before the court.

I believe that standing and ripeness and other jurisdictional requirements should be narrowly construed according to federal law. Courts should be involved with the constitutional interpretation and fair application of the law. Decisions should be limited to the parties before the court and should address the rights and remedies fairly applicable to those parties. Any serious departure from these notions, may impinge on legislative and executive responsibilities.

Chairman LEAHY. We will take a one-minute recess before we go to Mr. Gillis.

[The Committee stood in recess from 3:00 p.m. to 3:02 p.m.]

Chairman LEAHY. Mr. Gillis, do you solemnly swear that the testimony you shall give before this Committee will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. GILLIS. I do.

Chairman LEAHY. Please sit down. Mr. Gillis, do you have an opening statement you wish to make?

STATEMENT OF JOHN W. GILLIS, NOMINEE TO BE DIRECTOR, OFFICE FOR VICTIMS OF CRIME, DEPARTMENT OF JUSTICE

Mr. GILLIS. Yes, I do, Mr. Chairman.

Chairman LEAHY. Please go ahead.

Mr. GILLIS. Mr. Chairman and Senator McConnell, good afternoon. It is indeed an honor to appear before you here today as you consider my nomination for the position of Director of the Office for Victims of Crime.

First of all, I would like to thank Senator McConnell for those remarks and I appreciate that. Thank you.

In light of the far-reaching tragedies that have taken place within the past two days, a lot of responsibility will rest upon the shoulders of the Director. However, my varied experience, of which I will give an overview, has fully prepared me to lead this Office at such a critical time in our Nation's history.

I would like to begin by introducing my wife, Patsy. She has been by my side for 22 years. She supports my seeking this position and she has always given me encouragement in all of my endeavors.

My wife's cousins were due to be here today and I think maybe the traffic may have prohibited that. One of her cousins, who is Hillard Haynes, works at the Pentagon and he was there Tuesday morning when the attack occurred. Just two months ago, his office was moved from the impacted area and the Navy and Marine Corps personnel took over his office.

Our god-daughter, Marine Corps First Lieutenant Wendy Holmes, was just transferred to the Pentagon from California. Her first day of duty was to be Tuesday, but she took an extra day off to take care of some personal business. I talked with her this morning as she prepared for her first day of work and she was a bit uneasy. Her first day of work will be identifying bodies and tagging bodies. I promised her I would be available for her when she finishes her first day of duty this evening.

Other family members who could not be here and who could not make arrangements are my son, John, Jr., who is in California; my daughter, Felicia, and her husband, Don, and my two grandsons, 15-year-old Craig and 11-year-old Keifer, who are in Orlando. My brother, Stan, who will be 80 on his next birthday, and my sisters and brothers also could not make it here today.

I am deeply honored and humbled that the President has nominated me and that Attorney General Ashcroft has the confidence that I will be a capable and effective Director of the Office for Victims of Crime.

On a personal level, I was born and raised on a farm in Lexington, Kentucky, and I am the youngest of nine siblings. My fa-

ther, John, was a sharecropper and my mother, Mamie, was a homemaker. During my early years, I learned the importance of family, education and hard work.

When I graduated from Douglas High School in 1954, I accepted the challenge and became one of the proud six black students who integrated the University of Kentucky. After a year at the University of Kentucky, I went into the military, where I proudly served for 3 years.

After leaving the military, I moved to New York, where I worked odd jobs. I worked for the U.S. Postal Service and later became a police officer for the New York Port Authority. I still feel that I am a part of the New York Port Authority Police family and I grieve for each of the hundreds of Port Authority Police families that lost loved ones in the recent attack on America. I also want to send my heartfelt condolences to each and every family that has suffered a loss in that attack.

After leaving New York, I moved to California, where I continued my education and earned a bachelor's degree in political science and also a master's degree in public administration. I studied law and also received a community college teaching credential. I also taught criminal law and criminal justice at the Los Angeles community college system.

My career in criminal justice has spanned more than four decades, and I have been in both law enforcement and corrections. I served 26 years with the Los Angeles Police Department and I worked in various supervisory, management, intelligence and patrol assignments. I have also supervised more than 200 homicide scenes, and my experience and training in law enforcement has prepared me well for the kind of event that was thrust upon our country in the past week.

I have supervised disaster areas, including floods, fires and earthquakes, and I was the assistant commanding officer of the Los Angeles Police Department's 911 emergency command control center and responsible for the management of over 400 sworn and civilian employees. I was responsible for activating the emergency command control center whenever the need arose.

I served 9 years with the California Board of Prison Terms and served 2 years as chairman. As chairman of the board, I was responsible for 140 employees and a $21 million budget. Commissioners are responsible for determining parole suitability for prisoners sentenced to life, and conduct clemency hearings.

I became a crime victim in 1979, when my 23-year-old daughter, Luanna, was targeted and murdered by a gang member who wanted to move up in the gang hierarchy. Since her murder, I have worked with other crime victims, victim organizations, service providers, judges, legislators, district attorneys in an effort to resolve many of the issues that I observed and experienced firsthand.

Today, after working with many leaders in these fields and after assessing the progress that has taken place over the past 20 years in California and around the Nation to improve victims' rights and services, we can collectively be proud of the changes that have occurred, and I look forward to being a part of the changes on the horizon in the 21st century.

Because of my strong background in management and supervision and over 20 years of related experience in crime victim issues both on a personal and professional level, I can assure you that I will continue to be a passionate advocate for the rights of crime victims and to the ever-expanding responsibilities of the Office for Victims of Crime.

If confirmed, I will continue to be sensitive to victim issues and needs. I will continue to work with consultants in the field and help to expand training for those who provide much-needed services. I am a crime victim who has spent nearly four decades in criminal justice and thoroughly understand the needs of both victims and the criminal justice system. If confirmed as the Director of the Office for Victims of Crime, I will be committed to carry out the duties of the Office and to uphold the oath for which I am sworn.

Thank you for considering my nomination and I will be happy to answer any questions.

Chairman LEAHY. Well, thank you very much, Mr. Gillis. As I mentioned earlier, Attorney General Ashcroft had called me at home last evening and urged that we move forward as quickly as we could with your nomination.

All of us, and I am one, who have served in law enforcement know the very special bond that those who have been in law enforcement have had in your work in L.A. or at the New York Port Authority. But there is one bond that, as much as we see crime and crime victims, most of never have and, of course, that is what you suffered with the loss of your daughter.

I suspect, sir, that that is something one never, ever gets over, and I think you understand probably more than anybody else here what the police and fire and EMS and reserve personnel have gone through in New York. I am sure you know what they faced when those people rushed in, including a friend of mine who rushed into that building to help others and they lost their lives doing it.

This year, we finally passed a bill that Senator Stevens had that established a medal of valor for law enforcement. I suspect you are going to see that medal awarded there, even though all of us wish that it wasn't necessary.

I couldn't help but think those of us who have been in law enforcement have been at funerals for fallen comrades, or sometimes a tragedy where three or four or even five have fallen. You know what that is like; it brings people from departments all over the area, in my part of the United States from all over New England and New York because three or four fell. We don't even know how many hundreds have died here and how many children went home from school and there was nobody there.

I think the acting director and the staff of the Office for Victims of Crime are doing a tremendous job today. I think you would concur with this, would you not, that everybody from the Justice Department, the various executive branch agencies, the military, and everybody else is doing a tremendous job coping with this?

You mentioned your god-daughter is in the Marines. My son is a former Marine and I can imagine what this must be like. I think you would agree with me none of us have ever had any experience

that could begin to match what we are seeing in just the past 48 hours. Would you agree with that, sir?

Mr. GILLIS. Yes, Senator, I would agree with that, and I also would agree that the staff at OVC are doing a good job. These are career people who are doing an outstanding job. I can't begin to compliment them enough.

Chairman LEAHY. You are going to come into a job where you are going to have responsibilities that you couldn't have expected, the Attorney General couldn't have expected when he recommended you, the President couldn't have expected when he nominated you. But be thankful you have those people in place.

I think about two months after the Oklahoma City tragedy I proposed a bill, and the Senate approved it, the Victims of Terrorism Act of 1995. It was ultimately put in a larger anti-terrorism package, and it provided authority for OVC to respond to the consequences of violent extremism, whether it was abroad or here at home. It established an emergency reserve as part of the Crime Victims Fund. It authorized OVC to make grants from the reserve to provide compensation and assistance to victims of terrorism or mass violence.

Now, as I mentioned at the beginning of this meeting, Senator McConnell, myself and Senator Cochran are all members of the Appropriations Committee. We are trying to figure out how much money we can get, when and where and how quickly to help. Money won't bring anybody back, but it can at least help put together what pieces are remaining in those families that suddenly are totally devastated.

Do you have recommendations for improvements to the Victims of Terrorism Act or other legislative initiatives that might help in a case like this, or would you like to see how this plays out and come back with recommendations?

Mr. GILLIS. I would love to come back with recommendations, if I am confirmed, and it is something that I would love to take a look at and work with Congress and those people who are in the business and put something together. That would be acceptable and would work to the benefit of crime victims across the country.

Chairman LEAHY. Well, thank you, and I think this might be a very good time to do that to just make sure that people look very objectively at what worked best in our system and what didn't work. We know there are a lot of things that are working very well, but feel very frank in coming back and talking to us and telling us if there are improvements we could make.

We have another bill by Senator Kennedy and I and Senator Schumer and others to help crime victims. We introduced S. 783, the Crime Victims Assistance Act, and we worked closely with OVC and a number of victims organizations to provide rights and protections for victims of Federal crimes, to establish innovative new programs that might help promote compliance with State victims rights laws, several significant amendments to the Victims of Crime Act.

I am not going to ask you to go down through—we have more important things right now—line by line with it, but can I ask for your commitment, if you are confirmed, after the immediate tragedies are being addressed that you and your staff will work with our

staff to see if there are improvements and if there are things that are needed or things that we could do to make that law better?

Mr. GILLIS. Yes, I could make that commitment. I will always be committed to looking at legislation or anything that will be an improvement for crime victims, and that would include your legislation, sir.

Chairman LEAHY. Thank you. I will have other questions on funding that may actually change as a result of what we might do in the next 24 hours.

I would yield to the Senator from Kentucky.

Senator MCCONNELL. I think the chairman has got it right that this event of Tuesday makes your job potentially quite different from what you anticipated because there has never been a tragedy quite like this, nor this many victims. It seems to me, as well as Senator Leahy, that it will provide an opportunity for innovative thinking on the part of you and your office. We wish you well and we look forward to seeing what recommendations you may end up arriving at.

Do you have any thoughts you would like to share with us just in general about the events of Tuesday and your reaction to it and what the victims may be going through?

Mr. GILLIS. No, except that like all Americans, we look at it and we don't think that those kinds of things happen here. Yet, we always knew there was the possibility, and it just means that we have to be a little more vigilant. I know that Congress will do whatever it can do to help the victims of these tragedies. I am sure that Congress will be looking at other ways to avert this kind of tragedy in the future. But like most Americans, it is just hard to fathom.

Senator MCCONNELL. Well, I wish you well, Mr. Gillis. I think you are an outstanding choice for this position and I am enthusiastically behind you.

Thank you, Mr. Chairman.

Mr. GILLIS. Thank you.

Chairman LEAHY. Mr. Gillis, normally your nomination would not have come before our Committee for a couple of weeks. I am going to confer in this case—and this is really for me, anyway, an unprecedented thing—I am going to confer with the Majority Leader and the Republican Leader. We have a little-used expedited parliamentary procedure. If we can get people to agree, then I am going to try in an expedited fashion to move your nomination through before this week is out. That is because I want you there, I want you with a hand in the till, I want you working with the very, very good people, most of whom probably haven't slept in the last 48 hours. I want you on the front line with your background and your abilities.

With that—

Senator MCCONNELL. Mr. Chairman, could I just quickly mention to you that Deborah Daniels, who is the nominee for Assistant Attorney General for the Office of Justice Programs, of which this office which Mr. Gillis is going to head is component, is still pending on the floor. Maybe the chairman might be willing to consider moving her nomination as well. I just suggest that.

Chairman LEAHY. This has gone a little bit above my pay grade. It is in the hands of your leader and my leader on that. I did my part in getting her out of the Committee. I suspect that will not be long. I assume that the Senator from Kentucky would not have any objection if we were able to poll Mr. Gillis out on the floor.

Senator MCCONNELL. No. I think that would be a great idea.

Chairman LEAHY. Thank you.

Mr. GILLIS. Thank you, sir.

Chairman LEAHY. Mr. Gillis, thank you very much.

[The biographical information of Mr. Gillis follows:]

I.BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

JOHN WILLIAM GILLIS

2. Address: List current place of residence and office address(es).

Rancho Murieta, CA 95683 (Residence)
Alhambra, CA 91803 (Residence)

3. Date and place of birth.

March 9, 1937
Lexington, Kentucky

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address)es).

Married
Patsy J. Gillis (Mix)
Self-Employed - Voterdigest.com
P. O. Box 1745
Sacramento, CA 95812

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

University of Southern California (USC), Dates Attended: 9-71 to 6-74, MA Public Administration, Date of Degree: (6/7/73)
California State University, at Los Angeles, Dates Attended: 9-68 to 6-71, BA Political Science, Date of Degree: (12/12/70)
East Los Angeles College, Dates Attended: 9-65 to 6-68, Associate Arts, Date of Degree: (6/14/68)

NON DEGREE STUDIES
Glendale College School of Law, 6-74 to 10-76 (Law Classes)
University of Kentucky, at Lexington, 9-54 to 4-55 (Agriculture)

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

EMPLOYMENT HISTORY:

4-16- 99 to Present	**Self-Employed - GILLIS ENTERPRISES/VOTERDIGEST.COM Owner of a Computer and Internet Business**
5-23-90 to 4-15-99	**COMMISSIONER, CALIFORNIA BOARD of PRISON TERMS (Chairman of the Board from 5-30-91 to 12-1-93)**
3-88 to 1-92	**GILLIS ENTERPRISES/OFFICE SUPPORT CENTER - CEO/OWNER, Alhambra, CA**

LOS ANGELES POLICE DEPARTMENT, Los Angeles, CA -- 10-62 to 2-88

6-85 to 2-88	**ASSISTANT COMMANDING OFFICER**, Communications Division
1981 to 6-85	**DETECTIVE LIEUTENANT**, Northeast Division
1980 to 1981	**DETECTIVE LIEUTENANT**, Newton Division
1979 to 1980	**LIEUTENANT WATCH COMMANDER**, Hollenbeck Division
1969 to 1979	**SERGEANT,** Internal Affairs, Supervisory & Investigative duties
10-62	**POLICE OFFICER** - Joined the Los Angeles Police Department
5-62 to 10-62	**MAIL CARRIER,** United States Post Office, Los Angeles, CA
2-60 to 5-62	**POLICE OFFICER,** Port of New York Authority
2-58 to 2-60	**MAIL CARRIER**, United States Post Office, New York City, NY

NONPROFIT BOARDS

Fight Crime Invest in Kids, Advisory Committee Member - 2000 to Present
Justice for Homicide Victims, Founding Member - 1984 to Present
Optimist International, Rancho Murieta, - 1996 to Present
Parents of Murdered Children (POMC), - 1984 to Present
Sacramento County River City Republicans, Board of Directors - 1997 to Present
Victims & Friends United, Founder - 1988 to Present
YMCA Board of Directors (San Gabriel Chapter) Alhambra, California - 1968 to 1991

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

U.S. Army, Enlisted Status, 4-55 to 1-58

Private First Class, Serial# RA15536134
Honorable Discharge

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Presidential Victim Services Award, 1991
U.S. Attorney General's Special Commendation Award, 1993
Honor Award, American Police Hall of Fame, 1990
Law Enforcement Appreciation Award (West Virginia Troopers Assn.), 1993

Police Commission Award - Designed a Computerized Police Permit Issuing Process System for Los Angeles Police Department, 1977

9. Bar Associations: List all bar associations, legal or judicial-related committees 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.

California Bar Association, Victims and Corrections Committee, 1994 to 1998

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

To the best of my knowledge, there are no organizations to which I belong that are active in lobbying before public bodies.

OTHER ASSOCIATIONS/ORGANIZATIONS:

-Alhambra Chamber of Commerce, 1977 to 1991
-American Probation & Parole Association, Victim Issues Committee, 1991 to 1997
-American Correctional Association, 1990 to Present
-Association of Paroling Authorities, International -Western States Vice President, 1991 to 1996
-Association of Black Law Enforcement Executives (ABLE) 1979 to 1994
-Businessmen for Law Enforcement (BLEND), Police Advisor - 1981 to 1985
-Coalition on Victims Equal Rights (C.O.V.E.R.), (Founding Member)
-Department of Youth Authority, Victim Task Force 1989 to 1991
-Los Angeles County Peace Officer Association, 1984 to 1988
-National Organization of Black Law Enforcement Executives, (NOBLE) 1979-1996
-National Organization of Victim Assistance (NOVA) 1981-Life Member
-Optimist International, Monterey Park 1979 to Present
-Rotary Club of Alhambra 1988 to 1994, Secretary 89/90, 90/91

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any

lapse of membership. Give the same information for administrative bodies which require special admission to practice.

None

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Publications & Dates: The New Killer Kids (1998) - Gold River Review (Fall 1998); The Future of Corrections (1998) - Gold River Review (Summer 1998); Preventing Crime, Saving Children: Monitoring, Mentoring, Ministering (February 1997); The State of Violent Crime in America (January 1996).

13. Health: What is the present state of your health? List the date of your last physical examination.

My overall health is good. I have diabetes and high blood pressure which are controlled by medication. My last physical examination was in 2000.

14. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

1996 - Sacramento District Attorney's Citizen Cabinet, (1996 - Present) (Appointed by District Attorney)
4-15-90 - Appointed Commissioner, California Board of Prison Terms (1990 to 1999) (Appointed by Governor)
1989/1990 -Alhambra Police Facility Chairman (Building Committee) (Appointed by City Council)
1988 to 1990 -Governor's Minority Roundtable Advisory Committee (Appointed by Governor Deukmejian)
1987 to 1988 -Emergency Dispatcher Standards Advisory Committee, California Department of Justice (Founding Member), (Appointed by Governor Deukmejian)
1984 to 1989-Economic Development Corporation City of Alhambra (Founding Member), (Appointed by City Council)
1981 to 1983- Alhambra Board of Education Advisory Committee, (Appointed by Board of Education)
1981 to 1983- Alhambra Community Crime Council (Vice President) (Appointed by City Council)
1981 to 1989- Housing and Community Development Advisory Committee (HUD), Board Member (Three term president), (Appointed by Mayor of Alhambra)
1980 - 1983 -Alhambra Legislative Affairs Committee, (Appointed by City Council)

1979 to 1981- Board of Library Trustees, Alhambra (Appointed by Mayor)

Unsuccessful candidacies:
1998 - Unsuccessful Candidate, California State Assembly, 10th District
1988 - Unsuccessful Candidate for Alhambra School Board
1978 - Unsuccessful Candidate for Alhambra School Board

15. Legal Career:

I am not a law school graduate and have not been admitted to practice law in any state.

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

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

I have not served as a clerk to a judge.

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

I have not practiced law.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

ALL PREVIOUS EMPLOYMENT/EMPLOYERS
GILLIS ENTERPRISES
6503 Via Sereno Drive
Rancho Murieta, CA 95683

OFFICE SUPPORT CENTER/GILLIS ENTERPRISES
2624 W. Valley Boulevard
Alhambra, CA 91803

VOTERDIGEST.COM
P. O. BOX 1745
Sacramento, CA 95812

BOARD OF PRISON TERMS
428 J Street, 6th Floor
Sacramento, CA 95814

LOS ANGELES POLICE DEPARTMENT
150 N. Los Angeles Street
Los Angeles, CA 90012

UNITED STATES POST OFFICE
300 N. Los Angeles Street
Los Angeles, CA 90012

PORT OF NEW YORK AUTHORITY
2 Broadway
New York, NY 10004

UNITED STATES POST OFFICE
151 W. 34th Street
New York, NY 10001

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

I have never had a law practice.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

I have not practiced law or had any clients.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Between March 1963 and September 1979, I appeared in court frequently in my capacity as a police officer/investigator representing the City of Los Angeles.

2. What percentage of these appearances was in:
(a) federal courts;
(b) state courts of record;
(c) other courts.

Ninety-nine percent of my appearances were in state courts of record.

3. What percentage of your litigation was:
(a) civil;
(b) criminal.

I did not litigate cases but appeared as the arresting or investigating officer. Ninety-nine percent of the cases were criminal.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have not tried any cases or practiced law.

5. What percentage of these trials was:
   (a) jury;
   (b) non-jury.

Approximately 25% of the cases were jury and 75% were non-jury.

16. Litigation: Describe the ten most significant litigated matters which you personally handled. 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:

I am not an attorney and have not litigated any cases.

   (a) the date of representations;
   (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.

17. 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 the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

I have a strong background in management and supervision. I have nearly 4 decades of experience in supervisory and management positions. As Chairman of the Board of Prison Terms, I was responsible for 140 employees and a $21 million dollar budget. As assistant Commanding Officer of the Los Angeles Police Department's Communications Division, I was responsible for the management of approximately 400 sworn and civilian employees.

My work with victim rights legislation includes four years as a member of the California State Bar Association's Crime Victims and Corrections Committee, and four years on the American Legislative Exchange Council's Victim Committee. I was an active participant and advisor in the production of two training videos for crime victims and law enforcement. The videos are widely used throughout the United States and several foreign countries.

I understand, and know, how to breach the chasm of misunderstanding and mistrust between crime victims and the Criminal Justice system. I have worked tirelessly since 1981 to ensure that our criminal justice system treats crime victims and their families with dignity, equity and sensitivity. In addition, I have worked with victims to help them understand how they can best help the criminal justice system identify and prosecute perpetrators so that the case can be brought to a speedy resolution.

I have been community oriented and community interactive for several decades, and have served and worked with many community groups and non profit organizations.

I am a crime victim who has spent nearly 4 decades working in criminal justice and thoroughly understand the needs of both the victims and the criminal justice system. My personal and professional integrity, experience, qualifications, training, and my understanding of crime victim issues will serve me well in my position as Director, Office for Victims of Crime.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List 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. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Lifetime, Vested Pension, Los Angeles Police Department Retirement: $ 49,960 per year
Lifetime, Vested Pension, State of California Retirement: $ 15,086 per year
Rental Property Income: $27,000 per year
457 Deferred Compensation Plan (State of California) Payment on Demand: $123,000
401K Pension Plan, Payment on Demand: $ 37,000

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

To the best of my knowledge, I have no potential conflict of interest. I will resign from my position as President & CEO of Voterdigest if I am confirmed.

In the event of a potential conflict of interest, I will consult with the Department of Justice Ethics official.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

I do not have any plans, commitments or agreements to pursue outside employment, and I will not engage in any outside employment, with or without compensation, after confirmation.

4. 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, patents, honoraria, and other items exceeding $500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See attached SF-278.

5. Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Financial Statement - Net Worth.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

During the 2000 Bush-Cheney campaign I served as Sacramento County Education Co-Chair. It was my responsibility to disseminate information regarding the Bush-Cheney position on education.

U.S. Department of Justice

Washington, D.C. 20530

APR 30 2003

Ms. Amy L. Comstock
Director
Office of Government Ethics
Suite 500
1201 New York Avenue, NW
Washington, DC 20005-3919

Dear Ms. Comstock:

In accordance with the provisions of Title I of the Ethics in Government Act of 1978 as amended, I am forwarding the financial disclosure report of John W. Gillis, who has been nominated by the President to serve as Director, Office for Victims of Crime, Department of Justice.

We have conducted a thorough review of the enclosed report. The conflict of interest statute, 18 U.S.C. 208, requires that Mr. Gillis recuse himself from participating personally and substantially in a particular matter in which he, his spouse, minor children or anyone whose interests are imputed to him under the statute, has a financial interest. We have counseled him to obtain advice about disqualification or to seek a waiver before participating in any particular matter that could affect his financial interests. Mr. Gillis's continuing interests in the defined benefit plans of the State of California and the County of Los Angeles, constitute financial interests. However, there is a regulatory exemption pursuant to 18 U.S.C. Section 208(b)(2) found at 5 CFR 2640.201(c) under which Mr. Gillis would be permitted to participate in particular matters of general applicability such as rulemaking which affect all states or local governments, including the State of California and County of Los Angeles.

Mr. Gillis and his spouse own Voterdigest.com, a business that provides a website with information about national elections and state and local elections in California, which are non-partisan under state law. Mr. Gillis will resign his position as Chief Executive Officer and President of Voterdigest.com upon confirmation, and will perform no services for the business

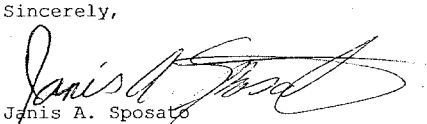
although he remains a passive owner. Mr. Gillis has agreed to obtain advice or seek a waiver before participating in a particular matter that could affect the financial interest of Voterdigest.com.

Mr. Gillis and his spouse also own Gillis Enterprises, a sole proprietorship that formerly provided computer consulting and training. The business has been inactive since 1998, and will remain inactive and conduct no business during Mr. Gillis's government tenure. Mr. Gillis will provide no services and receive no income from Gillis Enterprises during his government tenure.

We have advised Mr. Gillis that because of the standard of conduct on impartiality at 5 CFR 2635.502 he should seek advice before participating in a particular matter with specific parties in which a member of his household has a financial interest or in which someone with whom he has a covered relationship is or represents a party. He will have a covered relationship with the clients and advertisers of Voterdigest.com.

Based on the above agreements and counseling, I am satisfied that the report presents no conflicts of interest under applicable laws and regulations and that you can so certify to the Senate Judiciary Committee.

Sincerely,



Janis A. Sposato
Acting Assistant Attorney
General for Administration and
Designated Agency Ethics Official

Enclosure

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved:
OMB No. 3209 - 0001

Date of Appointment, Candidacy, Election, or Nomination *(Month, Day, Year)*	**Reporting Status** (Check Appropriate Boxes)	Incumbent ☐	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate ☑	Termination Filer ☐ Termination Date *(If Applicable) (Month, Day, Year)*
Reporting Individual's Name	Last Name: GILLIS			First Name and Middle Initial: John W	
Position for Which Filing	Title of Position: Director, Office for Victims of Crime			Department or Agency *(If Applicable)*: Justice	
Location of Present Office (or forwarding address)	Address *(Number, Street, City, State, and ZIP Code)*: 6503 Via Sereno Drive, Rancho Murieta, CA 95683			Telephone No. *(Include Area Code)*: (916) 354-1780	
Position(s) Held with the Federal Government During the Preceding 12 Months *(If Not Same as Above)*	Title of Position(s) and Date(s) Held: None				
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination: Senate Judiciary			Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☑ No	
Certification: I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	Signature of Reporting Individual: John W Gillis			Date *(Month, Day, Year)*: april 25, 2001	
Other Review (If desired by agency)	Signature of Other Reviewer: Mary Braden			Date *(Month, Day, Year)*: 4/27/01	
Agency Ethics Official's Opinion: On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).	Signature of Designated Agency Ethics Official/ Reviewing Official: Janice M. Rodgers			Date *(Month, Day, Year)*: 4/27/01	
Office of Government Ethics Use Only	Signature			Date *(Month, Day, Year)*	

Comments of Reviewing Officials *(If additional space is required, use the reverse side of this sheet)*

Reviewed + notations by Janice M. Rodgers, DOJ, upon consultation with filer.

(Check box if filing extension granted & indicate number of days _____) ☐

(Check box if comments are continued on the reverse side) ☐

Fee for Late Filing
Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a $200 fee.

Reporting Periods

Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

Nominees, New Entrants and Candidates for President and Vice President:

Schedule A -- The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of date of filing.

Schedule B -- Not applicable.

Schedule C, Part I (Liabilities)--The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

Schedule C, Part II (Agreements or Arrangements)--Show any agreements or arrangements as of the date of filing.

Schedule D -- The reporting period is the preceding twocalendar years and the current calendar year up to the date of filing.

Agency Use Only

OGE Use Only

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: GILLIS, John W.

SCHEDULE A

Assets and Income — BLOCK A

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse).

None ☐

Valuation of Assets at close of reporting period. — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

	Assets and Income (Block A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples	Central Airlines Common				X												X						X										
	Doe Jones & Smith, Hometown, State			X																												Law Partnership Income $130,000	
	Kempstone Equity Fund					X								X										X									
	IRA: Heartland 500 Index Fund													X											X								
1	L.A. Police Retirement - Defined Benefit Plan (Value not readily ascertainable)																															Retirement Income $60,000	
2	State of CA Retirement - Defined Benefit Plan (Value not readily ascertainable)																															Retirement Income $20,000	
3	Residential Rentals 133-139 S. Elm Street, Alhambra, CA						✓											✓								✓							
4	L.A. Police Credit Union P.O. Box 10188, Van Nuys, CA 91410				✓														✓				✓										
5	Golden One Credit Union P.O. Box 15966, Sacramento, CA 95852		✓																✓			✓											
6	Bank of America (Cash/Checking Account) 160 S. Main, Alhambra, CA 91801		✓																✓			✓											

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: GILLIS, John W.

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period. — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (Block A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rents and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
7	Voterdigest.com P.O. Box 1745, Sacramento, CA 95812				✓																											Busi. income $6,100.	
8	Public Agenda 6 E. 39th Street, NY, NY 10016																															$250.00 Honorarium	03/09/01
9	Public Employees' Retirement System State of CA 457 Plan, Savings Pool Program*					✓													✓			✓											
10	Public Employees' Retirement System State of CA 401K Plan, Savings Pool Plan*			✓															✓			✓											
11	Public Employees' Retirement System State of CA 401K Plan, S&P 500 Index Fund		✓											✓							✓												
12	Public Employees' Retirement System State of CA 457 Plan, S&P 500 Index Fund			✓										✓							✓												
13																																	
14																																	
15	*Funds invested in Golden One Credit Union & Western Corp Federal Credit Union (WestCorp)																																

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot Be Used.

OGE/PureEdge, version 1.0.1 (3/30/01)

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Do not complete Schedule B if you are a new entrant, nominee, or Vice Presidential or Presidential Candidate

Reporting Individual's Name
GILLIS, John W.

SCHEDULE B

Part I: Transactions

None ☐

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

	Identification of Assets	Transaction Type (s): Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	Amount of Transaction (x): $1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
Example	Central Airlines Common				2/1/99												
1																	
2																	
3																	
4																	
5																	

* This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260, and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☐

	Source *(Name and Address)*	Brief Description	Value
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty)	$500
	Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
1			
2			
3			
4			
5			

Prior Editions Cannot Be Used.

OGE/PureEdge, version 1.0.1 (3/30/01)

SF 278 (Rev. 09/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: GILLIS, John W.

SCHEDULE C

Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at **any time** during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None ☐

	Creditors (Name and Address)	Type of Liability	Date incurred	Interest Rate	Term if applicable	$10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			X								
	John Jones, 123 JSt., Washington, DC	Promissory note	1999	10%	on demand					X						
1	1st Nationwide Mortage, P.O. Box 7175 Pasadena, CA 91109-7175	Mortgage on Rental Property in Alhambra	1975	9.50	30 years		✓									
2	Los Angeles Police Credit Union P.O. Box 10188, Van Nuys, CA 91410	Voterdigest.com Loan	1999	12.9	3 years		✓									
3	First USA Bank, N.A. P.O. Box 1876, Elgin, IL 60121-1876	Revolving Credit	1999	18.4	N/A	✓										
4																
5																

* This category applies only if the underlying liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None ☐

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will recieve lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1	Los Angeles Police Pension - Defined Benefit Plan (Receive fixed monthly payment) Disclosed on Schedule A	Los Angeles Police Department	03/88
2	State of California Pension - Defined Benefit Plan (Receive fixed monthly payment) Disclosed on Schedule A	State of California	04/99
3	State of California 401K - ~~Deferred~~ Retirement Benefit Plan Disclosed on Schedule A	State of California	04/99
4	State of California 457 Plan - Deferred Benefit Plan Disclosed on Schedule A	State of California	04/99
5			
6			

Prior Editions Cannot Be Used.

OGE/PureEdge, version 1.0.1 (3/30/01)

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name	SCHEDULE D	Page Number
GILLIS, John W.		6 / 6

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization *(Name and Address)*	Type of Organization	Position Held	From *(Mo., Yr.)*	To *(Mo., Yr.)*
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	*Voterdigest.com - P. O. Box 1745, Sacramento, CA 95812	Nonpartisan political web site	CEO	11/98	Present
2	*Gillis Enterprises, 6503 Via Sereno, Rancho Murieta, CA 95683 (inactive)	Computer Consulting & Training	Owner w/spouse	09/85	Present
3					
4	* I will resign upon confirmation.				
5					
6					

Part II: Compensation in Excess of $5,000 Paid by One Source

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

None ☐

	Source *(Name and Address)*	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (Client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	Voterdigest.com	Services as CEO of web-site that accepts advertising fees.
2		
3		
4		
5		
6		

Prior Editions Cannot Be Used.

OGE/PureEdge, version 1.0.1 (3/30/01)

FINANCIAL STATEMENT

NET WORTH

JOHN WILLIAM GILLIS

Provide a complete, current financial net worth statement which itemizes in detail all assets (including ba accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debt mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members your household.

ASSETS		LIABILITIES	
Cash on hand and in banks	82,000.00	Notes payable to banks—secured	15,000.00
U.S. Government securities—add schedule	NONE	Notes payable to banks—unsecured	
Listed securities—add schedule	NONE	Notes payable to relatives	
Unlisted securities—add schedule	NONE	Notes payable to others	
Accounts and notes receivable:		Accounts and bills due	3,000.00
Due from relatives and friends	NONE	Unpaid income tax	
Due from others	NONE	Other unpaid tax and interest	
Doubtful		Real estate mortgages payable—add schedule	236,127.00
Real estate owned—add schedule	1,155,000.00	Chattel mortgages and other liens payable	
Real estate mortgages receivable	N/A	Other debts—itemize:	
Autos and other personal property	16,000.00	Mastercard-Revolving	11,000.00
Cash value—life insurance	NONE	AmericanExpress_Revolving	5,000.00
Other assets—itemize:			
Income from Rentals	27,000.00		
State of CA 457 Plan	123,000.00		
State of CA 401K Plan	37,000.00	Total liabilities	270,127.00
		Net worth	1,169,873.00
Total assets	1,440,000.00	Total liabilities and net worth	1,440,000.00
CONTINGENT LIABILITIES		**GENERAL INFORMATION**	
As endorser, comaker or guarantor	NONE	Are any assets pledged? (Add schedule.)	NO
On leases or contracts	NONE	Are you defendant in any suits or legal actions?	NO
Legal Claims	NONE	Have you ever taken bankruptcy?	NO
Provision for Federal Income Tax	NONE		
Other special debt	NONE		

FINANCIAL STATEMENT
Of
John W. Gillis
May 9, 2001

Real Estate	Date Of Loan	Cost	Value	Mortgage	Bank Name
Income Rentals 133/35/37/39 S. Elm Alhambra, CA	1976	$ 79,000.00	$ 430,000.00	$ 27,229.00	1st Nationwide Mortgage
Residence Rancho Murieta, CA	1993	$ 260,000.00	400,000.00	208,898.00	1st Nationwide Mortgage
Residence Alhambra, CA	1979	84,000.00	325,000.00	00.00	PAID IN FULL
TOTALS		$423,000.00	$1,155,000.00	$ 236,127.00	

Autos	Value	Balance Owed
1997 Ford Windstar	$ 9000.00	$ 00.00
1996 Ford Taurus	$ 7000.00	$ 00.00
TOTALS	$16,000.00	$ 00.00

III. GENERAL (PUBLIC)

1. 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.

-Fight Crime Invest in Kids, Advisory Committee Member, 2000 to Present
-Justice for Homicide Victims, Founding Member 1984 to Present
-Optimist International, Rancho Murieta 1996 to Present
-Parents of Murdered Children (POMC) 1984 to Present
-Sacramento County River City Republicans, Member, 1997 to Present
-Victims & Friends United, Founder, 1988 to Present

2. Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion – through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies.

I was the first African American admitted to Alhambra, California Rotary Club. Two years after I was admitted I lobbied for the first female to be admitted. (1988 to 1994)

I was the first African American admitted to the Eastside Optimist Club (Monterey Park, California). I later supported the admission of the first female member to the organization. (1979 to Present)

[Whereupon, at 3:22 p.m., the Committee was adjourned.]
[Questions and answers and a submission for the record follow.]

QUESTIONS AND ANSWERS

Responses of Justice Michael P. Mills to questions submitted by Senator Patrick Leahy

Question 1: In the past few years, the Supreme Court has struck down a number of federal statutes, most notably several designed to protect the civil rights and prerogatives of our more vulnerable citizens, as beyond Congress's power under Section 5 of the Fourteenth Amendment. The Supreme Court has also struck down a statute as being outside the authority granted to Congress by the Commerce Clause. These cases have been described as creating new power for state governments, as federal authority is being diminished. As the same time, the Court has issued several decisions, most notably in the environmental arena, granting states' significant new authority over the use of land and water, despite long-standing federal regulatory protection of the environment. Taken individually, these cases have raised cancers about the limitations imposed on Congressional authority; taken collectively, they appear to reflect a "new federalism″ crafted by the Supreme Court that threatens to alter fundamentally the structure of our government. What is your view of these developments?

Response: The question you have presented describing the trend toward a "new federalism" seems to identify the balancing of authority in two different settings within our federal system. The first balance is between the Federal Courts and Congress. The second balances the sovereignty of the States and the authority of the Federal government.

As to the balance between the Federal Courts and Congress, I think it is important to note that I served 12 years in the Mississippi House of Representatives. I was a Judiciary Committee Chairman for four of those years. As both a former member of the legislature and my more recent service on the Mississippi Supreme Court, I have developed a profound respect for both the role of the Legislature and the powers of the courts, both federal and state.

If confirmed as a federal trial court judge, I will respect the independence favored my office by the U.S. Constitution and proceed with a profound regard for the limited powers placed in the U.S. District Courts. I believe my record establishes that I possess sufficient judicial restraint, respect for the Constitution, and adherence to precedent to avoid the temptation to view my office as unaccountable. My life experiences have given me respect for the voices of the people through their elected representatives, and also respect for the law. I will try to be ever aware of the delicate balance among these competing, yet oddly consistent, tensions in our constitutional structure.

Are there Supreme Court precedents with which you strongly disagree that you would not follow or apply? If so, which ones?

Response: I have great respect for the doctrine of stare decisis. I do not know of any Supreme Court precedents with which I so strongly disagree that I could not follow or apply them.

Question 2: In *McMillan* v. *City of Jackson*, you concluded that a protester convicted of trespassing at an abortion clinic should have been permitted to present a defense of "necessity"—i.e., that the protester acted out of a reasonable belief that her actions were necessary to prevent a significant evil. The majority and the dissent differed over whether the defendant had proffered sufficient evidence that the clinic was performing abortions beyond the point of fetal viability, in violation of state law.

a) Assuming that the defendant convicted of trespass did establish that she had actual knowledge of a specific legal harm and that she had no alternatives to avert the harm, what would have been a proportionate response under the law? For example, should a jury be allowed to consider a necessity defense when a protestor blocks access to a health care clinic? Or when a protester bombs the clinic or shoots a doctor in order to halt activities with the clinic?

Response: McMillan presents a classic issue of the due process rights of a defendant balanced against the rights of others, abortion patients and doctors in that case. I joined Justice Smith's dissent in this case because Mississippi law requires courts to give defendants broad leeway in criminal cases to present his or her "theory of the case." I do not believe the necessity defense should extend to those who block access or commit acts of violence. The facts in *McMillan* do not establish any acts of violence or blocking of access by the defendant.

Question 3: In *Hollon* v. *Hollon*, you voted in dissent to affirm a lower court ruling that awarded child custody to a father primarily because the mother was alleged to be having a lesbian affair. The father, who rarely exercised visitation rights and regularly failed to make child support payments, had testified that his only concern with the mother's fitness to care for the child was the "homosexual environment" in her home.

a) In your view, when is evidence of a parent's homosexual relationship a sufficient basis for denying that parent child custody? When assessing the moral fitness of two parents, does one parent's homosexuality automatically weigh against him or her?

Response: Both heterosexual and homosexual relationships should be matters of privacy and discretion. However, when either is practiced so openly as to become a familial concern, then I think such practices are a factor, though not the controlling factor, in determining the best interests of the child. I do not believe that one parent's homosexuality automatically weighs against him or her, as the chancellor correctly stated in his opinion in *Hollon*. However, I do believe it is not in the best interests of a child for a parent to practice either heterosexual or homosexual acts openly in front of the child and then to lie about it.

b) The dissent in *Hollon* relied principally on the lower court's conclusion that the mother had been dishonest in denying the alleged affair. Under what circumstances is it proper for a lower court to admit allegations that a parent has engaged in same-sex sexual conduct? Should a lower court custody decision be affirmed if the court makes a credibility determination against the gay or lesbian parent, regardless of how much hostility the court expresses towards the parent's sexual orientation?

Response: The dissent in this case was authored by Justice McRae. I joined this dissent because it was obvious from reading the record that the mother had not only given dishonest testimony, but had encouraged another witness to commit perjury. The lack of honesty exhibited by the mother tainted her testimony, and in a close case such as this one, I thought it appropriate to defer to the trial court's judgment since the judge was in a better position than I to view the demeanor and credibility of the witnesses. As to when such "allegations" of same-sex sexual conduct should be admitted, I do not believe allegations should ever be admitted into a trial. The question is when should evidence be admitted. Such evidence, like all other evidence, should be admitted into court when it is relevant to prove the truth or falsity of an issue in dispute. In *Hollon* there was relevant, admissible evidence of the adulterous homosexual affair and of the mother's lack of candor.

Child support determinations in Mississippi must be based on *Allbright* v. *Allbright*, 437 So.2d 1003 (Miss. 1983), which require consideration of many factors, including the age and health of the child; available educational opportunities; the income and means of the parents; housing arrangements; whether other family relationships meaningful to the child have been established, or will be disrupted, etc. A custody order that properly considers and balances these concerns should be affirmed when supported by evidence in the record.

Proper application of these factors tends to minimize the lower court's ability to translate its "hostility" toward any particular circumstance into a decision on the case. I might add, however, that if a court's hostility toward any party, regardless of the reason, is so obvious as to affect the appellate court's confidence in the impartiality of the lower court, then the appellate court should review such decision with heightened scrutiny and reverse where appropriate.

Responses of Justice Michael P. Mills to questions submitted by Senator Richard J. Durbin

Question 1: In a challenge to various state restrictions on abortion, your colleague Justice Smith wrote a concurring/dissenting opinion that concluded, "I find no authority in the Mississippi Constitution which would permit an abortion." *Pro-Choice Mississippi* v. *Fordice*. 716 So. 2d 645, 668 (Miss. 1998). You signed on to this opinion, notwithstanding that the Mississippi Supreme Court previously had recognized in the state constitution "a right to the inviolability and integrity of our persons, a freedom to choose or a right of bodily self-determination." *In Re Brown*. 478 A. 2d 1033, 1039 (Miss. 1985).

a) In your view, does a woman's right of bodily self-determination not include the right to terminate an unwanted pregnancy?

Response: The Supreme Court has clearly stated in *Roe* v. *Wade* and its progeny that a woman has the right to terminate a pregnancy, and I respect the law articulated in that line of cases. Should I be confirmed as a federal judge, I would follow Supreme Court precedents.

b) How do you reconcile your conclusion in *Pro-Choice Mississippi* with the Court's holding in *In Re Brown*? Do you think that *Brown* was wrongly decided? Is it your belief that *Brown* should not have been followed by the Court?

Response: I joined Justice Smith's dissent, which concurred in most parts with the majority, as an act of collegial deference to a view that most closely reflected my own. I believe that *In Re Brown*, 478 So. 2d 1033 (Miss. 1985), was correctly decided. *In Re Brown* concerned the right of a member of the Jehovah's Witness faith to refuse a life-continuing blood transfusion so that the State could preserve her as a witness in a criminal case. That case dealt with the free exercise of religion and the right to privacy. I have carefully read the case again in order to respond to your question and it is absolutely right on point in finding that a person's religious beliefs control, unless the State can prove compelling interests "of the highest order." The issue before the court in *Pro-Choice Mississippi* was not the same issue before the court in *In Re Brown*.

I find no inconsistency between *In Re Brown* and *Pro-Choice Mississippi* v. *Fordice*. The former dealt with the rights of mature, alert, consenting adults to make decisions with as little state interference as possible. *Pro-Choice Mississippi* dealt with the constitutionality, *vel non*, of certain statutory enactments regulating abortions in Mississippi. As to *Pro-Choice Mississippi*, I believe that the United States Supreme Court decision in *Roe* v. *Wade* is the final word on this issue.

c) As a district court judge, would you apply the legal doctrine of stare decisis?

SUBMISSION FOR THE RECORD

Statement of Hon. Charles E. Schumer, a U.S. Senator from the State of New York

I want to express my profound disappointment that I am unable to be with you hear today as the Senate Judiciary Committee takes up the nomination of Judge Barrington Parker, Jr. As you know, I had accepted the privilege of chairing this hearing and was looking forward to spending this afternoon with you. The horrific events of this week require that my attention remain focused on the immediate needs of New York as it begins to cope with the immense tragedy that has befallen the city, state, and country.

Chairman Leahy and his staff have been exceptionally gracious and accommodating in stepping in for me here. The Chairman was not only willing, but volunteered to chair this hearing notwithstanding the important matters to which he would otherwise be attending. I am grateful for all of his kindness during this very difficult week.

I would ask that before we proceed with the orderly business of this hearing and of the Senate, we all take a moment for personal reflection on the tremendous losses we have suffered this week.

Were I able to be with you today, I would tell you personally that I am proud to have before the Committee Judge Parker who has been nominated for a seat on the Second Circuit Court of Appeals. A graduate of Yale College and Yale Law School, Judge Parker went on to clerk for Judge Aubrey Robinson, embarking on a distinguished legal career. His impressive achievements in private practice are, remarkably, exceeded by his record of public service. This nomination and, hopefully, confirmation, will serve both to reward and enhance Judge Parker's already remarkable career as a public servant.

Judge Parker embodies all that I look for in federal judicial nominees. He is a moderate, non-partisan jurist who was chosen for his overwhelming legal attitude. He is a model judge and his elevation to the appellate bench is well-deserved.

Judge Parker, I look forward to congratulating you personally when we next see one another. I apologize again for not being with you today, but I am confident you appreciate the compelling reasons for my absence. Good luck and God bless.

NOMINATION OF EDITH BROWN CLEMENT TO BE CIRCUIT JUDGE FOR THE FIFTH CIRCUIT; KAREN K. CALDWELL TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF KENTUCKY; CLAIRE V. EAGAN TO BE DISTRICT JUDGE FOR THE NORTHEN DISTRICT OF OKLAHOMA; JAMES H. PAYNE TO BE DISTRICT JUDGE FOR THE NORTHERN, EASTERN AND WESTERN DISTRICTS OF KENTUCKY; LAURIE SMITH CAMP TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEBRASKA; AND JAY S. BYBEE TO BE ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL, DEPARTMENT OF JUSTICE

THURSDAY, OCTOBER 4, 2001

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 2:02 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Herb Kohl presiding.

Present: Senators Kohl, Leahy, and McConnell.

STATEMENT OF HON. HERB KOHL, A U.S. SENATOR FROM THE STATE OF WISCONSIN

Senator KOHL. This committee will come to order.

We welcome the distinguished members of the Senate who are here today to introduce particular nominees. And, of course, we welcome the nominees and their families. Judicial nomination hearings are among the most important duties of the Judiciary Committee. A Federal judgeship is a lifetime appointment and a job that affects the lives of innumerable people throughout the course of the judge's tenure. The job is a great responsibility entrusted to just a very few people. All that we ask is that you administer impartial justice and obey the Constitution. So we congratulate all the nominees on their selection.

I would like to proceed in the following manner. After opening statements from committee members, we would like for the Sen-

ators to introduce their nominees. Then we will invite all of the nominees forward together to appear on the second panel.

This will include Judge Edith Brown Clement, to be United States Circuit Judge for the Fifth Circuit; Karen Caldwell, to be United States District Judge for the Eastern District of Kentucky; Laurie Smith Camp, to be United States District Judge for the District of Nebraska; Claire Eagan, to be United States District Judge for the Northern District of Oklahoma; and James Payne, to be United States District Judge for the Northern, Eastern and Western Districts of Kentucky. After that, on the second panel, we will hear from Jay Bybee, who is nominated to be Assistant Attorney General for the Office of Legal Counsel.

Now, I would like to ask Senator Nickles to make his opening statement.

PRESENTATION OF CLAIRE V. EAGAN, NOMINEE FOR DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OKLAHOMA AND JAMES H. PAYNE, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN, EASTERN AND WESTERN DISTRICTS OF KENTUCKY BY HON. DON NICKLES, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator NICKLES. Mr. Chairman, thank you very much. I appreciate your holding this hearing on behalf of several outstanding judicial nominees. On behalf of Senator Inhofe and myself, I want to make a few comments concerning the two nominees from Oklahoma.

First is Judge Claire Eagan; she is a U.S. Magistrate. She has been a Magistrate in the Northern District of Oklahoma for the last three years. She has done an outstanding job. She has been an attorney in private practice with Hall, Estill, one of the more prominent firms in Tulsa.

For 20 years, as an attorney, she has had a lot of appearances before Federal courts. As U.S. Magistrate for the last several years, she has done an outstanding job. She is well thought of in the Oklahoma community. In the legal community, she has been rated outstanding by all the judicial rating groups, ABA and Hubbell as well.

So it is with great pleasure that I strongly recommend to the committee that Judge Claire Eagan as a Federal District Court Judge for the Northern District.

Also, Mr. Chairman, I would like to introduce to the committee Judge James Payne, who is also a U.S. Magistrate. He is a Magistrate Judge in the Eastern District of Oklahoma, and has been for 13 years. He has done a fantastic job in that capacity.

He has also had private practice in Muskogee, the eastern part of Oklahoma, and as well he served as Assistant U.S. Attorney in the Eastern District of Oklahoma. In addition to that, he served several years as a Judge Advocate in the military.

Both nominees are well-qualified. Both nominees will do an outstanding job. I have every confidence that this Senate, our President and the country will be very pleased with both Judge Payne and Judge Eagan as Federal District Court Judges from the State of Oklahoma.

Senator KOHL. We thank you, Senator Nickles.

I would like to ask Senator Reid to make his statement, because he has to go back to the floor.

PRESENTATION OF JAY BYBEE, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL, BY HON. HARRY REID, A U.S. SENATOR FROM THE STATE OF NEVADA

Senator REID. Senator Kohl, I really do appreciate that. We are in recess until two o'clock. I would ask unanimous consent that my full statement be made part of the record.

Senator KOHL. It will be so done.

Senator REID. Mr. Chairman, in my statement I talk about all the legal qualifications for Jay Bybee and how proud we are of him. He is from the University of Nevada at Las Vegas, a new law school, and he is going to be representing the State of Nevada here in Washington with Attorney General Ashcroft.

He has all kinds of qualifications as an academic, but his greatest qualification, in my opinion, is his family. He is an outstanding person based upon his family. Without reservation, without qualification, I support his nomination.

I am very happy that my colleague and friend, Senator Ensign, recommended to the President Jay Bybee. When Senator Ensign brought this name to me, I was elated. He couldn't have made a better choice.

Thank you very much.

Senator KOHL. We thank you, Senator Reid.

Senator Inhofe?

PRESENTATION OF CLAIRE V. EAGAN, NOMINEE FOR DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OKLAHOMA AND JAMES H. PAYNE, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN, EASTERN AND WESTERN DISTRICTS OF KENTUCKY BY HON. JAMES M. INHOFE, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator INHOFE. Thank you very much, Mr. Chairman. First of all, let me just say that Senator Nickles covered quite a few things about our two outstanding candidates from Oklahoma.

I would elaborate a little bit on Judge Eagan. She received her bachelor's degree from Trinity College, here in Washington, D.C., and has studied abroad, and it gives her quite an insight into things. She studied at both the University of Paris and the University of Fribourg. She received her law degree from Fordham University, in New York City.

She has had some significant cases. As a judge, she wrote *Fitzgerald* v. *Caldera*, which was affirmed by the Tenth Circuit. As a lawyer, she argued *Atlantic Richfield Company* v. *American Airlines*, a case we are familiar with.

I would say about Judge Payne, he is an Oklahoma man. And since there are several on this panel up here who are very impressed with the University of Oklahoma football team, I would say that Judge Payne was on a football scholarship at the University of Oklahoma.

The thing I found about both of these is that Senator Nickles and I talked to a number of people from Oklahoma and interviewed a lot of different people. In each case, they said if there is going to

be someone from Muskogee, it has got to be Judge Payne, or someone from Tulsa, it has got to be Judge Eagan. So they were just number one among their peers and everyone else we talked to.

They are outstanding people and Don and I are both very proud to encourage you to confirm these two candidates.

Senator KOHL. Thank you, Senator Inhofe.

We have with us a distinguished member of the Judiciary Committee, Senator McConnell, here, if he would like to make a statement.

PRESENTATION OF KAREN K. CALDWELL, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF KENTUCKY BY HON. MITCH MCCONNELL, A U.S. SENATOR FROM THE STATE OF KENTUCKY

Senator MCCONNELL. Thank you, Mr. Chairman. Senator Bunning and I are both here today to enthusiastically support the President's nominee for the Eastern District of Kentucky, Karen Caldwell.

Karen served beginning in 1991 as U.S. Attorney for the Eastern District of Kentucky and earned the distinction of being the first female U.S. Attorney in Kentucky history. During her tenure, she successfully directed the high-profile public corruption case known as Operation BOPTROT which led to the conviction of 17 lobbyists and State legislators, including the Speaker of the Kentucky House of Representatives.

Karen achieved universal acclaim for her service as U.S. Attorney. Upon her departure from office, the Lexington Herald Leader said she "has been an outstanding U.S. Attorney. We are sorry to see her go." An opposing attorney stated that Karen "is a person of high integrity," and that, in particular, "she did a very good job in the high-profile cases involving politicians."

But Karen was not just an outstanding manager. She has paid her dues in the legal trenches. Prior to being U.S. Attorney, she served as Assistant U.S. Attorney for four years, where she litigated both civil and criminal cases. In this capacity, she distinguished herself, receiving the Attorney General's Outstanding Performance Award and rising to the position of Deputy Chief of the Civil Division.

She increased her knowledge of the issues that come up in Federal practice by serving on the Joint Local Rules Committee for the Federal Courts in both the Eastern and Western Districts of Kentucky.

In addition to her notable achievements as a public servant, Karen has also had a brilliant career in private practice, gaining experience in several legal fields. For the past three years, she has been a partner at Dinsmore and Shohl, a large regional law firm in Ohio, Kentucky and Tennessee. There, she has specialized in complex commercial, environmental and white-collar criminal litigation. She has also had experience in contract, public corruption, antitrust, fraud, and RICO cases, as well as other areas of business litigation.

Karen's peers in the legal community have recognized her many accomplishments and talents. In 1995, the Kentucky Bar Association honored her with its Outstanding Lawyer Award.

So, Mr. Chairman, she is widely respected for integrity and character, two qualities that are essential in public office and for the effective administration of justice. For the last four years, she has served as a member of the Character and Fitness Committee of the Kentucky Supreme Court's Office of Bar Admissions. The trust in, and respect for Karen's advice on important ethical issues by our Commonwealth's highest court is a testament to her knowledge, integrity and judgment.

Finally, Karen has repeatedly demonstrated a commitment to her fellow citizens and her community. She has served on the board of directors of Prevent Child Abuse Kentucky and is its immediate past president. She has served as a trustee of Midway College, a member of the Transylvania Alumni Executive Board, and the Lexington–Fayette Urban County Government Ethics Commission.

In recognition of her civic service, she has been honored with the National College Administrators' Philanthropy Award and the Distinguished Service Award from Transylvania University.

So, Mr. Chairman, I really think the President has made an outstanding selection here and I am pleased to be here on her behalf.

Senator KOHL. We thank you, Senator McConnell.

We are joined at this time by the chairman of the committee, Senator Patrick Leahy.

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. Thank you, Mr. Chairman. I just wanted to actually thank you for helping these committee meetings. Earlier today, we voted out about 18 different nominations, literally 18 different nominations, from U.S. Attorneys to a Circuit Court of Appeals judge. But it is only because people like yourself are willing to help and keep these going, even in light of all the terrible things of the 11th.

We have confirmed, I think, since July, when we took over this committee, mid–July, as many courts of appeals nominees as were confirmed during the first year of the Clinton administration, which I think shows some strong bipartisanship. In fact, in the last three months we have done as many as were reported by this committee all of last year. So I thank you for doing this.

I am delighted to see Judge Edith Brown Clement, from Louisiana, here. Senator Breaux has talked to me a great deal about her. I know she was one of the first nominees, sent to the committee, I believe, in May.

Is that correct, John?

Senator BREAUX. Yes.

Chairman LEAHY. Unfortunately, her name was sent back at the beginning of the August recess, which the Republican Leader had a right to do, but had it not been done, we probably could have had her hearing in August. But I am delighted we are having it here. I want to thank you for doing that. I concur with what Senator McConnell was saying earlier. I just ran into Senator Reid out in the hall, who has urged us to move along.

So I am just going to put my whole statement in the record, if that is okay with you, Mr. Chairman, and turn it back to you. Thank you again.

[The prepared statement of Senator Leahy follows:]

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

I am pleased that the Committee is able to continue holding confirmation hearings on Executive Branch and Judicial Branch nominees in spite of the fact that we have focused our attention on our response to the terrorist attacks and threat of terrorism since September 11. In particular, I thank Senator Kohl for agreeing to chair this hearing on short notice. The last few weeks have been incredibly difficult for everybody, and I would again like to thank the staff of the Judiciary Committee for working overtime to get the paperwork on these nominees in sufficient shape that we could proceed with this hearing today.

Judge Edith Brown Clement from Louisiana was among the first nominees sent to this Committee by the President in May. Unfortunately, in the wake of a Republican objection to keeping that nomination and many others pending over the August recess, Senate rules required that her nomination be returned to the President without action on August 3. She was re-nominated last month. She is nominated to serve on the United States Court of Appeals for the Fifth Circuit, which encompasses the States of Texas, Louisiana and Mississippi. This is one of the many Circuits that were left with multiple vacancies through the end of the Clinton Administration.

Since April 7, 1999, the seat previously occupied by Judge Duhe of the 5th Circuit has been vacant. Although former President Clinton nominated Alston Johnson to fill that vacancy only 15 days later, on April 22, 1999, Mr. Johnson was never granted a hearing by the Judiciary Committee, then chaired by Senator Hatch. Since January 23, 1997, Judge Garwood's seat on the 5th Circuit has been vacant. Despite the fact that former President Clinton nominated Jorge Rangel to fill this vacancy in July of 1997, Mr. Rangel never received a hearing and his nomination was returned on October 21, 1998. On September 16, 1999, former President Clinton nominated Enrique Moreno to fill the same vacancy. Once again, the nominee did not receive a hearing.

Over the last several years I have commented on those vacancies as I urged action on the nominations of Jorge Rangel, Enrique Moreno and Alston Johnson to fill those vacancies on the 5th Circuit. None of those nominees were ever provided a hearing before this Committee or acted upon by the Senate. After 15 months without action, Mr. Rangel asked not to be re-nominated. After 15 months and two nominations, Enrique Moreno's nomination was returned to the President without action. After nearly 23 months and two nominations without action, Mr. Johnson's nomination was withdrawn by President Bush in March of 2001. Indeed this is the first nominations hearing on a nominee to the 5th Circuit in seven years—not since September 14, 1994. Since 1999, Chief Judge King of the 5th Circuit has declared her Circuit in a state of emergency such that the hearing and determination of cases and controversies could be conducted by panels of three judges selected without regard to the qualification in 28 U.S.C. § 46(b) that a majority of each panel be composed of judges of the 5th Circuit.

I recall when delays in the confirmation process threw the 2nd Circuit into a similar emergency in March of 1998, and how hard I worked to get those vacancies filled to end that emergency in my Circuit. I am glad that we are proceeding with Judge Clement today in order to try to help the 5th Circuit.

Since the Senate was allowed to reorganize and the Committee membership was set, we have maintained a sustained effort to consider judicial and executive nominees. Today, at our Executive Session, the agenda contained the names of 14 nominees for United States Attorneys, the Director of the United States Marshals Service, the Associate Attorney General, and two more judicial nominees, including another for a Court of Appeals. We have already confirmed since July as many Court of Appeals nominees as were reported during the first year of the Clinton Administration and we have reported as many such nominees as were reported by this Committee all last year.

At this hearing we consider five more judicial nominees and an Assistant Attorney General for the Office of Legal Counsel at the Department of Justice. Despite the upheaval we have experienced this year with the shifts in chairmanship and, more importantly, the need to focus our attention on responsible action in the fight against international terrorism, we are ahead of the pace for hearings and confirma-

tions of judges during the first year of the Clinton and the first Bush Administrations.

The nominees before us today will play important roles in the days, months, and years to come. The recent vicious attacks on our people have given all of us a heightened awareness of the critical importance of our civil liberties, of the many possible threats to those freedoms, and of the necessity of responding to the challenge of international terrorism without sacrificing what is best about America. The Assistant Attorney General for the Office of Legal Counsel is in charge of drafting the legal opinions of the Attorney General, assisting the Attorney General in his function as legal advisor to the President and all executive branch agencies, and of providing his own written opinions and oral advice in response to requests from the Counsel to the President. The Office of Legal Counsel is also responsible for providing legal advice to the executive branch on all constitutional questions as well as for reviewing legislation for constitutionality. This is serious and important work.

As federal judges, the nominees before us today will have a vital role to play in protecting and preserving our civil liberties in the days ahead. Our system of checks and balances requires that the judicial branch review the acts of the political branches. I know that the nominees before us today will take this responsibility seriously and will rely on their experience and on our rich history of judicial precedent to make wise decisions in the challenging times ahead.

Senator KOHL. Senator John Breaux?

PRESENTATION OF EDITH BROWN CLEMENT, NOMINEE TO BE CIRCUIT JUDGE FOR THE FIFTH CIRCUIT BY HON. JOHN B. BREAUX, A U.S. SENATOR FROM THE STATE OF LOUISIANA

Senator BREAUX. Thank you very much, Mr. Chairman, both Senator Leahy, Senator Kohl, and Senator McConnell.

A little over 10 years ago, I came before this committee to speak for a nominee named Edith Brown Clement, known to us in Louisiana as Joy Clement. We are back again today, a little over 10 years later, the same Senator speaking for the same nominee. Eleven years ago, it was a President Bush that nominated her and 11 years later it is a President Bush that nominated her again. The only difference is that the President is a little different, with a different middle initial.

What I am saying is that 11 years ago, Joy Clement was nominated for the Federal district bench in Louisiana, in New Orleans, by President Bush at that time. It was a good choice then and it is a good choice today. She has distinguished herself as an outstanding member of the Federal judiciary as a district court judge for almost 11 years and has had time to serve on the Fifth Circuit in ad hoc positions.

When you are on a circuit court, I think it is obviously a little special, and sometimes people will advocate people who are esoteric and law professors and people who study the law. But rarely do you get someone who has studied the law and who has taught the law and who has practiced the law, and has also served in the judicial system as a judge.

I think the good thing about Judge Clement being elevated to the Fifth Circuit is she has done all of these, and she has done all of these with great distinction. Both Senator Landrieu and I enthusiastically support her and recommend her to you and the rest of the committee members.

Thank you.

Senator KOHL. We thank you, Senator Breaux.

Senator Ben Nelson?

PRESENTATION OF LAURIE SMITH CAMP, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEBRASKA BY HON. E. BENJAMIN NELSON, A U.S. SENATOR FROM THE STATE OF NEBRASKA

Senator NELSON. Thank you, Mr. Chairman and members of the committee. Together with my colleague and friend, Senator Hagel, it is a pleasure for me to be here today in support of the nomination of Laurie Smith Camp to the Federal District Court for the District of Nebraska.

I would like to first, through, thank the committee for acting quickly on both of the nominations for vacant judgeships in Nebraska, first for the Eighth Circuit and now for the Federal District Court.

Moving Ms. Camp's nomination is of particular importance to our State because of the urgent need for an additional judge to reduce the workload on our existing district court judges, and so I appreciate very much the committee taking that need into consideration and choosing to act expeditiously.

Ms. Camp exemplifies the kind of nominee that I think we would all like to see put forth for every important judgeship. She is not only highly qualified for this position, but she has also earned broad bipartisan support and respect in Nebraska in all of her many years of service. I am of the opinion, and I think others share it widely, that she will be an excellent judge, and so it is my pleasure to join Senator Hagel here today.

As a matter of personal note, I can speak personally about her qualities and capabilities as an attorney. In her capacity in the attorney general's office, she had the occasion, hopefully not too often, to represent my office while I was Governor of the State of Nebraska, and I can attest to the quality of her work and to the keenness of her intellect.

She brings that diverse background that I think is important to the bench, and that is both civil and criminal legal experience. I think it will serve her well, as well as the people of Nebraska and all who come before her. She has shown throughout her career a deep respect for the judiciary and the legal profession. I think she has that experience and expertise and the balance that is so important to be a member of the judiciary.

So it is my pleasure and I am truly honored to have the opportunity to be here today to speak on her behalf, and to join my colleague from Nebraska in urging that the committee act quickly and favorably on her nomination.

Thank you, Mr. Chairman.

Senator KOHL. I thank you, Senator Nelson.

Senator Hagel, I apologize for the lapse in protocol. Would you like to make your statement?

PRESENTATION OF LAURIE SMITH CAMP, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEBRASKA BY HON. CHUCK HAGEL, A U.S. SENATOR FROM THE STATE OF NEBRASKA

Senator HAGEL. I am just pleased to be included, Mr. Chairman. Thank you.

I join my friend and colleague, Senator Nelson, in strongly supporting the nomination of Laurie Smith Camp. Mr. Chairman, I have a statement which I will ask to be included for the record, but I would like to highlight a couple of points here about her qualifications and embroider a bit on what Senator Nelson said because this is a unique candidate, a well-qualified candidate, a candidate who has committed herself not just to the bar and justice and what we believe is most fundamental and important in this country, but also to her community.

She has two children, a son and a daughter, so she has found time to be a very good mother and that probably rates her higher than most as to qualifications. I have always believed that, as Senator Breaux stated, we can take all the education and the experience, and we should take those into consideration, but it is the fundamentals of the individuals, I think, that we always have held most dear and important as we think about who we want to stand in judgment of each of us. I start with that fundamental at the baseline.

She certainly has the rest of the package when you go through her curriculum vitae and where she has studied: valedictorian, editor-in-chief, Stanford University, Nebraska Law School, although she did not play for the University of Nebraska football team. She might have done very well if she had. A 24-year legal career serving the people of Nebraska, 11 years as general counsel for the State Department of Correctional Services. Before going to work for Nebraska's Attorney General, as Senator Nelson mentioned, she served as the deputy attorney general in charge of criminal matters, one of the two highest-ranking deputies in the State attorney general's office. And it goes on and on with her awards and recognitions.

I would summarize my thoughts, Mr. Chairman, by saying that she possesses the character, the credentials, the experience and knowledge, and maybe as important as anything the temperament to be an excellent district court judge. We are all very proud of us, all of us, as Senator Nelson said, Democrats and Republicans in the State of Nebraska, for her accomplishments, and look forward to a long and distinguished career on the bench, if this committee so decides that she is the kind of individual that this country wants and needs to represent our citizens on the bench, and if the full Senate would be then so inclined. I suspect Senator Nelson and I will do everything we can to help that along.

So, Mr. Chairman, thank you very much, and Senator McConnell and Senator Hatch and the distinguished chairman, Senator Leahy, for your expeditious handling of this nomination.

Thank you.

[The prepared statement of Senator Hagel follows:]

STATEMENT OF HON. CHUCK HAGEL, A U.S. SENATOR FROM THE STATE OF NEBRASKA

Mr. Hagel. Mr. Chairman, thank you for the Committee's attention to re-scheduling this hearing on the nomination of Laurie Smith Camp to be a United States District Court Judge for the District of Nebraska.

I recommend Laurie Smith Camp without reservation. If approved by this Committee and confirmed by the Senate, she will be an excellent addition to the District Court of Nebraska and will serve with distinction. Laurie has strong bipartisan support from the Nebraska delegation.

Laurie Smith Camp graduated as valedictorian from Burke High School in Omaha in 1971 and studied British legal aid and civil liberties in Northern Ireland in 1973. She is a graduate of Stanford University and the University of Nebraska College of Law, where she was Editor-in-Chief of the Nebraska Law Review.

She has spent the majority of her 24-year legal career serving the people of Nebraska. For 11 years she was general counsel for the Department of Correctional Services before going to work for Nebraska's Attorney General in 1991. From 1991 to 1995, she was chief of the civil-rights section of the Nebraska Department of Justice. In 1995 she was promoted to Deputy Attorney General in charge of Criminal Matters, one of the two highest-ranking deputies in the Attorney General's office.

Laurie not only professionally represents and serves the people of Nebraska in her professional capacity, but she has found time to share her knowledge with others in Nebraska and throughout the country. She is a member of the Committee on Legislation for the Nebraska Bar Association and a lifetime Fellow of the Nebraska Bar Foundation. Over the years, Laurie has written numerous legal articles and lectured extensively on criminal justice matters. In Many of this year Laurie received the top award from the Nebraska Law Enforcement Coordinating Committee.

Since 1982Laurie has been involved in the development of Lincoln's Haymarkert Square warehouse area into a shopping, restaurant and business district. Laurie is also on the board of the Nebraska Shakespeare Festival and is a director of the Nebraska Conference United Church of Christ. Laurie has two children—Janathan, 18, and Abby, 13.

Mr. Chairman and Members of the Committee, Laurie Smith Camp is fully prepared for the challenges that lay ahead for her as a District Court Judge. She possesses the character, credentials, experience, knowledge and temperament to be an excellent District Court judge.

If confirmed, Laurie will be replacing U.S. District Judge William Cambridge of Omaha, who has retired. Judge Cambridge's dedication to the rule of law and faithfulness to the bench is an inspiration to us all. We thank him for his service.

Mr. Chairman, I recommend Laurie Smith Camp without reservation. If given the opportunity, I know that she will excel in the position as she has with every responsibility in her life.

Thank you.

Senator KOHL. We thank you, Senator Hagel.

Senator Bunning?

PRESENTATION OF KAREN K. CALDWELL, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF KENTUCKY BY HON. JIM BUNNING, A U.S. SENATOR FROM THE STATE OF KENTUCKY

Senator BUNNING. Thank you, Mr. Chairman. I am pleased to have the opportunity to say a few words this afternoon in support of the nomination of Karen Caldwell to be judge for the Eastern District of Kentucky.

I won't plow all the same ground that Senator McConnell just covered. I think it is enough to say that Karen is an excellent nominee and will be a fine judge. We are very proud of her. She is a Kentucky native, born, bred and educated. Her professional history is excellent.

Her performance, first as assistant and then U.S. Attorney for the Eastern District, won universal acclaim in Kentucky. In fact, in 1989, she received that office's Outstanding Achievement Award. Senator McConnell mentioned her fine work in directing prosecutions as part of Operation BOPTROT, and I can't emphasize enough how instrumental this was in restoring confidence in our public officials in Kentucky. Karen's office is acknowledged by Republicans and Democrats alike to have superbly handled a politically delicate and legally complicated matter.

Since leaving the U.S. Attorney's post, Karen has specialized in complex litigation for a prominent Kentucky firm. Again, she has

excelled. She has also continued her commitment to public service, serving on the boards of numerous charities and non-profits in Kentucky, and having taught at several of our universities.

From a personal perspective, I can tell you that I have known Karen for years and I can attest to her ability and her character. She has a temperament and intellect that will serve her well on the bench. In nominating Karen, the President made an excellent decision for Kentucky and the Nation.

Finally, Mr. Chairman, I would like to put a plug in for asking for a speedy vote on Karen's nomination. There are three vacancies in the Eastern District of Kentucky right now, and the chief judge has written to Senator McConnell and myself about the judicial emergency that we are facing in the Eastern District. The sooner you can get Karen confirmed, the better it will be for justice in our Commonwealth.

I thank you very much for the time.

Senator KOHL. We thank you, Senator Bunning, and we will do everything we can to act on your recommendation for a speedy decision.

Senator BUNNING. Thank you.

Senator KOHL. Senator Ensign?

PRESENTATION OF JAY BYBEE, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL, DEPARTMENT OF JUSTICE BY HON. JOHN ENSIGN, A U.S. SENATOR FROM THE STATE OF NEVADA

Senator ENSIGN. Thank you, Mr. Chairman. It is an honor for me to be here today before the Senate Judiciary Committee to introduce an esteemed legal scholar and public servant, my friend, Professor Jay Bybee, and I join Senator Reid in supporting his nomination.

While a native of the ranking member's home State of Utah, Nevada is proud to claim Jay as one of its own. Mr. Bybee currently serves as a professor of law at the William Boyd School of Law at the University of Nevada–Las Vegas, where he was named Professor of the Year in 2000. The William Boyd School has recently graduated its inaugural maiden class and is rapidly becoming recognized throughout the country as a legal center of the highest quality.

Having worked in the Justice Department for half a decade as an attorney in the Office of Legal Policy, as well as a member of the appellate staff in the Civil Division, Jay is all too familiar with the rigors that can accompany a Justice Department tenure. Additionally, through his service as Associate White House Counsel, Mr. Bybee has proven his ability to navigate the mechanisms unique to public service in Washington, D.C.

Jay Bybee's service will be a valuable asset to the Justice Department and to the people of this Nation. He expertise and focus reside in constitutional and religious freedom matters, and makes him exceptionally qualified to serve as Assistant Attorney General for the Office of Legal Counsel, where constitutional proficiency is put to daily use. Jay has embodied the best in public service and legal aptitude and is admired throughout his field as a leader and a gentleman.

Mr. Chairman, I am proud to present to you a man who has committed much of his career to the search for truth, the preservation of justice, and protecting the rights and ideals upon which this Nation was founded.

Thank you, Mr. Chairman.

Senator KOHL. We thank you, Senator Ensign.

Now, I would like to ask the nominees to the Federal bench to step forward.

Would you please stand and raise your right hand as I administer the oath?

Do you swear that the testimony you shall give in this hearing shall be the truth, the whole truth and nothing but the truth, so help you God?

Judge CLEMENT. I do.

Ms. CALDWELL. I do.

Judge EAGAN. I do.

Judge PAYNE. I do.

Ms. CAMP. I do.

Senator KOHL. Thank you. You may be seated.

I would like at this time to give each of you an opportunity to make any comment, introduce your family, your friends, say anything you would like before we begin the questions.

I will start with you, Judge Clement.

STATEMENT OF EDITH BROWN CLEMENT, OF LOUISIANA, NOMINEE TO BE CIRCUIT JUDGE FOR THE FIFTH CIRCUIT

Judge CLEMENT. I want to thank you very much for scheduling the hearing, but more importantly I want to thank you for inviting me.

I would like to introduce my family. My husband has come from New Orleans, Rutledge Clement; my mother, Edith Brown. My sister-in-law lives here, Alice Coles. Mr. Ambassador, Donald Ensenat, is a good friend from New Orleans.

My son, Carter Clement, has come down from Princeton. My niece, Elizabeth Riddle, is a school teacher here in Washington. My good friends, Sue Anna and Dando Cellini, are from New Orleans, but they live here.

My first law clerk, Matt Miller, is here. He is practicing law here now. And another law clerk who just had a baby, Mary Coyne, is here. My very dear friends who live here, Stevie and Gardner Gillespie—I clerked with Gardner. He clerked for the Fifth Circuit and I clerked for a district judge about a hundred years ago.

Thank you all for being here.

Senator KOHL. We thank you.

[The biographical information of Ms. Clement follows.]

Edith Brown Clement

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

   Edith Joy Brown Clement

2. Address: List current place of residence and office address(es).

   Residence: New Orleans, Louisiana

   Chambers: United States District Court
   500 Camp Street
   New Orleans, Louisiana 70130

3. Date and place of birth.

   April 29, 1948
   Birmingham, Alabama, U.S.A.

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

   Married.

   SPOUSE: Rutledge Carter Clement, Jr.
   Attorney
   Locke, Liddell & Sapp
   601 Poydras Street, Suite 2400
   New Orleans, Louisiana 70130

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

   University of Alabama, 1965-1969, B.A., 1969
   Tulane University Summer school, 1966
   Tulane University School of Law, 1970-1972, J.D. , 1973
   University of Florida Summer Law Program, 1971
   Emory Law School, 1972, Credited to Tulane for J.D.

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations,

nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

1991-Present	U.S. District Judge, Eastern District of Louisiana
1975-1991	Jones, Walker, Waechter, Poitevent, Carrère & Denègre Associate and Partner
1973-1975	U.S. District Judge H.W. Christenberry (Dec.) Law Clerk
1969-1970	Shell Oil Company Data Processing Trainee

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

   No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

   None.

9. Bar Associations: List all bar associations, legal or judicial-related committees 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.

   As an Attorney:

   American Bar Association
   - Member, Policy Subcommittee, Admiralty & Maritime Law Committee, Torts and Insurance Practice Section. 1990-1991
   - Member, Task Force on Involvement of Women Lawyers in TIPS, 1990-1991
   - Member, Long-Range Planning Committee, Torts and Insurance Practice Section, 1988-1991

Edith Brown Clement

Chairman, Admiralty & Maritime Law Committee, Torts and Insurance Practice Section, 1987-1988
Member, Trial Techniques Committee, Torts and Insurance Practice Section, 1983-1988

Member, Disciplinary Enforcement Committee for United States District Court for the Eastern District of Louisiana, 1980

Federal Bar Association
President, New Orleans Chapter, 1990-1991
Officer and Member of Board of Directors, 1980-1989
Special Committee on Houma District Court Proposal, 1982

Federal Fifth Circuit Court of Appeals Bar Association

The Federalist Society

Delegate to the United States Fifth Circuit Judicial Conference, 1986 and 1989

International Association of Defense Counsel
Chairman, Newsletter Committee for Maritime and Admiralty Law Committee

Louisiana Bar Foundation
Lifetime Fellow

Member, Magistrate Selection Panel for United States District Court for the Eastern District of Louisiana, 1980-1981 and 1989

New Orleans Bar Association
Former Officer and Member of Executive Committee, 1981-1982
Vice Chair, Public Relations Committee 1983-1984

Maritime Law Association of the United States (Proctor)
Committee on Transportation of Hazardous Substances, 1982-1991

Republican National Lawyers Association

Tulane Law School Dean's Council, 1990-1993

Edith Brown Clement

Tulane Alumni Association - Various committees and fund raising work

Tulane Representative to Friends of La. Independent Higher Education

Metropolitan Area Committee and Leadership Forum

World Trade Center of New Orleans

As a Federal Judge:

American Inn of Courts, Tulane Law School

American Law Institute

Federalist Society, Advisory Council

Fifth Circuit Judicial Council Member and District Court Representative

Committee on the Administrative Office of the Judicial Conference of the United States

Tulane Admiralty Law Institute Advisory Board

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

I do not belong to any organizations that lobby.

Non-Lobbying Organizations:

The Federalist Society, Advisory Council
Sugar Bowl Committee
United States Supreme Court Historical Society

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Louisiana State Bar, 1973

Edith Brown Clement

Louisiana State Supreme, Appellate and District Courts, 1973
Supreme Court of the United States, 1978
United States District Court, Eastern District of Louisiana, 1973
United States District Court, Western District of Louisiana, 1980
United States Fifth and Eleventh Circuit Courts of Appeals, 1975 and 1981

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

As an Attorney:

"Rule 11 and Related Issues," by Edith Brown Clement and Patrick H. Patrick, 5th Federal Law Institute, Anatomy of a Federal Trial, April 5-6, 1990.

"Current Status of Defenses to Reduce or Mitigate Damages in Jones Act, Longshoremen, and General Maritime Law Personal Injury Claims,: by Edith Brown Clement and Robert T. Lemon II, published by the Standing Committee on Admiralty and Maritime Law and the Tort and Insurance Practice Section of the American Bar Association in Damages Recoverable in Maritime Matters in March 1984.

As a Federal Judge:

"Civil Liability for Stowaways," Maritime Law Association.

"Improving our Juries," Southeast Admiralty Law Institute (SEALI) Annual Fall Meeting, October 1995, Santa Fe, New Mexico.

"Factors to Consider in Entering a Remittitur Order," (Labor Law), ABA-EEOC Mid Winter Meeting, March 1996. Carlsbad, California (San Diego).

"A View from the Bench: Expert Witness Testimony," National Expert Witness and Litigation Seminar, SEAK, Inc. Legal and

Medical Information Systems, June 1996, Hyannis, Massachusetts.

"Admiralty Jurisdiction and Seaman Status," a Case Study of Maritime Personal Injury Claims, Admiralty Jurisdiction and Seaman Status. Maritime Personal Injury Seminar, October 1998, Louisiana State University Law Center, Baton Rouge, Louisiana.

Panel Discussion: "Perspectives on Professionalism: A Candid Dialogue on the State of Our Profession." Louisiana State Bar CLE Program, White Collar Crime for Civil and Criminal Practitioners Seminar, December 1998, New Orleans, Louisiana.

"Sex Discrimination and Sexual Harassment in the Workplace," Women In Shipping, March 1999, New Orleans, Louisiana.

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent; 03/24/01.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Appointed to United States District Court for the Eastern District of Louisiana by President George H. W. Bush in 1991. As a federal trial judge I handle cases based on federal question jurisdiction, diversity jurisdiction or federal criminal statutes.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Edith Brown Clement

(1) Significant Opinions.

A district court judge is more likely to preside over significant cases than author significant "opinions." In the context of a significant case, the aggregate of each decision is significant, and many of the most crucial decisions are made informally without written opinion. To this end, I would note that I have presided over numerous high-profile criminal cases which have been extremely significant to the State of Louisiana: United States v. Cecil Brown, Crim. No. 01-004 (E.D. La.) (political corruption case involving former Governor Edwin Edwards); United States v. Brown, Crim. No. 99-151 (M.D. La. Aug. 10, 2000) (sitting by appointment of the 5th Cir.) (political corruption case involving former Governor Edwin Edwards and presiding Insurance Commissioner Jim Brown); United States v. Espy, Crim. No. 96-198 (E.D. La.) (illegal campaign contributions); United States v. Carollo, Crim. No. 94-158 (E.D. La.) (organized crime's presence in the state's gaming industry); United States v. Krenning, Crim. No. 91-514 (fraud in the state's insurance industry). Of the approximately 1300 opinions I have written which are available on Westlaw, I have compiled a list of opinions which might be my most significant, as requested. In chronological order, most to least recent:

Holy Cross Neighborhood Ass'n v. Julich, 106 F. Supp. 2d 876 (E.D. La. 2000).

Parents for Educational Justice v. Picard, Civ. No. 00-633, 2000 WL 526864 (E.D. La. Apr. 20, 2000).

Superior Merch. Co., Inc. v. M.G.I. Wholesale, Inc., 52 U.S.P.Q. 2d 1935 (E.D. La. 1999).

Louisiana ACORN Fair Housing v. Quarter House, 952 F. Supp. 352 (E.D. La. 1997).

United States v. Carollo, Crim. No. 94-158, 1995 WL 505461 (E.D. La. Aug. 22, 1995), *aff'd sub nom.* United States v. Salvatore, 110 F.3d 1131 (5th Cir. 1997), *abrogated by* Cleveland v. United States, 121 S. Ct. 365, 148 L. Ed. 2d 221 (2000).

Stradley v. LaFourche Communications, Inc., 869 F. Supp. 442 (E.D. La. 1994).

Mazur v. Gaudet, 826 F. Supp. 188 (E.D. La. 1992).

Carnival Cruise Lines v. Red Fox Enters., Inc., 813 F. Supp. 1185, 1993 A.M.C. 2749 (E.D. La. 1993), *aff'd in part without opinion*, 18 F.3d 935 (5th Cir. 1994) and 30 F.3d 1493 (5th Cir. 1994.

Adcom, Inc. v. Nokia Corp., 812 F. Supp. 81 (E.D. La. 1993) and 1993 WL 165734 (E.D. La. May 10, 1993).

Trico Marine Operators, Inc. v. Dow Chem. Co., 809 F. Supp. 440, 1993 A.M.C. 1042 (E.D. La. 1992).

(2) Reversed or Criticized.

A. Reversed, Partially Reversed, Remanded, or Vacated.

United States v. Brown, —F.3d—, 2001 WL 460837, Nos. 00-30953, 00-31042, 00-31179, 00-31284, 00-31069 and 00-31201 (5th Cir. May 1, 2001).

McKenzie v. Lee, 246 F.3d 494 (5th Cir. 2001).

Jacobs v. Northern King Shipping Co., Ltd., 180 F.3d 713 (5th Cir. 1999).

Chaney v. New Orleans Pub. Facility Mgmt., Inc., 179 F.3d 164 (5th Cir. 1999), *cert. denied*, 529 U.S. 1027, 120 S. Ct. 1439, 146 L. Ed. 2d 327 (2000).

Laitram Corp. v. NEC Corp., 163 F.3d 1342 (Fed. Cir. 1998); 115 F.3d 947 (Fed. Cir. 1997); 62 F.3d 1388 (Fed. Cir. 1995). In a patent infringement case, the Federal Circuit reversed me on three separate occasions (after having reversed my predecessor on this case once).

Licciardi v. Murphy Oil U.S.A., Inc., 111 F.3d 396 (5th Cir. 1997) (per curiam).

Gautreaux v. Scurlock Marine, Inc., 107 F.3d 331 (5th Cir. 1997) (en banc).

United States v. Food, 2,998 Cases, 64 F.3d 984 (5th Cir. 1995).

United States v. Menendez, 48 F.3d 1401 (5th Cir. 1995).

Phillips Petroleum Co. v. Best Oilfield Servs., Inc., 48 F.3d 913 (5th Cir. 1995).

McGuire v. Sigma Coatings, Inc., 48 F.3d 902 (5th Cir. 1995).

Missouri Pac. R.R. Co. v. City of New Orleans, 46 F.3d 487 (5th Cir. 1995).

Marine Transp. Lines, Inc. v. M/V TAKO INVADER, 37 F.3d 1138 (5th Cir. 1994).

Mac Sales, Inc. v. E.I. du Pont de Nemours & Co., 24 F.3d 747 (5th Cir. 1994).

The Fifth Circuit found an error in sentencing in United States v. Myers, 150 F.3d 459 (5th Cir. 1998) (denial of right of allocution); United States v. Krenning, 93 F.3d 1257 (5th Cir. 1996) (sentence vacated for recalculation of loss and specific findings on application of one guideline); United States v. McCaskey, 9 F.3d 368 (5th Cir. 1993) (term of supervised release modified).

B. Affirmed with Dissents.

Chrysler Credit Corp. v. Whitney Nat'l Bank, 51 F.3d 553 (5th Cir. 1995).

United States v. Bechtel, 997 F.2d 1108 (5th Cir. 1993).

(3) Significant Constitutional Cases.

United States v. Flunker, Crim. No. 98-75, 2000 WL 823469 (E.D. La. June 23, 2000).

Parents for Educational Justice v. Picard, Civ. No. 00-633, 2000 WL 526864 (E.D. La. Apr. 20, 2000).

Thibodaux v. Watson, Civ. No. 99-1408, 2000 WL 63310 (E.D. La. Jan. 20, 2000).

Gaubert v. Denton, Civ. No. 98-2947, 1999 WL 350103 (E.D. La. 1999), *aff'd*, 210 F.3d 368 (5th Cir. 2000) (unpublished).

Howell v. City of New Orleans, 844 F. Supp. 292 (E.D. La. 1994).

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Not applicable.

17. Legal Career:

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

1. 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;

Law Clerk to the late U.S. District Judge Herbert W. Christenberry, Eastern District of Louisiana, 1973-1975

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

No.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

1975-1991 Jones, Walker, Waechter, Poitevent, Carrère & Denègre
201 St. Charles Avenue, 47th Floor
New Orleans, Louisiana 70170
Associate 1975-1979
Partner 1979-1991

Edith Brown Clement

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

Litigation, primarily maritime and insurance defense.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Insurance companies, oil companies, marine service industry; specialist in maritime and admiralty law.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Frequently.

2. What percentage of these appearances was in:
(a) federal courts;
(b) state courts of record;
other courts.

100% in federal courts.

3. What percentage of your litigation was:
(a) civil;
(b) criminal.

100% civil litigation.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Approximately twenty; only seven as sole counsel (it is the practice of my law firm to have more than one attorney assigned to each case for trial).

5. What percentage of these trials was:
   (a) jury;
   (b) non-jury.

   Fifty percent each.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. 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 the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

A. DAVIS & SONS v. GULF OIL CORPORATION

CITATION: 919 F.2d 313 (5th Cir. 1990)

SUMMARY/SIGNIFICANCE:

Gulf Oil Corporation (my client) claimed indemnification for death benefits paid to the widow of an employee of an independent contractor who drowned when he fell from a Gulf barge. The district court ruled that the Louisiana Oil Field Indemnity Act voided the indemnity clause in the Gulf contract, but the Fifth Circuit reversed in favor of Gulf, holding that the death occurred during the performance of a maritime obligation, so that maritime law applied to the interpretation of the indemnity clause rather than Louisiana law. The case law prior to the Fifth Circuit's ruling had been inconsistent and contradictory, and the Fifth Circuit's opinion in Davis affected the determination of respective indemnity obligations under the blanket contract which was widely used between oil companies and offshore service companies throughout the Gulf of Mexico.

Edith Brown Clement

PARTY REPRESENTED: Gulf Oil Corporation

DATE OF REPRESENTATION: September 1988 to 1991

NATURE OF PARTICIPATION: Trial counsel

DISPOSITION: Verdict by trial judge; appealed and reversed

TRIAL DATE: July 1986

COURT: United States District Court
Eastern District of Louisiana

JUDGE: Hon. George Arceneaux, Jr.

DOCKET NO.: Civil No. 85-634

CO-COUNSEL: Robert M. Contois, Jr., retired fm
Jones, Walker, Waechter, Poitevent, Carrère & Denègre
201 St. Charles Avenue
New Orleans, Louisiana 70170
Home No.: (504)456-1924

COUNSEL FOR OTHER PARTIES: James R. Sutterfield
Sutterfield and Webb, L.L.C.
650 Poydras Street - 21st Fl.
(504) 589-2715
Counsel for Davis & Sons, Inc.

B. CURTIS CAMPO v. ELECTRO-COAL TRANSFER CORPORATION

CITATION: 909 F.2D 1480 (5th Cir. 1990)

SUMMARY/SIGNIFICANCE:

The trial court entered a directed verdict in favor of Electro-Coal (my client) finding that plaintiff was not a seaman because he could not show a connection to a fleet of vessels and because his job was specifically enumerated in the Longshore and Harbor Workers' Compensation Act. The Fifth Circuit affirmed on the basis of the district court's second line of reasoning, but the appellate decision was vacated by the Supreme

Court in light of Southwest Marine, Inc. v. Gizoni, 502 U.S. 81, 112 S.Ct.486, 116 L.Ed.2d 405 (U.S. 1991), in which the Court held that the Longshore and Harbor Workers' Compensation Act does not provide the exclusive remedy for all harbor workers. On remand, the Fifth Circuit again affirmed the district court's decision, holding that the plaintiff did not qualify as a Jones Act seaman because he did now show a connection to a fleet of vessels.

PARTY REPRESENTED: Electro-Coal Transfer Corporation

DATE OF REPRESENTATION: August 1989 to 1991

NATURE OF PARTICIPATION: Trial co-counsel

DISPOSITION: Directed verdict

TRIAL DATE: September 1989

COURT: United States District Court
Eastern District of Louisiana

JUDGE: Hon. Morey L. Sear

DOCKET NO.: Civil No. 89-0351

CO-COUNSEL: George R. Alvey, Jr., retired from
Jones, Walker, Waechter, Poitevent, Carrère & Denègre
201 St. Charles Avenue
New Orleans, Louisiana 70170

COUNSEL FOR OTHER PARTIES: Evangeline M. Vavrick
912 Louisiana Avenue
New Orleans, LA 70115
(504) 899-5555
Counsel for Curtis Campo

C. **SHIRLEY GOODMAN v. AUDREY LEE & NIKKI N. LEE**

SUMMARY/SIGNIFICANCE:
Three days before trial; we were engaged to represent the defendants, the widow and minor child of plaintiff's singing partner of thirty years ago. A

local rhythm and blues artist filed suit, contending that she had been defrauded because her name was not included on the copyright registration of the song "Let The Good Times Roll" and because royalties had been allegedly concealed from her through fraud. The jury found in favor of Goodman. Subsequently, we discovered an affidavit executed by Goodman years before the trial stating that she had knowledge that the copyright was not in her name and that she had confronted Lee about the omission failure to receive the royalties. This 1984 affidavit had been filed in the U.S. Copyright Office by the same attorney representing the plaintiff, Goodman, in this litigation. Inasmuch as the plaintiff took no legal action for almost thirty years, the claim was, we believed, barred by the statute of limitations. A Rule 60(b)(3) motion to dismiss the claim based on fraud was filed, two evidentiary hearings were held, and the matter was under advisement by the district judge in excess of three years. The motion was denied and the case was affirmed by the Fifth Circuit. The issues of prescription and fraud were highly significant to the music industry, both to artists as well as to the publishing companies, and the ultimate disposition of the case could have had a significant impact on the sanctity of copyrights and publishing contracts.

PARTIES REPRESENTED:	Audrey Lee Nikki N. Lee
DATE OF REPRESENTATION:	January 1988 to 1991
NATURE OF PARTICIPATION:	Trial co-counsel
DISPOSITION:	Jury verdict
TRIAL DATE:	January 14, 1988
COURT:	United States District Court Eastern District of Louisiana
JUDGE:	Hon. Morey L. Sear
DOCKET NO.:	Civil No. 85-2966

Edith Brown Clement

CO-COUNSEL: George R.Alvey, Jr., retired from Jones, Walker, Waechter, Poitevent, Carrère & Denègre
201 St. Charles Avenue
New Orleans, Louisiana 70170

COUNSEL FOR OTHER PARTIES: Richard E. Bennett
915 Broadway, Suite 1010
New York, New York 10010
(212) 995-5656
Counsel for Shirley Goodman

D. IN RE OCEAN RANGER

CITATION: 632 F.Supp.72(Jud.Pan.Mul.Lit.1985; 617 F.Supp 435 (E.D. La. 1985); 589 F.Supp. 302 (E.D. La. 1984)

SUMMARY/SIGNIFICANCE:

This complex multi-district litigation involved the deaths of eighty-four crew members who were aboard a rig offshore Newfoundland which sunk in heavy weather. There was ongoing litigation in several provincial and federal courts in Canada and in five jurisdictions in the United States, including both state and federal courts. The federal suits were transferred and consolidated in the Eastern District of Louisiana. I represented Mitsubishi Heavy Industries, Ltd., a Japanese corporation which had fabricated the rig, the largest semisubmersible drilling barge ever built. The suit involved highly litigated jurisdictional issues as well as issues of negligence and strict liability in the area of manufacturer's products liability law. The case was pending for three and one-half years and required the filing and defense of extensive and complicated motions, both procedural and substantive, as well as voluminous depositions primarily focused on the technical operation of the rig, which required multiple experts for each party.

PARTY REPRESENTED: Mitsubishi Heavy Industries, Ltd.

DATE OF REPRESENTATION: March 1982 to March 1986

NATURE OF PARTICIPATION: Trial co-counsel

Edith Brown Clement

DISPOSITION: Settled

TRIAL DATE: Not applicable

COURT: United States District Court
Eastern District of Louisiana

JUDGE: Robert F. Collins, resigned after conviction for bribery

DOCKET: MDL No. 508

CO-COUNSEL: Robert B. Acomb, Jr.
James E. Wright, III
Jones, Walker, Waechter,
Poitevent, Carrère & Denègre
201 St. Charles Avenue
New Orleans, Louisiana 70170
(504)592-8000

COUNSEL FOR OTHER PARTIES: Donald R. Abaunza
S. Gene Fendler
Liskow & Lewis
One Shell Square, 50th Floor
New Orleans, Louisiana 70139
(504)589-7979
Counsel for Mobil Oil Canada, Ltd. & Mobil Oil Corporation

Tucker H. Couvillon, III
Lemele & Kelleher
Pan-American Life Center
21st Floor
601 Poydras Street
New Orleans, Louisiana 70130
(504) 586-1241
Counsel for Ocean Drilling & Exploration Company

Thomas Coyne, formerly with
Kirlin, Campbell & Keating
5 Hanover Square, 14th Floor
New York, New York 10004
(212)425-7800
Counsel for American Bureau of Shipping

Edith Brown Clement

John J. Cummings, III
Cummings, Cummings & Dudenhfer
200 Alison House
416 Gravier Street
New Orleans, Louisiana 70130
(504) 586-0000
Lead Counsel for Plaintiffs

Stephen B. Murray
909 Poydras Center, Suite 2550
New Orleans, Louisiana 70130
(504) 525-8100
Counsel for Plaintiffs

George A. Frilot, III
Frilot, Partridge, Kohnke & Clements
1100 Poydras St, uite 3600
New Orleans, Louisiana 70163
(504) 599-8000

Michael A. McGlone
Lemle & Kelleher
Pan-American Life Center
21st Floor
601 Poydras Street
New Orleans, Louisiana 70130
(504) 586-1241
Counsel for Ocean Drilling & Exploration Company

Thomas L. Jones, formerly with
Civil Division, Torts
United States Department of Justice
P. O. Box 14271
Washington, D.C. 20004
(202) 616-4400
Counsel for United States of America

Edith Brown Clement

E. LEWIS R. CRIST, RECEIVER FOR TRANSIT CASUALTY COMPANY v. DICKSON WELDING COMPANY

SUMMARY/SIGNIFICANCE:

This suit was the first to be tried of many similar suits filed nationwide by the Receiver for the insolvent Transit Casualty Company against its insureds for additional premiums. Alexander & Alexander, Inc., the broker, was sued by Dickson Welding for indemnity. The jury returned a verdict in favor of Dickson Welding, rendering the claim against A&A moot. The case was affirmed and its outcome affected the disposition of the remaining cases nationwide.

PARTY REPRESENTED: Alexander & Alexander, Inc.
Third-party Defendant

NATURE OF PARTICIPATION: Trial co-counsel

DISPOSITION: Jury verdict; appeal pending

TRIAL DATES: April 1990

COURT: United States District Court
Eastern District of Louisiana

JUDGE: Hon. Martin L.C. Feldman

DOCKET NO.: Civil No. 87-5664

CO-COUNSEL: John C. Combe, Jr., retired from
Jones, Walker, Waechter, Poitevent,
Carrère & Denègre
201 St. Charles Avenue
New Orleans, Louisiana 70170
Home No.: (504) 834-7984

James E. Wright, III
Jones, Walker, Waechter, Poitevent,
Carrère & Denègre
201 St. Charles Avenue
New Orleans, Louisiana 70170
(504) 582-8000

Edith Brown Clement

COUNSEL FOR OTHER PARTIES: Andrew S. de Klerk
Frilot, Partridge, Kohnke & Clements
1100 Poydras St, uite 3600
New Orleans, Louisiana 70163
(504) 599-8000
Counsel for Lewis Crist

Walter W. Christy
Kullman, Inman, Bee & Downing
1100 Poydras Street, Ste. 1600
New Orleans, Louisiana 70163
(504) 524-4162
Counsel for Dickson Welding

J. Albert Kroemer
Prager, Metzger & Kroemer
2626 Cole Avenue, Suite 900
Dallas, Texas 75204
(214) 969-7600
Counsel for Miro & Associates, Inc. and Miro & Associates Risk Management, Inc.

F. OCEANIC CONTRACTORS, INC. v. UNDERWRITERS AT LLOYD'S LONDON AND THE INSTITUTE OF LONDON UNDERWRITERS

CITATION: 384 So.2D 805 (La. 1980); 383 So.2d 1018 (La. 1980)

SUMMARY/SIGNIFICANCE:

This suit was tried in state court against McDermqtt's insurer for loss of a well jacket fabricated by McDermott while being transported across the Atlantic in heavy weather by barge under tow. The non-jury trial resulted in a $25 million verdict in favor of McDermott, which included $100,000 in attorney's fees on a defamation claim. At the time, this was believed to be the highest judgment ever rendered in Louisiana.

PARTY REPRESENTED: Oceanic Contractors, Inc.
Subsidiary of J. Ray McDermott

DATE OF REPRESENTATION: September 1979 to March 1982

Edith Brown Clement

NATURE OF PARTICIPATION: Trial co-counsel

DISPOSITION: Verdict by trial court.

TRIAL DATES: May 1980

COURT: Civil District Court
Parish of Orleans
State of Louisiana

JUDGE: Hon. Richard J. Garvey

DOCKET NO.: Civil No. 79-15026 c/w 79-16598

CO-COUNSEL: John V. Baus, retired
Jones, Walker, Waechter, Poitevent, Carrère & Denègre
201 St. Charles Avenue
New Orleans, Louisiana 70170
(504)581-6745

COUNSEL FOR OTHER PARTIES: Jerry Y. Gilmore, Jr., deceased
John Michael Kops, relocated to Florida, (561)585-3220
Faris, Ellis, Cutrone & Gilmore, has been disbanded
1207 Whitney Building
New Orleans, Louisiana 70130
(504) 581-6373
Counsel for Underwriters at Lloyd's, London and The Institute of London Underwriters

G. **SANDRA K. MYERS v M/V DORIS, BOLLINGER OFFSHORE BOATS, INC., OPERATORS, INC., ET AL**

CITATION: 652 F.2D 998 (5th Cir. 1981)

SUMMARY/SIGNIFICANCE:

This was a claim against the platform owner for personal injuries sustained when plaintiff was hit in the head by a crane hook which was offloading the

Edith Brown Clement

vessel on which plaintiff was employed as a seaman. Claims for inner ear damage, including tinnitus and lack of equilibrium, were asserted and the medical discovery was extensive and complex. The pretrial investigation resulted in findings that plaintiff, the captain of the vessel, and the primary treating physician were all convicted felons. Tenneco was dismissed on a directed verdict; although my other client, codefendant Operators, Inc., was found liable, the jury awarded only $25,000 with a 75% contributory finding against the plaintiff, resulting in an award of only $6,250. The jury verdict was affirmed on appeal and the high assessment of 75% contributory negligence was upheld.

PARTIES REPRESENTED: Operators, Inc. and Tenneco Oil Company

DATE OF PARTICIPATION: January 1978 to April 1982

NATURE OF PARTICIPATION: Sole trial counsel

DISPOSITION: Jury verdict

TRIAL DATE: December 1979

COURT: United States District Court Eastern District of Louisiana

JUDGE: Robert F. Collins, resigned after conviction for bribery

DOCKET NO.: Civil No. 77-3888

CO-COUNSEL: None

COUNSEL FOR OTHER PARTIES: Darleen M. Jacobs
828 St. Louis Street
New Orleans, Louisiana 70112
(504) 522-3287
Counsel for Sandra Myers

Richard A. Cozad
McAlpine, Peuler & Cozad
701 S. Peters St., Suite 300
New Orleans, Louisiana 70130

Edith Brown Clement

(504) 561-0323
Counsel for Bollinger Marine

H. WOODROW STEVEN ANDERSON V. TEXACO INC., PENROD DRILLING CORPORATION, AND CARDINAL WIRELINE SPECIALISTS, INC.

SUMMARY/SIGNIFICANCE:

This suit involved an explosion which occurred aboard an offshore drilling rig owned by Penrod, which was adjacent to a gas well platform owned by Texaco. Suit was in the discovery stage and an extensive number of depositions had been taken, with more scheduled to be taken when I was appointed to the district bench. The issues involved strict liability, Jones Act status, indemnity issues between the codefendants, and determination of the technical cause of the gas leak. There were thirteen injuries as a result of the explosion, and this was the first case in which discovery had proceeded.

PARTIES REPRESENTED: Texaco Inc.

DATE OF REPRESENTATION: January 1991 to 1991

NATURE OF PARTICIPATION: Trial counsel

DISPOSITION: In discovery stage when I became a judge

TRIAL DATE: February 10, 1992

COURT: United States District Court
Eastern District of Louisiana

JUDGE: Hon. Frederick J. R. Heebe

DOCKET NO.: Civil No. 90-4623

CO-COUNSEL: None

COUNSEL FOR OTHER PARTIES: Carroll H. Ingram
Ingram & Associates
211 South 29th Avenue
P.O. BOX 15039
Hattiesburg, MS 39404-5039

Edith Brown Clement

(601)261-1385
Counsel for Woodrow Anderson

Thomas G. O'Brien
Adams & Reese
4500 One Shell Square
New Orleans, LA 70139
(504) 581-3234
Counsel for Cardinal Wireline Specialists, Inc.

Alan K. Breaud
Breaud & Lemoine
600 Jefferson Street,
Suite 1101
P. O. Box 3448
Lafayette, LA 70502
(337) 266-2200
Counsel for Penrod Drilling Corporation

I. ALFRED LEWIS V. TIMCO, INC., ET AL

CITATION: 736 F.2D 163 (5th Cir. 1984); 697 F.2d 1252 (5th Cir. 1983)

SUMMARY/SIGNIFICANCE:

A hydraulic tong operator sued the owner of a drilling barge, the tong manufacturer, and others to recover for personal injuries sustained when his hand and arm were mangled as a result of being entangled in a "snub line." The issue on appeal was whether, notwithstanding the strict products liability law of Louisiana, the comparative fault of the hydraulic tong operator would be applied to reduce liability of the manufacturer of the defective tong which malfunctioned and resulted in injury to this maritime worker. The Fifth Circuit held that the doctrine of comparative fault did apply under the maritime jurisdiction of the federal court. The case was again appealed, and a rehearing en banc was granted whereby the court affirmed the trial court's decision that the maritime principle of comparative fault was applicable in cases which urged strict liability for defects in products but reversed the finding of the trial court that

Edith Brown Clement

plaintiff was 50% comparatively negligent. At trial, my client, Atwood Oceanic, Inc., was held to be not negligent.

PARTY REPRESENTED: Atwood Oceanic, Inc.

DATE OF REPRESENTATION: December 1978 to September 1983

NATURE OF PARTICIPATION: Trial co-counsel

DISPOSITION: Verdict by trial court; affirmed on appeal

TRIAL DATE: September 1980

COURT: United States District Court
Western District of Louisiana
Lafayette Division

JUDGE: Hon. W. Eugene Davis

DOCKET NO.: Civil No. 78-1383

CO-COUNSEL: Robert M. Contois, Jr.
Jones, Walker, Waechter, Poitevent, Carrère & Denègre
201 St. Charles Avenue
New Orleans, Louisiana 70170
Home No.: (504) 456-1924

COUNSEL FOR OTHER PARTIES: Patrick A. Juneau, Jr.
The Juneau Firm
1018 Harding Street
P. O. Drawer 51268
Lafayette, Louisiana 70505
(337) 269-0052
Counsel for Home Petroleum

James E. Diaz
Onebane, Donohoe, Bernard, Torian, Diaz, McNamara and Abell
Suite 600, Versailles Centre
102 Versailles Blvd.
P. O. Box 3507
Lafayette, Louisiana 70502

Edith Brown Clement

(337) 237-2660
Counsel for Rebel Rentals, Inc.

John A. Jeansonne, Jr.
Jeansonne & Remondet
200 W. Congress Street
P. O. Box 91530
Lafayette, Louisiana 70509
(337) 237-4370
Counsel for Joy Manufacturing

Harold K. Watson
Locke, Liddell, & Sapp
3500 Chase Tower
Houston, Texas 77002
(713) 226-1449
Counsel for Petroleum Equip. Suppliers Assoc.

Robert K. Guillory
128 Demanade Blvd.
P. O. Box 53478
Lafayette, Louisiana 70505
(337) 234-0500
Counsel for Alfred Louis

J. FREDDY R. STUTTS AND KAREN STUTTS V. McDERMOTT INCORPORATED

SUMMARY/SIGNIFICANCE:

This was a Jones Act suit against McDermott, the employer of an electrician working aboard a McDermott barge who received severe electrical shock as a result of a disconnected breaker box. The issues involved strict liability; following discovery and motion practice, the suit was settled just prior to trial.

PARTY REPRESENTED: McDermott Incorporated

DATE OF REPRESENTATION: January 1986 to December 1986

NATURE OF PARTICIPATION: Sole Counsel

DISPOSITION: Settled

Edith Brown Clement

TRIAL DATE:	Not applicable
COURT:	United States District Court Eastern District of Louisiana
JUDGE:	Hon. Frederick J. R. Heebe
DOCKET NO.:	Civil No. 85-0683
CO-COUNSEL:	None
COUNSEL FOR OTHER PARTIES:	Louis J. St. Martin St. Martin, Mahoney & Associates One Church Street P. O. Box 3320 Houma, Louisiana 70361 (504) 868-9600 Counsel for Mr. & Mrs. Stutts

19. 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 the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

As an Attorney:

To be a lawyer is to be a member of a service profession: service to the client, the profession, and one's community.

My most significant legal activity directed toward the profession was my presidency of the Federal Bar Association's New Orleans Chapter, consisting of approximately 1100 members. Although I was also active in the American, Louisiana State, and New Orleans Bar Associations, it was through my leadership role as president of the Federal Bar Association that I was able to make my most meaningful contribution to the profession. By sponsoring seminars, meetings of the bench and bar, publications, scholarships, speaker events, and other outreach programs, I believe that the goals of professionalism were significantly advanced in my community.

Edith Brown Clement

As a Federal Judge:

Nationally I have served for almost six years as a member of the Committee on the Administrative Office of the Judicial Conference of the United States.

Locally for the past year and a half I have been the Eastern District of Louisiana Representative on the Fifth Circuit Judicial Council as well as a member of the Fifth Circuit Judicial Council District Court Standing Committee.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List 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. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

   None.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

   None, but if any arise I will follow the guidelines of the Code of Judicial Conduct.

3. 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

4. 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, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

   See attached Financial Disclosure Report.

Edith Brown Clement

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

   See attached net worth statement and schedule.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

   No.

Edith Brown Clement
Financial Statement
Schedules

ASSETS: Government securities, listed securities, mutual funds:

Ace Limited
Advanced Radio Telecom Corp
Aim Dent Demographic Trends Class C
Aim Mid Cap Equity Fund Cl C
Aim Mid-Cap Opportunities Fund Class C
Aim Smallcap Growth Cl C
Aim Value Fund Class-C
Alliant Energy Corp
Alza Corp Com
American Express Co
Archer Daniels Midland
Associated Group Inc Class A
AT&T Corp
Blackrock North American Govt Income
BP Amoco PLC ADR
Bristol Myers Squibb Company
Burlington Resources
CAREDATA.COM, Inc.
CBS Corporation
CFW Communications Co.
Chase Manhattan Corp
CITIGROUP, Inc.
CNH Global N.V. CUSIP
Deere & Co
Delta Airlines, Inc
Disney Walt Co
EEX Corp
ESC Medical Systems Ltd
Federal Home Loan Mortgage Corporation remic trust
Federal National Mortgage Association remic series
Federated Communications Technology Fund CL C
Franklin Smallcap Growth Cl II
Fremont General Corp
El Passo Corporation
General Electric
Grey Wolf Inc
Hellenic Bottling Company
Honeywell International
IDACORP, Inc a/k/a ICACORP, Inc
Ikon Office Solutions Inc
Intelligent Polymers
Jefferson Parish Louisiana School Board
Kemper Technology Fund CL C
Koninklijke Philips Electronic
Louisiana State G/O-FDG Ser A
Lucent Technologies Inc
Managed High Yield Plus Fund, Inc.
Marsh & McLennan Companies, Inc.
Maverick Tube Corporation
McKesson, HBOC, Inc.
Merck & Co Inc
MFS Massachusetts Investors Growth Stock Class C
MFS Massachusetts Investors Trust C.
Morgan Select High Income Cl C
Motorola Inc
Noble Affiliates Inc.
NOVAMED Eyecare Inc
Ocean Energy Inc
Oracle Systems Corporation
Pentair Industries, Inc.
Pepsico Cap Res Inc Gtd Deb
PIMCO High Yield Fund Cl-C
Pride International, Inc.
Principal Class Money Market
Procter & Gamble Co
Prospect Street High Income PTFL
Regent Communications Inc
Saga Systems Inc
Schering Plough Corp
Seagull Energy Corp Sr Nts

Sierra Pac Res New
Sprint Corp
Storage Techonolgy Corp
Superior Energy Services
Texas Instruments Inc
Thornburg Value Fund Class C
Verizon Communications
Wells Fargo & Co
Williams Energy Partners
World Com Inc.

Real estate owned:

Residence: $800,000 FMV
New Orleans, LA

Rental: $400,000 FMV
New Orleans, LA
Annual Rent: $43,200

Metairie Cemetery: $20,000 FMV

Edith Brown Clement

FINANCIAL STATEMENT
NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks/money funds	146	600	00	Notes payable to banks-secured			
U.S. Government securities-add schedule	57	285	00	Notes payable to banks-unsecured			
Listed securities-add schedule	481	700	00	Notes payable to relatives			
Mutual Funds--add schedule	366	200	00	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due - unbilled	5	000	00
Due from relatives and friends	108	000	00	Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule			
Real estate owned-add schedule	1,200	000	00	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property	432	000	00				
Cash value-life insurance	192	500	00				
spouse's capitol account	40	000	00	Total liabilities	5	000	00
retirement IRA's	1,767	775	00	Net Worth	4,792	060	00
Total Assets	4,792	060	00	Total liabilities and net worth	4,787	060	00
CONTINGENT LIABILITIES	none			GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)		no	
On leases or contracts				Are you defendant in any suits or legal actions?		no	
Legal Claims				Have you ever taken bankruptcy?		no	
Provision for Federal Income Tax							
Other special debt							

AO-10 (w)
Rev. 1/2000

FINANCIAL DISCLOSURE REPORT
Nomination Report

Report required by the Ethics in Government Act of 1978, as amended (5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting *(Last name, first, middle initial)* IMENT, EDITH B.	2. Court or Organization U.S. Court of Appeal,	3. Date of Report 05/16/2001
4. Title *(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)* U.S. Circuit Judge Nominee	5. Report Type (check type) X Nomination, Date 05/09/2001 ___ Initial ___ Annual ___ Final	6. Reporting Period 01/01/2000 to 04/30/2001
7. Chambers or Office Address 500 CAMP STREET, ROOM 455 NEW ORLEANS, LA 70130	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.

I. POSITIONS *(Reporting individual only; see pp. 9-13 of Instructions.)*

[X] NONE (No reportable positions.)

	POSITION	NAME OF ORGANIZATION / ENTITY
1		
2		
3		

II. AGREEMENTS *(Reporting individual only; see pp.14-16 of Instructions.)*

[X] NONE (No reportable agreements.)

	DATE	PARTIES AND TERMS
1		
2		
3		

III. NON-INVESTMENT INCOME *(Reporting individual and spouse; see pp. 17-24 of Instructions.)*

[ ] NONE (No reportable non-investment income.)

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1	2000	Locke, Liddell & Sapp (law frim)	
2			
3			

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	CLEMENT, EDITH B.	05/16/2001

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)

	SOURCE	DESCRIPTION
☐ NONE (No such reportable reimbursements.)		
1 EXEMPT		
2		
3		
4		
5		
6		
7		

V. GIFTS

(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)

	SOURCE	DESCRIPTION	VALUE
☐ NONE (No such reportable gifts.)			
EXEMPT			
2			
3			

VI. LIABILITIES

(Includes those of spouse and dependent children. See pp 33-35 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
X NONE (No reportable liabilities.)			
1			
2			
3			
4			
5			
6			

* VAL CODES:J=$15,000 or less K=$15,001-$50,000 L=$50,001 to $100,000 M=$100,001-$250,000 N=$250,001-$500,000
O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting CLEMENT, EDITH B.	Date of Report 05/16/2001

VII. Page 1 INVESTMENTS and TRUSTS – income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income,assets, or transactions.)									
1 Bank One	A	Interest	J	T	EXEMPT				
2 First Commerce Corp. (com)	A	Dividend	J	T	"				
3 Rochester Resources Corp. (unlisted)	A	None	J	W	"				
4 St. Jacques Resources Corp. (unlisted)	A	Royalty	J	W	"				
5 Sunbird Resources (unlisted)	A	None	J	W	"				
6 Rainbow Royalties (unlisted)	A	None	J	U	"				
7 Rental Property/Residential FMV	E	Rent	N	W	"				
8 Ace Limited	A	Dividend			"				
9 Advanced Radio Telecom Corp		None	J	T	"				
10 Aim Dent Demographic Trends Class C		None	K	T	"				
11 Aim European Development Fund Class C		None			"				
12 AIM Mid Cap Equity Fund Cl C		None	L	T	"				
13 AIM Mid Cap Opportunities Fund Class C		None	L	T	"				
14 Aim Smallcap Growth CL C		None	L	T	"				
15 AIM Value Fund Class C		None	M	T	"				
16 ALCATEL ALSTHOM Spon ADR	A	Dividend			"				
17 Alliant Energy Corp		None			"				

I Inc/Gain Codes: A=$1,000 or less B=$1,001-$2,500 C=$2,501-$5,000 D=$5,001-$15,000 E=$15,001-$50,000
(Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

al Codes: I=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000 N=$250,001-$500,000
(Col. C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

J Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market
(Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
CLEMENT, EDITH B.	05/16/2001

VII. Page 2 INVESTMENTS and TRUSTS – income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)					Exempt				
18 Alza Corp Com		None	K	T	"				
19 American Express Co		None	K	T	"				
20 American Home Products Corp	A	Dividend			"				
21 Amsouth Bankcorporation	A	Dividend			"				
22 Archer Daniels Midland, Deb O/CPN Reg, Due 5/1/2002		None	K	T	"				
23 Associated Group Inc Class A		None			"				
24 AT&T Corp	A	Dividend	J	T	"				
25 AVAYA, Inc		None	J	T	"				
26 Baker Hughes Inc	A	Dividend			"				
27 Bank of America Corp (n/c 5/99 was Bankamerica, Corp)	B	Dividend			"				
28 Becton Dickinson	A	Dividend			"				
29 Blackrock North American Gov't Income	C	Dividend	K	T	"				
30 BP AMOCO PLC ADR	A	Dividend	J	T	"				
31 Bristol Myers Squibb Company	B	Dividend	L	T	"				
32 Burlington Resources	A	Dividend	K	T	"				
33 CAREDATA.COM Inc		None	J	T	"				
34 CBS Corporation	B	Interest	K	T	"				

1 Inc/Gain Codes: A=$1,000 or less B=$1,001-$2,500 C=$2,501-$5,000 D=$5,001-$15,000 E=$15,001-$50,000
(Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000 N=$250,001-$500,000
(Col. C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market
(Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
CLEMENT, EDITH B.	05/16/2001

VII. Page 3 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)					Exempt				
35 Cendant Corp		None			"				
36 CFW Communications Co	A	Dividend			"				
37 CITIGROUP, Inc	C	Dividend	M	T	"				
38 CNH Global N.V.CUSIP:N20935107	A	Dividend	J	T	"				
39 Coca-Cola Amatil Ltd Sponsored ADR	A	Dividend			"				
40 Commonwealth Telephone Enterprises Inc.		None			"				
41 Compaq Computer Corp	A	Dividend			"				
42 Complete Business Solutions Inc		None			"				
43 Core Laboratories N.V.		None			"				
44 CT Communications		None			"				
45 CVS Corporation Delaware	A	Dividend			"				
46 Deere & Co	A	Dividend			"				
47 Delta Airlines, Inc.	A	Dividend	K	T	"				
48 Disney, Walt Co		None			"				
49 BEX Corp		None	J	T	"				
50 El Paso Corp (merged w/ & n/c from Coastal Corp 2/01)	A	Dividend	L	T	"				
51 Ensco International Inc		None			"				

1 Inc/Gain Codes: A=$1,000 or less B=$1,001-$2,500 C=$2,501-$5,000 D=$5,001-$15,000 E=$15,001-$50,000
(Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

d Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000 N=$250,001-$500,000
(Col. C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market
(Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: CLEMENT, EDITH B.

Date of Report: 05/16/2001

VII. Page 4 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)					Exempt				
52 ESC Medical Systems Ltd		None	K	T	"				
53 FHLMC 7% Cl 1475-0 2/15/2008	A	Interest	J	T	"				
54 FNMA 7% 9/25/2022, 206-MB-Fixed Rt	A	Interest	J	T	"				
55 FHLMC 6.5%, 2/15/2023, C-Fixed Rt Series 1617	A	Interest	J	T	"				
56 FNMA 7%, 3/25/2023, 1993-50 CL X	B	Interest	K	T	"				
57 FNMA 6.5%, 3/25/2023, 1993-096 ClE	B	Interest	K	T	"				
58 FNMA 7%, 4/25/2023, 1993-99 Cl LL (See Section VIII)	B	Interest	K	T	"				
59 FHLMC 7/5%, 4/25/2024, Ser G30 Cl KA	A	Interest	J	T	"				
60 Federated Communications Technology Fund Cl C		None	L	T	"				
61 First Tennessee National Corp	A	Dividend			"				
62 First Union Corp	A	Dividend			"				
63 Flowserve Corp		None			"				
64 Franklin Smallcap Growth Cl II	A	Dividend	L	T	"				
65 Fremont General Corp	A	Dividend	J	T	"				
66 General Electric Co	A	Dividend	K	T	"				
67 Grey Wolf Inc		None	J	T	"				
68 John Hancock Bank and Thrift Opportunity Fund	A	Dividend			"				

1 Inc/Gain Codes: A=$1,000 or less B=$1,001-$2,500 C=$2,501-$5,000 D=$5,001-$15,000 E=$15,001-$50,000
(Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

2 Val Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000 N=$250,001-$500,000
(Col. C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market
(Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: CLEMENT, EDITH B.

Date of Report: 05/16/2001

VII. Page 5 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)					Exempt				
69 Hellenic Bottling Co (9/7 CocaCola Beverages merged w/)		None	J	T	"				
70 Honeywell International	A	Dividend			"				
71 IDACORP, INC	B	Dividend	K	T	"				
72 Ikon Office Solutions, Inc	A	Dividend	J	T	"				
73 Intelligent Polymers		None			"				
74 Interim Services, Inc		None			"				
5 Jefferson Parish La Sch Brd, 5.25%, 2/1/2008	A	Dividend	K	T	"				
76 Kemper Technology Fund Cl C		None	J	T	"				
77 Koninkliske Phillips Elec	A	Dividend	K	T	"				
78 Lightbridge Inc.		None			"				
79 Louisiana State G/O-REDG Ser A 8/1/2005	A	Interest	K	T	"				
80 Lowes Companies Inc.	A	Dividend			"				
81 Lucent Technologies Inc.	A	Dividend	J	T	"				
82 Managed High Yield Plus Fund, Inc	A	Dividend	J	T	"				
83 Marsh & McLennan Companies, Inc.		None	K	T	"				
84 Maverick Tube Corporation		None	J	T	"				
85 McKesson, HBOC Inc		None	K	T	"				

1 Inc/Gain Codes: A=$1,000 or less B=$1,001-$2,500 C=$2,501-$5,000 D=$5,001-$15,000 E=$15,001-$50,000
(Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

2 Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000 N=$250,001-$500,000
(Col. C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

3 Val Meth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market
(Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: CLEMENT, EDITH B.

Date of Report: 05/16/2001

VII. Page 6 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)					Exempt				
86 Merck & Co Inc	C	Dividend	M	T	"				
87 MFS Massachusetts Investors Growth Stock Class C	E	Dividend	M	T	"				
88 MFS Mass Investors Trust C	C	Dividend	L	T	"				
89 J.P.Morgan Chase & Co. (n/c 1/01 - was Chase Manhattan	A	Dividend	J	T	"				
90 Morgan Grenfell Small Cap Fund, Inc.	C	Dividend			"				
91 Morgan Select High Income Cl C	B	Dividend	L	T	"				
92 Motorola Inc.	A	Dividend	J	T	"				
93 Noble Affiliates Inc	A	Dividend			"				
94 NOVAMED Eyecare Inc		None			"				
95 NOVARTIS AG		None			"				
96 Ocean Energy Inc		None	L	T	"				
97 Oracle Systems Corporation		None	K	T	"				
98 Pentair Industries, Inc		None	K	T	"				
99 Pepsico CAP Res Inc, 4/1/2008		None	J	T	"				
100 Pepsico CAP Res Inc. 4/1/2011		None	J	T	"				
101 Pepsico Cap Res Inc, 4/1/2012		None	J	T	"				
102 PIMCO High Yeild Fund CL C	C	Dividend	K	T	"				

1 Inc/Gain Codes: A=$1,000 or less B=$1,001-$2,500 C=$2,501-$5,000 D=$5,001-$15,000 E=$15,001-$50,000
(Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

2 Val Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000 N=$250,001-$500,000
(Col. C1, D3) O=$500,001-$1,000,000 F1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market
(Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
CLEMENT, EDITH B.	05/16/2001

VII. Page 7 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions.)					Exempt				
103 Pride International Inc		None	J	T	"				
104 Principal Class(money market)	D	Dividend	N	T	"				
105 Proctor and Gamble Co.	B	Dividend	L	T	"				
106 Prospect Street High Income PTFL	B	Dividend	J	T	"				
107 Quest Communications Intl Inc.	A	Dividend			"				
108 Regent Communications, Inc.		None			"				
9 Rhodia		None			"				
110 Saga Systems Inc		None			"				
111 Schering Plough Corp	A	Dividend	L	T	"				
112 Seagull Energy Corp Sr Nts 8.625%, 8/1/2005	D	Interest	L	T	"				
113 Sierra Pac Res New		None	K	T	"				
114 Sprint Corp 9.70%, 4/01/2000	A	Interest			"				
115 Storage Technology Corp		None	J	T	"				
116 Superior Energy Services, Inc		None			"				
117 T Rowe Price Associates, Inc	A	Dividend			"				
118 Templeton World Class II Shs TEWIX	D	Dividend			"				
119 Templeton World Fund - Class I	D	Dividend			"				

1 Inc/Gain Codes: A=$1,000 or less B=$1,001-$2,500 C=$2,501-$5,000 D=$5,001-$15,000 E=$15,001-$50,000
(Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

J Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000 N=$250,001-$500,000
(Col. C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market
(Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: CLEMENT, EDITH B.

Date of Report: 05/16/2001

VII. Page 8 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)					Exempt				
120 Texas Instruments Inc	A	Dividend	K	T	"				
121 Thornburg Value Fund Class C	B	Dividend	L	T	"				
122 Verizon Communications	A	Dividend			"				
123 Warner-Lambert Co.	A	Dividend			"				
124 Wells Fargo & Co 6.875%, 4/15/2003	B	Interest	K	T	"				
125 William Companies	A	Dividend			"				
126 Williams Energy Partners		None	K	T	"				
127 World Com Inc - n/c fm MCI Worldcom Inc 5/5/00		None	K	T	"				
128									
129									
130									
131									
132									
133									
134									
135									
136									

1 Inc/Gain Codes: (Col. B1, D4) A=$1,000 or less B=$1,001-$2,500 C=$2,501-$5,000 D=$5,001-$15,000 E=$15,001-$50,000 F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

1 Codes: (Col. C1, D3) J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000 N=$250,001-$500,000 O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

3 Val Mth Codes: (Col. C2) Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting CLEMENT, EDITH B.	Date of Report 05/16/2001

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.
(Indicate part of report.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	CLEMENT, EDITH B.	05/16/2001

IX. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature E B Clement Date May 15, 2001

Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
One Columbus Circle, N.E.
Suite 2-301
Washington, D.C. 20544

Edith Brown Clement

III. GENERAL (PUBLIC)

1. 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.

   As an Attorney:

   Pro Bono representation in Orleans Parish Juvenile Court involving indigent child-custody disputes
   Member, Civil Justice Reform Act Advisory Group, Eastern District of Louisiana
   Assisting with the establishment of a Lawyer Referral Service in New Orleans under the auspices of the Federal Bar Association for EEOC claims filed in federal court in the Eastern District of Louisiana
   Supporter of Preservation Resource Center
   Supporter of Archbishop's Community Relief Fund, which funds a food bank, preschool educational programs and summer programs for children-at-risk

   As a Federal Judge:

   New Orleans Children Advocacy Program (NOCAP), 1995-2001 founding member of Board of Directors. NOCAP has provided after school arts and health education for inner-city school children through student teachers from Loyola University, Southern University, Tulane University and University of New Orleans.

   Tulane Admiralty Law Institute Advisory Board presents CLE programs for lawyers.

   Tulane Law School's Inn of Court provides forum for discussions of substantive and procedural legal issues with students and practitioners.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any

organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

From 1965 to 1969, I was a member of a women's sorority, Chi Omega, at the University of Alabama.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

Yes. Yes. I participated in conversations with the Louisiana delegation to discuss potential interest in appointment to the Fifth Circuit Court of Appeals. I was interviewed in the Office of White House Counsel in Washington, D.C. on February 19, 2001.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped-many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The stated criticisms of "judicial activism" designated above as "a" through "e" are avoidable by conscientiously adhering to the fundamental precepts requiring a judge to give statutory language its plain meaning and upholding the statute unless it is unconstitutional.

The separation of powers of the three independent branches of government is central to the federal balance of the structure of our Constitution. As the framers envisioned, each branch has distinct limits and functions: law making is the prerogative of the legislature, enforcement is the duty of the executive, and resolution of real factual and legal disputes is the responsibility of the judiciary. Indeed it is the duty of the judiciary to say what the law is, not what it should be.

It is not for the judiciary to determine what the law ought to be, that is within the province of the legislators, but only within the legislators' constitutional domain. Certainly once a judge concludes that the legislature has acted within its constitutional powers, the court's role is to uphold the law. However, in determining whether or not the legislative or the executive branch has acted within its constitutional powers, the court should be "activist" in its consideration of constitutional definitions, granting of powers and guarantees of liberties in determining the meaning of the text.

Ms. Caldwell?

STATEMENT OF KAREN K. CALDWELL, OF KENTUCKY, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF KENTUCKY

Ms. CALDWELL. Please excuse me for not standing, Senator. I don't have room, but I would like to thank you for having us here today. And I would also like to take the opportunity to introduce my friend and Congressman, Representative Ernie Fletcher, who is here, from Kentucky's 6th District.

I would also like to introduce my husband, Lloyd Cress, who is accompanying me here today. Also with me is my friend and partner, Barbara Edelman. With her is my friend and colleague, Frances Catron, and her husband, Jim Malone. Also, I have friends and colleagues from here in Washington. Lou DeFalaise is here, Troy Reynolds, and my friend, Lane Tucker, who is an attorney with the Department of Justice.

Senator KOHL. We welcome your family and your friends.

[The biographical information of Ms. Caldwell follows.]

United States Senate
Committee on the Judiciary

Questionnaire for Judicial Nominees

Karen K. Caldwell
Nominee

United States District Court
Eastern District of Kentucky

Section I Biographical Information (Public)
Section II Financial Data and Conflict of Interest (Public)
Section III General (Public)
Affidavit

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name (include any former names used.)**

Karen K. Caldwell
Karen Caldwell Frazier

2. **Address: List current place of residence and office address(es).**

Residence: Lexington, KY

Office: 250 West Main Street
Suite 2020
Lexington, KY 40507

3. **Date and place of birth.**

Stanford, Lincoln County, Kentucky
February 25, 1956

4. **Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

Husband: Lloyd R. Cress
Attorney at Law
Greenebaum Doll & McDonald, PLLC
1400 Vine Center Tower
P.O. Box 1808
Lexington, KY 40588

5. **Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**

(1977 - 1980) University of Kentucky College of Law
Lexington, Kentucky
J.D., (1980)

(Summer 1977)	University of Edinburgh Edinburgh, Scotland Summer Graduate Study
(1974 - 1977)	Transylvania University Lexington, Kentucky B.A., (1977)
(Summer 1975)	University of Kentucky Somerset Community College Summer School

6. **Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

1999-present	Dinsmore & Shohl, LLP 250 West Main Street, Suite 2020 Lexington, Kentucky 40507 (Partner)
1999-present	AIK Comp 200 West Chestnut Street Louisville, Kentucky 40202 (Trustee)
1996-present	Kentucky Office of Bar Admissions Character and Fitness Committee 1510 Newtown Pike, Suite X Lexington, Kentucky 40511 (Board Member)
1998-present	Prevent Child Abuse Kentucky 489 East Main Street, 3rd Floor Lexington, Kentucky 40507 (Board Member, Past President)
2001-present	ARC of the Bluegrass 898 Georgetown Street Lexington, Kentucky 40511 (Board Member)

2001-present	Transylvania University 300 North Broadway Lexington, Kentucky 40508 (Trustee)
1999-present	Correll Center for Leadership and Ethics Georgetown College Georgetown, Kentucky (Advisory Board Member)
2001-present	South Elkhorn Christian Church 4343 Harrodsburg Road Lexington, Kentucky 40513 (Elder, Church Cabinet)
2000	Transylvania University 300 North Broadway Lexington, Kentucky 40508 (Adjunct Professor)
1995-1999	Midway College 512 E. Stephens Street Midway, Kentucky (Trustee)
1995-1999	Breeding, Cunningham, Dance & Cress 300 West Vine Street Lexington, Kentucky 40507 (Partner)
1996-1998	Lexington-Fayette Urban County Government Ethics Commission 200 E. Main Street Lexington, Kentucky 40507 (Commission Member)
1993-1995	Robinson & McElwee 600 United Center 500 Virginia St., East Charleston, West Virginia 25326 (Counsel, Lexington, Kentucky office)

1987-1993	Office of the United States Attorney 110 West Vine Street Lexington, Kentucky 40507 (United States Attorney, 1991-1993) (Assistant United States Attorney, 1987-1991)
1987	Eastern Kentucky University 521 Lancaster Avenue Richmond, Kentucky 40475 (Adjunct Professor)
1980-1987	State Farm Fire & Casualty One State Farm Plaza Bloomington, ILL 61710 (Lexington, Kentucky, 1980-1985) (Houston, Texas, 1985-1987)
1984-1985	Eastern Kentucky University 521 Lancaster Avenue Richmond, Kentucky 40475 (Adjunct Professor)
1979-1980	Jerrico, Inc. 101 Jerrico Drive Lexington, Kentucky 40502 (Law Clerk)
1978-1979	Commonwealth of Kentucky Department of Labor 127 Building Frankfort, Kentucky 40601 (Law Clerk)
1978	Hays & Moss 267 W. Short Street Lexington, Kentucky 40507 (Summer Law Clerk)

7. **Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.**

I have not served in the military.

8. **Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.**

Life Fellow, Kentucky Bar Foundation, 2001

National Association of College Administrators Philanthropy Award, 1998

Kentucky Bar Association Outstanding Lawyer Award, 1995

"Top Women in Business," *The Lane Report,* 1994

U.S. Attorney's Outstanding Achievement Award, 1989

English Speaking Union Scholar, 1977

Transylvania University, Phi Alpha Theta, History Honorary, 1976

Who's Who in American Colleges and Universities

9. **Bar Associations: List all bar associations, legal or judicial-related committees 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.**

American Bar Association

Kentucky Bar Association:
Kentucky Bar Association Publications Committee, Chair, (1997-2001)
Kentucky Bar Association's *Bench and Bar* magazine, Editor, (1997-2001)
Kentucky Bar Association Annual Convention CLE Committee, (2001)
Kentucky Bar Association Annual Convention, Chair (1996)
Kentucky Bar Association, Outstanding Lawyer Award (1995)
Kentucky Bar Association Education Committee (1995)

Kentucky Supreme Court:
Kentucky Office of Bar Admissions, Character and Fitness Committee, (1996-present)

United States District Courts for the Eastern and Western Districts of Kentucky:
Joint Local Rules Commission (1999 - present)
Federal Civil Judicial Reform Commission (1993-1994)

United States Court of Appeals for the Sixth Circuit

Fayette County Bar Association

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Organizations active in lobbying before public bodies:

1. Prevent Child Abuse Kentucky
   Lobbies Kentucky General Assembly on issues regarding child protection and child abuse prevention.
2. Kentucky Office of Bar Admissions Character and Fitness Committee
   Although the Character and Fitness Committee does not engage in direct lobbying, it is an agency of the Kentucky Supreme Court, which is funded by the Kentucky General Assembly.

Other organizations to which I belong:

1. American Bar Association
2. Kentucky Bar Association
3. Fayette County Bar Association
4. Prevent Child Abuse Kentucky
4. ARC of the Bluegrass
5. Transylvania University Board of Trustees and Alumni Association
6. University of Kentucky Alumni Association
7. South Elkhorn Christian Church
8. The Federalist Society
9. Leadership Kentucky
10. Georgetown College, Correll Center for Leadership and Ethics Advisory Board
11. Lexington Philharmonic Guild

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

State:	Kentucky, 1984
Federal:	Court of Appeals for the Sixth Circuit, 1987
Federal:	United States District Courts for the Eastern District of Kentucky, 1987
	United States District Court for the Western District of Kentucky, 2001

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Articles Written and Edited

From 1997 until June, 2001, I served as editor-in-chief of *Bench & Bar Magazine*, the official publication of the Kentucky Bar Association. The magazine, which is published bi-monthly, contains articles written by Kentucky lawyers covering a wide range of topics approved by the Kentucky Bar Association's Publications Committee. (Copies of the magazine covers and indices are submitted in a separate attachment). Although I recently retired as editor-in-chief, I continue to serve on the editorial board and to edit articles submitted for publication in the magazine.

"Stings & Scandals; Cameras Record Corruption," *State Government News*, May, 1994. (Official Publication of the Council of State Governments.) (Copies submitted in separate attachment).

"Criminal Enforcement of Environmental Laws," *Kentucky Bar Association District Bar Meetings, Continuing Legal Education Program*, Fall 1996. (Copies submitted in separate attachment).

Public Addresses

I have addressed the public on many occasions. Below, I have listed most of my public appearances since 1994:

1994

Lexington Rotary Club
- Retrospective on Tenure as United States Attorney for the Eastern District of Kentucky
- Preserving and Protecting Integrity in Government

Waynesburg Elementary School Commencement Address
Madison County Lincoln Day Celebration Dinner
- Preserving and Protecting Integrity in Government

Fayette County Lincoln Day Celebration Dinner
- Preserving and Protecting Integrity in Government

Powell County Lincoln Day Celebration Dinner
- Preserving and Protecting Integrity in Government

Jackson County Lincoln Day Celebration Dinner
- Preserving and Protecting Integrity in Government

Fayette County Republican Women's Club
- Tenure as United States Attorney for the Eastern District of Kentucky

Eastern Kentucky College of Law Enforcement Commencement Address
The Hensley Report, WTVQ Television

- Retrospective on Tenure as United States Attorney for the Eastern District of Kentucky

Business and Industry Environmental Symposium, sponsored by the Manufacturer's Education Council

- Federal Enforcement of Environmental Laws, "Covering Your Assets"

1995

Franklin County Rotary Club
- Tenure as United States Attorney
- Protecting and Preserving Integrity in Government

Women Mean Business Conference
- Women in Public Policy Positions

Lexington Women's Forum
- Service as Kentucky's First Woman United States Attorney

University of Kentucky Public Radio
- Retrospective on my service as United States Attorney

Lincoln County Junior Miss Scholarship Competition
- Master of Ceremonies

Midway College
- Convocation Speaker
- Career Choices for Women

Kentucky Federation of Republican Women State Convention
- Preserving Integrity in Government

Fayette County Medical Society
- Preserving Integrity in Government

Business and Industry Environmental Symposium, sponsored by the Manufacturer's Education Council
- Federal Enforcement of Environmental Laws, "Covering Your Assets"

1996

Kentucky Bar Association District Bar Meetings (Appeared at nine conferences throughout Kentucky)
- Federal Enforcement of Environmental Laws, "Covering Your Assets"

Leadership Kentucky
- Chaired Panel on Law Enforcement Issues

Kentucky Academy Trial Lawyers CLE Event
- Challenges facing Women Trial Lawyers

Pulaski Regional Rally, Dole for President Campaign
- Integrity in Government

Business and Industry Environmental Symposium, sponsored by the Manufacturer's Education Council
- Federal Enforcement of Environmental Laws, "Covering Your Assets"

University of Kentucky, Pi Beta Phi Sorority
- Women in the Law

University of Kentucky, Kappa Alpha Theta
- The meaning of Sorority

Kentucky Association of Future Homemakers of America State Convention
- Setting and Achieving Career Goals

Lincoln County Junior Miss Scholarship Competition
- Master of Ceremonies

1997

Transylvania University
- Convocation Speaker

Kentucky Rural Development Center, Somerset Kentucky
- Legal Issues Confronting Women in the Work Place

Lexington Community College, Guest Speaker
- Introduction to the Law and Legal Careers

Powell County Homemakers Club
- Preserving Integrity in Government

Business and Industry Environmental Symposium, sponsored by the Manufacturer's Education Council
- Federal Enforcement of Environmental Laws, "Covering Your Assets"

1998

University of Kentucky College of Law Ethics Symposium
- Group discussion leader

Georgetown College Leadership Program
- Women in Leadership Positions

1999

University of Kentucky College of Law
- Ethical Standards Required for Bar Admission

2000

Transylvania University, Interim Professor
- Legal Systems

University of Kentucky College of Law
- Ethical Standards Required for Bar Admission

2001

Transylvania University Student Leadershop
- Leadership Experience

Transylvania University, Governmental Institutions
- Federal Law Enforcement
- Federal/State Court Systems

13. <u>Health</u>: What is the present state of your health? List the date of your last physical examination.

I am in excellent health. My last physical examination was May 8, 2001.

14. <u>Judicial Office</u>: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None. However, since 1996, I have served the Kentucky Supreme Court as one of four members of the Kentucky Board of Bar Admissions Character and Fitness Committee, which is responsible for determining whether applicants possess the

requisite character and fitness to practice law within the Commonwealth of Kentucky. In conducting its review, the Committee conducts evidentiary hearings and reports findings of fact and conclusions of law to the Supreme Court. Additionally, the Committee advises the Kentucky Supreme Court on special testing accommodations and in promulgating rules relevant to bar admission.

15. **Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.**

I have not served as a judge.

16. **Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.**

Lexington-Fayette Urban County Government Ethics Commission, (1996-1998)
Appointed by Pam Miller, Mayor of the Lexington-Fayette Urban County Government

United States Attorney for the Eastern District of Kentucky, (1991 -1993)
Appointed by George H.W. Bush, President of the United States

Assistant United States Attorney for the Eastern District of Kentucky, (1987- 1991)
Appointed by Louis DeFalaise, United States Attorney for the Eastern District of Kentucky

17. Legal Career:

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

1. 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;

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

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

1980-1985	State Farm Fire & Casualty Richmond Road Lexington, KY 40502
1985-1987	State Farm Fire & Casualty 1135 Edgebrook Houston, TX
1987-1993	Office of the United States Attorney 110 West Vine St. Lexington, KY 40507
1993-1995	Robinson & McElwee 250 West Main Street, Suite 1800 Lexington, KY 40507 (Lexington office closed in 1995)
1995-1998	Breeding, Cunningham, Dance & Cress, LLP 300 West Vine Street Lexington, KY 40507 (Office closed in 1998)
1998-present	Dinsmore & Shohl, LLP 250 West Main Street, Suite 2020 Lexington, Kentucky 40507

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Upon graduation from law school in 1980, I joined State Farm Fire and Casualty as the second female field claims representative in the Commonwealth of Kentucky. In that capacity, I investigated claims for property and casualty insurance benefits, and determined the validity and value of the cases assigned to me. In the first party claim context, I investigated the legitimacy of claims for loss to real and\or personal property, determined whether the claims were covered by the applicable insurance contract, and evaluated the damages sustained from the loss. As a result of my investigations and evaluations, State Farm defeated a number of fraudulent claims, including a high profile arson claim, which ultimately resulted in the criminal conviction of a persistent felon. In regard to third party claims filed against insured parties, I evaluated the legal positions asserted by all parties, selected outside counsel and directed the development of litigation plans and strategies. As a result of my accomplishments, I was promoted to the position of Claims Superintendent in Houston, Texas, where I managed two offices and a litigation unit for two years.

In 1987, I entered the practice of law as an Assistant United States Attorney for the Eastern District of Kentucky and was named Chief of Financial Litigation. In that capacity, I directed affirmative civil litigation, which included civil penalty enforcement actions, debt collection matters, asset forfeiture cases and actions for injunctive relief. Although my affirmative civil litigation practice involved an extensive written motion practice and routine appearances in federal court, the opportunity for trial experience was limited. Therefore, in order to broaden my litigation experience, I requested and received additional criminal trial assignments involving a myriad of issues including murder-for-hire, controlled substance violations, and mail fraud matters. All of those cases were tried to conclusion before juries and I was solely responsible for the matters on appeal.

In 1990, I became Chief of General Civil Litigation and Deputy Chief of the Civil Section of the Office of the United States Attorney for the Eastern District of Kentucky. As such, I supervised five attorneys and defended the United States in major tort cases, land condemnation matters, Social Security appeals, government contract disputes and employment matters. As is appropriate under federal law, most of these cases were resolved by dispositive motions or bench trials. However, advisory juries were empaneled in some civil trials..

In 1991, I was appointed by President George H. W. Bush as the first woman United States Attorney for the Eastern District of Kentucky. In that capacity, I was responsible for more than 1500 civil and criminal cases, a staff of approximately 60 employees and a

budget of $3.5 million dollars. As U.S. Attorney, I directed both civil and criminal litigation on a daily basis, including a complex public corruption investigation identified as Operation BOPTROT, which resulted in the criminal convictions of more than 17 lobbyists and state legislators, including the Speaker of Kentucky's House of Representatives. I also directed successful public corruption investigations which led to convictions of a number of county sheriffs, the Fayette County Attorney and the husband of the former governor of Kentucky.

After leaving public service in 1993, I entered private practice, which provided me with the opportunity to develop a private client base and to appear in state courts and before administrative agencies. From 1993 until 1995, I served as Counsel in the Lexington, Kentucky office of Robinson & McElwee, a West Virginia law firm of approximately 40 lawyers. Although I represented companies and individuals in civil and criminal litigation, I also ventured into transactional work and assisted the firm's major clients in developing regulatory compliance plans.

In late 1995, Robinson & McElwee closed its Kentucky office and I joined the law firm of Breeding, Cunningham, Dance and Cress as one of five partners. As my private practice expanded, I found that my clients' personal, business and financial interests were often best served through alternative dispute resolution rather than prolonged litigation. Therefore, as my caseload increased, my trial work decreased. As a result of the firm's success, it was combined with Greenebaum Doll & McDonald, a large regional law firm in 1998. Since my spouse was the managing partner of Greenebaum's Lexington office, nepotism considerations led me to join another firm.

In 1998, I joined Dinsmore & Shohl as a partner. Dinsmore is a large regional law firm with more than 200 lawyers in Ohio, Kentucky and Tennessee. I am a member of the firm's litigation group representing individual and corporate plaintiffs and defendants in state and federal courts throughout Kentucky. Presently, my litigation practice is divided between the state and federal courts. However, the escalating costs, distractions and uncertainties of litigation have made trials too risky for many individuals and businesses. Therefore, as indicated above, while I continue to appear regularly in court, my time is increasingly devoted to avoiding or resolving disputes rather than litigating them to conclusion. As my practice matures, I am also engaging in more transactional work and routinely providing regulatory compliance advice to clients in highly competitive and/or highly regulated businesses such as oil refineries and agricultural cooperatives.

In summary, since 1980, I have spent seven years in private business, seven years in public service and seven years in private practice. In civil cases, I've represented individual, governmental and corporate plaintiffs and defendants. In criminal cases, I've prosecuted and defended both the poor and the powerful. I've tried cases alone and with others before federal and state agencies, juries, and judges. Ironically, as my career has progressed, the depth and variety of experience that enables me to litigate any matter in any forum has enhanced my ability to effectively resolve my clients' problems outside the courtroom.

c. 1. **What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?**

1980 - 1987
As a claims representative and claims superintendent for State Farm Fire & Casualty, I was responsible for the investigation and litigation of property and personal injury claims filed against the company and those it insured. Although I did not serve as counsel of record, I selected the lawyers to represent the company or those it insured and supervised the development of the case from discovery through trial and appeal. Often, I served as the company's representative at trial and, in some instances, I provided testimony regarding the development of particular investigations.

1987 - 1991
As an assistant United States Attorney, my practice was devoted exclusively to civil and criminal litigation on behalf of the United States in federal court. (On occasion, the United States proceeded as a party in state court. Generally, these cases were limited to civil monetary collection actions.) In addition to maintaining my own caseload, I served as a unit supervisor and directed the work of other attorneys.

1991 - 1993
As United States Attorney for the Eastern District of Kentucky, I directed federal criminal and civil trial and appellate work on a daily basis.

1993 - Present
Since entering private practice, my practice has expanded to include transactional work, business negotiations and general legal consulting. Although my practice is still concentrated in litigation, my clients' interests are generally best served through alternative dispute resolution rather than through lengthy and expensive trials and appeals.

c. 2. **What percentage of these appearances was in:**

(a) federal courts
1980 - 1987 = 25%
1987 - 1993 = 98%
1993 - Present = 70%

(b) **state courts of record**
1980 - 1987 = 75%
1987 - 1993 = 2%
1993 - Present = 25%

(c) **other courts**
1980 - 1987 = 0%
1987 - 1993 = 0%
1993 - Present = 5%

c. 3. **What percentage of your litigation was:**

(a) **civil;**
1980 - 1987 = 95%
1987 - 1993 = 50%
1993 - Present = 66 2/3%

(b) **criminal.**
1980 - 1987 = 5%
1987 - 1993 = 50%
1993 - Present = 33 1/3%

c. 4. **State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.**

To the best of my knowledge, I have tried more than 20 significant cases to a verdict or judgment as either sole or chief counsel. I have tried more than a dozen cases as associate counsel. I have tried numerous cases that were settled during trial, immediately after trial, or later on appeal. (This does not include cases that were settled immediately before trial, after all preparations were made.) Additionally, during my seven years of insurance claims work, I participated in countless trials as an adviser, manager and observer.

c. 5. **What percentage of these trials was:**

(a) **jury;**
50%
(b) **non-jury**
50%

8. **Litigation: Describe the ten most significant litigated matters which you personally handled. 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.

Industrial Systems Associates, Inc. v. Hayes-Lemmerz International - Kentucky, Inc., and Hayes Lemmerz International Inc., United States District Court, Eastern District of Kentucky, London Division, CA 99-456

Jennifer B. Coffman, Judge
U.S. District Court
300 South Main Street, Room 207
London, KY 40741
(Phone: 606-877-1012)

J.B. Johnson, Jr.
United States Magistrate Judge
300 South Main Street, Room 111
London, KY 40741
(Phone: 606-878-6739)

Co-Counsel for Plaintiff:
Hon. Karen K. Caldwell
Dinsmore & Shohl, LLP
250 West Main Street, Suite 2020
Lexington, Kentucky 40507
859-425-1000

Counsel for Defendant:
Hon. D. Craig Dance
Greenebaum Doll & McDonald, PLLC
333 West Vine Street, Suite 1400
Lexington, Kentucky 40507
859-231-8500

Co-Counsel for Plaintiff:
Hon. Maria Wyckoff Boyce
Hon. Sesha Kalapatapu
Baker Botts, LLP
One Shell Plaza
910 Louisiana Street
Houston, Texas 77002
713-229-1234

I am lead counsel for the plaintiff in this complex litigation, which involves allegations of breach of contract, fraud, breach of fiduciary duty and claims for damages in excess of $5,000,000.

Stuart L. Lowenthal vs. American Rehabilitation Group, P.S.C.; Heartland Rehabilitation Services, Inc.; Rehabilitation Administration Corporation; Ernestine C. Brashear; D. Glenn Maguet; Robert E. Mccray; J. Michael Miller; James W. Spence, Jr. and Health Care and Retirement Corporation of America, Fayette Circuit Court, Second Division, Civil Action No. 99-CI-656

Gary D. Payne, Judge
Fayette Circuit Court
215 West Main Street
Lexington, KY 40507
(Phone: 859-246-2214)

Steven L. Barker, Mediator
Sturgill, Turner, Barker & Moloney
155 East Main Street
Lexington, KY 40507
(Phone: 859-255-8581)

Counsel for Plaintiff:
Richard D. Griffith
D. Chad McCoy
Stites & Harbison
250 West Main Street, Suite 2300
Lexington, Kentucky 40507
859-226-2300

Counsel for All Individually Named Defendants:
Albert F. Grasch, Jr.
Theodore E. Cowen
Grasch, Walters & Cowen
302 West High Street
Lexington, Kentucky 40507-1831
859-253-9506

Counsel for Defendants, American Rehabilitation Group, P.S.C.; Heartland Rehabilitation Services, Inc.; and, Rehabilitation Administration Corporation:
Karen K. Caldwell
Mindy G. Barfield
Dinsmore & Shohl, LLP
250 West Main Street, Suite 2020
Lexington, Kentucky 40507
859-425-1000

In this employment discrimination and breach of contract case, Plaintiff sought more than 2.5 million dollars in damages from his former partners and former employer based on the following claims: age discrimination in violation of Kentucky civil rights laws, namely KRS 344.040; conspiracy to commit age discrimination; violation of an employment agreement; civil conspiracy; tortious interference with contract; breach of fiduciary duty and aiding and abetting a breach of fiduciary duty; and violation of wage and hour laws by refusing to pay a bonus allegedly earned in 1998, the year of termination.

Defendants asserted that the termination was appropriate as the Plaintiff had violated material terms of several contractual agreements between the parties, including the operation of a personal real estate business from the physical therapy clinic. After completion of a substantial amount of discovery and two days of mediation, the parties arrived at a confidential settlement agreement.

United States of America vs. Laurel Ridge Landfill, LLC, United States District Court, Eastern District of Kentucky, London Division, CR 99-53

Jennifer B. Coffman, Judge
U.S. District Court
300 South Main Street, Room 207
London, KY 40741
(Phone: 606-877-1012)

J.B. Johnson, Jr.
United States Magistrate Judge
300 South Main Street, Room 111
London, KY 40741
(Phone: 606-878-6739)

Co-Counsel for the United States:
Hon. Dan Dooher
U.S. Department of Justice
P.O. Box 23985
Washington, DC 20026-3985
202-305-0321

Co-Counsel for the United States:
Hon. Fred Stine
Office of the United States Attorney
513 Madison Avenue
P.O. Box 72
Covington, Kentucky 41011-0072
859-655-3200

Counsel for the Defendant:
Hon. Karen K. Caldwell
Dinsmore & Shohl, LLP
250 West Main Street, Suite 2020
Lexington, Kentucky 40507
859-425-1000

Counsel for the Special Environmental Project and the Commonwealth of Kentucky:
Hon. C. Michael Haines
Deputy General Counsel
Office of Legal Services
Capital Plaza Tower
Frankfort, Kentucky 40601
502-564-6131

As a result of an investigation conducted by the Federal Bureau of Investigation and Kentucky Department for Environmental Protection, federal prosecutors expressed their intention to charge my client, Laurel Ridge Landfill, LLC ("LRL"), a wholly-owned subsidiary of Waste Management, Inc., with multiple felony violations of the Clean Water Act, 33 U.S.C. 1319, which were alleged to have occurred over a period of one year. The implications of the investigation were enormous for my client, *which had purchased the landfill shortly after the violations had occurred.* If convicted, managers could have faced prison sentences and the landfill could have been subject to felony criminal fines of up to $50,000 per day of violation. In addition, the landfill and its parent company, Waste Management, could have faced both state and federal debarment along with sanctions arising pursuant to environmental "bad actor" statutes, which have been adopted in at least seventeen states.

As a result of my client's cooperation, the responsible individuals, who were employees of previous landfill owners, were apprehended and convicted. Accordingly, prosecutors accepted a unique proposal for resolution of my client's successor liability. In exchange for a misdemeanor plea, which would minimize civil debarment and state "bad actor"

implications for my client and its parent company, LRL agreed to pay applicable statutory penalties, remediate the discharge site and spend one million dollars on environmental improvement in Kentucky at a site or sites identified by prosecutors. This unique resolution not only addressed the seriousness of the violations through the imposition of criminal penalties, but also restored and improved the environment in Kentucky.

Kentucky Employers Mutual Insurance Authority vs. Farmers Exterior Finish Systems, Inc. and Barry Farmer vs. Kentucky Employers Mutual Insurance Authority and Al Torstrick Insurance Agency, Inc., Commonwealth of Kentucky, 23rd Judicial Circuit, Estill Circuit Court, CA 98-CI-00066

William Trude, Jr., Judge
204 Courthouse
130 Main Street
Irvine, KY 40336
(Phone: 606-723-3320)

Linda M. Hopgood, Mediator
771 Corporate Drive, Suite 610
Lexington, KY 40503
(Phone: 859-223-3422)

Counsel for Plaintiff:
Hon. Brad Harris
145 West Main Street
Suite 300, Fayette Building
Lexington, Kentucky 40507
859-226-2726

Counsel for Defendant:
Hon. Karen K. Caldwell
Hon. Jerry M. Lovitt
Dinsmore & Shohl, LLP
250 West Main Street, Suite 2020
Lexington, Kentucky 40507
859-425-1000

Counsel for Defendant,
Al Torstrick:
Hon. Christopher P. Bastien
Bastien & Martin, L.C.
P.O. Box 2151
Charleston, WV 25328
304-345-1772

Kentucky Employers Mutual Insurance Authority ("KEMI") was created by the Kentucky General Assembly as the market of last resort for workers compensation insurance in the Commonwealth. In or about 1997, KEMI canceled Farmers Exterior Finish Systems' ("Farmers") workers compensation insurance policy for non-payment of premium. After cancellation, Farmers renewed its policy. However, after payment of premium, but before the policy was legally in force, a Farmers' employee was injured on the job. Farmers submitted an insurance claim, which KEMI denied based on the status of Farmers' policy. However, because KEMI also insured Farmers' general contractor, it paid for the worker's injuries pursuant to the general contractor's policy. In 1998, KEMI filed a statutory subrogation action against Farmers. Farmers countersued alleging bad faith in the wrongful denial of its original claim and seeking both compensatory and punitive damages. Farmers also asserted similar claims against his insurance agent, Al Torstrick.

The case had been pending for more than one year and was scheduled for trial when I was hired to replace KEMI's original counsel. The implications of this litigation, for KEMI, were significant. First, the action was brought in a forum which had been typically hostile to

insurance companies. Second, the law of "bad faith" as it relates to workers compensation insurance was relatively unsettled in Kentucky. Moreover, this was KEMI's first exposure to a "bad faith" claim.

After an unsuccessful attempt to resolve the case through mediation, we filed a motion for summary judgment asserting that the issue of coverage had been previously litigated in an administrative proceeding to which Farmers had been a party; therefore, Farmers was collaterally estopped from relitigating the insurance coverage issue in the Estill Circuit Court. Although, we were confident of our position, the pendency of the motion enabled us to resolve all issues with respect to all parties in a favorable settlement agreement. Ironically, while the settlement releases were in circulation, the court granted our motion dismissing the bad faith claim as to my client, KEMI.

Dale Lynch, Dennis Lynch and D.L. Lynch vs. United Waste Systems of Corbin, Inc., f/d/b/a United Waste Systems of Kentucky, Inc., f/d/b/a Jacobs Environmental of Kentucky, Inc., United Waste Systems, Inc. and Bradley Jacobs, Commonwealth of Kentucky, Whitley Circuit Court, Civil Action 96-CI-00355

Jerry D. Winchester, Judge
1019 Cumberland Falls Highway
Williamsburg, KY 40769
(Phone: 606-528-3013)

Ted W. Speigel, Mediator
7982 New LaGrange Road
Louisville, KY 40222
(Phone: 502-327-6787)

Counsel for Plaintiffs:
Hon. Gillard B. Johnson, III
Bowling & Johnson
Suite 66, 3475 Lyon Drive
Lexington, Kentucky 40513
859-255-7080

Counsel for Defendants:
Hon. Karen K. Caldwell
Breeding, Cunningham, Dance & Cress
300 West Vine Street, Suite 500
Lexington, Kentucky 40507

Counsel for Defendants:
Hon. Patrick Lamb
(Formerly of Katten, Muchin & Zavis)
Butler, Rubin, Sattarelli & Boyd
Three First National Plaza
Suite 18000
Chicago, Illinois 60602
312-444-9660

After this case had been in litigation for almost two years, I replaced local counsel for USA Waste, a successor in interest to United Waste Systems. My role was to assist Patrick Lamb and the Chicago law firm of Katten, Muchin & Zavis in the trial and/or disposition of the matter. Among other things, the plaintiffs alleged fraud in the inducement, bad faith and breach of contract by the defendants in connection with the sale of a waste disposal facility in Corbin, Kentucky. In essence, plaintiffs claimed that defendant had fraudulently structured the royalty portion of the consideration in order to deprive them of approximately $5,000,000 per year. In their counterclaim, my clients asserted, among other things, that plaintiffs were in breach of contract in that the landfill operation was not in compliance with environmental laws and regulations as warranted by sellers in the purchase contract.

After completion of discovery, we determined that a number of the issues in the matter were ripe for disposition by summary judgment. A motion and supporting memorandum were submitted to the court. At a hearing, the judge denied our motion based solely on the length of our memorandum. Although confident of our position, we understood that our

best chances for success would be before the Kentucky Court of Appeals after trial of the matter. We repeatedly advised plaintiffs' counsel of our resolve to appeal any adverse decision that might be rendered at the trial court level. Consequently, shortly before trial, we reached a favorable settlement through mediation.

The Kroger Company d/b/a Winchester Farms Dairy and Milk Marketing, Inc. v. David K. McCarty, et al., United States District Court, Eastern District of Kentucky, Lexington Division, Civil Action 97- 26

Karl S. Forester, Judge
U.S. District Court
Federal Building
P.O. Box 2165
Lexington, KY 40595
(Phone: 859-223-2625)

Counsel for Plaintiff,
The Kroger Company:
Hon. John A. West
Hon. Marcus P. McGraw
Greenebaum, Doll & McDonald, PLLC
1400 Vine Center Tower
Lexington, Kentucky 40507
859-231-8500

Counsel for Plaintiff,
Dairy Farmers of America
(formerly Milk Marketing, Inc.):
Hon. Karen K. Caldwell
Breeding, Cunningham, Dance & Cress
300 West Vine Street, Suite 500
Lexington, Kentucky 40507
859-253-6400

Counsel for Defendant, Bobby Cline:
Hon. Derek G. Gordon
Anggelis, Gordon & Simpson
139 Market Street
Lexington, Kentucky 40507
859-255-7761

Counsel for Defendants, James B. Turner
and Benny Turner:
Hon. Grover A. Carrington
White, Peck, Carrington & McDonald
26 Broadway
Mt. Sterling, Kentucky 40353
859-498-2872

Co-Counsel for Defendant,
Deweese Copher:
Hon. Michael R. Campbell
154 Flemingsburg Road
Morehead, Kentucky 40351
606-784-8926

Co-Counsel for Defendant,
Deweese Copher:
Hon. William E. Johnson
Hon. Richard M. Guarnieri
Johnson, Judy, True & Guarnieri, LLP
326 West Main Street
Frankfort, Kentucky 40601
502-875-6000

Counsel for Defendant,
David R. McCarty:
Hon. William E. Lane
Williamson, Lane & Lane
50 Broadway
Mt. Sterling, Kentucky 40353
859-498-2430

Counsel for Defendants,
Albert D. Fryman and Terry Fryman:
Hon. John Swinford
Swinford & Sims, PSC
40 East Pike Street
Cynthiana, Kentucky 41031
859-234-5820

I represented one of the plaintiffs, Milk Marketing, Inc. ("MMI"), which during the litigation merged with Dairy Farmers of America, Inc. ("DFA"). Plaintiffs filed the action to recover funds from a group of dairy farmers, a milk hauler and a Kroger employee, all of whom had conspired to recover payment for milk deliveries based upon falsified weight tickets. The damages in the case exceeded $2.5 million dollars. After the court granted our motions for prejudgment attachment and injunctive relief against all defendants, plaintiffs obtained all relief sought in the complaint through consent judgments. In addition, the plaintiffs cooperated with the Federal Bureau of Investigation and the Office of the United States Attorney in obtaining criminal convictions against each defendant.

Corporex v. United States of America, U.S. District Court for the Eastern District of Kentucky, Covington Division, CA 90-221

William O. Bertelsman, Judge
505 U.S. Courthouse
35 West Fifth Street
P.O. Box 1012
Covington, KY 41012
(Phone: 859-392-7900)

Co-Counsel for Plaintiff:
Hon. Phil Taliaferro
Taliaferro & Mehling
1005 Madison Avenue
P.O. Box 468
Covington, KY 41012-0468
859-291-9900

Co-Counsel for Plaintiff:
Hon. David Dempsey
Akin, Gump, Strauss, Hauer & Feld
1333 New Hampshire Ave., NW
Suite 400
Washington, DC 20036
202-887-4000

Co-Counsel for United States:
Hon. Lane Tucker
U.S. Department of Justice
Civil Division
1100 L. Street, NW
Washington, DC 20530
202-307-0318

Co-Counsel for Third Party Defendant:
Hon. Fred Williams, (retired)
Farris, Warfield & Kanaday
Third National Financial Center
424 Church Street, Suite 1900
Nashville, Tennessee 37219
615-244-5200

Co-Counsel for Third Party Defendant:
Hon. Tom Hill
901 Main Street, Suite 3100
Dallas, Texas 75202
214-651-5541

Co-Counsel for United States:
Hon. Karen K. Caldwell
U.S. Attorney's Office
Suite 400
Lexington, Kentucky 40507

I represented General Services Administration ("GSA"), an agency of the United States government, in this matter in which plaintiff, a disappointed bidder, sought to set aside a $30,000,000 contract for the construction and management of the IRS Service Center in Covington, Kentucky and to recover substantial damages against the government and the successful bidder. I served as lead counsel and was assisted at trial by Shelly Lane Tucker, counsel for GSA. During the trial, the claims against the United States were resolved through reinstatement of the bid process and payment of monetary damages in the amount of $10,000.

Fryman and Kinder v. United States of America, U.S. District Court, Eastern District of Kentucky Civil Action No. 90-5881

Karl S. Forester, Judge
U.S. District Court
P.O. Box 2165
Lexington, KY 40595
(Phone: 859-233-2625)

James M. Cook
United States Magistrate Judge
(Retired)

Counsel for Plaintiff:
Hon. Charles Rolph
105 South Main Cross Street
Flemingsburg, KY 41041
859-845-6161

Counsel for Defendant:
Hon. Karen K. Caldwell
Assistant U.S. Attorney
110 West Vine Street, Suite 400
Lexington, Kentucky 40507

Counsel for Third Party Defendant:
Hon. Thomas Glover
(formerly of Hays, Moss & Lynn)
Webb, Hoskins, Glover & Thompson
250 West Main Street, Suite 3010
Lexington, Kentucky 40507
859-253-1000

Plaintiff claimed $90,000 in damages as a result of alleged fraud and misrepresentation in the sale of a federal crop insurance policy. My client, Federal Crop Insurance Corporation ("FCIC") obtained summary judgment on the fraud allegations and prevailed at trial on the allegations of misrepresentation in the sale and interpretation of the insurance contract.

I was responsible for the case on appeal. However, ultimately, the appeal was withdrawn with respect to my client, FCIC.

United States v. Susan Mary Collins, U.S. District Court, Eastern District of Kentucky, Criminal Action No. 89-3

Karl S. Forester, Judge
U.S. District Court
Federal Building
P.O. Box 2165
Lexington, KY 40595
(Phone: 859-233-2625)

Counsel for Plaintiff:
Hon. Robert F. Trevey
Hon. Karen K. Caldwell
U.S. Attorney's Office
110 West Vine Street, Suite 400
Lexington, Kentucky 40507

Counsel for Defendant:
Hon. Donald D. Waggener
400 Security Trust Building
Lexington, Kentucky 40507
859-255-3603

In my first criminal case, a jury convicted Susan Mary Collins of threatening to kill President Ronald Reagan and newly- elected President George Bush. Although the United States Secret Service had been monitoring Ms. Collin's activity for several months, she was arrested after having attempted to purchase a handgun and traveling to an event attended by President Reagan. There was no appeal.

United States v. Mary Alice Wolf, United States District Court, Eastern District of Kentucky, CR 86-35

Henry R. Wilhoit, Jr., Judge
U.S. District Court
320 U.S. Courthouse
1405 Greenup Avenue
Ashland, KY 41101
(Phone: 606-329-2592)

Co-Counsel for Prosecution:
Hon. Robert F. Trevey
Hon. Karen K. Caldwell
U.S. Attorney's Office
110 West Vine Street, Suite 400
Lexington, Kentucky 40507

Counsel for Defense:
Hon. Steve Milner
Landrum & Shouse
106 West Vine Street
P.O. Box 951
Lexington, Kentucky 40588
859-255-2424

In or about 1988, Mary Alice Wolf had been convicted of hiring a band of professional killers to murder the wife of a former boyfriend. The original conviction, which was based on defendant's confession, was reversed by the United States Supreme Court and remanded for a new trial without the confession. At the retrial in 1990, we developed the case through cooperating witnesses and obtained convictions on all counts. There was no appeal.

19. 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 the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

A. OPERATION BOPTROT
United States District Court, Eastern District of Kentucky, Frankfort Division

Hon. Joseph M. Hood, Judge
U.S. District Court
313 John Watts Federal Bldg
330 West Broadway
Frankfort, KY 4601
502-875-4777
or
201B Federal Building
102 Main Street
Pikeville, KY 41501
606-437-7338

Joseph M. Whittle
Pedley, Zielke, Gordinier & Pence, PLLC
Suite 1150
455 S. 4th Ave.
Louisville, Ky 40202
502-589-4600

Stephen B. Pence
Pedley, Zielke, Gordinier & Pence, PLLC
Suite 1150
455 S. 4th Ave.
Louisville, Ky 40202
502-589-4600

Edwin J. Walbourn
U.S. Attorney's Office
513 Madison Avenue
P. O. Box 72
Covington, KY 41011 - 0072
859-655-3200

Operation BOPTROT was a successful undercover sting operation, which resulted in the conviction of more than 17 lobbyists and state government officials, including the Speaker of Kentucky's House of Representatives.

The investigation was initiated based on an informant's tip regarding illegal activity at high levels of Kentucky's state government. At the outset of the investigation, jurisdictional bounds could not be determined; therefore, the Special Agent in Charge of Kentucky's FBI, the U.S. Attorney for the Western District of Kentucky and I assembled a team of investigators and attorneys to manage the state-wide investigation and to prepare for the anticipated litigation. We led routine strategy sessions wherein investigative tools and techniques were tested and debated by the lawyers in anticipation of litigation and/or appeal. As a result of our cautious and deliberate management, the investigation was expanded through the use of cooperating defendants, who had entered into confidential plea agreements in hopes of obtaining favorable consideration by the court at sentencing. Moreover, we

successfully utilized a number of technical surveillance techniques including consensual monitoring, telephone taps and video recordings.

As a result of our intensive investigation and advance legal work, plea agreements were obtained in all but five cases. In all of the cases that proceeded to trial, convictions were obtained and sustained on appeal.

B. United States of America vs. Arthur Norrie Wake, United States District Court, Eastern District of Kentucky, Lexington Division, CR 93-4

Hon. Joseph M. Hood, Judge
U.S. District Court
313 John Watts Federal Bldg
330 W. Braodway
Frankfort, KY 4601
502-875-4777
or
201B Federal Building
102 Main Street
Pikeville, KY 41501
606-437-7338

Assistant United States Attorneys:
James Zerheusen
Ken Taylor
United States Attorney's Office
110 W. Vine
Lexington, KY 40507
606-233-2661

Counsel for Defendant:
Hon. R. Burl McCoy
McCoy & West
309 North Broadway
P.O. Box 1660
Lexington, KY 40592-1660
859-254-6363

As United States Attorney for the Eastern District of Kentucky, I developed a reputation for fighting corruption in government. As a result, while serving as United States Attorney, I received an anonymous telephone call from a local lawyer, who advised me that she had participated in criminal activity along with a respected and popular local prosecutor. The informant indicated that she could no longer live with herself and was willing to come forward only because of my independence in dealing with powerful public figures. Although I was somewhat skeptical of the informant's motives, I persuaded her to identify herself and to consent to an interview with an FBI agent, who independently corroborated her account of a complex scheme in which Mr. Wake required lawyers on his staff to kick back portions of their compensation in order to finance his political campaigns. I testified at trial in order to refute Mr. Wake's allegations of a politically-motivated prosecution. Mr. Wake was convicted on all counts charged in the indictment and his conviction was affirmed on appeal.

C. Character and Fitness Committee Member

Since 1996, I have served the Kentucky Supreme Court as one of four members of the Kentucky Office of Bar Admissions Character and Fitness Committee, which is responsible for determining whether applicants possess the requisite character and fitness to practice law within the Commonwealth of Kentucky. Additionally, the committee advises the Kentucky Supreme Court on special testing accommodations and in promulgating rules relevant to bar admission. (Ron Hayes, Executive Director and Legal Counsel, Kentucky Office of Bar Admissions, 1510 Newtown Pike, Suite X, Lexington, Kentucky 40511, Telephone: 859-246-2381)

D. Joint Local Rules Commission for the Federal Courts in the Eastern and Western Districts of Kentucky

Since 1999, I have served on the Commission, which advises the federal courts in Kentucky regarding local rule-making and administrative matters.

E. Advisor to corporate clients regarding environmental, safety and health issues

I routinely assist small and large companies, including Fortune 500 companies, in developing corporate plans for environmental, safety and health compliance. Additionally, I have assisted many of those same clients in developing environmental auditing and reporting programs. The identity of my clients is protected by the attorney-client privilege.

F. Criminal defense

In recent years, more of my practice has become devoted to advising clients who may have received grand jury subpoenas and\or those who are subjects or targets of criminal investigations. As such, I am experienced in obtaining grants of immunity for witnesses who may have Fifth Amendment concerns and in persuading federal prosecutors to refrain from seeking indictments against my clients. Presently, I represent two major companies which have been identified as subjects of complex criminal investigations. One involves a federal multi-state, multi-defendant investigation of alleged fraudulent insurance practices and the other involves a federal antitrust investigation of a highly regulated industry. The identity of my clients is protected by the attorney-client privilege.

G. Transactional practice

I routinely assist clients in forming small and large businesses, developing joint ventures and purchasing or selling corporate stocks or assets.

H. Employment practice

In addition to defending employers in employment discrimination matters, I have also assisted them in developing management plans and practices designed to avoid litigation while protecting both the employer and its employees. Recently, I defended a health care company in a significant employment case, Stuart L. Lowenthal vs. American Rehabilitation Group, P.S.C.; Heartland Rehabilitation Services, Inc.; Rehabilitation Administration Corporation; Ernestine C. Brashear; D. Glenn Maguet; Robert E. McCray; J. Michael Miller; James W. Spence, Jr. and Health Care and Retirement Corporation of America, Fayette Circuit Court, 2nd Division, CA 99-CI-656.

I. Lexington-Fayette County Government Ethics Commission

Initially, I served on the Commission which developed an ethics code applicable to our local government. Subsequently, I served for two years on the Commission which enforced the ordinance.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List 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. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

   I have no future expectation of compensation for past business interests, uncompleted contracts or future benefits from any source.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

   I will identify and resolve all potential conflicts of interest in accordance with federal statutory law, the canons of judicial ethics and common sense. The most obvious conflicts will arise when matters before me involve clients or former clients, members of my law firm, friends or family members. In this area, I will utilize caution so as to avoid even the appearance of an impropriety.

3. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.**

   I have no plans, commitments or agreements to pursue outside employment during my service with the court.

4. **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, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)**

   See AO-10 report attached.

5. **Please complete the attached financial net worth statement in detail (Add schedules as called for).**

See attached Net Worth Statement.

6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

I. Regional Campaign Chair, Dole for President, 1996.
Introduced speakers at campaign events and provided financial support for the campaign

II. Campaign Supporter, Ernest Fletcher for U.S. House of Representatives, 1998 and 2000.
Hosted Campaign Fundraiser in my home, (Summer 2000)

III. Campaign Supporter, Mitch McConnell for U.S. Senate, 1996- present.
Co-Hosted Campaign Fundraising Event

IV. Campaign Supporter, Jim Bunning for U.S. Senate, 1999.
Hosted Campaign Fundraiser in my home, (Summer, 1998)

V. Campaign Supporter and State Co-Chair, Lawyers for George W. Bush, 2000.
Co-Hosted Fundraiser and forwarded campaign materials to Bush supporters in the legal community.

AO-10 (w)
Rev. 1/2000

FINANCIAL DISCLOSURE REPORT
Nomination Report

Report required by the Ethics in Government Act of 1978, as amended (5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting *(Last name, first, middle initial)* Caldwell, Karen K.	**2. Court or Organization** District Court KY - Eastern District	**3. Date of Report** 08/06/2001
4. Title *(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)* U.S. District Judge Nominee	**5. Report Type (check type)** X Nomination, Date 08/02/2001 __ Initial __ Annual __ Final	**6. Reporting Period** 01/01/2000 to 08/06/2001
7. Chambers or Office Address 250 West Main Street Suite 2020 Lexington, KY 40507	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.** **Reviewing Officer** ____ **Date** ____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.

I. POSITIONS *(Reporting individual only; see pp. 9-13 of Instructions.)*

☐ **NONE** (No reportable positions.)

	POSITION	NAME OF ORGANIZATION / ENTITY
1	Partner	Dinsmore & Shohl, LLP
2	Employee	Transylvania University
3	Officer / Director	Prevent Child Abuse Kentucky

II. AGREEMENTS *(Reporting individual only; see pp.14-16 of Instructions.)*

☒ **NONE** (No reportable agreements.)

	DATE	PARTIES AND TERMS
1		
2		
3		

III. NON-INVESTMENT INCOME *(Reporting individual and spouse; see pp. 17-24 of Instructions.)*

☐ **NONE** (No reportable non-investment income.)

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1	1999	Dinsmore & Shohl, LLP (legal services)	145,605
2	1999	Self-employed (legal services)	
3	2000	Dinsmore & Shohl, LLP (legal services)	151,160
4	2000	AIK Comp (Director Fee)	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Caldwell, Karen K.	08/06/2001

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)

☐ NONE (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1	Exempt	
2		
3		
4		
5		
6		
7		

V. GIFTS

(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)

☐ NONE (No such reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1	Exempt		
2			
3			

VI. LIABILITIES

(Includes those of spouse and dependent children. See pp 33-35 of Instructions.)

☐ NONE (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE*
1	USAA	Line of Credit - Credit Card	K
2	PNC Bank	Line of Credit	K
3	First USA	Line of Credit - Credit Card	K
4	American Express	Line of Credit - Credit Card	K
5	Fifth Third Bank, Trustee for Lloyd Cress Retirement Account	Promissory Notes	K
6	First Union Bank	Line of Credit - Credit Card	J

* VAL CODES: J=$15,000 or less K=$15,001-$50,000 L=$50,001 to $100,000 M=$100,001-$250,000 N=$250,001-$500,000 O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Caldwell, Karen K.

Date of Report: 08/06/2001

VII. Page 1 INVESTMENTS and TRUSTS – income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
[ ] NONE (No reportable income, assets, or transactions.)									
1 IPA #1	C	Dividend			Exempt				
2 -Merrill Lynch Balanced Capital Fund Class D					Exempt				
3 -Merrill Lynch Global D Allocation					Exempt				
4 -Merrill Lynch Global Tech Fund Class B					Exempt				
5 -Merrill Lynch Dragon Fund Class B					Exempt				
6 -Merrill Lynch Pacific Fund Class B					Exempt				
7 -Merrill Lynch Latin America Fund, Class B					Exempt				
8 Plum Pick Investment Club	A	Dividend	J	U	Exempt				
9 -Applied Materials, Inc.					Exempt				
10 -Ciena Corporation					Exempt				
11 -Cisco Systems, Inc.					Exempt				
12 -Citigroup, Inc.					Exempt				
13 -EMC Corp Mass					Exempt				
14 -Genzyme Corp.					Exempt				
15 -Glaxosmithkline, PLC					Exempt				
16 -Intel					Exempt				
17 -JDS Uniphase Corp.					Exempt				

1 Inc/Gain Codes: A=$1,000 or less B=$1,001-$2,500 C=$2,501-$5,000 D=$5,001-$15,000 E=$15,001-$50,000
(Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

2 Val Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000 N=$250,001-$500,000
(Col. C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market
(Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Caldwell, Karen K.

Date of Report: 08/06/2001

VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions *(includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions.)									
18 -Corporation CL A					Exempt				
19 -Microsoft Corp.					Exempt				
20 -Novellus Systems, Inc.					Exempt				
21 -PMC Sierra, Inc.					Exempt				
22 -Sycamore Networks, Inc.					Exempt				
23 -Tumbleweed					Exempt				
24 -MCDTA Corp.					Exempt				
25 Feds Investment Club	A	Dividend	J	U	Exempt				
26 -Caterpillar					Exempt				
27 -Dupont					Exempt				
28 -Eastman Kodak					Exempt				
29 -International Paper					Exempt				
30 -Phillip Morris					Exempt				
31 -Southwest Bell					Exempt				
32 Keogh Plan Trust Account	F	Dividend	P1	U	Exempt				
33 -Debt Strategies Fund					Exempt				
34 -Merrill Lynch Focus Value Fund					Exempt				

1 Inc/Gain Codes: A=$1,000 or less B=$1,001-$2,500 C=$2,501-$5,000 D=$5,001-$15,000 E=$15,001-$50,000
(Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

2 Val Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000 N=$250,001-$500,000
(Col. C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market
(Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Caldwell, Karen K.	08/06/2001

VII. Page 3 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions.)									
35 -AEP					Exempt				
36 -Arch Coal					Exempt				
37 -Biotechnology General					Exempt				
38 -Intel					Exempt				
39 -Lexmark					Exempt				
40 -Mills Corp.					Exempt				
41 -Procter & Gamble					Exempt				
42 -Sovereign Bancorp					Exempt				
43 -Corporate Income Fund					Exempt				
44 -Pimco Advisors Opportunity Fund					Exempt				
45 -USAA International Fund					Exempt				
46 -USAA Income Fund					Exempt				
47 -USAA Income Stock Fund					Exempt				
48 -Fifth Third Money Market Fund					Exempt				
49 -Ashland, Inc.					Exempt				
50 -Lloyd Cress Notes					Exempt				
51 -LG&E					Exempt				

1 Inc/Gain Codes: (Col. B1, D4)	A=$1,000 or less	B=$1,001-$2,500	C=$2,501-$5,000	D=$5,001-$15,000	E=$15,001-$50,000
	F=$50,001-$100,000	G=$100,001-$1,000,000	H1=$1,000,001-$5,000,000	H2=$5,000,001 or more	
2 Val Codes: (Col. C1, D3)	J=$15,000 or less	K=$15,001-$50,000	L=$50,001-$100,000	M=$100,001-$250,000	N=$250,001-$500,000
	O=$500,001-$1,000,000	P1=$1,000,001-$5,000,000	P2=$5,000,001-$25,000,000	P3=$25,000,001-$50,000,000	P4=$50,000,001 or more
3 Val Mth Codes: (Col. C2)	Q=Appraisal	R=Cost (real estate only)	S=Assessment	T=Cash/Market	
	U=Book Value	V=Other	W=Estimated		

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Caldwell, Karen K.

Date of Report: 08/06/2001

VII. Page 4 INVESTMENTS and TRUSTS – income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions.)									
52 -Merrill Lynch Phoenix Fund					Exempt				
53 -Central & Southwest					Exempt				
54 -New Canadian National Railway					Exempt				
55 PNC Bank Account	A	Interest		T	Exempt				
56 Park Federal Credit Union	A	Interest		T	Exempt				
57									
58									
59									
60									
61									
62									
63									
64									
65									
66									
67									
68									

1 Inc/Gain Codes: A=$1,000 or less B=$1,001-$2,500 C=$2,501-$5,000 D=$5,001-$15,000 E=$15,001-$50,000
(Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

2 Val Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000 N=$250,001-$500,000
(Col. C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market
(Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Caldwell, Karen K.	08/06/2001

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Caldwell, Karen K.	08/06/2001

SECTION HEADING. (Indicate part of report.)

Information continued from Parts I through VI, inclusive.

PART 1. POSITIONS (cont'd.)

Line	Position	Name of Organization/Entity
4	Director	AIK Comp
5	Officer	Transylvania University Alumni Association
6	Director	Transylvania University
7	Director	ARC of the Bluegrass
8	Director	Prevent Child Abuse Kentucky
9	Member	Character and Fitness Committee (Kentucky Bar Association)

PART 3. NON-INVESTMENT INCOME (cont'd.)

Line	Date	Source and Type	Gross Income
5	2000	Self-employed (legal services)	
6	2000	Bankers Trust (Ashland Oil Pension)	
7	2001	Dinsmore & Shohl, LLP (legal services)	74,000
8	2001	AIK Comp (Director Fee)	
9	2001	Greenebaum, Doll & McDonald (legal services)	
10	2001	Bankers Trust (Ashland Oil Pension)	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Caldwell, Karen K.	08/06/2001

IX. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature Karen Caldwell Date 8/6/01

Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
One Columbus Circle, N.E.
Suite 2-301
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES	
Cash on hand and in banks	4,757	Notes payable to banks-secured	
U.S. Government securities-add schedule	----	Notes payable to banks-unsecured	124,600
Listed securities-add schedule	----	Notes payable to relatives	----
Unlisted securities--add schedule	----	Notes payable to others	----
Accounts and notes receivable:	----	Accounts and bills due	8,600
Due from relatives and friends	10,000	Unpaid income tax	----
Due from others	----	Other unpaid income and interest	----
Doubtful	----	Real estate mortgages payable-add schedule	** 435,000
Real estate owned-add schedule	* 540,000	Chattel mortgages and other liens payable	3,050
Real estate mortgages receivable	----	Other debts-itemize:	
Autos and other personal property	22,000	American Express	26,000
Cash value-life insurance	----	----	----
Other assets itemize:		----	----
Keogh Account	1,110,000	----	----
Investment Clubs	12,000	----	----
USAA Account	5,000	Total liabilities	597,250
Personal Property	205,000	Net Worth	1,311,507
Total Assets	1,908,757	Total liabilities and net worth	1,908,757
CONTINGENT LIABILITIES	----	GENERAL INFORMATION	
As endorser, comaker or guarantor	31,000	Are any assets pledged? (Add schedule)	No
On leases or contracts	----	Are you defendant in any suits or legal actions?	No
Legal Claims	----	Have you ever taken bankruptcy?	No
Provision for Federal Income Tax	----		
Other special debt	----		

* Personal residence, Lexington, Kentucky

** Community Trust, Lexington, Kentucky $320,000
PNC Bank, Lexington, Kentucky $115,000

III. GENERAL (PUBLIC)

1. **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.**

I contribute funds annually to support the Fayette County Pro Bono Office. I am also a life fellow of the Kentucky Bar Foundation, which assists in serving the disadvantaged through education and assistance regarding the legal profession. I have also represented family members and friends, who could not afford counsel, in minor criminal and domestic issues. Recently, I provided pro bono services to a federal prisoner in an administrative matter involving his conditions of confinement at the United States Federal Correctional Institute in Manchester, Kentucky. Additionally, I represented a candidate for local office in her effort to protect sealed court records regarding the custody, care and psychological condition of her minor children. Currently, I am representing a member of my church, who is facing criminal assault charges in Fayette County. Finally, as a partner at Dinsmore & Shohl, I support our firm's pro bono projects, which have included significant time and resource commitments.

From 1997 until June 2001, I served as Chair of the Kentucky Bar Association's Communications and Publications Committee and as Editor-in-Chief of *Bench & Bar Magazine*, the official publication of the Kentucky Bar Association. Although I retired as Chair, I am currently a member of the Publications Committee and serve on the editorial board of *Bench & Bar.* In 1995, I served as Program Planning Chair of the Kentucky Bar Convention and in 2001, I served on the Continuing Legal Education Planning Committee for the annual Kentucky Bar Association Convention. Since 1996, I have served the Kentucky Supreme Court as one of four members of the Kentucky Office of Bar Admissions Character and Fitness Committee, which determines whether applicants possess the requisite character and fitness to practice law within the Commonwealth of Kentucky. Additionally, the committee advises the Kentucky Supreme Court on special testing accommodations and in promulgating regulations regarding bar admission. Additionally, since 1999, I have served on the Federal Joint Local Rules Commission, which advises the federal courts in Kentucky regarding local rule-making and administrative matters.

I am a member of the Board of Trustees of my alma mater, Transylvania University in Lexington, Kentucky and serve on the advisory board to the Correll Leadership Center at Georgetown College, in Georgetown, Kentucky. I am a director and former president of a statewide child abuse prevention organization called Prevent Child Abuse Kentucky and currently serve as a director of ARC of the Bluegrass,

which aids and assists retarded and disabled individuals in our community. At South Elkhorn Christian Church, I am an elder and member of the governing cabinet. I am a graduate of Leadership Kentucky and a former member of the Lexington - Fayette Urban County Government Ethics Commission.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?**

   I am not nor have I belonged to an organization that discriminates on the basis of race, sex, or religion.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

   There is no selection commission in my jurisdiction to recommend candidates for nomination to the federal courts.

   In January, 2001, I wrote to Kentucky's U.S. Senators McConnell and Bunning and expressed my interest in one of three openings on the federal district bench in Kentucky. Although both Senators are familiar with my personal and professional qualifications, they requested written materials in support of my application. After examining the material and consulting with prominent judges and attorneys, Senators Bunning and McConnell informed me that my name and relevant materials would be submitted, along with other names, to the White House Counsel for further review.

   In or about March 2001, I was granted an interview with White House Counsel Gonzales and a member of his staff. In or about June 2001, I was advised by White House staff that the FBI had been authorized to conduct a background investigation. I submitted written information in support of the FBI investigation and vetting process to the United States Department of Justice. In or about June 2001, I was interviewed by an FBI agent. On or about July 2, 2001, I was interviewed on

behalf of the United States Department of Justice Office of Legal Policy. On or about July 27, 2001, a member of the White House counsel's staff advised me that President Bush intended to nominate me for a federal judicial position and that the nomination might occur on or about August 2, 2001. On August 2, 2001, the nomination was announced by the White House.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.**

   No.

5. **Please discuss your views on the following criticism involving "judicial activism."**

   The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped-many of the prerogatives of other branches and levels of government.

   Some of the characteristics of this "judicial activism" have been said to include:

   a. **A tendency by the judiciary toward problem-solution rather than grievance-resolution;**

   b. **A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;**

   c. **A tendency by the judiciary to impose broad, affirmative duties upon governments and society;**

   d. **A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and**

   e. **A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.**

As one of the three branches of our federal government, the role of the federal judiciary is circumscribed by constitutional and statutory limitations on its power. However, the federal judiciary has been afforded a unique status in the American system of government. The authority of the federal judiciary to invalidate actions of the executive and legislative branches of government and thereby nullify the effect of such actions vests the judiciary with extraordinary power in the resolution of public issues. Additionally, the lifetime tenure extended to the federal judiciary confers upon it the opportunity to administer justice without consideration of the popularity of its actions or the political implications of its decisions. Therefore, a commitment to judicial restraint is critical to the protection and preservation of our national compact, the United States Constitution.

AFFIDAVIT

I, Karen K. Caldwell, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

August 12, 2001
(DATE)

Karen Caldwell
Karen K. Caldwell

Janie J. Chrisman
(NOTARY)
Expiration: 5-14-05

::ODMA\MHODMA\LEX;26558;3

Claire Eagan?

STATEMENT OF CLAIRE V. EAGAN, OF OKLAHOMA, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OKLAHOMA

Judge EAGAN. Mr. Chairman, thank you. I want to thank you for inviting me to this hearing. While I have many friends and family with me in spirit, I have no one with me in person.

Senator KOHL. Thank you so much.

[The biographical information of Ms. Eagen follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

Questionnaire for Judicial Nominees

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name (include any former names used.)**

   Claire Veronica Eagan, formerly Claire Eagan Barrett

2. **Address: List current place of residence and office address(es).**

   Residence:

   Tulsa, Oklahoma

   Office:

   U.S. District Court
   333 West 4th Street, Room 411
   Tulsa, Oklahoma 74103

3. **Date and place of birth.**

   October 9, 1950 - Bronx, New York

4. **Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

   Husband: Anthony Joseph Loretti, Jr. Occupation: Retired; part-time sales consultant to Advanced Medical Instruments, Inc., 3061 West Albany, Broken Arrow, Oklahoma 74012.

5. **Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**

Fordham University School of Law New York, New York	1973-76	J.D., Cum Laude, May 1976
Trinity College Washington, D.C.	1968-72	B.A., Cum Laude, May 1972
University of Paris Institute of Comparative Law	1972-73	Non-Degree Graduate Study
University of Fribourg Switzerland	1970-71	Junior Year Abroad Undergraduate Study through Rosary College, River Forest, Illinois (credits were earned with Rosary College and transferred to Trinity College).

6. **Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

U.S. District Court, Northern District of Oklahoma
1998 - Present (United States Magistrate Judge)

Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C., Tulsa, Oklahoma. (1978-98)
April, 1991 - January, 1998 (Director and Executive Committee Member)
January, 1982 - January, 1998 (Shareholder)
May, 1978 - December 1981 (Associate)

Law Clerk to the Honorable Allen E. Barrow, Chief Judge (1976-78)
U.S. District Court, Northern District of Oklahoma.

Summer Associate, Rogers & Wells, New York, New York (1975)

Summer Law Clerk to the Honorable Allen E. Barrow (1974)

Summer Clerical Employee, North American Reinsurance Company (1973)
New York, New York

Summer Waitress, Palmer Lodge, Keene, New Hampshire (1972)

Part-Time Teaching:

Adjunct Professor, Constitutional Law II, University of Tulsa College of Law, Spring Semester 2001

Adjunct Professor, Introduction to Alternative Dispute Resolution, University of Tulsa College of Law, Fall Semester 1999

Adjunct Professor, Appellate Advocacy, University of Tulsa College of Law, Winter Semester 1989

Instructor of Legal Research and Writing, Tulsa Junior College Legal Assistants' Program, January, 1979 - May, 1985

Instructor of Legal Research, Adelphi University, New York. Legal Assistants' Program, March - August, 1975

Other Positions:

Director, Owner and Officer (former closely-held business), CCI Acquisition Company d/b/a Custom Circuits, 1994-1995

Outside Director (non-profit organizations):
Catholic Charities of the Diocese of Tulsa, Inc., 1983-1998
Oklahoma Sinfonia, 1983-1987
Sooner Chapter of Cystic Fibrosis Foundation, 1983-1985

Trustee (educational institution), Gannon University, Erie, PA, 1996-1998

7. **Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.**

No.

8. **Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.**

Editor (1975-76) and Staff (1974-75) of Fordham Law Review. Recipient of Law Review Scholarship (1975-76)

Trinity College Scholarship, 1968-70

Selected in 1997 as one of the "Best Lawyers in America."

American Inns of Court, Council Oak Chapter
Jack R. Givens Professionalism Award, 2000-01

Oklahoma Bar Association
Women In Law Committee - Mona Lambird Spotlight Award Recipient, 2000

Tulsa County Bar Association
Golden Rule Award Recipient

9. **Bar Associations: List all bar associations, legal or judicial-related committees 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.**

American Inns of Court, Council Oak Chapter, Tulsa, 1991-92 and 1995-Present
Master, Past President, and Executive Committee Member, 1995- Present
President, 1999-2000
Barrister, 1991-92

American Bar Association

Oklahoma Bar Association
Young Lawyers Division - Former Member of Board of Governors

Tulsa County Bar Association
Professional Responsibility Committee, Former Member
Young Lawyers Committee, Former Chairman
Entertainment Committee, Former Chairman
Executive Committee, Former Member
Judicial Candidates Committee, Former Member
Law Day Committee, Former Head of Publicity

Tulsa Women Lawyers Association
President, 2000 - Present

American Bar Foundation
Fellow, 1998 - Present

American Law Institute
Member, 2000 - Present

United States District Court, Northern District of Oklahoma
Admissions and Grievances Committee Chairman, 1996-98

Tenth Circuit Judicial Conference: Lawyer 1986-98; Magistrate Judge 1998-Present

10. **Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.**

Federal Magistrate Judges Association

American Association of Retired Persons

Fordham Law Alumni Association

Trinity College Alumni Association

11. **Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.**

United States Supreme Court	1980
United States Courts of Appeal	
Fifth Circuit	1980
Eighth Circuit	1997
Tenth Circuit	1978
Federal Circuit	1990
United States District Courts	
Northern District of Oklahoma	1977
Western District of Oklahoma	1981
Eastern District of Oklahoma	1988
New York State Bar	1977
Oklahoma State Bar	1977

No lapses.

12. **Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.**

Note, Possible Antitrust Violation Held Insufficient to Warrant Injunction Against Tender Offeror or Duty of Disclosure to Target Shareholders, 43 Fordham L. Rev. 484 (1974), reprinted in Securities Law Review.

Casenote, Antiradiation Agents Discovered Under Contract with AEC Held Not Property of Government Under Section 152 of Atomic Energy Act of 1954, 43 Fordham L. Rev. 1097 (1975), reprinted in Patent Law Review.

13. **Health: What is the present state of your health? List the date of your last physical examination.**

Excellent. May 29, 2001.

14. **Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.**

Adjunct Settlement Judge
Tulsa County District Court
Tulsa, Oklahoma
1990-98
Appointed
Mediator in county court of general jurisdiction.

United States Magistrate Judge
U.S. District Court, Northern District of Oklahoma
January, 1998 - Present
Appointed
Federal district court of general jurisdiction, with limitations of power of magistrate judges pursuant to 28 U.S.C. § 636 and Fed. R. Civ. P. 72.

15. **Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.**

(1)

Social Security

Bush v. Apfel, No. 97-CV-0538-EA
Reported at: 34 F. Supp. 2d 1290 (N.D. Okla. 1999)

Williams v. Apfel, No. 98-CV-0606-EA
Reported at: 65 F. Supp. 2d 1223 (N.D. Okla. 1999)

Civil

Fitzgerald v. Caldera, No. 97-CV-0710-EA
Reported at: 34 F. Supp. 2d 1299 (N.D. Okla. 1999), aff'd, No. 99-5079 (10th Cir. June 27, 2000) (unpublished).

Terwilliger v. Home of Hope, Inc., No. 96-CV-1042-H (E)
Reported at: 42 F. Supp. 2d 1231 (N.D. Okla. 1999)

Schrader v. Ray, M.D., P.C., No. 99-CV-0703-K (E)
Not Reported (N.D. Okla., Nov. 24, 1999)

Team Tires Plus, Ltd. v. Tire Plus, Inc., d/b/a Tire Plus+, No. 98-CV-0449-K (E)
Not Reported (N.D. Okla., Jan 4, 1999)

Habeas Corpus

Kuykendall v. Hargett, No. 97-CV-0537-K (E)
Not Reported (N.D. Okla., July 25, 2000)

Steffey v. Champion, No. 97-CV-0425-H (E)
Not Reported (N.D. Okla., Aug. 14, 2000)

Mathis v. Scott, No. 97-CV-0350-K (E)
Not Reported (N.D. Okla., Aug. 23, 2000)

Civil Rights

Sours v. County of Ottawa, et al., No. 97-CV-0581-Bu (E)
Not Reported (N.D. Okla., Dec. 28, 1999)

(2)

Four Social Security decisions by me were reversed by the Tenth Circuit Court of Appeals:

Smith v. Apfel; No. 98-5100
Not Reported (0th Cir. April 1, 1999)

> I affirmed the Social Security Commissioner's denial of benefits to claimant. On appeal, the Tenth Circuit determined that claimant did not have transferable (computer) skills which would enable her to work as an order clerk, and reversed the Commissioner's decision and remanded for an award of benefits.

Lewis v. Apfel, No. 98-5139
Not Reported (10th Cir. April 30, 1999)

> I affirmed the Social Security Commissioner's denial of benefits to claimant. On appeal, the Tenth Circuit determined that the Administrative Law Judge had not applied the correct legal standard in determining that claimant could perform her past relevant work as a telemarketer, and reversed. On remand,

the case was remanded to the Commissioner to make the necessary findings regarding past relevant work.

Howell v. Apfel, No. 98-5186
Not Reported (10th Cir. October 13, 1999)

I affirmed the Social Security Commissioner's denial of benefits to claimant. On appeal, the Tenth Circuit determined that the Administrative Law Judge committed legal error in evaluating claimant's subjective complaints, and reversed. On remand, the case was remanded to the Commissioner to make the necessary findings regarding complaints of disabling pain.

Ford v. Apfel, No. 99-5134
Not Reported (10th Cir. May 26, 2000)

I affirmed the Social Security Commissioner's denial of benefits to claimant. On appeal, the Tenth Circuit determined that the Administrative Law Judge misinterpreted the medical records and erroneously refused to give credence to claimant's testimony regarding disabling pain, and reversed and remanded for an award of benefits.

(3)

See (1) above. The only decision discussed on appeal is Fitzgerald v. Caldera, 34 F. Supp. 2d 1299 (N.D. Okla. 1999), aff'd, No. 99-5079 (10th Cir. June 27, 2000) (unpublished).

16. **Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.**

Appointed government position:
Law Clerk, September 1976 - April 1978.
Honorable Allen E. Barrow, Chief Judge
United States District Court for the Northern District of Oklahoma

17. **Legal Career:**

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

1. **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;**

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

3. **the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;**

Following graduation from law school, I clerked for Chief Judge Allen E. Barrow of the United States District Court for the Northern District of Oklahoma, from September 1976 through April 1978.[1] As a law clerk, I conducted research, prepared draft orders and opinions, and drafted memoranda of law, jury instructions, and bench summaries. I also was in the courtroom for many cases, both civil and criminal.

In May 1978, I commenced practice with Hall, Estill, Hardwick, Gable, Collingsworth & Nelson ("Hall, Estill"). Hall, Estill has been re-named Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C., and is located at 320 South Boston Avenue, Suite 400, Tulsa, Oklahoma 74103, (918) 594-0400. My practice was primarily civil litigation, with an emphasis on business disputes. As a litigation associate, I research and drafted pleadings, conducted discovery, interacted with clients, and appeared in court at hearings, trials, and appeals. I became a shareholder (partner) in January 1982, and in April 1991, I became a director and executive committee member. By the end of my nearly twenty-year tenure at Hall, Estill in early 1998, I was a senior attorney in the litigation section handling all aspects of litigation, as well as arbitration.

In January 1998, I left Hall, Estill to serve as a United States Magistrate Judge.

b. 1. **What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?**

As described above, I was a federal court clerk and thereafter practiced as a litigator. For my twenty years of private practice, I was engaged in business litigation, starting as "second chair" to a partner, and eventually serving as "first chair." The litigation was predominantly in federal court.

---

[1] Judge Barrow passed away in 1979.

2. **Describe your typical former clients, and mention the areas, if any, in which you have specialized.**

Although I had a diverse practice, my clients tended to be business entities or individuals engaged in commercial disputes. My areas of speciality included securities, environmental, telecommunications, and employment litigation and arbitration.

c. 1. **Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.**

Frequently.

2. **What percentage of these appearances was in:**

(a)	**federal courts;**	70%
(b)	**state courts of record;**	25%
(c)	**other courts.**	5% (arbitration)

3. **What percentage of your litigation was:**

(a)	**civil;**	>99%
(b)	**criminal.**	< 1%

4. **State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.**

To the best of my recollection, I tried 17 cases to verdict or judgment in courts of record. I was sole counsel in one, chief or co-counsel in eleven, and associate counsel in five.

5. **What percentage of these trials was:**

(a)	**jury;**	59% (10 of 17)
(b)	**non-jury.**	41% (7 of 17)

18. **<u>Litigation</u>: Describe the ten most significant litigated matters which you personally handled. 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.**

The following cases were selected based upon the significant time invested and the role of the undersigned, and not the importance of the subject matter.

(1) **Case:**

Atlantic Richfield Company v. American Airlines, Inc., et al.

United States District Court, Northern District of Oklahoma, Case No. 89-CV-0868-B
Before Brett, District Judge

United States Court of Appeals for the Tenth Circuit, Appeal No. 94-0561, Appeal No. 94-5079, Appeal No. 94-5099 and Cross-Appeal No. 94-5062
Reported at 98 F.3d 564 (10th Cir. 1996)
Before Henry, Seth, and Briscoe, Circuit Judges

Parties Represented:

Sand Springs Superfund PRP Group (group of defendants, also known as "Group I," consisting of Baker Hughes Incorporated, Borg-Warner Corporation, Burgess-Norton Manufacturing Co. (a division of Amsted Industries Incorporated), Chief Supply Corporation (sued as Chief Chemical Supply and Chief Chemical Supply, Inc.), Crane Carrier Corp., Dover Corporation, Groendyke Transport, Inc., H.W. Allen Co., f/k/a MK & O Coach Lines, Jerry Inman Trucking, Inc., Kansas Industrial Environmental Services, Inc., McDonnell Douglas Corporation, Paccar, Inc., Phillips Petroleum Company, Ramsey Winch Company, Ryder Truck Rental, Inc., (for itself and as successor to Wilco Truck), The Uniroyal Goodrich Tire Company, Webco Industries, Inc., and Whirlpool Corporation).

Date(s) of Representation:

1989-96

Nature of Representation:

Defense of environmental cost recovery action in district court and on appeal.

Summary:

Atlantic Richfield Company (ARCO) filed claims for the recovery of certain costs incurred by ARCO to remediate a portion of the Sand Springs Petrochemical Complex. ARCO was the prior owner of a site in Sand Springs which was identified as a Superfund Site under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9657. ARCO and the Environmental Protection Agency (EPA) filed a consent decree in the district court under which ARCO agreed to perform the remediation of the entire Sand Springs Site. The defendants/appellants are companies whose waste oil materials and solvents were delivered to a portion of the site known as Glenn Wynn. ARCO brought this action against defendants/appellants seeking contribution and recovery of CERCLA response costs for the costs it incurred and would continue to incur to remediate the Glenn Wynn portion of the site. The Group I defendants stipulated to liability as parties responsible for their proportionate share of the costs to remediate the Glenn Wynn portion of the site, but contended that some of the costs sought by ARCO were not recoverable under CERCLA.

Role:

I actively conducted discovery and tried the case with co-counsel Michael Graves and Susan Gates (Hall, Estill), and argued the appeal.

Trial Dates:

December 7-13, 1993

Disposition:

The district court found that nonlitigation attorneys' fees and EPA oversight costs were recoverable by ARCO, but denied recovery of litigation attorneys' fees and adjunct settlement judge fees. Defendants/appellants appealed the district court finding that ARCO could properly recover all costs incurred by the EPA, and reimbursed by ARCO, for the EPA to oversee ARCO's remediation of the Glenn Wynn portion of the site and the attorneys' fees and related costs that ARCO incurred in its negotiation of the consent decree with the EPA. ARCO cross-appealed the district court's refusal to award it, as recoverable CERCLA response costs, its litigation attorneys' fees and its proportionate cost of an adjunct settlement judge appointed by the district court. The Tenth Circuit affirmed the award of EPA oversight costs, but reversed the award to ARCO of attorneys' fees incurred in negotiation of the consent decree. On the cross-appeal, the Tenth Circuit affirmed the district court's denial of litigation attorneys' fees and settlement judge fees as recoverable costs.

Co-Counsel:

For Defendants/Appellants/Cross-Appellees
Michael D. Graves, Esq. (918) 594-0400
Susan L. Gates, Esq.
Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C.
320 South Boston Avenue, Suite 400
Tulsa, Oklahoma 74103-3708

Opposing Counsel:

For Plaintiff/Appellee/Cross-Appellant
James M. Harris, Esq. (213) 896-6000
Larry G. Gutterridge, Esq.[2]
Sidley & Austin
555 West 5th Street
Los Angeles, California 90013-1010

(2) **Case:**

Tubular Corporation of America and B.A.R.D. Industries, Inc. v. Tyler-Dawson Supply Company (Oklahoma), a/k/a Platinum Industrial Supply Company; Supply Corporation International; T-D Holdings, Inc.; T-D Industrial Holdings, Inc.; T-D Oilfield Supply, Inc; Tyler-Dawson Supply Company (Delaware); Sam P. Douglass, Nolan Lehmann, Tom Tucker, Amfac Distribution Corporation, Bank of Oklahoma, N.A. and Continental Bank, N.A.

Tulsa County District Court, State of Oklahoma, Case No. C-83-570
Before Wiseman, District Judge

Party Represented:

Bank of America Illinois (formerly Continental Bank, N.A.)

Date(s) of Representation:

1995-98

---

[2] Mr. Gutterridge is currently an attorney with Hanna and Morton, L.L.P., 444 S. Flower Street, 20th Floor, Los Angeles, California 90071-2922. He can be reached at (213) 628-7131.

Nature of Representation:

Defense of fraudulent conveyance action in state district court following an appellate court reversal of adverse judgments and remand for new trial.

Summary:

Plaintiffs sued Tyler-Dawson for breach of contract, and asserted derivative claims against other defendants for fraudulent conveyances. Bank of America was joined because it received loan repayments with proceeds from the sale of Tyler-Dawson assets. Following a trial (prior to my representation), judgment against various defendants was entered, which included a judgment in excess of $11 million against Bank of America. While the appeal of Bank of America and others was pending, plaintiffs received consideration from other defendants in settlement of claims asserted against them, which consideration included cash, notes, and stock. The appellate court reversed and remanded for new trial the claim against Bank of America. Hall, Estill was retained to retry the claim with co-counsel, Brian Gaskill. Bank of America and the remaining co-defendants successfully urged that, prior to retrial, the court should conduct a non-jury trial on the value of the consideration received by plaintiffs in settlements, on the ground that the consideration received amounted to a credit against any potential judgment large enough to nullify any potential liability of the remaining defendants.

Role:

Co-counsel with Brian Gaskill in discovery and trial.

Trial Dates:

December 18, 19, and 20, 1996 and January 29, 1997

Disposition:

Following trial, the district court entered findings of fact and conclusions of law, holding that the value of the consideration received in settlements exceeded the maximum potential fraudulent conveyance liability of the remaining defendants. [I withdrew from representation of Bank of America to assume the duties of magistrate judge. I have been informed that plaintiffs recently filed an appeal of this decision.]

Co-Counsel:

For Defendant, Bank of America Illinois
Brian S. Gaskill, Esq. (918) 583-3145
Sneed, Lang, Adams & Barnett
(now Sneed Lang, P.C.)
Two West Second Street, Suite 2300
Tulsa, Oklahoma 74103-3136

For Co-Defendants, Sam P. Douglass, et al.
Clyde A. Muchmore, Esq. (405) 235-7700
Crowe & Dunlevy
1800 Mid-America Tower
20 North Broadway
Oklahoma City, OK 73102

Opposing Counsel:

For Plaintiff
Laurence L. Pinkerton, Esq. (918) 587-1800
Pinkerton & Finn
2000 First Place
15 East 5th Street
Tulsa, Oklahoma 74103-4367

(3) **Case:**

T.D. Williamson, Inc. v. Dwane Odell Laymon and Electronic Pigging Systems, Inc.

United States District Court, Northern District of Oklahoma, Case No. 83-CV-0084-C
Reported at 723 F. Supp. 587 (N.D. Okla. 1989)
Before Cook, District Judge

United States Court of Appeals for the Federal Circuit, Case No. 90-1236
Before Mahey, Smith, and Mayer, Circuit Judges. Unpublished disposition.

Party Represented:

T.D. Williamson, Inc.

Date(s) of Representation:

1987-91

Nature of Representation:

Action to recover damages for patent infringement.

Summary:

Defendants were found to be infringing plaintiff's patent for a caliper pig pipeline survey device. The trial was to assess the damages to be awarded for the infringement. Plaintiff sought lost profits damages, or in the alternative, a reasonable royalty. Defendants asserted that plaintiff was not entitled to any damages, was not entitled to damages on certain foreign jobs, and was not entitled to prejudgment interest.

Role:

Following a judgment for patent validity and infringement obtained by patent co-counsel Paul Johnson, Hall, Estill was retained to participate in discovery and trial of the damage claim with co-counsel Paul Johnson. I argued the appeal in the Federal Circuit.

Trial Dates:

February 22-26 and 29, 1988, and March 1-3 and 7-8, 1988.

Disposition:

A district court judgment awarding plaintiff lost profits damages on most jobs, a reasonable royalty for certain foreign jobs, and prejudgment interest, was affirmed by the Federal Circuit.

Co-Counsel:

For Plaintiff

Fred S. Nelson, Esq. (deceased) (918) 594-0400
Barbara L. Woltz, Esq.[3]
Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C.
320 South Boston Avenue, Suite 400
Tulsa, Oklahoma 74103-3708

---

[3] Ms. Woltz is currently an attorney with The Williams Companies, Inc., Bank of Oklahoma Tower, One Williams Center, Tulsa, Oklahoma 74172. She can be reached at (918) 573-8022.

Paul H. Johnson, Esq. (918) 587-2000
Head & Johnson
(now Head, Johnson & Kachigian)
228 West 17th Place
Tulsa, Oklahoma 74119

Opposing Counsel:

For Defendants
William S. Dorman, Esq. (918) 583-4276
Dorman & Kachigan, Inc.
(now Dorman & Gilbert)
406 South Boulder Avenue, Suite 830
Tulsa, Oklahoma 74103

(4) **Case:**

Cara Schulz Lindquist v. Alan Condra and Hormel Foods Corporation

United States District Court, District of Minnesota, Third Division, Case No. 3-96-175
Before Davis, District Judge

United States Court of Appeals for the Eighth Circuit, Case No. 97-2833
Reported at 162 F.3d 1164 (8th Cir.) (unpublished), cert. denied, 525 U.S. 1055 (199
Before Wollman and Hansen, Circuit Judges, and Goldberg, District Judge

District Court, State of Minnesota, County of Mower, Case No. C2-97-538
(Stayed pending federal appeal)

Party Represented:

Hormel Foods Corporation

Date(s) of Representation:

1996-98

Nature of Representation:

Defense of employment discrimination (sexual harassment) claims in district and appeals court.

Summary:

Plaintiff alleged she was a victim of sexual harassment by defendant Condra, a former employee of defendant Hormel Foods Corporation, in violation of Title VII, 42 U.S.C. § 2000e-3, and the Minnesota Human Rights Act. She also asserted a number of state law claims. Plaintiff claimed that she worked as an employee of Hormel. Defendants denied liability and, following discovery, moved for summary judgment on the grounds that the evidence established that plaintiff was not an "employee" of Hormel, but was instead an independent contractor, and that any relationship between Lindquist and Condra was consensual. In addition, defendants denied that plaintiff could establish claims for sexual harassment and/or retaliation in violation of the Minnesota Human Rights Act and could not establish her claims for negligent and intentional infliction of emotional distress as a matter of law.

Role:

As co-counsel for Hormel with Larry Hanson and James Blaney, I actively participated in discovery and argued the motion for summary judgment before the district court. Following preparation and filing of Hormel's brief in the Eighth Circuit, I withdrew from representation of Hormel Foods Corporation to assume the duties of magistrate judge.

Disposition:

The district court granted summary judgment to defendants, finding that plaintiff was an independent contractor, not an employee, and could not maintain her Title VII claims. The district court dismissed without prejudice the state law claims, which were refiled in state district court.

The Eighth Circuit affirmed the district court's award of summary judgment.

Co-Counsel:

For Defendant, Hormel Foods Corporation
Larry Hanson, Esq. (651) 227-7683
James E. Blaney, Esq.
Moore, Costello & Hart, P.L.L.P.
1400 Northwest Center
55 East 5th Street
St. Paul, Minnesota 55101-1792

For Defendant, Alan Condra
Thomas Baudler, Esq. (507) 433-2393
Baudler, Baudler, Maus & Blahnik
108 North Main Street
Austin, Minnesota 55912

Opposing Counsel:

For Plaintiff, Cara Lindquist
Warren F. Plunkett, Esq. (507) 437-2845
Paul R. Spyhalski, Esq.
Warren F. Plunkett & Associates
107 West Oakland Avenue
Austin, Minnesota 55912

(5) **Case:**

Kopfman Farms, Inc.; K & M Farms; Lynn Kopfman; Donald Mochetti and Byron David v. Farmland Industries, Inc.; CF Industries, Inc.; Matlok Fertilizer Company; Stone's Farm Supply, Inc.; Agricultural Minerals, Limited Partnership

District Court, County of Rio Grande, State of Colorado, Case No. 94-CV-4
Before Ogburn, District Judge

Party Represented:

Agricultural Minerals, Limited Partnership (Terra Nitrogen, Limited Partnership)

Date(s) of Representation:

1994-95

Nature of Representation:

Defense of product liability action in Colorado state district court.

Summary:

Plaintiffs alleged that defendants supplied a fertilizer which damaged their potato crops. The plaintiffs' claims included negligence, breaches of express and implied warranty, and products liability. Defendants denied plaintiffs' allegations, and pursued a scientific defense that it was impossible for the fertilizer to cause the damage claimed.

Role:

As counsel for Agricultural Minerals, Limited Partnership, with co-counsel Martin Gonzales, I actively participated in discovery and settlement negotiations.

Disposition:

A settlement was reached and the parties filed a stipulation for dismissal with prejudice.

Co-Counsel:

For Defendant, Agricultural Minerals, Limited Partnership
(Terra Nitrogen, Limited Partnership)
Martin A. Gonzales, Esq. (719) 589-6676
Motz, Gonzales & Martinez
700 Main Street
P.O. Box 779
Alamosa, Colorado 81101-0779

For Defendant, Farmland Industries, Inc.
Daniel F. Wake, Esq. (303) 534-4466
Law Office of Daniel F. Wake, P.C.
1050 Seventeenth Street, Suite 1700
Denver, Colorado 80265

For Defendants, CF Industries, Inc. and Matlok Fertilizer Company
Edward J. Godin, Esq. (303) 572-3100
Wilson, Godin & Baity, LLC
(now Godin & Baity, LLC)
1050 Seventeenth Street, Suite 1610
Denver, Colorado 80265

For Defendant, Stone's Farm Supply, Inc.
Amy L. Miletich, Esq. (303) 407-0830
Tilly & Graves, P.C.
3773 Cherry Creek N. Dr., Suite 1001
Denver, Colorado 80209

Opposing Counsel:

For Plaintiffs
William A. Paddock, Esq. (303) 861-9000
Carlson, Hammond & Paddock, L.C.
1700 Lincoln Street, Suite 3900
Denver, Colorado 80203

(6) **Case:**

J. Robert Wasson and Lodelle Wasson, and Leta Wasson v. William Rutledge, Bankruptcy Trustee

United States Court of Appeals for the Tenth Circuit, Case No. 92-7097

Party Represented:

Leta E. Wasson

Date(s) of Representation:

1993 (Hall, Estill represented Mrs. Wasson for a longer period, but my involvement in the appeal was in 1993 only.)

Nature of Representation:

Tenth Circuit appeal of district court affirmance of adverse ruling of bankruptcy court.

Summary:

Leta Wasson was the life beneficiary of a testamentary trust established by her late husband, John A. Wasson. Her son, J. Robert Wasson, would have received the trust corpus at the end of Leta Wasson's life estate, if he survived her. J. Robert Wasson and Lodelle Wasson filed a voluntary petition in bankruptcy court and listed the contingent remainder interest in the trust on the schedule of assets. The bankruptcy court held that J. Robert Wasson's remainder interest in his father's trust was a vested interest and property of the bankruptcy estate. Leta Wasson sought and was granted intervention in the appeal proceedings. The district court entered an order affirming the findings and conclusions of the bankruptcy court. Leta Wasson appealed to the Tenth Circuit on the ground that the remainder interest is contingent, not vested, and not property of the bankruptcy estate. Thus, the bankruptcy trustee was not entitled to an accounting or other information.

Role:

I argued the appeal in the Tenth Circuit Court of Appeals.

Disposition:

Following oral argument, J. Robert Wasson died. The appeal was dismissed as moot due to his death.

Co-Counsel:

For Appellant, Leta Wasson
Thomas F. Golden, Esq. (918) 594-0400
Kenneth G.M. Mather, Esq.
Steven W. Soulé, Esq.
Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C.
320 South Boston Avenue, Suite 400
Tulsa, Oklahoma 74103-3708

Opposing Counsel:

For Appellee
Beverly K. Smith, Esq. (918) 586-5711
Conner & Winters
15 East 5th Street, Suite 3700
Tulsa, Oklahoma 74103

(7) **Case:**

Williams Pipe Line Company v. Miles, Inc. (now Bayer Corporation)

United States District Court, Southern District of Iowa, Central Division,
Case No. 4-95-20158
Reported at 964 F. Supp. 1300 (S.D. Iowa 1997).
Before Bremer, Magistrate Judge

Party Represented:

Williams Pipe Line Company

Date(s) of Representation:

1995-98

Nature of Representation:

Suit to seek access to land to install environmental remediation equipment and perform remediation.

Summary:

Williams Pipe Line Company (WPL) brought suit after defendant refused to allow WPL to enter Bayer's property to implement WPL's planned remediation of environmental contamination on Bayer's property. WPL sought declaratory judgment allowing access to Bayer's land to install monitoring and recovery equipment for remediation of Bayer's property. Bayer filed a counterclaim based on state law claims of strict liability, nuisance, trespass, negligence, and alleging violation of certain environmental protection statutes.

Role:

As co-counsel with lead counsel, Paul Horvath, I actively participated in discovery and trial.

Trial Dates:

October 10-14, 1996.

Disposition:

The trial court held that it did not have jurisdiction over WPL's claim for declaratory judgment, nor did it have jurisdiction over Bayer's environmental protection statutes counterclaims. The Court dismissed these claims and awarded Bayer damages for the diminution in the market value of its land due to the environmental contamination.

Bayer filed an appeal with the Eighth Circuit Court of Appeals, which it dismissed.

Co-Counsel:

For Plaintiff

Paul E. Horvath, Esq. (515) 246-4552
Dickinson, Mackaman, Tyler & Hagen, P.C.
1600 Hub Tower
699 Walnut Street
Des Moines, Iowa 50309-3986

Opposing Counsel:

For Defendant
Ivan T. Webber, Esq. (515) 243-7611
Ahlers, Cooney, Dorweiler, Haynie, Smith & Allbee, P.C.
100 Court Avenue, Suite 600
Des Moines, Iowa 50309-2231

(8) **Case:**

WilTel, Inc. v. American Telephone and Telegraph Company and AT&T Business Communications Services

United States District Court, Northern District of Oklahoma, Case No. 93-CV-0195-E
Before Ellison, District Judge

United States District Court, District of Columbia, Civil Action No. 93-1964
Before Harris, District Judge

Party Represented:

WilTel, Inc.

Date(s) of Representation:

1993-95

Nature of Representation:

Federal district court litigation for tort damages arising from a telecommunications marketing campaign.

Summary:

WilTel alleged that the defendants embarked on a significant marketing campaign which targeted WilTel and two other competitors and told WilTel's customers that their contracts with WilTel were unlawful and unenforceable and alleged that WilTel was engaged in illegal activities. WilTel's claims against the defendants included: tortious interference with contractual relations; tortious interference with prospective economic advantage; unfair competition; defamation; and violations of the Oklahoma Deceptive Trade Practices Act, the Communications Act, and the Lanham Act.

In a related case, America Telephone & Telegraph Co. v. Williams Telecommunications Group, Inc. and WilTel, Inc., Civil Action No. 93-0284, United

States District Court, District of Columbia, AT&T sought damages under the Communications Act for business AT&T claims it lost because of the failure of WilTel to file tariffs.

Role:

As co-counsel with lead counsel, Paul M. Pohl (Jones, Day), I actively participated in discovery and court hearings.

Disposition:

Settlement was reached in both matters and the parties filed stipulations of voluntary dismissal with prejudice.

Co-Counsel:

For Plaintiff

Paul M. Pohl, Esq. (412) 391-3939
Roy A. Powell, Esq.
Laura Ellsworth Mead, Esq.
Jones, Day, Reavis & Pogue
One Mellon Bank Center
500 Grant Street - 31st Floor
Pittsburgh, Pennsylvania 15219

Katie J. Colopy, Esq. (214) 220-3939
Jones, Day, Reavis & Pogue
2300 Trammel Crow Center
2001 Ross Avenue
Dallas, Texas 75201

Kevin D. McDonald, Esq. (202) 879-3939
Jones, Day, Reavis & Pogue
51 Louisiana Avenue, N.W.
Washington, DC 20001-2113

Opposing Counsel:

For Defendant

James L. Kincaid, Esq. (918) 592-9800
Crowe & Dunlevy
321 South Boston Avenue, Suite 500
Tulsa, Oklahoma 74103-3313

James F. Bendernagel, Jr., Esq. (202) 736-8000
Sidley & Austin
1722 Eye Street, N.W.
Washington, DC 20006

Charles W. Douglas, Esq. (312) 853-7000
Sidley & Austin
Bank One Plaza
10 S. Dearborn Street
Chicago, Illinois 60603

(9) **Case:**

Jerry Corbier v. Trigen-Oklahoma Energy Corporation, Trigen-Oklahoma City Energy Corporation, Trigen Energy Corporation, and Thermal Cold Storage, Inc.

Tulsa County District Court, State of Oklahoma, Case No. CJ-94-04016
Before Sellers, District Judge

Parties Represented:

Trigen-Oklahoma Energy Corporation, Trigen-Oklahoma City Energy Corporation, Trigen Energy Corporation, and Thermal Cold Storage, Inc.

Date(s) of Representation:

1994-97

Nature of Representation:

Defense of breach of employment contract action in state district court.

Summary:

Plaintiff alleged breach of an employment agreement and breach of a stockholders agreement and restricted stock purchase agreement, based on his wrongful discharge. Defendants maintained that plaintiff was terminated from his employment with defendants after they became aware of conduct which constituted gross negligence, willful misconduct, and extremely poor judgment in the carrying out of plaintiff's duties. Defendants counterclaimed for breach of fiduciary duty and conversion.

Role:

As co-counsel with J. Patrick Cremin (Hall, Estill), I actively conducted discovery and argued motions, and jointly developed with him the case strategy and resolution.

Disposition:

The case was settled shortly before trial.

Co-Counsel:

For Defendants
J. Patrick Cremin, Esq. (918) 594-0400
Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C.
320 South Boston Avenue, Suite 400
Tulsa, Oklahoma 74103-3708

Opposing Counsel:

For Plaintiff
Stephen Q. Peters, Esq. (918) 743-6201
Harris, Turner, Daniel, McMahan & Peters, P.C.
(now Harris, Gordon, McMahan, Peters & Thompson, P.C.)
1924 South Utica, Suite 700
Tulsa, Oklahoma 74104

Mike Jones, Esq. (918) 367-3303
The Jones Law Firm
116 North Elm
P.O. Box 1215
Bristow, Oklahoma 74010

(10) **Case:**

Cherry Communications, Inc. v. WorldCom, Inc., WorldCom Network Services, Inc. and Digital Communications of America, Inc. v. James R. Elliot, The Management Network Group, Inc., and Mickey Woo

United States District Court, Northern District of Oklahoma, Case No. 96-CV-1102-K
Before Kern, District Judge

Parties Represented:

WorldCom, Inc., WorldCom Network Services, Inc. and Digital Communications of America, Inc. (defendants)

Date(s) of Representation:

1996-97

Nature of Representation:

Defense and prosecution of counterclaims in telecommunications contract litigation in federal district court.

Summary:

Plaintiff and defendants entered into certain telecommunications contracts which were the basis of this suit. Plaintiff brought suit alleging breach of contract, fraud, consumer fraud and deceptive business practices, violation of the Uniform Deceptive Trade Practices Act, and tortious interference with contract and reasonable expectation of economic benefit, and sought reformation, restitution, accounting, and rescission. Defendants' counterclaims included breach of contract, foreclosure of security interest, declaratory judgment, conspiracy, and collection of three promissory notes.

Role:

As co-counsel with lead counsel, Donald L. Kahl (Hall, Estill), I actively participated in discovery and trial.

Trial Dates:

July 21-23, 1997.

Disposition:

Prior to trial, the court ordered foreclosure of WorldCom Network Services' security interest. The case went to trial on the remaining claims, and settled after three days of trial.

Co-Counsel:

For Defendants
Donald L. Kahl, Esq. (918) 594-0400
Mark Banner, Esq.
T. Lane Wilson, Esq.
Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C.
320 South Boston Avenue, Suite 400
Tulsa, Oklahoma 74103-3708

Opposing Counsel:

For Plaintiffs

Charles B. Sklarsky, Esq. (312) 222-9350
Jenner & Block
One IBM Plaza
Chicago, Illinois 60611

Amelia A. Fogleman, Esq. (918) 595-4800
Gable, Gotwals, Mock, Schwabe
(now Gable & Gotwals, P.C.)
100 West 5th Street, Suite 1100
Tulsa, Oklahoma 74103-4217

19. **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 the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).**

During my tenure at Hall, Estill, I was involved in litigation of hundreds of cases. Two in particular I consider significant:

World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980): As a new associate, my first court experience was to argue, unsuccessfully, lack of personal jurisdiction of our client, World-Wide Volkswagen, in the District Court of Creek County, Oklahoma. I was fortunate enough to work on the appeals to the Oklahoma and United States Supreme Courts and I attended oral arguments. We ultimately prevailed. Today, this case is one of the personal jurisdiction decisions taught in law schools.

Patty Precision v. Brown & Sharpe Manufacturing Co., 742 F.2d 1260 (10th Cir. 1984), and 846 F.2d 1247 (10th Cir. 1988): I worked on this case for ten years (1978-88). Hall, Estill represented the plaintiff, which sued for, inter alia, breach of express and implied warranties. The district court granted summary judgment for defendants on the warranty claims, based on lack of privity. I appealed and argued successfully to the Tenth Circuit Court of Appeals that privity was no longer required under Oklahoma law. After remand and trial, the district court entered judgment for the controls manufacturer based on a disclaimer. I appealed and successfully argued that the manufacturer's disclaimer was not binding on the ultimate buyer. These opinions are frequently cited as leading cases on Oklahoma law of privity and disclaimer.

The other work I performed in private practice which I consider significant legal activity is my pro bono representation of an adoption agency for more than fifteen years. I was involved in all aspects of adoption, including foster care placements, parental notifications, terminations of parental rights, and consents to adoption on behalf of the agency. Pro bono work proved to be the most satisfying work in my private practice.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List 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. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

   None.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

   Our financial holdings, other than real estate, are limited to investment securities. As I do currently, I will use the court's software program to track newly-filed litigation assigned to me to identify conflicts of interest and make immediate recusal decisions. I will in all instances follow the Code of Judicial Conduct.

3. **Do you have any plans, commitments, or agreements to pursue outside employment, with our without compensation, during your service with the court? If so, explain.**

   No. There is the possibility that I could teach another evening course at the University of Tulsa College of Law.

4. **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, patents, honoraria, and other items exceeding $500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in government Act of 1978, may be substituted here.)**

   See Financial Disclosure Report for 1/1/00 to 7/31/01, attached at the end of Section II.

5. **Please complete the attached financial net worth statement in detail. (Add schedules as called for.)**

   See attached net worth statement.

6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

   No.

FINANCIAL STATEMENT
NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES	
Cash on hand and in banks	$ 9,095	Notes payable to banks - secured	
U.S. Government securities - add schedule		Notes payable to banks - unsecured	
Listed securities - add schedule	$ 80,815	Notes payable to relatives	
Unlisted securities - add schedule		Notes payable to others	
Accounts and notes receivable:		Accounts and bills due	
Due from relatives and friends		Unpaid income tax	
Due from others		Other unpaid tax and interest	
Doubtful		Real estate mortgages payable - Add schedule	$ 171,700
Real estate owned - add schedule	$ 510,000	Chattel mortgages and other lists payable	
Real estate mortgages receivable		Other debts - itemize	
Autos and other personal property	$ 57,000	Credit card	
Cash value - life insurance			
Other assets - See Schedule	$ 809,701		
		Total Liabilities	$ 171,700
		Net Worth	$1,294,911
Total Assets	$1,466,611	Total Liabilities and Net Worth	$1,466,611
CONTINGENT LIABILITIES	None	GENERAL INFORMATION	
As endorser, comaker or guarantor		Are any assets pledged? (Add schedule)	Yes
On leases or contracts		Are you defendant in any suits or legal actions?	No
Legal Claims		Have you ever taken bankruptcy?	No
Provision for Federal Income Tax			
Other special debt			

SCHEDULES

Cash

Schwab Account	$ 2,408
Investor Fund	6,512
Credit Union	175
	$ 9,095

Listed Securities

Exxon Mobil Corporation	$ 33,408
Abgenix Inc.	11,632
PE Corp-Celera Genomics	3, 063
Williams Communications Group, Inc.	26,136
Genvec, Inc.	6,576
	$ 80,815

Real Estate Owned

Residence, Tulsa, Oklahoma	$275,000
Non-Residence, Tulsa, Oklahoma	60,000
Condominium, Highland Beach, Florida	175,000
	$510,000

Autos / Other Personal Property

Autos	$ 20,000
Furnishings	15,000
Jewelry	22,000
	$ 57,000

Other Assets

IRA Account (Spouse)	$ 31,983
IRA Account (Self)	772,918
Thrift Savings Plan	4,800
	$809,701

Real Estate Mortgages

Residence, Tulsa, Oklahoma	$ 85,000
Condominium, Highland Beach, Florida	86,700
	$171,700

AO-10 (w)
Rev. 1/2000

FINANCIAL DISCLOSURE REPORT
Nomination Report

Report required by the Ethics in Government Act of 1978, as amended (5 U.S.C. App. 4, Sec. 101-112)

Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
Eagan, Claire V.	USDC/N. Dist. of Oklahoma	08/06/2001
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5. Report Type (check type)**	**6. Reporting Period**
District Judge - Nominee	X Nomination, Date 08/02/2001 __ Initial __ Annual __ Final	01/01/2000 to 07/31/2001
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.**	
United States Courthouse 333 W. 4th Street, Room 411 Tulsa, Oklahoma 74103	Reviewing Officer _____ Date _____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.

I. POSITIONS *(Reporting individual only; see pp. 9-13 of Instructions.)*

☐ NONE (No reportable positions.)

	POSITION	NAME OF ORGANIZATION / ENTITY
1	Trustee	Trust #1 [See #17 in Part VII and Note in Part VIII]
2	Trustee	Trust #2 [See #18 in Part VII and Note in Part VIII]
3		

II. AGREEMENTS *(Reporting individual only; see pp.14-16 of Instructions.)*

☒ NONE (No reportable agreements.)

	DATE	PARTIES AND TERMS
1		
2		
3		

III. NON-INVESTMENT INCOME *(Reporting individual and spouse; see pp. 17-24 of Instructions.)*

☐ NONE (No reportable non-investment income.)

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1	2001	University of Tulsa College of Law	$1,500
2	2001	Advanced Medical Instruments, Inc.	
3	2000	Advanced Medical Instruments, Inc.	
4	1999	Advanced Medical Instruments, Inc.	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Ragan, Claire V.	08/06/2001

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)

☐ NONE (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1	EXEMPT	
2		
3		
4		
5		
6		
7		

V. GIFTS

(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)

☐ NONE (No such reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1	EXEMPT		
2			
3			

VI. LIABILITIES

(Includes those of spouse and dependent children. See pp 33-35 of Instructions.)

☐ NONE (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE
1	Homeside Lending, Inc.	Mortgage loan on parents' residence	L
2			
3			
4			
5			
6			

* VAL CODES: J=$15,000 or less K=$15,001-$50,000 L=$50,001 to $100,000 M=$100,001-$250,000 N=$250,001-$500,000
O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Eagan, Claire V.	08/06/2001

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)

☐ NONE (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1	EXEMPT	
2		
3		
4		
5		
6		
7		

V. GIFTS

(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)

☐ NONE (No such reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1	EXEMPT		
2			
3			

VI. LIABILITIES

(Includes those of spouse and dependent children. See pp 33-35 of Instructions.)

☐ NONE (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE
1	Homeside Lending, Inc.	Mortgage loan on parents' residence	L
2			
3			
4			
5			
6			

* VAL CODES: J=$15,000 or less K=$15,001-$50,000 L=$50,001 to $100,000 M=$100,001-$250,000 N=$250,001-$500,000
O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Eagan, Claire V.	08/06/2001

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)					EXEMPT	- - -	- -	-	- EXEMPT
1 Investor Fund / Bank of Oklahoma, N.A.	A	Dividend	J	T					
2 Property #1 - Tulsa, OK		None	L	W					
3 Property #2 - Highland Beach, FL		None	M	W					
4 Exxon Corp. - Common	A	Dividend	K	T					
5 The Williams Cos. - Common (-0- Ending Value)	E	Dividend		T					
6 Merrill Lynch Managed IRA #1 (#7-11 below) (See VIII)									
7 Alliance Growth Fund (-0- Ending Value)	A	Dividend		T					
8 Davis New York Venture Fund (-0- Ending Value)	A	Dividend		T					
9 MFS Emerging Growth Fund (-0- Ending Value)	A	Dividend		T					
10 Ivy International Fund (-0- Ending Value)	A	Dividend		T					
11 Merrill Lynch Global Allocation Fund (-0- End Val)	A	Dividend		T					
12 Merrill Lynch Managed IRA #2 (#13-16 below) (See VIII)									
13 Merrill Lynch Global Allocation Fund (-0- End Val)		None		T					
14 Evergreen High Yield Bond Fund (-0- Ending Value)		None		T					
15 Cash & Money Funds (-0- Ending Value)		None		T					
16 Merrill Lynch CMA Acct., Cash Management Fund	A	Interest	J	T					
17 Trust #1 (See Note in VIII)		None	J	T					

1 Inc/Gain Codes: (Col. B1, D4) A=$1,000 or less B=$1,001-$2,500 C=$2,501-$5,000 D=$5,001-$15,000 E=$15,001-$50,000 F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

2 Val Codes: (Col. C1, D3) J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000 N=$250,001-$500,000 O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

3 Val Mth Codes: (Col. C2) Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Eagan, Claire V.

Date of Report: 08/06/2001

VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions.)					EXEMPT	- - -	- -	-	- EXEMPT
18 Trust #2 (See Note in VIII)		None	J	T					
19 Schwab IRA - (#1) (#20-35 below) (See VIII)									
20 Russell Diversified Equity Fund	D	Dividend	M	T					
21 Russell Equity Income Fund (See VIII) (Sold in 1999)		None							
22 Russell Quantitative Equity Fund	D	Dividend	M	T					
23 Russell Special Growth Fund	E	Dividend	M	T					
24 Russell Emerging Markets Fund	A	Dividend	K	T					
25 Russell Diversified Bond Fund (-0- Ending Value) (See VIII)	A	Dividend		T					
26 Russell Multi Strategy Bond Fund (-0- End Val) (See VIII)	A	Dividend		T					
27 Russell International Securities Fund	D	Dividend	M	T					
28 Russell Real Estate Securities Fund (See VIII) (Sold in 1999)		None							
29 Russell Money Market Fund (See VIII) (Sold in 1999)		None							
30 Schwab Money Market Fund	A	Dividend	J	T					
31 Firsthand Technology Fund	B	Dividend	J	T					
32 Northern Technology Fund	D	Dividend	J	T					
33 Rydex OTC Fund	A	Dividend	J	T					
34 Eaton Vance Trad. Worldwide	B	Dividend	K	T					

1 Inc/Gain Codes: A=$1,000 or less B=$1,001-$2,500 C=$2,501-$5,000 D=$5,001-$15,000 E=$15,001-$50,000
(Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

2 Val Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000 N=$250,001-$500,000
(Col. C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market
(Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Eagan, Claire V.	08/06/2001

VII. Page 3 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income,assets, or transactions.)					EXEMPT				EXEMPT
35 Fremont Inst. U.S. Micro	D	Dividend	K	T					
36 Schwab One Inv. Acct. (#2) (#37-45 below) (See VIII)									
37 Hibernia Corp. (-0- Ending Value)	A	Dividend		T					
38 Abgenix Inc.		None	K	T					
39 Incyte Pharmaceuticals (-0- Ending Value) (See VIII)		None		T					
40 PE Corp-Celera Genomics (See Note in VIII)		None	J	T					
41 Money Market Fund	A	Interest	J	T					
42 Geron Corp. (-0- Ending Value)		None		T					
43 Charles Schwab Corp. (-0- Ending Value)	A	Dividend		T					
44 Williams Communications Group A		None	K	T					
45 XETA Technologies (-0- Ending Value)		None		T					
46 Genvec		None	J	T					
47 Schwab One IRA - (#3) (See #48-50 below)(See VIII)									
48 Schwab Money Market	A	Dividend	J	T					
49 Fremont U.S. Microcap	D	Dividend	K	T					
50 Rydex Biotechnology		None	K	T					
51									

1 Inc/Gain Codes: A=$1,000 or less B=$1,001-$2,500 C=$2,501-$5,000 D=$5,001-$15,000 E=$15,001-$50,000
(Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

2 Val Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000 N=$250,001-$500,000
(Col. C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market
(Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Bagan, Claire V.	08/06/2001

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Attach part of report.)

Part VII - Inv. and Trusts (cont'd)

#5 The Williams Cos. - Common
On March 20, 2001, the investment was sold via public trade and the gain realized is reported accordingly.

#6 Merrill Lynch Managed IRA Account #1
From January 1 through February 3, 2000, investments were made and managed through Merrill Lynch as account custodian. No income was distributed to participant. Any distributions from the Funds to the account custodian were reinvested. On Febuary 3, 2000, all investments were transferred to Charles Schwab IRA as trustee/account custodian. No income was distributed to participants invested in the Funds. If there were any distributions from the Funds to Schwab, Schwab reinvested them in the Funds.

#12 Marrill Lynch Managed IRA Account #2
From January 1 through February 3, 2000, investments were made and managed through Merrill Lynch as account custodian. No income was distributed to participant. Any distributions from the Funds to the account custodian were reinvested. On February 3, 2000, all investments were transferred to Charles Schwab IRA as trustee/account custodian. No income was distributed to participants invested in the Funds. If there were any distributions from the Funds to Schwab, Schwab reinvested them in the Funds.

#17 Trust #1
The Trust is the named beneficiary of a life insurance policy issued by Northwestern Mutual Life on the life of a family member who is still living. There are no other Trust assets.

#18 Trust #2
The Trust is a trust created in 2000 to receive, hold and distribute certain assets. No assets were contributed in 2000 or to date in 2001.

#19 Charles Schwab IRA (#1)
Investments were made and managed through Schwab. No income was distributed to participants invested in the Funds. If there were any distributions from the Funds to Schwab, Schwab reinvested them in the Funds.

#21 Russell Equity Income Fund
No ownership or distributions in 2000. Investments were converted to cash and reinvested in other Funds in 1999.

#25 Russell Diversified Bond Fund
On July 26, 2000, investments in this Fund were converted to cash and reinvested in new funds with Schwab as account custodian. No income was distributed to participant.

#26 Russell Multi Strategy Bond Fund
On July 26, 2000, investments in the Fund were converted to cash and reinvested in new funds with Schwab as account custodian. No income was distributed to participant.

#28 Russell Real Estate Securities Fund
No ownership or distributions in 2000. Investments were converted to cash and reinvested in other Funds in 1999.

#29 Russell Money Market Fund
No ownership or distributions in 2000. Investments were converted to cash and reinvested in other Funds in

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Eagan, Claire V.	08/06/2001

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Attach part of report.)

1999.

#36 Schwab One Investment Account (#2)
Investments were made and managed through Schwab. No income was distributed to participants invested in the Funds. If there were any distributions from the Funds to Schwab, Schwab reinvested them in the Funds.

#39 Incyte Pharmaceuticals
From January 1 through January 13, 2000, investments were made and managed through Schwab. On January 13, 2000, the investments were sold via public trade and the gain realized is reported accordingly.

#40 PE Corp-Celera Genomics
On January 21, 2000, the investments were partially sold via public trade and the gain realized is reported accordingly.

#47 Schwab One IRA (#3)
Investments were made and managed through Schwab. No income was distributed to participants invested in the Funds. If there were any distributions from the Funds to Schwab, Schwab reinvested them in the Funds.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Eagan, Claire V.	08/06/2001

IX. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature Claire V Eagan Date 8-6-01

Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
One Columbus Circle, N.E.
Suite 2-301
Washington, D.C. 20544

III. GENERAL (PUBLIC)

1. **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.**

   Over the years, I have actively participated in bar and community organizations and activities, including bar committees.

   For more than fifteen years during my association with Hall, Estill, I served as pro bono adoption counsel for Catholic Charities. This work included rendering legal advice, handling the termination of parental rights litigation, and participating in adoption proceedings.

   As a member of the Junior League of Tulsa, my volunteer activities included placement in literacy and domestic violence projects. One year, I trained as a literacy tutor and tutored a young man. Another year, I participated in weekly activity periods with children in a local domestic violence shelter while their mothers attended classes.

   I was appointed to handle two pro bono matters by local federal courts: In the Northern District of Oklahoma, I was appointed to serve as counsel to a plaintiff suing a housing authority for improved housing. In the Eastern District of Oklahoma, I was appointed to serve as co-counsel with a federal public defender in a death penalty habeas proceeding.

   Finally, I have been active in local community volunteer organizations, such as the United Way and the Cystic Fibrosis Foundation.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?**

   No.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

There was not a selection commission involved in this judicial selection process. Instead, our two Senators, Senator Don Nickles and Senator James Inhofe, selected the candidates from Oklahoma. Interested persons sent letters of interest and résumés to the Senators, who conducted interviews and selected the candidates. I had separate interviews with Senator Nickles and Senator Inhofe. Each Senator called me after the selection decision was made.

In February 2001, the Senators recommended me to President Bush for nomination to the United States District Court for the Northern District of Oklahoma. Following this recommendation, on May 4, 2001, I was interviewed at the White House by Timothy E. Flanigan and staff concerning my experience and qualifications. Thereafter, I was interviewed by an agent of the Federal Bureau of Investigation and an attorney with the Department of Justice. I was nominated by President Bush on August 2, 2001.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.**

No.

5. **Please discuss your views on the following criticism involving "judicial activism."**

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. **A tendency by the judiciary toward problem-solution rather than grievance resolution;**

b. **A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;**

c. **A tendency by the judiciary to impose broad, affirmative duties upon governments and society;**

d. **A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and**

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The United States Constitution both creates and limits the federal government by separation of powers and a system of checks and balances. The system is most effective if each branch limits itself to its assigned duties.

The role of the judiciary is to interpret and apply the law, not to make the law. Judicial activism, in my experience, commonly takes two forms: venturing beyond application or interpretation into law making, and thereby infringing on the legislative branch; and using judicial decrees to exercise power where none exists, and thereby usurping executive powers. Both are equally improper.

The judiciary is required to apply the law as promulgated by the legislature (which ideally reflects the will of the majority) unless in conflict with the Constitution. In exercising this duty, a federal judge should be deferential to federal, state, and local authority and should exercise restraint. When called upon to balance the rights of the individual with the right of the majority to govern, the judge should be guided by the words of the Constitution, by original understanding (if known), and by precedent. If the Constitution is silent, policy-making and rule-making should be left to the legislatures, the executives, and the people.

Mr. Payne?

STATEMENT OF JAMES H. PAYNE, OF OKLAHOMA, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN, EASTERN AND WESTERN DISTRICTS OF KENTUCKY

Judge PAYNE. Senator, I want to thank you and the committee for holding this prompt. I will have no further statement than that. I am in the same position as Claire. I have a wife, Judith Mills Payne, who is very strongly behind me, but she is not here. And a son, Jon Michael Payne, an active, practicing attorney in Oklahoma, and my daughter, Julie Payne Woolslayer, mother of my three proudest grandchildren, Matthew, Jack and Phillip, are all with me in spirit, but not here today.

Senator KOHL. We thank you.

[The biographical information of Mr. Payne follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

James Hardy Payne
Jim Payne
Jimmy Payne

2. Address: List current place of residence and office address(es).

Residence:	**Muskogee, Oklahoma**
Office:	**451 United States Courthouse** **101 North Fifth Street** **Muskogee, Oklahoma 74401**

3. Date and place of birth.

March 5, 1941
Lubbock, Texas

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Judith Ann Mills Payne
Married September 7, 1963
Homemaker

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

University of Oklahoma
1963-1966
Juris Doctor
June 1966

University of Oklahoma
1959-1963
Bachelor of Science
May 1963

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Oct. 1988 - Present	**United States Magistrate Judge**	**Eastern District Oklahoma Muskogee, Oklahoma**
May 1973 - Oct. 1988	**Partner**	**Sandlin and Payne Law Firm Muskogee, Oklahoma**
July 1970 - May 1973	**Asst. United States Attorney**	**Eastern District Oklahoma Muskogee, Oklahoma**
Jan. 1969 - May 1970	**Staff Judge Advocate**	**Columbus Air Force Base Mississippi**
July 1968 - Jan. 1969	**Asst. Staff Judge Advocate**	**Anderson Air Force Base Guam**
Sept. 1966 - June 1968	**Asst. Staff Judge Advocate**	**Columbus Air Force Base Mississippi**
June 1966 - Sept. 1966	**Laborer**	**Stamford Cotton-Oil Co. Stamford, Texas**
Sept. 1963- June 1966	**Graduate Assistant (football)**	**University of Oklahoma Norman, Oklahoma**
June 1963 - Aug. 1963	**Laborer**	**Lee-Way Motor Freight Oklahoma City, Oklahoma**

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

United States Air Force Reserve
Lieutenant Colonel
Serial #462-64-2021
Dates of Service: Jan 1975 - Jan. 2, 1992

United States Air Force
Captain
Serial #FV315976/462-64-2021
Dates of Service: Sept 1966 - July 1970
Honorable Discharge

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Joe Stamper-Andrew C. Wilcoxen Chapter of the American Inns of Court
Eastern District of Oklahoma

Paul Harris Fellow
Rotary Foundation of Rotary International

Four-year athletic scholarship
University of Oklahoma

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

Judicial Branch Committee of the Judicial Conference of the United States	**Committee Member**	**February 1999 (open term)**
United States District Court Advisory Council	**Member**	**September 1998 (one-year term)**
Advisory Group of United States Magistrate Judges	**Tenth Circuit Representative**	**February 1997 (three-year term)**
Civil Justice Reform Act Advisory Group for the United States District Court for the Eastern District of Oklahoma	**Chairman**	**March 1994**
Muskogee County Bar Association	**1979Vice-President Grievance Committee**	**May 1970 to present**
American Bar Association	**Member**	**July 1966 to present**
Oklahoma Bar Association	**Member**	**July 1966 to present**

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Lobbying Organizations:
None

Other Organizations:
Rotary International
Family YMCA, Muskogee, OK
Muskogee Country Club, Muskogee, OK
St. Paul United Methodist Church
Varsity "O" Club, University of Oklahoma
Oklahoma Chapter Fellowship of Christian Athletes, Board of Representatives
Football Letterman's Association, University of Oklahoma

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

August 21, 1972	**United States District Court, Northern District Oklahoma**
September 21, 1970	**United States Court of Appeals, Tenth Circuit**
July 17, 1970	**United States District Court, Eastern District Oklahoma**
March 25, 1970	**United States Court of Military Appeals**
March 23, 1970	**Supreme Court of the United States**
July 26, 1966	**Oklahoma Supreme Court**

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Drafted the Report of the Civil Justice Reform Act Committee for the Eastern District of Oklahoma

Edited the Civil Justice Expense and Delay Reduction Plan for the Eastern District of Oklahoma

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent
August 23, 2000

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

1988 to present	**United States Magistrate Judge**	**Appointed by Chief Judge, Eastern District Oklahoma**

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

(1) ***Atchley v. Smith***
No. CIV 93-378-P (E.D. Okla. Feb. 1, 1994)
Affirmed, No. 94-7037 (10th Cir. June 5, 1995)

Beezly v. Union Pacific Railroad
No. CIV 00-147-P (E.D. Okla. Dec. 21, 2000)

Eldridge v. Missouri Pacific Railroad
832 F.Supp. 328 (E.D. Okla. 1993)

Hollingsworth v. Hill
No. CIV 94-347-P (E.D. Okla. May 4, 1995)
Affirmed, 110 F.3d 733 (10th Cir. 1997)

Kiser v. Boone
No. CIV 97-386-S (E.D. Okla. Aug. 6, 1999)
- Magistrate Judge's Findings and Recommendation
- United States District Judge's Order adopting and affirming the Findings and Recommendation (Jan. 31, 2000)

Affirmed, No. 00-7030 (10th Cir. Feb. 27, 2001)

Luna v. Thomason
No. CIV 95-150-P (E.D. Okla. Dec. 8, 1995)
Affirmed, No. 96-7008 (10th Cir. Sept. 27, 1996)

Smith v. Ward
No. CIV 96-008-S (E.D. Okla. Aug. 11, 1997)
- Magistrate Judge's Findings and Recommendation
- United States District Judge's Order adopting and affirming the Findings and Recommendation (Dec. 10, 1997)

Affirmed, No. 98-7021 (10th Cir. Feb. 12, 1999)

Wisdom v. Ward
No. CIV 97-527-P (E.D. Okla. July 24, 1998)
Affirmed, No. 98-7114 (10th Cir. May 18, 1999)

Wiseman v. Cody
No. CIV 92-677-S (E.D. Okla. Jan. 16, 1998)
- Magistrate Judge's Findings and Recommendation
- United States District Court Judge's Order adopting and affirming the Findings and Recommendation (Mar. 6, 1998)

Affirmed, No. 98-7047 (10th Cir. Aug. 31, 1999)

Wright v. United States of America
No. CIV 94-099-P (E.D. Okla. June 15, 1994)
Affirmed, No. 94-7117 (10th Cir. Jan. 12, 1995)

(2) ***Horton v. Massie***
No. CIV 96-036-B (E.D. Okla. Feb. 5, 1999)
- Magistrate Judge's Findings and Recommendation
- United State District Judge's Order adopting and affirming the Findings and Recommendation (Mar. 31, 1999)

Reversed, No. 99-7052 (10th Cir. Jan. 31, 2000)

In ***Horton v. Massie***, No. 99-7052 (10th Cir. Jan. 31, 2000), the Tenth Circuit Court of Appeals reversed this court's decision to deny a petition for a writ of habeas corpus and remanded with instructions to grant the writ unless the State of Oklahoma granted a retrial. The petitioner was convicted of First Degree Murder and Kidnapping based primarily on the testimony of a convicted accomplice and an individual to whom the petitioner allegedly had confessed. The petitioner claimed her husband was the actual killer, and her young daughter had witnessed the murder. The Tenth Circuit found the petitioner's trial counsel was ineffective pursuant to *Strickland v. Washington*, 466 U.S. 668 (1984), in three areas: (1) failure to call the petitioner's four-year-old daughter to testify as an eyewitness to the murder, (2) failure to adequately investigate, and (3) failure to request a jury instruction on the defense of duress.

Summers v. Missouri Pacific Railroad
No. CIV 94-468-P (E.D. Okla. Aug. 25, 1995)
Affirmed in part, 132 F.3d 599 (10th Cir. 1997)

In ***Summers v. Missouri Pacific Railroad***, 132 F.3d 599 (10th Cir. 1997), two railroad employees brought an action against the railroad pursuant to the Federal Employer's Liability Act ("FELA") and the Boiler Inspection Act ("BIA") alleging injuries resulting from exposure to diesel exhaust fumes. This court granted the railroad's Daubert motion to exclude expert testimony, held the psychologist's

testimony regarding dementia was inadmissible, denied the Plaintiffs' motion for new scheduling order and conducted trial.

Prior to trial, Plaintiffs had requested a new scheduling order to enable them to add an expert witness. The motion for new scheduling order was denied based on this court's interpretation of Fed.R.Civ.P. 16(b) which provides that "[a] schedule shall not be modified except upon a showing of good cause . . ." This court determined the proffered testimony of the new expert did not differ in any significant respect from the testimony already excluded. Therefore, this court held Plaintiffs failed to make the requisite threshold showing of good cause.

The Tenth Circuit Court of Appeals affirmed the exclusion of the disputed testimony, held the jury instructions were proper, but determined the defendants were entitled to a new scheduling order in order to allow them to add an expert witness.

Ballard v. Muskogee Regional Center
No. CIV 99-021-P (E.D. Okla. Sept. 30, 1999)
Reversed, 238 F.3d 1250 (10th Cir. 2001)

In ***Ballard v. Muskogee Regional Medical Center***, 238 F.3d 1250 (10th Cir. 2001), this court's ruling on the defendant's motion for judgment as a matter of law was reversed by the Tenth Circuit Court of Appeals. In *Ballard,* the plaintiff was a psychological technician at Defendant Muskogee Regional Medical Center. Plaintiff brought the action against the defendant pursuant to 42 U.S.C. §1983 for First Amendment retaliation. Specifically, the plaintiff alleged she was terminated when she reported an abused patient to the County Health Department that the defendant had received from a referring facility. Plaintiff further alleged the defendant did not report the abuse due to the risk of losing future referrals. Defendant claimed that the plaintiff was terminated because of her poor work performance. At the close of all the evidence, Defendant moved for judgment as a matter of law. The jury, answering special interrogatories, found that (1) Plaintiff's speech was a substantial or motivating factor in her termination and (2) she would have been terminated absent her exercise of speech. The jury further advised that Plaintiff be awarded $8,150.00 in front pay damages. This court awarded Plaintiff $8,150.00 in front pay damages as equitable relief based on the jury's finding of a constitutional violation and in the amount recommended by the jury.

(3) same cases cited in (1)

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

July 1970 - May 1973	**Assistant United States Attorney Eastern District of Oklahoma Muskogee, Oklahoma**

17. Legal Career:

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

1. 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;

No

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

No

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.

Oct. 1988 - present	**United States Magistrate Judge**	**Eastern District Oklahoma 451United States Courthouse Muskogee, OK 74401**
May 1973 - Oct. 1988	**Partner**	**Sandlin and Payne Law Firm 330 North Fourth Street Muskogee, OK 74401**
July 1970 - May 1973	**Assistant United States Attorney**	**Eastern District Oklahoma 333 United States Courthouse Muskogee, OK 74401**
Jan. 1969 - May 1970	**Staff Judge Advocate**	**Columbus Air Force Base Mississippi**
July 1968 - Jan. 1969	**Asst. Staff Judge Advocate**	**Anderson Air Force Base Guam**
Sept. 1966 - June 1968	**Asst. Staff Judge Advocate**	**Columbus Air Force Base Mississippi**

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Oct. 1988 - Present

Duties include conducting jury trials, summary jury trials, settlement conferences, involvement in a broad range of civil and criminal pretrial matters, and research and drafting of opinions on a wide variety of issues.

To date, court statistics reflect over 800 civil cases have consented to my office for final disposition. These cases were disposed of by dispositive orders and 93 jury and non-jury trials. I have also conducted numerous civil hearings relating to discovery; criminal hearings involving preliminary matters and detention; issued over 1,000 written opinions.

In May 1989, the Magistrate Judge was designated by the Chief Judge to implement an Alternative Dispute Resolution Program for the Eastern District. Since inception of the program, and effective through 2000, I have conducted an average of 100 settlement conferences per year.

Further, since first appointed in 1988, I have issued in excess of 400 criminal search warrants and have conducted numerous criminal preliminary hearings, arraignments, bail hearings, and misdemeanor criminal jury trials.

May 1973 - Oct. 1988

Fifteen-year practice was devoted to civil matters, representing business corporations, municipal corporations, and individuals involved in banking, manufacturing, wholesale/retail distribution, and real estate development. In summary, the practice included commercial litigation, product liability defense, workers compensation defense, eminent domain, labor negotiations, bank charter applications, Department of Health certificate of need applications, probate and estate planning. This varied civil practice required regular

appearances before federal and state courts, as well as various administrative tribunals. Accepted indigent, criminal appointments and provided pro bono representation for several non-profit entities.

July, 1970 - May, 1973

Approximately 50% of tenure was with the criminal division involving prosecution of bank robberies, interstate shipment of stolen property, counterfeiting, and various gun/drug violations. The civil division experience involved numerous condemnation cases associated with the Arkansas River Navigation Project, as well as defense of federal tort claim matters.

Jan. 1969 - June 1970

As Staff Judge Advocate, served as Senior Legal Advisor to the Wing Commander and Base Commander, which involved supervising all court martial activities, as well as representing the Air Force's interest in government contracts, federal tort claims, aircraft accident investigations and flying evaluation boards.

During last 1½ years of active duty, met Air Force requirements for military judge certification.

Sept. 1966 - Jan. 1969

Duties of Assistant Staff Judge Advocate involved both prosecution and defense of court martial actions dealing with misdemeanor and felony matters such as A.W.O.L., desertion, drug possession, rape, assault, etc.

During first 2½ years of active duty, met Air Force requirements for certification as trial counsel (prosecutor) and defense counsel.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

During my first four years as an attorney with the Air Force, I was required to make court appearances for court martials, discharge boards, and various boards of inquiry dealing with both criminal and civil matters.

Following my discharge from the Air Force, and while an Assistant United States Attorney, I was involved in court appearances in both criminal and civil matters.

Thereafter, in my private civil practice, I was required to make regular appearances in state and federal courts, as well as before various administrative tribunals.

2. What percentage of these appearances was in:
   (a) federal courts; **15%**
   (b) state courts of record; **65%**
   (c) other courts. **20%**

3. What percentage of your litigation was:
   (a) civil; **85%**
   (b) criminal. **15%**

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

   Tried approximately 105 cases:

   25 associate counsel
   30 chief counsel
   50 sole counsel

   Note: These figures do not reflect military trials and administrating hearings.

5. What percentage of these trials was:
   (a) jury; **25%**
   (b) non-jury. **75%**

18. Litigation: Describe the ten most significant litigated matters which you personally handled. 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. U.S.A. v. Bruce Charles Blalack, Sr. and Danny Waldrop

Trial Dates: Dec. 16-17, 1971

Trial Court: United States District Court, Eastern District Oklahoma
Case No. 27928

Trial Judge: Edwin L. Langley (deceased)

Co-Counsel: Robert McDonald
(Former Chief, Criminal Division, United States Attorney, ED/OK)
P.O. Box 3566
Bernice, OK 74331-3566
918-257-6565

Opposing Counsel: Don Gillespie
Sam Sexton
P.O. Box 1526
Ft. Smith, AR 72901
501/782-8958

Summary: Case involved prosecution of two defendants charged with Bank Robbery, by assaulting bank employees with firearms, in violation of 18 U.S.C. §2113(d). Significantly, case provided first opportunity to participate in prosecution of major federal crime. Acted as associate counsel with United States Attorney and assisted with preparation of case for trial. Shared trial responsibility with United States Attorney. Trial resulted in a conviction of both defendants.

2. State of Oklahoma v. Edmondson, 532 P.2d 81

Trial Date: Mar. 15-16, 1974

Trial Court: District Court of Muskogee County, OK
Case No. F-74-493

Trial Judge: Bill Hayworth

Co-Counsel: R. Forney Sandlin
330 North Fourth Street
P.O. Box 1934

Muskogee, OK 74402
918/683-5513

Opposing Counsel: Jim Conrad
Asst. District Attorney
(deceased)

Summary: Chief defense counsel for indigent defendant, Lonnie R. Edmondson, charged with First Degree Murder. Prepared appellate briefs, which resulted in a new trial for defendant. Acted as chief defense counsel at the second trial. Defendant received a life sentence, with opportunity for parole.

3. USA v. Jerry Wayne Oxford

Trial Dates: May 5-6, 1975

Trial Court: United States District Court, Eastern District Oklahoma
Case No. 75-15-CR

Trial Judge: Joseph W. Morris

Co-Counsel: None

Opposing Counsel: Robert McDonald
(Former Chief, Criminal Division, United States Attorney, ED/OK)
P.O. Box 3566
Bernice, OK 74331-3566
918-257-6565

Summary: Sole defense counsel for defendant charged with Receiving, Concealing, Transporting, and Selling Stolen Explosive Materials, in violation of 18 U.S.C. §842(h) and 844(a). Case provided significant insight to problems associated with preparing defense of serious federal crimes. At conclusion of two-day jury trial, defendant was acquitted of all charges.

4. Loftin Construction Company v. Louis Nevitt, Sam Sontag and Sooner Federal Savings & Loan, et al.

Trial Dates: Dec. 13-16, 1977; Jan. 18-20, 1978; Jan. 23-27, 1978

Trial Court: District Court of Muskogee County, OK
Case No. C-84-589

Trial Judge: **Hardy Summers**

Co-Counsel: **R. Forney Sandlin**
330 North Fourth Street
P.O. Box 1934
Muskogee, OK 74402
918/683-5513

Opposing Counsel: **Joe Kennedy**
(Representing Loftin Construction Co.)
306 Kingsbury Drive
Muskogee, OK 74403
918/687-8536

Douglas Garrett
(Representing Defs Nevitt & Sontag)
(deceased)

Carl Robinson
(Representing Morgan Supply)
(Currently Muskogee County Special District Judge)
Muskogee County Courthouse
220 State Street
Muskogee, OK 74401
918/684-1611

D. D. Hayes
(Representing Duff Plumbing)
444 Court Street
P.O. Box 1906
Muskogee, OK 74402
918/683-2911

Cliff Cate
(Representing Fidelity & Dept. Co.)
2520 Chandler Road
P.O. Box 2669
Muskogee, OK 74402
918/683-6100

Summary: **A complex builder's lien foreclosure action that involved several hundred thousand dollars in lien claims. Case was significant because it required analysis of intricate, factual scenario to determine proper lien priorities. Sooner Federal Savings & Loan Association was the principal lender. Acted as chief trial counsel for Sooner Federal**

Savings & Loan Association in a 10-day non-jury trial that concluded with a verdict finding Sooner Federal Savings & Loan Association had a first lien on the real estate where the construction was initiated.

5. U.S.A. v. 158.07 Acres of Land Situate in Oklahoma County, OK, Claire Spencer, et al.

Trial Dates: **Oct. 7, 1985**

Trial Court: **United States District Court, Western District Oklahoma Case No. 82-884**

Trial Judge: **David L. Russell**

Co-Counsel: **Gomer Smith, Jr.**
9639 North May Avenue, Suite 200
OK City, OK 73120
405/755-0008

Opposing Counsel: **John Green**
(Retired) Assistant United States Attorney
200 Northwest Fourth Street
OK City, OK 73102
405/553-8700

Summary: **Intricate eminent domain matter filed by United States Corps of Engineers seeking to take by condemnation essential acreages used by landowner for exclusive real estate development. Condemnation action also involved acquisition of real estate with on-going quarterhorse breeding operation. The case involved unique investigation of market data that required detailed preparation of direct and cross-examination of experts associated with real estate appraisal, real estate development, zoning, agronomy, quarterhorse breeding and marketing. Acted as chief trial counsel for landowner. Verdict for landowner turned out to be one of the largest per acre judgments returned against the Corps of Engineers in the Arcadia Lake Project.**

6. **Winston C. Johnson, Jr. v. Gene White and Pat White**

Trial Dates: June 19-20, 1986

Trial Court: District Court of Muskogee County, OK
Case No. 85-167

Trial Judge: Lyle Burris

Co-Counsel: None

Opposing Counsel: Steve Scherer
208 West Broadway
P.O. Box 2130
Muskogee, OK 74402
918/683-7751

Summary: Case involved issues concerning validity of contract for sale of commercial real estate. Case is significant because it involved jury trial analysis of a series of confusing real estate transactions. Acted as sole trial counsel for plaintiff, who received a favorable verdict after a two-day jury trial.

7. **Bob Dunkelburger, Ken Webb, Muskogee County Concerned Citizens v. Board of County Commissioners of Muskogee County, Ft. Howard Paper Company, and Raines**

Trial Dates: May 13-15, 1987

Trial Court: District Court of Muskogee County, OK
Case No. C-86-1840

Trial Judge: William Bliss

Co-Counsel: Norman Thygeson
(Represented Board of County Commissioners)
(Assistant District Attorney)
Okmulgee County Courthouse
314 West 7th Street
Okmulgee, OK 74447
918/758-1218

Joe Kennedy
(Represented Ft. Howard Paper Company)
306 Kingsbury Drive
Muskogee, OK 74403
918/687-8536

Opposing Counsel: **D. D. Hayes**
(Represented Webb)
444 Court Street
P.O. Box 1906
Muskogee, OK 74402
918/683-2911

Carl Robinson
(Represented Dunkelburger)
(Currently Muskogee County Special District Judge)
Muskogee County Courthouse
220 State Street
Muskogee, OK 74401
918/684-1611

Summary: **Case involved a zoning dispute over development of industrial property for disposal of coal fly ash. Case required landowner's counsel to closely coordinate industrial zoning ordinances with EPA regulations. Acted as chief counsel for landowner before zoning commission at trial court and on appeal. The trial court sustained zoning commission's order allowing use of land for coal fly ash disposal and Oklahoma Supreme Court affirmed trial court decision.**

8. Muskogee Urban Renewal Authority v. Cleo Buford Garrett, et al.

Trial Dates: **July 22-24, 1987; Jan. 29, 1988**

Trial Court: **District Court of Muskogee County, Oklahoma**
Case No. C-87-441

Trial Judge: **Lyle Burris**

Co-Counsel: **R. Forney Sandlin**
330 North Fourth Street
P.O. Box 1934
Muskogee, OK 74402
918/683-5513

Opposing Counsel: **Duke Logan**
101 South Wilson Street
P.O. Box 558
Vinita, OK 74301
918/256-7511

Summary: **Case involved issue of whether or not Muskogee Urban Renewal Authority could properly condemn defendant's land for commercial development. Case was significant because it was one of the first efforts by an urban renewal authority to combine use of a H.U.D. grant with a U.D.A.G. grant to develop blighted property for use as commercial property. Represented plaintiff, Muskogee Urban Renewal Authority, as chief trial counsel. Case resulted in a favorable trial court verdict for Plaintiff. Trial court decision affirmed by Court of Appeals in unpub. dec. (No. 7455) April 1, 1989, cert. denied by the Oklahoma Supreme Court December 17, 1991.**

9. William O. Woodruff v. Yaffee Iron and Metal Company

Trial Dates: **Aug. 27, 1987**

Trial Court: **Workers Compensation Court, State of Oklahoma**
Case No. 86-08187Q

Trial Judge: **Dick Lynn**

Co-Counsel: **None**

Opposing Counsel: **David Garrett**
215 State Street
P.O. Box 2969
Muskogee, OK 74402
918/683-3288

Summary: **Case involved Plaintiff's workers compensation claim for total disability against the defendant. Case is an example of intensely litigated issue of total disability by a self-insured defendant. Acted as sole trial counsel for defendant. Trial court returned verdict for defendant that was later reversed by Oklahoma Supreme Court. See unpub. dec. (No. 70,307) Feb. 7, 1989.**

10. Lashears Construction Company v. Donald J. McMahon, Jr. and Jeri A. McMahon, and Indian Trails Distributing Company v. American Insurance Company, as Third Party Defendant

Trial Dates: Mar. 24, 1988; Sept. 6, 1988

Trial Court: District Court of Muskogee County, OK
Case No. C-84-589 (consol w/C-83-1178, C-84-331)

Trial Judge: Bill Ed Rogers

Co-Counsel: None

Opposing Counsel: Greg Thomas
(Represented Lashears and American Insurance Co. [surety company])
314 West Broadway
Muskogee, OK 74401
918/687-4900

Mike Kelly
(Represented lien claimant)
502 Court Street
P.O. Box 2253
Muskogee, OK 74402
918/683-3246

Mike Howerton
(Represented lien claimant)
416 Court Street
Muskogee, OK 74401
918/683-0236

Summary: Case involved consolidation of three cases with the primary issue being resolution of issues concerning faulty construction of a large warehouse complex. Litigation of case required close review of the terms of a performance bond and detailed coordination with a forensic engineer who testified about intricate, latent defects. Acted as sole trial counsel for the defendant landowner and cross-petitioner against third-party defendant surety company. Case resulted in a substantial verdict against the third-party defendant surety company.

19. 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 the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

During 15 years of private practice, I actively participated in our firm's representation of The Greater Muskogee Development Corporation, a non-profit corporation involved in the economic, educational and environmental development of the City of Muskogee, Oklahoma. Our client's goal was to not only improve the economic circumstances of our community, but to accomplish that task while preserving the integrity of our historical and natural resources. In representing our client's interest, I was involved in negotiations with prospective developers, preparing contracts, and procurement of real estate through the eminent domain process. These efforts, on behalf of the City of Muskogee, contributed to the development of a well-respected city- administered industrial park and downtown urban renewal program that has made a lasting, positive contribution to the Muskogee County, Oklahoma area.

As United States Magistrate Judge, the District Court gave me the responsibility of initiating the Alternative Dispute Resolution Program (ADR). In that capacity, effective 2001, I have conducted in excess of 1,000 settlement conferences; our records reflect approximately 65% of the assigned cases settled without the necessity of trial. The early resolution of these disputes saved the court and the litigants untold hours of time that would have otherwise been consumed by trial and further discovery. Although there have been no precise calculations of the monetary savings, it is clear our ADR program has resulted in significant savings for both litigants and the court. These cases involved matters ranging from simple diversity, negligence issues to complex, environmental litigation.

Further, I was Chairman of the Advisory Group responsible for implementing the Civil Justice Reform Act of 1990 for the United States District Court, Eastern District of Oklahoma.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List 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. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

   Do not anticipate compensation for previous business interests except from retirement benefits to be derived from past IRA and KEOUGH retirement accounts.

   Also anticipate reimbursement for magistrate judge retirement contributions.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

   Since I have been away from private practice in excess of 12 years, I do not anticipate any conflict of interest with previous clients. In general, I plan to comply with Canon 3 Code of Judicial Conduct and the provisions of 28 U.S.C. §455 concerning disqualification of United States District Judge or United States Magistrate Judge.

3. 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

4. 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, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978 may be substituted here.)

   See Attached Financial Disclosure Report

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

   See Attached Financial Statement

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Muskogee Area Campaign Coordinator for Senator Henry Bellmon - 1974 United States Senate Campaign

AO-10 (w)
Rev. 1/2000

FINANCIAL DISCLOSURE REPORT
Nomination Report

Report required by the Ethics in Government Act of 1978, as amended (5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting *(Last name, first, middle initial)* PAYNE, JAMES H.	**2. Court or Organization** U.S.D.C.(EAST/NORTH/WEST OKLA)	**3. Date of Report** 08/13/2001
4. Title *(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)* U.S. DISTRICT JUDGE NOMINEE	**5. Report Type (check type)** X Nomination, Date 08/02/2001 __ Initial __ Annual __ Final	**6. Reporting Period** 01/01/2000 to 08/13/2001
7. Chambers or Office Address ROOM 451 U.S. COURTHOUSE P.O. BOX 2459 MUSKOGEE, OKLAHOMA 74402	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.** **Reviewing Officer** _____ **Date** _____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.

I. POSITIONS *(Reporting individual only; see pp. 9-13 of Instructions.)*

	POSITION	NAME OF ORGANIZATION / ENTITY
[X]	**NONE** (No reportable positions.)	
1		
2		
3		

II. AGREEMENTS *(Reporting individual only; see pp.14-16 of Instructions.)*

	DATE	PARTIES AND TERMS
[X]	**NONE** (No reportable agreements.)	
1		
2		
3		

III. NON-INVESTMENT INCOME *(Reporting individual and spouse; see pp. 17-24 of Instructions.)*

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
[X]	**NONE** (No reportable non-investment income.)		
1			
2			
3			
4			

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	PAYNE, JAMES H.	08/13/2001

IV. REIMBURSEMENTS — transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)

☐ NONE (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1	Exempt	
2		
3		
4		
5		
6		
7		

V. GIFTS

(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)

☐ NONE (No such reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1	Exempt		
2			
3			

VI. LIABILITIES

(Includes those of spouse and dependent children. See pp 33-35 of Instructions.)

☐ NONE (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE*
1	Bank of America (formerly Nations Bank)	Promissory Note & Mortgaged Real Estate Investment (VII, Line 6)	J
2	North American Mortgage Co., Houston, TX	Promissory Note & Mortgaged Rental Property, Muskogee, OK (VII, Line 3)	K
3			
4			
5			
6			

* VAL CODES: J=$15,000 or less K=$15,001-$50,000 L=$50,001 to $100,000 M=$100,001-$250,000 N=$250,001-$500,000
O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
PAYNE, JAMES H.	08/13/2001

VII. Page 1 INVESTMENTS and TRUSTS-- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income,assets, or transactions.)									
1 4TH STREET BUILDING CORP, Muskogee, OK (1989)	C	Dividend	L	Q	Exempt				
2 900 ACRE FARM - Stonewall Co., TX (1/8 interest)	A	Rent	L	W	Exempt				
3 RENTAL PROPERTY - Duplex Muskogee, OK	D	Rent	K	W	Exempt				
4 BANCFIRST (formerly City Bank) Muskogee, OK SAVINGS	A	Interest	J	T	Exempt				
5 BANCFIRST (formerly City Bank) Muskogee, OK SAVINGS	A	Interest	J	T	Exempt				
6 COMMERCIAL REAL ESTATE - 18 Acres Muskogee, OK (1/5 int)	A	Rent	K	W	Exempt				
7 EDWARD D. JONES CO - Muskogee, OK - MONEY MARKET	A	Interest	J	T	Exempt				
8 Wal-Mart Stores, Inc. (Wmt) STOCK	A	Dividend	K	T	Exempt				
9 UTS Van Kampen Merritt ANNUITY	A	Dividend	J	T	Exempt				
10 Anchor Nat'l ANNUITY	B	Dividend	K	T	Exempt				
11 AmCap Fund,Inc.MUTUAL FUND (HIGH INCOME)	A	Dividend	K	T	Exempt				
12 American Mutual Funds, Inc	B	Dividend	K	T	Exempt				
13 Vodafone (Vod) STOCK	A	Dividend	J	T	Exempt				
14 Edison, Int'l (EIX) STOCK	A	Dividend	J	T	Exempt				
15 Lucent Technology (LU) STOCK	A	Dividend	J	T	Exempt				
16 Pepsico (PEP) STOCK	C	Dividend	M	T	Exempt				
17 Tricon Global (Yum) STOCK	A	Dividend	K	T	Exempt				

1 Inc/Gain Codes: A=$1,000 or less B=$1,001-$2,500 C=$2,501-$5,000 D=$5,001-$15,000 E=$15,001-$50,000
(Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

2 Val Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000 N=$250,001-$500,000
(Col. C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessi
(Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
PAYNE, JAMES H.	08/13/2001

VII. Page 2 INVESTMENTS and TRUSTS-- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
[ ] NONE (No reportable income,assets, or transactions.)									
18 SBC Commun (SBC) STOCK	B	Dividend	L	T	Exempt				
19 AmCapFund - MUTUAL FUND	A	Dividend	J	T	Exempt				
20 Oracle (ORCL) STOCK	A	Dividend	K	T	Exempt				
21 Compaq Computers (CPQ) STOCK	A	Dividend	J	T	Exempt				
22 Staples (SPLS) STOCK	A	Dividend	J	T	Exempt				
23 Ascent STOCK	A	Dividend			Exempt				
24 Oneok (OKE) STOCK	A	Dividend	J	T	Exempt				
25 Pfizer, Inc. (PFE) STOCK	A	Dividend	J	T	Exempt				
26 Washington Mutual Investors MUTUAL FUND	A	Dividend	J	T	Exempt				
27 Williams Co., Inc.(WMB)STOCK	A	Dividend	J	T	Exempt				
28 Cisco (CSCO) STOCK	A	Dividend	J	T	Exempt				
29 EuroPacific Growth (AEPGX) MUTUAL FUND (X)	A	Dividend	J	T	Exempt				
30 Putnam New C (PNCAX) MUTUAL FUND	A	Dividend	J	T	Exempt				
31 Putnam New Opp (PNOPX) MUTUAL FUND	A	Dividend	J	T	Exempt				
32 Carnival Corp. Pan (CCL) STOCK	A	Dividend			Exempt				
33 Delta Airlines (DAL) STOCK	A	Dividend	J	T	Exempt				
34 NTN Comm. (NTN) STOCK	A	Dividend			Exempt				

1 Inc/Gain Codes: A=$1,000 or less B=$1,001-$2,500 C=$2,501-$5,000 D=$5,001-$15,000 E=$15,001-$50,000
(Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

2 Val Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000 N=$250,001-$500,000
(Col. C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessr
(Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
PAYNE, JAMES H.	08/13/2001

VII. Page 3 INVESTMENTS and TRUSTS-- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ **NONE** (No reportable income,assets, or transactions.)									
35 European Growth Port 00A MUTUAL FUND	A	Dividend	J	T	Exempt				
36 John Hancock Growth MUTUAL FUND	A	Dividend	J	T	Exempt				
37 ML Growth Fund CLB MUTUAL FUND	A	Dividend	J	T	Exempt				
38 Alliance DDFD-Corp. Bond Port CLB MUTUAL FUND	A	Dividend	K	T	Exempt				
39 Williams Communications (WCG) STOCK	A	Dividend	J	T	Exempt				
40 ML Banking Advantage MONEY MARKET	B	Dividend	K	T	Exempt				
41 AVAYA, Inc. (AV) STOCK	A	Dividend	J	T	Exempt				
42 Sprint Corp. PCS Com SR1 STOCK	A	Dividend	J	T	Exempt				
43 CMA Money Fund MONEY MARKET	A	Dividend	K	T	Exempt				
44 Puerto Rico Cmwlth IFA MUN. BOND	A	Dividend	K	T	Exempt				
45									
46									
47									
48									
49									
50									
51									

1 Inc/Gain Codes: A=$1,000 or less B=$1,001-$2,500 C=$2,501-$5,000 D=$5,001-$15,000 E=$15,001-$50,000
(Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

2 Val Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000 N=$250,001-$500,000
(Col. C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessr
(Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	PAYNE, JAMES H.	08/13/2001

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.
(Indicate part of report.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	PAYNE, JAMES H.	08/13/2001

IX. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature James H Payne Date 08-13-01

Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
One Columbus Circle, N.E.
Suite 2-301
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks	61	000	00	Notes payable to banks—secured	28	000	00
U.S. Government securities—add schedule	–			Notes payable to banks—unsecured	–		
Listed securities—add schedule	598	000	00	Notes payable to relatives	–		
Unlisted securities—add schedule	50	000	00	Notes payable to others	–		
Accounts and notes receivable:	–			Accounts and bills due	5	000	00
Due from relatives and friends	–			Unpaid income tax	–		
Due from others	–			Other unpaid tax and interest	–		
Doubtful	–			Real estate mortgages payable—add schedule	67	000	00
Real estate owned—add schedule	385	000	00	Chattel mortgages and other liens payable			
Real estate mortgages receivable	–			Other debts—itemize:			
Autos and other personal property	35	000	00				
Cash value—life insurance							
Other assets—itemize:							
				Total liabilities	100	000	00
				Net Worth	1,029	000	00
Total Assets	1,129	000	00	Total liabilities and net worth	1,129	000	00
CONTINGENT LIABILITIES	–			GENERAL INFORMATION	–		
As endorser, comaker or guarantor	–			Are any assets pledged? (Add schedule.)	–		
On leases or contracts	–			Are you defendant in any suits or legal actions?	–		
Legal Claims	–			Have you ever taken bankruptcy?	–		
Provision for Federal Income Tax	–						
Other special debt	–						

FINANCIAL STATEMENT

Real Estate Owned / Real Estate Mortgage Payable

Real Estate			
Homestead	$225,000	$ 28,000	BancFirst Muskogee, OK 74402
Rental			
1504-1506 East Broadway Muskogee, OK 74401	35,000	30,000	North American Mortgage Co. Houston, TX
T15N R19E undivided 30% Muskogee Co., OK	75,000	9,000	
1/8 interest 900+ acre ranch Stonewall Co., TX (inherited 1988)	50,000	-	-
TOTAL VALUE	**385,000**		
TOTAL MORTGAGE		**67,000**	

FINANCIAL STATEMENT

Listed Securities / Unlisted Securities

Listed Securities

See attached Financial Disclosure Report

Unlisted Securities

See attached Financial Disclosure Report

III. GENERAL (PUBLIC)

1. 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.

Accepted indigent, criminal appointments, and provided pro bono representation for several non-profit entities.

- **Provided initial legal work for incorporation and served as founding director for the following non-profit corporations:**

  Kelly B. Todd Cerebral Palsy Foundation, Inc.
  Muskogee Public School District I-20 Foundation, Inc.
  Muskogee Crime Stoppers, Inc.

  Performed approximately 10-15 hours of legal work incorporating each of the above referenced non-profit corporations. Also, attended monthly board meetings and performed miscellaneous legal work that consumed approximately 5 to 6 hours per month.

- **From 1973 to 1978, participated in approximately 3 to 5 indigent criminal appointment proceedings per year.**

- **Served as adult sponsor for Fellowship of Christian Athletes group at Muskogee High School. At least 50% of the participants are disadvantaged youths. Sponsorship involves at least 1½ to 2 hours per week beginning August 15 through December 15.**

- **Served on the Muskogee Family YMCA Board of Directors 1977-1986 (President 1977-1979). One of the primary purposes of the YMCA is to provide day care services and recreational facilities for lower income citizens. Attended monthly board meetings and provided pro bono representation. Consumed approximately two hours per month September-May.**

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to changes these policies?

No

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts: If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

In October 2000, at the time the Honorable Michael Burrage resigned the roving position as United States District Judge for the Eastern-Northern-Western Districts of Oklahoma, I communicated to Senator Nickles and Senator Inhofe my interest in being appointed to serve in the position that Judge Burrage had vacated. Thereafter, the Senators requested a resume' and I was interviewed by both Senators. At their respective interviews, it was made known to me that I was one among several others being interviewed for the judgeship. In early February 2001, I was notified by Senator Nickles and Senator Inhofe that my name would be recommended to President Bush for nomination. On May 3, 2001, I interviewed with White House Chief Counsel Alberto Gonzales. I returned forms and questionnaire to the Department of Justice on May 30, 2001. The FBI initiated its background investigation on June 20, 2001. The Department of Justice conducted a telephone inquiry on July 16, 2001. On August 2, 2001, I was notified by a representative with Senator Nickle's office that The President had nominated me for the position of United States District Judge for the Eastern-Northern-Western Districts of Oklahoma.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

A United States District Judge is first and foremost a trial judge. Thus, it is my view that it is very important for federal trial judges to view the conflicts adjudicated in his/her court as people problems in need of solutions, rather than opportunities for announcing or imposing new abstract principles of law.

Initially, it is the duty of a trial judge to determine the jurisdiction of the court. This is usually a straightforward issue when challenges to jurisdiction are based on a lack of diversity or the jurisdictional amount in controversy. However, when the question of subject matter jurisdiction arises, the court must be cautious to heed doctrines such as standing and ripeness. These doctrines serve as procedural requirements which prevent the court from addressing cases that are the responsibility of either the states or the legislative branch of the federal government. In the final analysis, the duties of a trial judge require the judge to assist litigants and their attorneys in eliciting pertinent facts through an orderly discovery process, then to apply the most current statute and any relevant case law to decide disputed matters. When either a bench trial or a jury trial becomes necessary, it is the role of a trial judge to rule justly and preserve the integrity of the judicial process.

On the occasions when a United States District Judge is confronted with constitutional issues, the concepts are defined by the United States Constitution. Therefore, in such instances the trial court is compelled to follow the Constitution and has little, if any, latitude in expanding or limiting the impact of the Constitution.

Ms. Camp?

STATEMENT OF LAURIE SMITH CAMP, OF NEBRASKA, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEBRASKA

Ms. CAMP. Thank you, Mr. Chairman, and thank you for scheduling the hearing today. My son, Jonathan Camp, who just retired as Governor of Nebraska's Boy's State and began college, is not able to join me today. And my daughter, Abby Camp, who has just begun high school, is also in classes today and is not able to join me. But thank you for letting me mention their names for the record.

Senator KOHL. We thank you.

[The biographical information of Ms. Camp follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Laurie Smith Camp (since 5/24/75). Maiden name was Laurie Louise Smith.

2. Address: List current place of residence and office address(es).

Residence: Lincoln, NE
Office: State Capitol Room 2115, Lincoln, NE 68509

3. Date and place of birth.

November 28, 1953, Omaha, Nebraska

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Divorce pending final judgment. Husband's name is Jon A. Camp. He is a member of the Lincoln City Council, employed by the City of Lincoln, 555 South 10th Street, Lincoln, NE 68508.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Northwestern University, School of Journalism, summer studies, 1970

University of London, Queen Mary College Faculty of Laws, courses in British Legal Aid and Civil Liberties in Northern Ireland, 1973

Stanford University, 1971-74, B.A. with honors, 1974

University of Nebraska College of Law 1974-77, J.D. (1977)

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

1976 (summer) Law Clerk: Swarr, May, Smith & Andersen, Omaha, NE

1977-78 Associate General Counsel: First National Bank and Trust Company, Lincoln, NE

1978-79 Associate Attorney: Turner & Boisseau, Great Bend, KS

1980 (six months) Solo practitioner: Lincoln, NE

1980-1991 General Counsel: Nebraska Department of Correctional Services, Lincoln, NE

1991-1995 Chief, Civil Rights Section: Nebraska Department of Justice, Lincoln, NE

1995-Present, Chief Deputy Attorney General for Criminal Matters: Nebraska Department of Justice, Lincoln, NE

1982-Present, Partner: Haymarket Square General Partnership, (a Real Estate Development Partnership), Lincoln, NE

1982-Present, Partner: H.B. Brand's General Partnership, (a Restaurant Partnership), Lincoln, NE

1990-Present, Secretary and Director: CH, Ltd., a Sub-Chapter S Corporation, holding real estate in Lincoln, NE

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

1971 Valedictorian, Burke High School, Omaha, NE
1974 Executive Editor, Nebraska Law Review
1974-75 Editor-in-Chief, Nebraska Law Review
1984 Colorado Outward Bound, Team Management "Survivor"
1994 Nebraska State Government, Manager of the Year
1994 Robert Van Pelt American Inn of Court, Master of the Bar, 1996-2000 Executive Council, 1999-2000 President
1999 Lifetime Fellow, Nebraska Bar Foundation
2001 Nebraska Law Enforcement Coordinating Committee "Top Award"

9. Bar Associations: List all bar associations, legal or judicial-related committees 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.

1977-Present, Nebraska State Bar Association; Corrections Committee 1985-89; Legislation Committee 1996-Present; Minority and Justice Task Force 2001

1977-Present, Lincoln Bar Association

1979-81 Kansas Bar Association (presently inactive)

1992-Present, Nebraska Federal Practice and Civil Justice Reform Committees; Chair, Attorney Appointments Subcommittee 1999; Chair, Nebraska Federal Practice Committee 2001.

2000-01, Governor's Task Force on Sex Offenders; Chair, Committee on Sentencing and Civil Commitment.

2001, Nebraska Supreme Court Committee on Drug Courts.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

The Nebraska County Attorneys Association is the only organization to which I belong which is engaged in active lobbying, other than the Nebraska State Bar Association.

Nebraska County Attorneys Association, Director
Nebraska Coalition for Victims of Crime, Director
Robert Van Pelt American Inn of Court, Innkeeper
Crucible Club (Discussion Group)
Nebraska Republican Women's Club
Elephant Club (Republicans no longer "Young")
Abendmusik, Director, President (Classical Music Series)
Nebraska Shakespeare Festival, Bard's Club, Community Board
United Church of Christ, State Board of Directors
First Plymouth Congregational Church, Church Council,
Chair of Board of Music and Fine Arts
Nebraska State Historical Society, Records Retention Board

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for

administrative bodies which require special admission to practice.

1977 All Nebraska State Courts, U.S. District Court (Nebraska)
1979 All Kansas State Courts,U.S. District Court (Kansas) (I allowed the Kansas State Bar membership to lapse in 1981 due to a move back to Nebraska).
1990 United States Court of Appeals for the Eighth Circuit
1992 United States Supreme Court

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

[In 1969-71, I served as reporter, feature editor and editor-in-chief of my high school newspaper. In 1970-71, I wrote several articles published by the Omaha World-Herald, as a student reporter. In 1971-72, I wrote several articles as a student reporter for the "Stanford Daily." I have not attempted to list any of those articles here. In 1976-77, I edited the Nebraska Law Review. I have listed only those articles I wrote, and not those edited.]

"Applying Due Process to Issuance of Gag Orders," 55 Neb. L. Rev. 427 (1976).

"Land Accretion and Avulsion: the Battle of Blackbird Bend," 56 Neb. L. Rev. 814 (1977).

"Why Nebraska Needs Prison Litigation Reform," 76 Neb. L. Rev. 781 (1997), republished in The Nebraska Lawyer, October, 1998.

"Speaking in Complete Sentences," The Nebraska Lawyer, March 2000.

"Lawyers in Willa Cather's Fiction: the Good, the Bad, and the Really Ugly," the Nebraska Lawyer, September 2000, republished by the Willa Cather Foundation, 2001.

"When Clerks of the District Court Had Real Power: Robert Smith's Omaha," The Nebraska Lawyer, April 2001.

"On Gifted Education: Why not meet the needs of a child like Scout," Lincoln Journal Star, Jan. 17, 1994.

"At age 8, daughter knows no limitations," Lincoln Journal Star, April 24, 1996.

"Republicans must reach beyond hard workers, family values," Lincoln Journal Star, August 3, 1996.

"Mother took command of her corner of the 'village,'" Lincoln Journal Star, March 15, 1997.

I have written several published articles for the signature of the Nebraska Attorney General, Don Stenberg. Law review articles so written are "Malice in Wonderland," 30 Creighton L. Rev. 15 (1996), which addressed an issue of usurpation of legislative powers by the Nebraska Supreme Court, and "Why Nebraska Needs Civil Commitment Proceedings for Sex Offenders," 33 Creighton L. Rev. 721 (2000). Another nationally-published article so written was a monograph for the National Association of Attorneys General entitled "Managing the Defense of Inmate Civil Litigation," May 1994. I also wrote Law Day articles for his by-line, published in The Omaha Daily Record on May 1, 1991 - 2001.

I have written many successful legislative bills, which:

- Ensured "truth in sentencing" (Neb. LB 529, 1993).
- Allowed judges to prevent inmates from receiving early parole (Neb. LB 529, 1993).
- Expanded inmate work programs (Neb. LB 594, 1983 and LB 353, 1987).
- Improved efficiency in disposing of charges against inmates (Neb. LB 591, 1984).
- Required dismissal of frivolous inmate litigation (amendments to 28 U.S.C. 1915 and 42 U.S.C. 1997e, 1996).
- Offered representation/indemnification for inmates' medical service providers (Neb. LB 560, 1992).
- Lengthened sentences for drug dealers, murderers, and habitual criminals (Neb. LB 371, 1995, and LB 299, 1999).
- Provided for drug free school zones (Neb. LB 371, 1995).

- Increased penalties for firearms offenses, including drive-by shootings (Neb. LB 371, 1995).

- Facilitated law enforcement access to juvenile criminal histories (LB 371, 1995).

I frequently serve as a guest lecturer. Below is a list of some of the organizations to which I have spoken and the topic of the speech or lecture. I have supplied copies of speeches which may be viewed as involving constitutional law or legal policy.

University of Nebraska-Omaha, criminal justice and administrative law courses; University of Nebraska-Lincoln, business law courses; Nebraska Civil Liberties Union, Symposium on Legal Aid; Nebraska Correctional Association, seminar on sexual integration of the correctional work force; National Institute of Justice, international conference on private sector prison industries; Nebraska Bar Association, seminars on Eighth Amendment Issues and legal ethics in government practice; National Management Association, seminars on ethics and history of management; Center for Great Plains Studies, seminar on alternatives to incarceration; Nebraska Coalition for Victims of Crime, speech on sentencing in Nebraska; Crucible Club, speeches on inmate litigation and sentencing; Nebraska County Attorneys Association, training for new county attorneys; Peace Officers Memorial Day, remarks in dedication; Hall County "Leadership Tomorrow," criminal justice seminar; Nebraska State Council for Social Studies, criminal justice seminar; Boys State/Girls State, Supreme Court practice; Legal Secretaries Association, Bosses' Night Speech; Future Problem Solvers, speech on alternatives to incarceration; Nebraska Retail Federation and Hastings Chamber of commerce, speech on civil liability of businesses for criminal acts of third parties; Mayor's Committee for International Friendship, speech to Azerbaijani judges on relationship between judges and prosecutors.

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent. 2001.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

N/A

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

1980-1991 General Counsel: Nebraska Department of Correctional Services, Lincoln, NE

1991-1995 Chief, Civil Rights Section: Nebraska Department of Justice, Lincoln, NE

1995-Present, Chief Deputy Attorney General for Criminal Matters: Nebraska Department of Justice, Lincoln, NE

My positions with the Nebraska Department of Correctional Services and the Nebraska Department of Justice have been appointed and not elected.

17. Legal Career:

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

1. 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;

N/A

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

1980, 16th & L Streets
Lincoln, NE 68508

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

1977-78 Associate General Counsel, First National Bank, Lincoln, 13th and L Streets, Lincoln, Nebraska 68508.

1978-79 Associate Attorney, Turner & Boisseau, 3900 Broadway Avenue, Great Bend, Kansas 67530.

1980-1991 General Counsel, Nebraska Department of Correctional Services, Folsom & W. Prospect Place, Lincoln, Nebraska 68509.

1991-95 Chief, Civil Rights Section, Nebraska Department of Justice, 13th & K Streets, Lincoln, Nebraska 68509.

1995-Present, Chief Deputy Attorney General for Criminal Matters, Nebraska Department of Justice, 2115 State Capitol, Room 2115, Lincoln, Nebraska 68509.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

1977-78: Banking law, Commercial law, Employment law.

1978-80: Civil Litigation, Torts, Contracts, Worker's Compensation.

1980-91: Administrative Law, Employment Law, Tort Claims, Real Estate, Contracts, Legislation, Civil Rights.

1991-Present: Civil Litigation, Civil Rights, Appellate Practice, Administrative Law, Liquor Law, Legislation, Law Office Management. As Chief Deputy Attorney General for Criminal Matters, I supervise the work of five sections: (1) Criminal Prosecution, which handles drug and violent crime prosecution, child protection, environmental enforcement, and extradition, (2) Criminal Appeals, which also handles federal

habeas corpus actions, (3) Consumer Protection, (4) Medical Administrative Enforcement, and (5) Civil Rights.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

During the last 21 years, my clients have been the State of Nebraska and employees/administrators of Nebraska State Government. My areas of specialization are listed in the section immediately above.

During the last 19 years, I have also provided legal advice and representation, as well as management services, for real estate development entities which have renovated and restored blighted inner-city properties in Lincoln, Nebraska.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I appeared in court very frequently in 1978-79 when practicing in Kansas state courts. The firm with which I practiced had five attorneys in its Great Bend office, and a support staff of 35. The attorneys spent the majority of their time in court. I appeared in court occasionally from 1980-90 when working as General Counsel for the Department of Correctional Services. During those years, I appeared very frequently in administrative hearings, at which formal rules were often invoked, and I was designated as a Special Assistant Attorney General to handle a variety of litigation involving inmates. I appeared in court very frequently from 1991-95 as the Chief of the Civil Rights Section of the Department of Justice, handling civil litigation in state and federal courts, in trial and on appeal. Since 1995, I have still appeared in court frequently, but usually to handle motions and oral arguments rather than full trials.

2. What percentage of these appearances was in:
   (a) federal courts;
   (b) state courts of record;
   (c) other courts.

Approximately half my litigation experience has been in federal court and half in state courts. Much of my state litigation has originated in administrative hearings before state boards and commissions.

3. What percentage of your litigation was:
(a) civil;
(b) criminal.

All my major litigation has been civil. I have handled federal and state habeas corpus actions, and many cases involving issues of sentencing, post-conviction, and inmate civil rights. I have also worked as the Nebraska Department of Justice liaison with the Nebraska State Patrol directing approximately 100 criminal investigations during my term as Deputy Attorney General. I have supervised those who prosecute, but have not acted as a prosecutor myself.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Between 75 and 100. Computer records of the Office of The Nebraska Attorney General show that I have handled and brought to a conclusion 511 cases since joining the office in 1991. Many of those cases were dismissed on motion prior to trial or were heard in courts of general jurisdiction on appeal from records made in administrative proceedings. My estimate of cases "brought to verdict or judgment in courts of record" would not include cases dismissed on motion, appeals on records made in administrative hearings, workers' compensation cases, or the voluminous numbers of cases which I have handled before administrative tribunals. I have handled most cases as sole counsel. Because I have usually represented defendants in civil litigation, my goal was to obtain dismissal before trial. I was usually successful.

5. What percentage of these trials was:
(a) jury;
(b) non-jury.

Ninety percent of my trials have been non-jury, ten percent jury.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. 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. **Klinger v. Nebraska Department of Correctional Services**, 824 F. Supp. 1374 (D. Neb. 1993); 31 F.3d 727 (8th Cir. 1994); 887 F. Supp. 1281 (D. Neb. 1995); 902 F. Supp. 1036 (D. Neb. 1995); 909 F. Supp. 1329 (D. Neb. 1995); 107 F.3d 609 (8th Cir. 1997), cert. denied. In this class action lawsuit which lasted nine years, female inmates in Nebraska alleged denial of equal protection (in comparison to male inmates at the state penitentiary), denial of access to the courts, discrimination in education and vocational training under Title IX, and a variety of other conditions-of-confinement violations. Judge Richard Kopf of the Nebraska District Court presided at the initial four-week trial (trial was bifurcated). He issued a 95-page opinion in which the Defendants (correctional administrators whom I represented) lost on most issues. On appeal, Judges Wollman and MaGill reversed, with McMillian dissenting. After further proceedings in district court, including the trial of remaining issues, I took a second appeal on behalf of the Defendants. Judges McMillian, MaGill and Morris Sheppard Arnold heard the second appeal. The Defendants, whom I represented, ultimately prevailed on all issues. Plaintiffs' counsel petitioned for certiorari, which was denied. **Klinger** is a landmark case in Equal Protection analysis, and in corrections law. My co-counsel at the first trial was Elaine Chapman. After the first trial, she left the office of the Attorney General, and I handled the subsequent appeals and trials alone. Her address is 8325 Horseshoe Drive, Lincoln, NE 68516. Her telephone number is 402-486-1774. Opposing counsel were Gail Perry, Robert Grimit, and David Dudley of the Baylor, Evnen firm in Lincoln. Their address is 206 S. 13th Street, #1200, Lincoln, NE 68508-2077. Their telephone number is 402-475-9515.

2. **Bills v. Dahm**, 32 F.3d. 333 (8th Cir. 1994). In this Equal Protection case the Court of Appeals found that the inmate plaintiff in a maximum security prison did not have the right to keep his infant child with him in his cell, even though female inmates were afforded such an opportunity. My motion for summary judgment, raising a qualified immunity defense, was denied by Magistrate Judge David Piester of Nebraska, and I appealed on behalf of the Defendant, Warden John Dahm.

Judges Morris Sheppard Arnold, Henley and John R. Gibson of the Eighth Circuit heard the appeal and reversed the district court, acknowledging qualified immunity. **Bills** and **Klinger** emphasized the importance of the "similarly situated" analysis in Equal Protection cases. Todd Frazier represented the inmate Plaintiff. Frazier's address is 316 N. 115th Street, Omaha, NE 68154. His phone number is 402-691-9800.

3. **Hansen v. Rimel**, 104 F3d 189 (8th Cir. 1997). The inmate Plaintiff sued correctional administrators alleging violations of the Eighth Amendment, the Equal Protection Clause, and the Rehabilitation Act of 1973. He was hearing-impaired and contended that adequate accommodations had not been made for his use of the prison telephones. I represented the correctional administrators, and filed a motion for summary judgement, raising defenses of qualified immunity. Judge William Cambridge of the Nebraska District Court granted the motion except on the issue of Equal Protection. I filed an interlocutory appeal. Judges McMillian, McGill and Morris Sheppard Arnold of the Eighth Circuit reversed the district court on the Equal Protection issue, finding that an inmate with hearing loss was not similarly situated to other inmates for purposes of the use of telephones and that the Defendants were entitled to qualified immunity. This case reinforced the principles established in **Klinger** and **Bills**, above. Opposing counsel was James Fitzgerald. His address is One Central Park Plaza, #1400, Omaha, NE 68102. His telephone number is 402-341-3070.

4. **Atkinson v. Bohn**, 91 F3d 1127 (8th Cir. 1996). I represented prison administrators in this case in which an inmate alleged that he had been subjected to retaliation for filing prior lawsuits. The Plaintiff had been given opportunities to amend his complaint after initial review by Magistrate Judge David Piester of the Nebraska Federal District Court, but the Magistrate Judge ultimately dismissed the complaint, sua sponte, for failure to state a cause of action. The inmate appealed the dismissal. This case is significant to me because I drafted the language in the Prison Litigation Reform Act of 1996 which provides that the district court **shall** dismiss an action filed in forma pauperis if it **fails to state a cause of action**. [See 28 U.S.C. section 1915.] Before the enactment of the PLRA in April of 1996, the U.S. Court of Appeals for the Eighth Circuit would not permit district courts to dismiss such actions sua sponte for failure to state a cause of action. [See **Carney v. Houston**, 33 F3d 893 (8th Cir. 1994)]. Service of process on defendants had been required, and the defendants had been burdened with the need

to respond with motions to dismiss. In **Atkinson**, the Eighth Circuit applied the new language of the PLRA which vacated their prior practice, and affirmed the district court's dismissal. Judges Wollman, MaGill and Hansen issued the decision. No co-counsel or opposing counsel appeared.

5. **State v. Atkins**, 250 Neb. 315, 549 N.W.2d 159 (1996). A Nebraska district court judge issued a proclamation to county jailers that jail good time in his district would be calculated in the same manner as good time awarded to inmates incarcerated in state correctional facilities, even though the statutes provided for a different formula which gave the jail inmates less good time. A county judge applied the proclamation in sentencing an inmate to county jail, and the district judge upheld the sentence. I represented the State and argued that the judge's action was an unconstitutional usurpation of the power of the legislature and of the Nebraska Board of Pardons. I demonstrated the fallacy of the "Equal Protection" argument used by the district court judge in his declaration. The Nebraska Supreme Court reversed the district court, requiring the inmate to serve the sentence according to the formula set by the legislature. Opposing counsel was Robert Lindemeier. His address is 1020 S. Dewey, P.O. Box 906, North Platte, NE 69103-0906. His telephone number is 308-534-6740. Co-counsel was Kent Turnbull (then county attorney, now county judge). His address is 301 N. Jeffers, North Platte, NE 69101. His telephone number is 308-534-4350.

6. **Duff v. Clarke**, 247 Neb. 345, 526 N.W.2d 664 (1995). This was a separation of powers case in which the Nebraska Supreme Court found that a sentence could not be altered by later action of the legislature, without approval by the Nebraska Board of Pardons. The inmate plaintiff sought the application of a new, more liberal good time law. The Nebraska Supreme Court found that the inmate was not entitled to the application of the new law without approval of the Board of Pardons. I represented the State of Nebraska. Opposing counsel was Dick Goos, who is deceased.

7. **F&T, Inc. v. Nebraska Liquor Control Commission**, 7 Neb. App. 973 (1998). In this case, the Nebraska Court of Appeals recognized the power of the Nebraska Liquor Commission to impose reasonable conditions on the granting of a liquor license. The Commission wanted to preclude the prior licensee, who had a felony drug record and a bad management history, from working in the establishment. The holding in this case is useful to prevent the issuance of liquor licenses to parties who may operate under the control and direction of

others. Such "silent partner" arrangements have been known to create havens for drug dealing, prostitution, money laundering, and organized crime. Opposing counsel was Bradley Holtorf. His address is 340 E. Military Ave., Fremont, NE 68025-5070. His telephone number is 402-721-9120.

8. **Gunter v. Abdullah**, Petition for Writ of Certiorari (Oct. 1991 U.S. Supreme Court term). I represented the Director of the Department of Correctional Services and other correctional administrators in petitioning the Supreme Court for review of a decision of the U.S. Court of Appeals for the Eighth Circuit, reported at 949 F.2d 1032 (8th Cir. 1991). The U.S. District Court had declined to appoint counsel to represent an inmate after finding that the inmate was well-qualified to represent himself and that the facts and issues were not complex. (The inmate wanted to make a two-dollar charitable donation which department regulations did not permit). The Court of Appeals reversed, and ordered that counsel be appointed to represent the inmate and that a new jury trial be held. Although I was not successful in persuading the Supreme Court to review the decision, the petition generated much discussion within the Eighth Circuit about the Court's practice of requiring appointment of counsel in virtually every inmate case, and led to the development of new protocols for appointment of counsel to represent indigent plaintiffs, including inmates. Another attorney represented the defendants in the district court and Court of Appeals. No co-counsel or adverse counsel appeared.

9. **Manchester v. Gunter**, CV:90-L-349, was a 1993 jury trial before U.S. District Court Judge Warren Urbom. There is no published opinion. I represented several correctional administrators in this action in which the inmate plaintiff alleged that he was denied a liberty interest without due process. He claimed to have worked as a "confidential informant" within the prison under an express or implied contract with correctional officials, and demanded a reduced custody level for services rendered. The case easily could have been settled by giving the inmate plaintiff (who was an escape artist and was serving time for attempted murder) a reduced custody level. Instead, we proceeded to trial to make clear to all inmates and staff that the department did not employ an "informant" or "snitch" system, and no rewards would be given to inmates who provided correctional administrators with information about other inmates. This is an important principle in prison management. The inmate dismissed his court-appointed counsel and chose to proceed pro se. My co-

counsel was Alfonza Whitaker. His address is P.O. Box 94934, Lincoln, NE 68509-4934. His phone number is 402-471-2024.

10. **County Cork, Inc. v. Nebraska Liquor Control Commission**, 250 Neb. 456, 550 N.W.2d 913 (1996). I lost this case in which I attempted to defend a rule promulgated by the Nebraska Liquor Control Commission which purported to prohibit illegal activities in licensed premises. After the loss, I redrafted the rule for the Commission, tailoring it within constitutional parameters. I persuaded Governor Ben Nelson (now U.S. Senator Nelson) that the new rule should be approved, and it has been very useful to help prevent gambling, drug-dealing, prostitution, and other crimes within licensed premises. Opposing counsel was Don Dunn. His address is 3942 W. Old Hwy. 30, P.O. Box 2078, Grand Island, NE 68124. His telephone number is 308-382-8820.

In the above cases, I have not listed names of judges of the Nebraska Supreme Court or Nebraska Court of Appeals. The Judges of the Nebraska Supreme Court are John Hendry 402-471-3738, William Connolly 402-471-3733, John Gerrard 402-471-3733, Michael McCormack 402-471-4345, Lindsey Miller-Lerman 402-471-3734, Kenneth Stephan 402-471-3737, and John Wright 402-471-3735. Judges of the Nebraska Court of Appeals are John Irwin 402-471-9038, Theodore Carlson 402-471-9036, Edward Hannon 402-471-9040, Everett Inbody 402-471-9039, Frankie Moore 402-471-9037, and Richard Sievers 402-471-9035. The address for all is Nebraska State Capitol, Lincoln, NE 68509.

19. 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 the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

During my years as General Counsel for the Nebraska Department of Correctional Services, Nebraska was one of the few states in the nation **not** to come under court order to correct conditions of confinement. I helped to implement the successful sexual integration of the correctional work force; helped to bring correctional policies and procedures into compliance with constitutional standards; and helped to develop private sector work programs for inmates. I built an excellent working relationship with Nebraska's federal judges, and persuaded the judges to implement a local rule to effect

a system of graduated filing fees for inmate litigation, to deter the inmates from filing frivolous lawsuits.

In my years in the Office of the Nebraska Attorney General, I helped to improve office management by promoting specialization among attorneys, developing brief banks and form pleadings, and increasing communication with our clients. In 1994, I received the "Manager of the Year" award for Nebraska State Government, based upon the written nomination of lawyers and support staff working under my supervision.

Because I represent defendants in civil litigation, my greatest successes have been the cases for which I have obtained dismissals without the need for trial. I have used motions to dismiss, motions for summary judgment, and motions raising issues of qualified immunity and sovereign immunity very effectively to end litigation at the earliest possible stage, saving time and expense for my clients, the state, and opposing counsel.

Please see the list of successful legislation which I have written, in section 12, "Published Writings," above. I am proud of my participation in the drafting of the Prison Litigation Reform Act of 1996, which has been a great help in reducing frivolous federal inmate litigation. I am also particularly proud of my authorship of Nebraska's "truth-in-sentencing" legislation, because it has enabled judges to prevent the most dangerous offenders from receiving early parole. The legislation has been used extensively by sentencing judges in cases involving criminal defendants who require lengthy incarceration for the protection of the public.

Since 1982, I have provided legal advice and representation for real estate development entities which transformed a blighted inner-city district of Lincoln, Nebraska, into the most vibrant area of the city.

II. FINANCIAL DATA-AND CONFLICT OF INTEREST (PUBLIC)

.. List 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. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

When I am 65 years old, in 2018, I may begin to receive deferred compensation and retirement benefits from plans established in connection with my employment by the State of Nebraska.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I will comply with all provisions of the Judicial Code of Conduct. Unlike attorneys in private practice, I do not have clients or a law firm association that could present a conflict of interest. I can liquidate publicly traded stocks which could present a conflict. My real estate holdings consist of a 40% interest in eight buildings in Lincoln's Haymarket District. It is very unlikely that the real estate interest would cause any conflict in my judicial service.

3. 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.

4. 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, patents, 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, Form AO-10, is attached.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

   See Attached Financial Net Worth Statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

   My only role in political campaigns has been to donate small amounts of money, walk precincts, put up yard signs, and host fund-raisers.

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES	
Cash on hand and in banks (See Schedule #1)	2,000,000	Notes payable to banks-secured	-0-
U.S. Government securities-add schedule (Schedule #2)	350	Notes payable to banks-unsecured	-0-
Listed securities-add schedule (Schedule #3)	3,000,000	Notes payable to relatives	-0-
Unlisted securities--add schedule (Schedule #4)	15,000	Notes payable to others	-0-
Accounts and notes receivable:	-0-	Accounts and bills due	-0-
Due from relatives and friends	-0-	Unpaid income tax	-0-
Due from others	-0-	Other unpaid income and interest	-0-
Doubtful	-0-	Real estate mortgages payable-add schedule	-0-
Real estate owned-add schedule (Schedule #5)	7,115,000	Chattel mortgages and other liens payable	-0-
Real estate mortgages receivable	-0-	Other debts-itemize:	-0-
Autos and other personal property (schedule #6)	75,000		
Cash value-life insurance (Schedule #7)	410,000		
Other assets itemize:			
Retirement/IRA's/Def. Comp. (Schedule #8)	800,000		
Jonathan Camp (son) UGMA account and stocks (Schedule #9)	328,000		
Abigail Camp (daughter) UGMA account and stocks (Schedule #10)	310,000	Total liabilities	-0-
		Net Worth	14,053,350
Total Assets	14,053,350	Total liabilities and net worth	14,053,350

CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor	-0-	Are any assets pledged? (Add schedule)	No.
On leases or contracts	-0-	Are you defendant in any suits or legal actions?	No.
Legal Claims	-0-	Have you ever taken bankruptcy?	No.
Provision for Federal Income Tax	-0-		
Other special debt	-0-		

Please note that this financial statement represents the assets of my husband and my two minor children, as well as my own. I am awaiting final judgment and division of marital assets in connection with divorce proceedings which I initiated on January 3, 2000. Approximately $2,000,000 of the assets listed were inherited by me, not integrated into the marital estate, and should not be subject to division. I anticipate that the remaining assets, which are marital, will be divided in approximately equal shares. I have designated accounts held in my name with my initials (LSC) and accounts held in my husband's name with his initials (JAC). Some of these assets, such as stocks and cash accounts, fluctuate daily, and so I have used rounded figures in the statement above.

Schedule #1 - Cash on hand in banks. (Money in the children's personal checking accounts is not listed.)

Wells Fargo (WF) Checking #1	(12/29/00)	$ 58,937	(LSC)
WF Federated Money Mkt Acc't #1	(12/31/00)	$1,372,117	(LSC)
WF Federated Money Mkt Acc't #2	(11/30/00)	$ 92,391	(JAC)
WF Federated Money Mkt Acc't #3	(11/30/00)	$ 80,118	(JAC)
WF Federated Money Mkt Acc't #4	(11/30/00)	$ 166,039	(JAC)
WF Federated Money Mkt Acc't #5	(11/30/00)	$ 101,276	(JAC)
WF Federated Money Mkt Acc't #6	(12/31/00)	$ 170,750	(LSC)
WF Checking #2	(11/01/00)	$ 1,551	(JAC)
First Federal Checking	(11/01/00)	$ 560	(JAC)
Ameritrade Cash Acc't	(09/26/00)	$ 500	(JAC)
Accutrade Cash Acc't	(11/30/00)	$ 18,680	(JAC)

Schedule #2 - U.S. Government Securities.

I have listed Federated Accounts (which invest in federal tax exempt securities) under Schedule #1. The only other federal securities owned are saving bonds held by my daughter, in the amount of $350.00.

Schedule #3 - Listed Securities (Numbers represent shares held.)

Stocks I inherited which I maintain in my name alone:

AT&T 2,250
Alltel 401
Avaya 162
Bausch and Lomb 300
ConAgra 52,300
Citigroup 5,320
GE 4,200
IBM 400
Kimberly Clark 1,248
Lucent 972
NCR 93.75
Pfizer 3,300

Stocks I inherited and placed in joint tenancy with husband:

Aetna 150
Alltel 401
AT&T 1,125
Burlington Northern 531
Burlington Resources 309
Chase Manhattan Bank 312
First Union 1,296
Delphi 69
Exxon 600
GTE 222
GE 3,000
GM 100
IBM 800
International Paper 200
Lucent 972
NCR 46.875
Pfizer 4,950
Verizon 270
Wyerhauser 300

Stocks held in street name with Accutrade (the account is in joint tenancy in my name and my husband's name, but I have proposed that these stocks be placed in my husband's name in connection with the division of marital property):

AIG 1012, Alltel Preferred 11, ATK 100, AVTR 116, ConAgra 400, Disney 800, Honeywell 1,600, Hewlett Packard 400, Hugoton 100, INTC 300, LCE stock 6, LCE warrants 33, LEN 1,800, LNR 1,800, LOR 800, MEI 200, NSM 750, TA 300, TAN 400, TRII 500, WMX 2,400.

Schedule #4 - Unlisted Securities

The only unlisted securities are held by my daughter. They are Colorado Spring Tax Exempt Bonds issue #11-2018, worth $15,000.

Schedule #5 - Real Estate Owned

I hold a 40% interest and my husband holds a 40% interest in a Nebraska General Partnership, Haymarket Square, which owns five buildings and a courtyard in Lincoln, Nebraska. Based on an appraisal conducted in late 2000, the value of the 80% interest is $2,556,800. This value is in dispute in pending divorce proceedings.

I hold a 40% interest and my husband holds a 40% interest in a Subchapter S Corporation which owns three buildings and a surface parking lot in Lincoln, Nebraska. Based on an appraisal conducted in late 2000, the value of the 80% interest is $4,136,640. This value is in dispute in pending divorce proceedings.

I own a house in, Lincoln, NE, (now held in joint tenancy) with an assessed value of $216,600.

My husband owns a house in, Lincoln, NE, with an appraised value of $270,000.

Schedule #6 - Autos and Personal Property

My husband and I own a 1982 Mercedes, a 1989 Oldsmobile, a 2000 Sebring, and our son, owns a 2000 Honda. We each have household goods.

Scheduled #7 - Cash Value Life Insurance

New England (now Metlife) Policy #1 - $132,102 (Owned by Jon Camp on life of Laurie Smith Camp)
New England (now Metlife) Policy #2 - $249,360 (Owned by Laurie Smith Camp on life of Jon Camp)
New England (now Metlife) Policy #3 - $15,910 (Owned by Jon Camp on own life)
Nat'l Serv. Life - $6,418 (Owned by Jon Camp on his own life)
World Ins. - $5,263 (Owned by Jon Camp on his own life)
NY Life - $4,305 (Owned by Jon Camp on his own life)

Note: I anticipate that upon distribution of the marital estate, I will own the policy on my own life, and my husband will own the policies on his own life.

Schedule #8 - Retirement, IRA's and Deferred Compensation Plans

State of Nebraska (Laurie Smith Camp) - $184,542
State Deferred Compensation (LSC) - $27,285
Hartford Deferred Compensation (LSC) - $147,922
New England Deferred Compensation (JAC) - $51,036
New England Money Purchase (JAC) - $104,512
New England IRA (JAC) - $68,592
New England IRA (LSC) - $46,006
Haymarket Square Money Purchase - (JAC) $4,378; (LSC) $3,098
CH, Ltd., Money Purchase (JAC) - $161,584; (LSC) $3,838

Schedule #9 - Son's Assets

UGMA Acc't (Wells Fargo Federated) approx. $225,000
ConAgra 200
Disney 400
Hewlett Packard 200
New England (Metlife) Insurance CV - $18,000

Schedule #10 - Daughter's Assets

UGMA Acc't (Wells Fargo Federated) approx. $225,000
ConAgra 200
Disney 400
Hewlett Packard 200
(Tax exempt securities listed in Schedule #4)

III. GENERAL (PUBLIC)

1. 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.

   For a government attorney, often the best "pro bono publico" contribution is work above and beyond the call of duty in the government job itself. My position as Deputy Attorney General for Criminal Matters places me in a unique position to be of help to the public, and I work long hours to accomplish that goal. I devote one morning each month to meeting with the Nebraska Crime Victims Coalition to discuss strategies for addressing the needs of Nebraska's victims of crime. I volunteer in educational programs, including Boys and Girls State Supreme Court Practice seminars (one or two days each year), high school mock trial competitions (about two days each year drafting case studies and judging contests), and law school programs (about one day each year judging competitions). I am a frequent speaker in high schools, at community group meetings, and in correctional facilities (about seven to ten speeches each year, traveling throughout the state). Direct representation of indigent parties is not encouraged within the Office of the Attorney General, due to potential conflicts of interest.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

   No.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from

beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

Early in 2000, a judge of the U.S. District Court for the District of Nebraska encouraged me to place my name in consideration for the vacancy created by the retirement of Judge William Cambridge. The judge informed me that he and other judges of the district respected my work and my character. I wrote to Senator Chuck Hagel to express my interest in the vacancy. After the election of President Bush, I also contacted Governor Mike Johanns, Congressman Doug Bereuter, and Congressman Tom Osborne to express my interest. I met with Governor Johanns and spoke briefly with Representative Bereuter. I provided each with a copy of my resume. I provided a courtesy copy of the resume to Senator Ben Nelson, as well. I contacted a few individuals who are familiar with my work and my character to let them know that I had placed my name in consideration for the judgeship, and that any letters of support could be directed to Senator Hagel. I met with Senator Hagel on February 12, 2001. I received a call from Senator Hagel's office on March 20, 2001, informing me that my name was among three referred by his office to the White House for consideration. I received a call from the White House Counsel's Office on March 21, 2001, asking me to schedule an interview at the White House. On March 29, 2001, I met with attorneys in the White House Counsel's Office. I was nominated by President Bush on June 19, 2001.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped-many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

It is the function of the judiciary to interpret and apply the law - not to legislate. At times, a judge may be faced with the duty of applying a law which he or she finds repugnant. Still, the judge must leave the task of changing the law to the legislative branch.

Judges should begin with the presumption that other government officials are acting in good faith. Statutes duly enacted should be presumed to be constitutional and should be interpreted according to their plain meaning. Judicial precedent should be presumed to be binding. When judges take liberties with the interpretation of the Constitution, statutes, and court precedent, not only may they usurp the power of the other branches of government, but they create unnecessary uncertainty regarding the status of the law. Such uncertainty causes a proliferation of litigation.

Because judges enjoy the independence of lifetime tenure, they are insulated from the checks and balances of democracy and should be especially sensitive to the need to keep their power circumscribed within constitutional limits.

AO-10 (w)
Rev. 1/2000

FINANCIAL DISCLOSURE REPORT
Nomination Report

Report required by the Ethics in Government Act of 1978, as amended (5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting (Last name, first, middle initial) Camp, Laurie S.	2. Court or Organization U.S. District Court - Nebraska	3. Date of Report 06/19/2001
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge - Nominee	5. Report Type (check type) X Nomination, Date 06/19/2001 __ Initial __ Annual __ Final	6. Reporting Period 01/01/2000 to 05/31/2001
7. Chambers or Office Address Nebraska State Capitol Room 2115 Lincoln, NE 68509	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.

I. POSITIONS *(Reporting individual only; see pp. 9-13 of Instructions.)*

__ NONE (No reportable positions.)

	POSITION	NAME OF ORGANIZATION / ENTITY
1	Deputy Attorney General	State of Nebraska - Office of the Attorney General
2	General Partner	Haymarket Square - A Nebraska General Partnership
3	Director, Secretary	CH, Ltd., A Subchapter S Corporation

II. AGREEMENTS *(Reporting individual only; see pp.14-16 of Instructions.)*

__ NONE (No reportable agreements.)

	DATE	PARTIES AND TERMS
1	2000-01	State of Nebraska Retirement Plan
2	2000-01	State of Nebraska Deferred Compensation Plan (2)
3	2000-01	Haymarket Square Retirement (Money Purchase) Plan

III. NON-INVESTMENT INCOME *(Reporting individual and spouse; see pp. 17-24 of Instructions.)*

__ NONE (No reportable non-investment income.)

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1	1999	State of Nebraska gross salary	$74,641.86
2	2000	State of Nebraska Gross Salary	$76,639.68
3	2001	State of Nebraska Gross Salary	$32,249.35
4			

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Camp, Laurie S.

Date of Report: 06/19/2001

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)

	SOURCE	DESCRIPTION
NONE	(No such reportable reimbursements.)	
1	Exempt	
2		
3		
4		
5		
6		
7		

V. GIFTS

(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)

	SOURCE	DESCRIPTION	VALUE
NONE	(No such reportable gifts.)		
1	Exempt		
2			
3			

VI. LIABILITIES

(Includes those of spouse and dependent children. See pp 33-35 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
X NONE	(No reportable liabilities.)		
1			
2			
3			
4			
5			
6			

* VAL CODES: J=$15,000 or less K=$15,001-$50,000 L=$50,001 to $100,000 M=$100,001-$250,000 N=$250,001-$500,000 O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Camp, Laurie S.

Date of Report: 06/19/2001

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
1 Aetna	A	Dividend	J	T	Exempt				
2 Alltel	B	Dividend	K	T	Exempt				
3 AT&T	C	Dividend	L	T	Exempt				
4 Bausch & Lomb	A	Dividend	J	T	Exempt				
5 Burlington Northern	A	Dividend	K	T	Exempt				
6 Burlington Resources	A	Dividend	J	T	Exempt				
7 Chase Manhattan	A	Dividend	J	T	Exempt				
8 Citigroup	C	Dividend	N	T	Exempt				
9 ConAgra	F	Dividend	P1	T	Exempt				
10 Disney	A	Dividend	J	T	Exempt				
11 Exxon	B	Dividend	L	T	Exempt				
12 First Union	C	Dividend	K	T	Exempt				
13 GM	A	Dividend	J	T	Exempt				
14 GE	C	Dividend	N	T	Exempt				
15 GTE	A	Dividend			Exempt				
16 Hewlett Packard	A	Dividend	J	T	Exempt				
17 IBM	A	Dividend	M	T	Exempt				

1 Inc/Gain Codes: A=$1,000 or less B=$1,001-$2,500 C=$2,501-$5,000 D=$5,001-$15,000 E=$15,001-$50,000
(Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

2 Val Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000 N=$250,001-$500,000
(Col. C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market
(Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT | Name of Person Reporting: Camp, Laurie S. | Date of Report: 06/19/2001

VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income,assets, or transactions.)									
18 Int. Paper	A	Dividend	J	T	Exempt				
19 Kimberly Clark	B	Dividend	L	T	Exempt				
20 Lucent	A	Dividend	K	T	Exempt				
21 Pfizer	B	Dividend	N	T	Exempt				
22 Warner Lambert	B	Dividend			Exempt				
23 Weyerhauser	A	Dividend	K	T	Exempt				
24 Accutrade - Cash Account	A	Interest	K	T	Exempt				
25 Co. Sp. Tax Exempt Bond #11-2018	A	Interest	J	T	Exempt				
26 Rental Property #1 Lincoln, NE	G	Rent	P1	Q	Exempt				
27 Rental Property #2 Lincoln, NE	G	Rent	P1	Q	Exempt				
28 Wells Fargo Accounts	F	Interest	P1	T	Exempt				
29 New England (now Metlife) Insurance Policies	E	Interest	N	T	Exempt				
30 New England (now Metlife) IRAs	D	Interest	M	T	Exempt				
31 New England (now Metlife) Retirement Plans	D	Interest	M	T	Exempt				
32 Nat'l Serv. Life Insurance	A	Interest	J	T	Exempt				
33 New York Life Insurance	A	Interest	J	T	Exempt				
34 World Insurance	A	Interest	J	T	Exempt				

1 Inc/Gain Codes: (Col. B1, D4) A=$1,000 or less; B=$1,001-$2,500; C=$2,501-$5,000; D=$5,001-$15,000; E=$15,001-$50,000; F=$50,001-$100,000; G=$100,001-$1,000,000; H1=$1,000,001-$5,000,000; H2=$5,000,001 or more

2 Val Codes: (Col. C1, D3) J=$15,000 or less; K=$15,001-$50,000; L=$50,001-$100,000; M=$100,001-$250,000; N=$250,001-$500,000; O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000; P3=$25,000,001-$50,000,000; P4=$50,000,001 or more

3 Val Mth Codes: (Col. C2) Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash/Market; U=Book Value; V=Other; W=Estimated

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Camp, Laurie S.

Date of Report: 06/19/2001

VII. Page 3 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
35 Haymarket Square Retirement Plans	A	Interest	J	T	Exempt				
36 CH. Ltd.. Retirement Plans	C	Interest	M	T	Exempt				
37 State of NE Retirement Plan	C	Interest	M	T	Exempt				
38 State of NE Deferred Comp.	C	Interest	K	T	Exempt				
39 Hartford Deferred Comp.	D	Interest	M	T	Exempt				
40 Accutrade Brokage Account					Exempt				
41 -- AIG	A	Dividend	M	T	Exempt				
42 -- ATK		None	J	T	Exempt				
43 -- AVTR		None	J	T	Exempt				
44 -- ConAgra	A	Dividend	J	T	Exempt				
45 -- Disney	A	Dividend	L	T	Exempt				
46 -- Honeywell	B	Dividend	M	T	Exempt				
47 -- Hewlett Packard	A	Dividend	M	T	Exempt				
48 -- INTC	A	Dividend	K	T	Exempt				
49 -- LCE Warrants		None	J	T	Exempt				
50 -- LEN	A	Dividend	L	T	Exempt				
51 -- LNR	A	Dividend	K	T	Exempt				

1 Inc/Gain Codes: A=$1,000 or less B=$1,001-$2,500 C=$2,501-$5,000 D=$5,001-$15,000 E=$15,001-$50,000
(Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

2 Val Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000 N=$250,001-$500,000
(Col. C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market
(Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Camp, Laurie S.	06/19/2001

VII. Page 4 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
52 -- LCR		None	K	T	Exempt				
53 -- MSM		None	K	T	Exempt				
54 -- TA	A	Dividend	K	T	Exempt				
55 -- TAN	A	Dividend	K	T	Exempt				
56 -- TR II		None	J	T	Exempt				
57 -- WMX	B	Dividend	L	T	Exempt				
58									
59									
60									
61									
62									
63									
64									
65									
66									
67									
68									

1 Inc/Gain Codes: A=$1,000 or less B=$1,001-$2,500 C=$2,501-$5,000 D=$5,001-$15,000 E=$15,001-$50,000
(Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

2 Val Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000 N=$250,001-$500,000
(Col. C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market
(Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Camp, Laurie S.

Date of Report: 06/19/2001

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

I filed for divorce on January 3, 2000. The action is pending final judgment. Non-investment income listed in Part III does not include spousal income, per instructions. The investments lised in Part VII include my assets, marital assets not yet divided, and assets of my minor children.

FINANCIAL DISCLOSURE REPORT
VII. Page 2

#26 Rental Property #1, Lincoln, NE, Appraisal Date 10/2000
#27 Rental Property #2, Lincoln, NE, Appraisal Date 10/2000

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Camp, Laurie S.	06/19/2001

SECTION HEADING. (Indicate part of report.)
Information continued from Parts I through VI, inclusive.

PART 1. POSITIONS (cont'd.)

Line	Position	Name of Organization/Entity
4	General Partner	HB Brand's, A Nebraska General Partnership
5	Director	Nebraska County Attorneys Association
6	Director	Nebraska Coalition for Victims of Crime

PART 2. AGREEMENTS (cont'd.)

Line	Date	Parties and Terms
4	2000-01	CH, Ltd., Retirement (Money Purchase) Plan

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Camp, Laurie S.	06/19/2001

X. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature Laurie S. H. Camp Date 6/19/01

Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
One Columbus Circle, N.E.
Suite 2-301
Washington, D.C. 20544

We will start with Judge Clement.

In your responses to the committee's questionnaire, your answers to a question about judicial activism interested us. You said, "Certainly, once a judge concludes that the legislature has acted within its constitutional powers, the court's role is to uphold the law. However," you said, "in determining whether or not the legislative or the executive branch has acted within its constitutional powers, the court should be activist in its consideration of constitutional definitions, granting of powers, and guarantees of liberties in determining the meaning of the text."

Judge Clement, could you explain what you meant when you said a court should be activist?

Judge CLEMENT. Well, I certainly didn't mean it in a negative sense. Judicial activism has been criticized as when a jurist oversteps the bounds of the Constitution or recognized constitutional statutes and attempts to inflict the will of the jurist on either the legislative or the executive branch or the people.

What I believe is that when legislation is proposed and passed and becomes statutory that there is a presumption of constitutionality. And to the extent, the statute should be upheld and the Constitution should be enforced.

Senator KOHL. Okay, a follow-up. When the Congress decides that an issue is a matter of national concern and that it significantly affects interstate commerce, do you then think that the courts should defer to Congress' findings?

Judge CLEMENT. Well, of course, if the law is passed, there is a presumption, as I said, of constitutionality. So I would like to have the opportunity, of course, to review the statute, review the language of the statute, make a factual determination as to what was attempted to be accomplished by the passage of the statute, and then evaluate whether it is within the confines of the Commerce Clause, if it is permissible.

Senator KOHL. All right. Judge Clement, would you describe what you think are the key elements of the Federal right to privacy, if, in fact, you believe there is such a right?

Judge CLEMENT. Well, the Constitution guarantees the right of privacy and the due process protection must be enforced. A statute should be considered constitutional, but, of course, if it does not guarantee due process, then it should be studied very seriously.

Senator KOHL. I would like to turn briefly to the topic of privately-funded judicial seminars, or what some have called junkets for judges. Your financial disclosure forms indicate that you have attended a significant number of these seminars in recent years, including a seminar on environmental law hosted by the Foundation for Research on Economics and the Environment.

As you are probably aware, such seminars have come under intense scrutiny based on evidence that the seminars are one-sided and that they are being funded by corporations and special interest groups that have an interest in Federal court litigation. Senator Kerry and Senator Feingold have introduced legislation that would ban these kinds of trips.

Do you think that those Senators are correct to be concerned about these trips, and might you support their kind of legislation?

Judge CLEMENT. Well, as you know, judicial officers are frequently invited to participate as speakers or participants in programs dealing with judicial education, as well as continuing legal education for lawyers, as well as participate in lectures to law students.

My experience has shown that the panels and the speakers are from a widely diverse group, that there is a representation from private industry as well as from government and public officials, as well as from the law schools, including the deans of the law schools and the faculty members.

So to that extent, my participation in programs, either as a speaker or as a participant, has reflected that there is a wide variety of opinions expressed. I think it is a very broad-based presentation of issues dealing with constitutional law, as well as antitrust and economics, as well as environmental issues. So to that extent, I don't see a problem with the educational opportunities afforded to the judiciary.

Senator KOHL. Do you plan to continue these types of seminars in terms of your attendance in the event that you are confirmed to the Fifth Circuit?

Judge CLEMENT. Well, some of the seminars are basic economics which, of course, I have completed. And then there is an advanced economics, which I have completed. Some of the seminars are focused on the Constitution, some are focused on environmental issues.

So to the extent that I haven't already been exposed to that information and to the extent that I am impressed with the faculty that is being presented, I would evaluate the opportunity at that time when presented with the invitation.

Senator KOHL. Thank you so much.

Judge CLEMENT. Thank you.

Senator KOHL. Senator Landrieu, would you like to make a statement?

PRESENTATION OF EDITH BROWN CLEMENT, NOMINEE TO BE CIRCUIT JUDGE FOR THE FIFTH CIRCUIT BY HON. MARY LANDRIEU, A U.S. SENATOR FROM THE STATE OF LOUISIANA

Senator LANDRIEU. Thank you, Mr. Chairman, and let me just apologize for being a few minutes late. I was actually in Louisiana and came back a little bit later than scheduled, Mr. Chairman. So I appreciate it because I wanted to be here and just very briefly, because I do not want to interrupt your line of questioning—and I know the committee has a lot of work to do, but I wanted to just appear this afternoon to give my strong support to Judge Clement and to say that I have known her for many years and feel that her qualifications are excellent, that she has served our community well. I believe she will serve this Nation well, and I will be submitting this testimony in full to the record.

I would also want to welcome her children, her husband Rutledge, and her mother, who is here, to welcome them from Louisiana and to say congratulations to all the nominees. You have got my full support.

[The prepared statement of Senator Landrieu follows:]

STATEMENT OF HON. MARY L. LANDRIEU, A U.S. SENATOR FROM THE STATE OF LOUISIANA

Mr. Chairman and Members of the Committee:

I am very pleased to offer my support to the nomination of Edith Joy Brown Clement, of New Orleans, Louisiana, nominee to the United States Fifth Circuit Court of Appeals.

It is most fitting that an individual of Judge Edith Brown Clement's high standards and eminent qualifications be nominated for this very important position.

Edith Brown Clement comes tot he Committee with impressive credentials, having served since 1991 as a United States District Court Judge for the Eastern District of Louisiana. During this period, she has personified judicial excellence while handling a Diverse caseload. Her distinguished ten years as a federal judge will serve her well on the 5th Circuit Court of Appeals. In addition, Judge Edith Brown Clement received a Stellar Legal Education as a 1972 graduate of Tulane University School of Law.

Judge Edith Brown Clement has a distinguished career in law and public service.

Among the professional organizations to which Judge Edith Brown Clement holds membership are the New Orleans chapter of the Federal Bar Association, of which she was president from 1990 to 1991, and the American Bar Association, where she served as chair of the Admiralty & Maritime Law Committee, Torts and Insurance practice section. Furthermore, Judge Edith Brown Clement has been admitted to practice before the Supreme Court of the United States, as well as the United States Fifth and Eleventh Circuits.

It is important to note that during her career, Judge Edith Brown Clement has also served with distinction in a number of responsible positions outside the legal profession. She has been very active in her community. She was a founding board member of the New Orleans Child Advocacy Program. Currently, she also serves on the Sugar Bowl Committee.

Prior to her appointment as a United States District Court Judge, Judge Edith Brown Clement was an Associate and Partner in the Venerable Law Firm of Jones, Walker, Waechter, Poitevent, Carrere & Denegre from 1975–1991. She also served as a Law Clerk to the Honorable H.W. Christenberry, U.S. District Judge for the Eastern District of Louisiana, from 1973 to 1975.

Judge Edith Brown Clement is married to Rutledge Clement, and has two children: Her son Carter and her daughter Lanier. of course, I would be remiss if I did not mention that her mother, Edith Brown, as well as Rutledge and Carter are in attendance this afternoon.

I have found Edith Brown Clement to be very professional and competent as a Judge and Community Leader. Moreover, I am confident she possesses the necessary Judicial temperament to serve on the Fifth Circuit Court of Appeals.

In sum, I believe that Judge Edith Brown Clement possesses the integrity, appropriate demeanor, and aptitude for legal scholarship that will enable her to serve well and with distinction if she is confirmed.

Mr. Chairman, Edith Brown Clement is imminently qualified to serve as a Judge to the Fifth Circuit Court of Appeals, and I strongly urge the Committee to act favorably on her nomination.

Senator KOHL. We thank you, Senator Landrieu.

Senator McConnell, do you have a question of Judge Clement?

Senator MCCONNELL. I really had not intended to ask a question of Judge Clement. Listening to her answer, I just want to commend you for attending these seminars. I think they are an excellent idea. I also want to commend you for not ruling out attending them in the future, and to suggest to you that there will be vigorous opposition to the bill to which Senator Kohl referred which would prevent judges from attending such seminars.

I congratulate you on your nomination and look forward to supporting it.

Judge CLEMENT. Thank you, Senator.

Senator KOHL. Thank you.

Ms. Caldwell, I would like to ask you the following question. What do you believe are the three most important Supreme Court cases of the 20th century, and why?

Ms. CALDWELL. That is a very difficult question, in that there are so many important Supreme Court cases in the 20th century. Of course, Supreme Court decisions are important to different attorneys and to different members of the public for different reasons.

I can cite a case that was very important to me back in 1989. I had joined the United States Attorney's office in 1987 as a novice prosecutor. At that time, the Federal Sentencing Guidelines had been promulgated by the Sentencing Commission. There was a question as to the constitutionality, or questions had been raised as to the constitutionality of those Sentencing Guidelines.

So when *Mistrada* v. *United States* was heard by the Supreme Court which found that the judicial commission had the authority promulgate the Sentencing Guidelines, that cleared the issue for those of us in law enforcement, for members of the defense bar, and for the judges on the court. Regardless of what anyone's opinion is with respect to the Sentencing Guidelines, that was a very important case and one that had personal significance to me.

Another case that had personal significance to me was a case that was decided by the Supreme Court in about 1989, *Mary Alice Wolfe* v. *United States*. That case was heard by the Supreme Court and her conviction for a conspiracy to commit murder for hire was thrown out by the Supreme Court because it had been illegally obtained without the presence of her counsel. Needless to say, in my second trial I was confronted with trying that case on the retrial, on remand, from the United States Supreme Court.

There are many other cases that I am sure have greater significance and more importance to the public at large, but those are ones that come to mind that had great significance to me and had an impact on my career.

Senator KOHL. I thank you.

Senator McConnell?

Senator MCCONNELL. Ms. Caldwell, you were, of course, in Kentucky known principally for your leadership in pursuing the public corruption cases in Operation BOPTROT, which both Senator Bunning and I alluded to.

I am wondering how that experience, which I would repeat led to the conviction and incarceration of the Speaker of the Kentucky House of Representatives, may have impacted your insight as to the importance of integrity in public servants.

Ms. CALDWELL. Well, obviously, as a citizen one is entitled to expect integrity from our public officials. As a prosecutor, of course, those cases presented particularly difficult and complex legal issues in terms of identifying specific statutory wrong, setting about using what some would term as invasive measures for conducting an undercover investigation and being sure to protect the reputations of innocent people.

But I was glad that law enforcement worked in terms of protecting public confidence in our system of government when called upon. However, I think the most important mechanism for protecting our system of government is for the public to be involved in knowingly electing, supporting and monitoring the behavior of people of integrity in our government.

Senator MCCONNELL. Well, obviously, Senator Bunning and I are enthusiastic about your selection and both of us intend to support you. We are pleased that you are here today.

Ms. CALDWELL. Thank you, Senator McConnell.

Senator MCCONNELL. Thank you, Mr. Chairman.

Senator KOHL. Thank you, Senator McConnell.

Judge Camp, would you describe for us what you understand to be the key principles of the Federal right to privacy?

Judge EAGAN. Are you speaking to me?

Senator KOHL. I am sorry. I meant to ask Ms. Camp that.

Ms. CAMP. Thank you, Mr. Chairman. I think that there is a Federal right of privacy and I think it is found in several provisions of the United States Constitution. Certainly, the United States Supreme Court has recognized a right of privacy under the penumbra of the Constitution, noting that there are references throughout several of the amendments to the citizen's right of privacy. And if I am confirmed to the district court bench, I will do my best to uphold the Constitution, as interpreted by the United States Supreme Court.

Senator KOHL. I thank you.

Senator McConnell?

Senator MCCONNELL. I don't have any questions, Mr. Chairman.

Senator KOHL. Judge Eagan, in the past few years, beginning with the Lopez decision, the Supreme Court has struck down a number of Federal statutes, including several designed to protect the civil rights of our more vulnerable citizens, as beyond Congress' power. Taken individually, these cases have raised concerns about the limitations imposed on congressional authority. Taken collectively, they appear to reflect a new federalism crafted by the Supreme Court that threatens to alter fundamentally the structure of our Government.

What advice would you give Senators who are drafting legislation to comply with the new federalism?

Judge EAGAN. Thank you, Mr. Chairman. I do believe that Lopez was a watershed decision in putting limits on the power of Congress under the Commerce Clause, and I would recommend that the Senators follow the opinion in Lopez and other opinions that followed it and find out what exactly the Supreme Court found lacking in the passage of those statutes and try to make findings and having hearings to determine if indeed it is an area that can be governed under the Commerce Clause and to follow that precedent.

Senator KOHL. I thank you.

Senator McConnell?

Senator MCCONNELL. No questions, Mr. Chairman.

Senator KOHL. Judge Payne, there has been a great deal of attention paid to Federal courts' increased caseloads and the resulting problem of docket backlogs. This backlog has an adverse effect on the people before the court who have suffered at least some delay in the resolution of their claims.

If confirmed, what steps do you intend to take to ensure that your docket proceeds at a quick pace, as quick a pace as is fair and reasonable?

Judge PAYNE. Thank you, Senator. I would say that maybe a recent place for us to start would be the Civil Justice Reform Act of 1990. I think that was a starting place and it has been a starting place in our court, and as a magistrate judge, I have had an opportunity to help to implement that Act.

I think it has to do with the judge assigned to the case being active at the very beginning, from the discovery process to the planning of the scheduling of the case, having a meeting for a Rule 16 conference where the parties know where they are, what the schedule is.

I think perhaps the most important thing is to get the case scheduled and stick with the schedule. I think it is important to add the ingredient of alternative dispute resolution to give the parties an opportunity to settle the case before going to trial, if necessary. I think that saves time, money, and perhaps some stress for the litigants.

Senator KOHL. Senator McConnell?

Senator MCCONNELL. No questions, Mr. Chairman.

Senator KOHL. I would like to ask this question of all the members of the panel and give each of you a chance to respond.

In the past few years, there has been a growth in the use of so-called protective orders in product liability cases. We can see this happening in the recent settlements arising, for example, from the Bridgestone/Firestone lawsuits. Critics like myself argue that these protective orders sometimes prevent the public from learning about the health and safety hazards in the products that they use.

Should you be confirmed, what would be your opinion on a litigant's right to privacy when the information sought to be sealed could keep secret a public health and safety hazard?

Judge CLEMENT. For the past 10 years when I have been on the bench reviewing in camera requests or motions to have documents sealed or testimony sealed, I have been very cautious not to do that with a broad brush. It is easier for the litigants to submit a pretty comprehensive document and ask that it all be sealed, but if you have a conference, sit down, you can readily narrow the issues and determine is there a patent involved, is there a particular privacy issue involved.

If you sit down with a conference, work with the lawyers—you should even get the parties in to make sure that the parties are understanding what the lawyers have submitted. And I would just encourage a very narrow reading of any request to put anything outside of the public view.

Senator KOHL. I thank you.

Ms. Caldwell?

Ms. CALDWELL. I would echo Judge Clement's sentiment and also say that by their very nature court proceedings are public proceedings. So there is a constant importance, I think, for judges to be mindful of the public's right to know and to participate in public proceedings, versus the needs for privacy of particular parties or litigants with respect to particular information.

Senator KOHL. Judge Eagan?

Judge EAGAN. Thank you, Mr. Chairman. I think your question raises a very important issue in two areas that we deal with on the

bench. One is proceedings generally and the public right to have access to those proceedings, and, second, in the settlement context.

First, in proceedings generally, in our district we are firm believers in the public's right of access and we are very reluctant to seal pleadings and seal orders, and there is a strong burden for litigants to have anything sealed.

With regard to settlements, there is the competing interest of wanting to encourage parties to settle versus when you have an issue that implicates public health and safety. And I think in the latter instance, there are interim steps that can be taken where you can advance the interests of public health and safety but still encourage settlement, such as, for example, sealing the amount of the settlement, but if there is an issue as to a defective product, use your discretion to perhaps make a problem known.

Senator KOHL. Judge Payne?

Judge PAYNE. Senator, I think you have identified some tension. Looking back at the Civil Justice Reform Act and later legislation that has encouraged ADR in the Federal courts, I think that is one of the places we see it. And I agree with a lot of what Judge Eagan had to say that there is a tension there.

I think the public interest and need to know about dangerous products is of the highest importance to the people of this country. I think they have a right to know, and I agree with Judge Eagan's suggestion that perhaps you can accomplish both. But I think the public safety probably would weigh heaviest on my mind.

Senator KOHL. I thank you.

Ms. Camp?

Ms. CAMP. Thank you, Mr. Chairman. Certainly, there should be a strong presumption of public access to any documents that are filed with the court or introduced into evidence in a trial proceeding. I recognize that there is some need for balancing when there are trade secrets involved, but I agree with Judge Eagan that there should be a very strong burden, a very heavy burden on the party who is trying to maintain those documents as secret.

Thank you.

Senator KOHL. Okay, one more question for the panel. I am sure that you have followed the debate here on Capitol Hill and, in fact, across the country, about the need to address the risk of more terrorist attacks. Without getting into any specific proposals, what do you think the tradeoff needs to be between liberty and security?

Judge Clement?

Judge CLEMENT. Well, the very recent ruling by the Supreme Court in the Zatadis case addressed the terrorist concern, and they called it, I believe, a special problem that the legislature would address if there was a situation, in which case the legislative ability should be respected by the judiciary.

And to that extent, I think we need to see what the legislation puts forward, and to the extent that we need to protect civil liberties I am sure the Senate and the Congress will address those issues, as they are examining them now. So that extent, I think that need was recognized by the Supreme Court and we have to just trust the legislators to enact a law that is safeguarding for the citizens of this country, since we are under terrorist attack, but also recognizes that people do have civil liberties to protect, wheth-

er they are foreigners or not, or whether they are protection and their right to be in this country has been brought under question.

There are certainly statutes protecting them and providing for hearings and examination and presentation of issues. If there is a preventive detention, which I believe the Supreme Court discussed in the *Zatadis* case, I believe that the preventive detention should be set forth with some particularity, and to that extent I think that would resolve the issue.

Senator KOHL. Thank you.

Ms. Caldwell?

Ms. CALDWELL. I appreciate the delicate task that you members of Congress are confronted with and the members of this body are confronted with in terms of safeguarding national security versus protecting the important civil liberties of our citizens and those who come to this country.

With respect to that legislation, I will have to trust that to this body in terms of making certain that it meets constitutional muster. However, I encourage and believe that it is important for judges to look at the laws currently on the books, to be familiar in terms of Supreme Court precedent, superior court precedent, and also statutory law which does provide protections for civil liberties and also provides some tools to those who would safeguard our national security.

Senator KOHL. Good.

Judge Eagan?

Judge EAGAN. Mr. Chairman, thank you. I believe the Supreme Court has suggested that there might be an exception when dealing with civil liberties and the different procedural safeguards for those liberties if there is an issue of terrorism. And I trust the Congress, and I trust that they will be conscious of the delicate balance between the civil liberties, but the fear of the American people of terrorist attacks. And I believe any statute will have a presumption of constitutionality.

Senator MCCONNELL. If I might interject, hopefully we have gotten it right. As you may have read in the paper, we have reached a bipartisan agreement on a terrorism package that the Justice Department believes is constitutional and we believe is constitutional. Happily, we are going to go forward with that. I guess some court at some point will tell us whether we got it right, but at least we seem to have reached an agreement on this very important and timely subject.

Judge EAGAN. Thank you, Senator.

Senator KOHL. Judge Payne?

Judge PAYNE. Senator, not to be trite, but these are times that try our souls. I think it is heartwarming that you bring that issue up here today. I know it is one that troubles us all.

The hallmark of this country is our personal freedoms. I know that the Senate and the Congress has a very difficult balancing act to keep us free and keep us secure. I know the role of the court is not to interfere with your process. It is not an enviable job, but the job of the Congress and the Senate to pass that law, and perhaps for some of us to look at it for constitutional scrutiny in the future. I have confidence in your judgment.

Senator KOHL. Thank you.

Ms. Camp?

Ms. CAMP. Thank you, Mr. Chairman. Certainly, any legislation passed by Congress would be given a very strong presumption of constitutionality, and I know that Congress, working with the Justice Department and others, is taking into consideration the issue of civil liberties in preparing the legislation.

I am not aware of any United States Supreme Court decisions which say that someone has to be released into society who poses a clear threat to society. There are due process considerations involved, but the Supreme Court has been looking at a number of issues lately where the Court has found that individuals may be detained even though they are not convicted of a criminal offense if they pose a clear threat to society.

Thank you.

Senator KOHL. Thank you. Before I dismiss you, I would like to advise you all that you may receive some follow-up questions from members of our panel. We will keep the record open for a week and if you get questions, I would hope that you would respond expeditiously.

I think you have done a great job and I can assure you that we will work very hard to get your confirmations down as quickly as possible. Thank you so much.

[The biographical informations of Judge Clement, Ms. Caldwell, Judge Eagan, Judge Payne and Ms. Camp follow:]

Senator KOHL. We now have before us Professor Jay Bybee, to be the Assistant Attorney General for the Office of Legal Counsel.

Will you please stand and raise your right hand as I administer the oath?

Do you swear that the testimony you shall give in this hearing shall be the truth, the whole truth and nothing but the truth, so help you God?

Mr. BYBEE. I do.

Senator KOHL. We thank you.

Mr. Bybee, if you have any opening statement or you would like to introduce any family or friends who are with you today, please proceed.

STATEMENT OF JAY S. BYBEE OF NEVADA, NOMINEE, TO BE ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL, DEPARTMENT OF JUSTICE

Mr. BYBEE. Thank you, Mr. Chairman. In light of the increased responsibilities that have been placed on the Senate, I appreciate you conducting this hearing and proceeding with this in light of other responsibilities that have been placed upon you.

I would like to introduce my family that are here with me today. I have my wife, Diana, my wife of 15 years; my sister, Karen Bybee; my niece, Kelly Frasier; my brother, David Bybee, and his wife, Renee, and their daughter, Morgan Letelier. Our children, Scott, who is 14, and David, who is 11, and Alyssa, who is 9, and Ryan, who is 7, remain at home in Las Vegas. We trust that they are in school, and if they are watching these proceedings, boys, no Nintendo.

My mother, Joanne Bybee, cannot be with us today. I have another brother, Lynn, who is not able to be here as well. But my

mother, Joanne, I would like to pay special recognition to today, Senator. She is serving at her own expense as a missionary in Mexico teaching English as a second language, and will return to the United States after more than a year-and-a-half in Mexico in December.

[The biographical information of Mr. Bybee follows.]

I.BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Jay Scott Bybee

2. Address: List current place of residence and office address(es).

Residence:
Henderson, Nevada

Office:
William S. Boyd School of Law
University of Nevada, Las Vegas
4505 Maryland Parkway Box 451003
Las Vegas, Nevada 89154-1003

3. Date and place of birth.

Born October 27, 1953, in Oakland, California.

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address)es).

I have been married since 1986 to Dianna Jean Greer. My wife is a full-time homemaker. She works part-time out of our home for a public relations firm, Ballard Communications, 1850 E. Flamingo Road, Las Vegas, Nevada 89119.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

I attended Brigham Young University from 1971-73 and 1975-77. I received a B.A. (*Magna Cum Laude*) in economics in 1977.

I attended the J. Reuben Clark Law School at Brigham Young University from 1977-80. I received a J.D. (*Cum Laude*) in 1980.

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director,

partner, proprietor, or employee since graduation from college.

1977	Research assistant, Dr. Ronald Heiner, BYU Department of Economics, Provo, UT Laborer, Heritage Homes, Salt Lake City, UT
1978	Summer associate, Ogden, Robertson & Marshall, Louisville, KY
1979	Summer associate, Chapman, Duff & Paul, Washington, DC
1980	Summer associate, Shearman & Sterling, New York, NY
1980-81	Law clerk, the Honorable Donald S. Russell, United States Court of Appeals for the Fourth Circuit, Spartanburg, SC and Richmond, VA
1981-84	Associate, Sidley & Austin (now Sidley, Austin, Brown & Wood), Washington, DC
1982-98	Member, Advisory Editorial Board, *Sunstone Magazine*
1984-86	Attorney-Advisor, Office of Legal Policy, U.S. Department of Justice, Washington, DC
1986-89	Attorney, Civil Division/Appellate Staff, U.S. Department of Justice, Washington, DC
1989-91	Associate Counsel to the President, The White House
1991-98	Professor of Law, Associate Professor of Law, Assistant Professor of Law, Paul M. Hebert Law Center, Louisiana State University, Baton Rouge, LA
1999-present	Professor of Law, William S. Boyd School of Law, University of Nevada, Las Vegas, Las Vegas, NV
1999-present	Board of Directors, J. Reuben Clark law Society, Las Vegas Chapter, Las Vegas, NV

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

   No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Harry S. Redmon Professorship, Louisiana State University
Phi Kappa Phi National Honor Society

9. Bar Associations: List all bar associations, legal or judicial-related committees 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.

Member of the State Bar of Nevada and Bar Association of the District of Columbia.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

So far as I know, I do not belong to any organizations that actively lobby before public bodies. I am not aware of whether the bar associations to which I belong lobby.

Other organizations to which I belong or am otherwise affiliated include the Bar of the District of Columbia, the State Bar of Nevada, The Church of Jesus Christ of Latter-day Saints, the Boy Scouts of America, the Federalist Society, College Republicans, the J. Reuben Clark Law Society, and the Sandy Ridge Homeowners Association.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Court	Date Admitted
Nevada Supreme Court	May 31, 2001
District of Columbia Court of Appeals	December 21, 1981
U.S. Supreme Court	March 25, 1985
U.S. Court of Appeals for the Second Circuit	March 23, 1987
U.S. Court of Appeals for the Fourth Circuit	June 4, 1983
U.S. Court of Appeals for the Fifth Circuit	August 1, 1986
U.S. Court of Appeals for the Ninth Circuit	December 9, 1987
U.S. Court of Appeals for the Tenth Circuit	February 5, 1987
U.S. Court of Appeals for the D.C. Circuit	January 28, 1987

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Book and Book Contributions

"Domestic Violence Clause" and "Child Support Recovery Act (1992)" *in* ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION (Leonard W. Levy, Kenneth L Karst & Adam Winkler, eds. 2d ed. 2000)

"George Sutherland" and "Owen J. Roberts" *in* THE SUPREME COURT JUSTICES: ILLUSTRATED BIOGRAPHIES, 1789-1993 (Clare Cushman, ed. 1993)

RELIGIOUS LIBERTY UNDER THE FREE EXERCISE CLAUSE, U.S. Department of Justice, Office of Legal Policy, 165 pp. (1986)(co-authored with Lowell V. Sturgill)

Articles

Common Ground: Robert Jackson, Antonin Scalia and a Power Theory of the First Amendment, 75 TUL. L. REV. 251 (2000)

The Tenth Amendment Among the Shadows: On Reading the Constitution in Plato's Cave 23 HARV. J.L. & PUB. POL'Y 551 (2000)

Agency Expertise, ALJ Independence, and Administrative Courts: The Recent Changes in Louisiana's Administrative Procedure Act, 59 LA. L. REV. 431 (1999)

Insuring Domestic Tranquility: Lopez, *Federalization of Crime and the Forgotten Role of the Domestic Violence Clause*, 66 GEO. WASH. L. REV. 1 (1997)

The Equal Process Clause: A Note on the (Non)Relationship Between Romer v. Evans *and* Hunter v. Erickson, 6 WM. & MARY BILL RTS. J. 201 (1997) (Symposium)

Who Executes the Executioner? Impeachment, Indictment and Other Alternatives to Assassination, 2 NEXUS 53 (1997) (Symposium)

Ulysses at the Mast: Democracy, Federalism and the Sirens' Song of the Seventeenth Amendment, 91 NW. U.L. REV. 500 (1997)

Substantive Due Process and Free Exercise of Religion: Meyer, Pierce *and the Origins of* Wisconsin v. Yoder, 25 CAP. U.L. REV. 887 (1996) (Symposium)

Taking Liberties with the First Amendment: Congress, Section 5 and the Religious Freedom Restoration Act, 48 VAND. L. REV. 1539 (1995)

Advising the President: Separation of Powers and the Federal Advisory Committee Act, 104 YALE L.J. 51 (1994)

Utah's Horseman: George Sutherland, XIII THE SUPREME COURT HISTORICAL

QUARTERLY14 (No. 2 1992)

Note, *Reverse Political Checkoff Per Se Illegal as Violation of Federal Election Campaign Act*, 1980 B.Y.U. L. REV. 403

Comment, *Profits in Subrogation: An Insurer's Claim to Be More Than Indemnified*, 1979 B.Y.U. L. REV. 145, *reprinted in* 30 FED'N INS. COUNS. Q. 249 (1980)

Columns

"The Legal Intractability of Pornography," 10 *Sunstone* 32 (June 1985)

"Covenants As Solemn Promises Under Seal," 10 *Sunstone* 38 (March 1985)

"The Lawyer's Conflict Between Duty to Truth and Duty to Client, " 10 *Sunstone* 28 (February 1985)

"The Litigation Explosion: Rights Versus Duties," 9 *Sunstone* 47 (January/February 1984)

"The Supreme Court and the Religion Clauses, 1982-83," 8 *Sunstone* 47 (July/August 1983)

"On the Constitution and the Family: From Status to Contract," 8 *Sunstone* 48 (July/August 1983)

"Oedipus Lex: The Law and Psychiatry," 8 *Sunstone* 48 (May/June 1983)

"Courts, Congress, and 'Pregnant Persons': The Logic of Discrimination," 8 *Sunstone* 78 (January/April 1983)

"Government-Sponsored Nativity Scenes: Getting Christ Out of Christmas," 7 *Sunstone* 63 (November/December 1982)

"Government Aid to Education: Paying the Fiddler," 7 *Sunstone* 61 (July/August 1982)

"The Supreme Court and the Religion Clauses, 1981-82," 7 *Sunstone* 61 (May/June 1982)

"Callister's Decision," 7 *Sunstone* 60 (March/April 1982)

"Judge Callister and the ERA," 7 *Sunstone* 59 (January/February 1982)

Book Reviews

Book Review, GREGORY A. PRINCE, POWER FROM ON HIGH: THE DEVELOPMENT

OF MORMON PRIESTHOOD, 19 *Sunstone* 60 (December 1996)

Book Review, JOHN KENNETH GALBRAITH, THE AGE OF UNCERTAINTY, *Century II* 47 (1977)

Congressional Testimony

Religious Liberty, Hearing before the Senate Judiciary Committee, 106th Cong., 1st Sess. (Sept. 9, 1999) (testimony on the Religious Liberty Protection Act)

Other Public Statements

I have supplied copies of the following public speeches or presentations that I have given:

"The Due Process Clause in Theory and Practice," Nevada State Bar Administrative Law Seminar, Las Vegas & Reno, April 19-20, 2001

"Relations Between the Judiciary and the State Legislature: Some Themes in Separation of Powers," Nevada Limited Jurisdiction Judges Seminar, Mesquite, January 24, 2001

"We the People: The Citizen and the Constitution," Clark County Law-Based Teacher Education, Las Vegas, September 14, 2000

"The First Amendment in Television Journalism: Problem or Potential," World Television Journalism Conference, Las Vegas, June 27, 2000

"Liberty Versus Equality in the First Amendment: Some Recent Developments," Nevada State Bar Convention, San Francisco, June 22, 2000

"Federalism and the Shadows of State Power: On Reading the Constitution in Plato's Cave, Nevada Inn of Court, Las Vegas, June 7, 2000; J. Reuben Clark Law Society, Salt Lake City, January 25, 2000

"Separation of Powers in Nevada," Current Developments in Law and Public Policy, UNLV, June 1, 2000

"The Crumbling Wall Separating Church and State: Do School Vouchers Violate the Establishment Clause and Does Government Funding for Faith-Based Social Services Endanger Religious Freedom," Anti-Defamation League, Las Vegas, February 24, 2000.

"The U.S. Supreme Court and the Constitution: The Year in Review," Keynote Address, Constitutional Law Symposium, Brigham Young University Law School, October 17, 1997

Over the years, I have also given other speeches and participated in panel discussions. I

do not have copies of my remarks. From time to time I have been called by the media for background or interviews. For example, I was interviewed on a local cable news program, "Point of View Vegas" (LV-1), in November and December 2000 on the Florida presidential election. In April 2000, I was on the same news program to discuss advertising and "shadow jury" polling during the course of the Binion murder trial. In April 1994, I was interviewed on a nationally syndicated radio program, "The Gill Gross Show," on the Supreme Court's denial of certiorari in case involving FCC regulation of profanity on the airwaves.

13. Health: What is the present state of your health? List the date of your last physical examination.

My health is excellent. I had a general physical in Fall 1998; I had a check-up in connection with my attendance at Boy Scout camp in June 2001.

14. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None.

15. Legal Career:

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

1. 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;

From 1980-81, I served as law clerk to the Honorable Donald S. Russell of the United States Court of Appeals for the Fourth Circuit. Judge Russell lived in Spartanburg, South Carolina.

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

No. I have never practiced alone.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

From 1981 to 1984, I practiced law as an associate in the Washington, DC office of

Sidley & Austin (which is now Sidley, Austin, Brown & Wood), 1722 Eye Street, Washington, DC 20006.

From 1984 to 1989, I was with the U.S. Department of Justice, 10th & Pennsylvania Avenue, NW, Washington, DC. 20530. From 1984-86, I was an attorney-advisor in the Office of Legal Policy. From 1986 to 1989, I was an attorney on the Appellate Staff at the Civil Division.

From 1989 to 1991, I was Associate Counsel to the President, The White House, Washington, DC.

Between 1991 and 1998, I was on the faculty of the Paul M. Hebert Law Center at Louisiana State University, Campus Drive, Baton Rouge, LA 70803. I was Assistant Professor of Law from 1991 to 1994; Associate Professor of Law from 1994 to 1998, and Professor of Law in 1998.

Since 1999, I have been Professor of Law at the William S. Boyd School of Law, University of Nevada, Las Vegas, 4505 Maryland Parkway, Box 451003, Las Vegas, NV 89154-1003.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

The Washington office of Sidley & Austin, where I practiced from 1981-84, handled largely regulatory and antitrust matters and represented corporations such as Norfolk-Southern Corporation, CSX Corporation, and AT&T. I worked on a broad range of matters, including issues connected with the breakup of the Bell System, deregulation of railroad rates on export coal, antitrust litigation, and export licensing. Most of my work involved civil litigation in federal courts or before the Interstate Commerce Commission.

As an attorney-advisor in the Office of Legal Policy at the Department of Justice (1984-86), I represented the office on various interagency and intra-departmental committees. I also worked for a time on judicial selection. Another attorney and I co-authored a study, subsequently published by OLP, on religious liberty under the Free Exercise Clause; I also worked on other matters involving religious liberty. Towards the end of my time at OLP, I wrote a brief and argued a case before the U.S. Court of Appeals for the Federal Circuit. The Appellate Staff in the Civil Division of the Department of Justice represents the United States in civil matters before the U.S. Courts of Appeals and, occasionally, in matters before state appellate courts. The staff also makes recommendations to the Solicitor General on cases that might be appealed to the U.S. Supreme Court and prepares first drafts of briefs. During my three years on the staff (1986-89), I was the principal author of the government's briefs in more than 25 cases. I also worked with other attorneys in the office and with attorneys in the office of the Solicitor General on seven matters that were filed in the U.S. Supreme Court. I argued cases before the Second, Third, Fifth, Ninth, Tenth, Eleventh and Federal Circuits.

As Associate White House Counsel (1989-91), I reviewed enrolled bills, executive orders, and proclamations to be signed by the President for form and constitutionality. I reviewed financial disclosure and FBI background checks for presidential appointees. I also worked on most litigation matters involving the White House (except for Iran-Contra) and served

as the White House liaison to the Solicitor General's working group on civil justice reform.

At the law schools at both Louisiana State University (1991-98) and the University of Nevada, Las Vegas (1999-present), I have taught Civil Procedure I & II, Constitutional Law I & II, Administrative Law and seminars on religious liberty and separation of powers. I have consulted occasionally with attorneys in Washington, DC; Louisiana; and Nevada–largely on appeals and petitions for writs of certiorari. In this capacity, I have represented individuals, a private school, and the Clarendon Foundation (a public interest foundation; all matters I worked on for Clarendon were *pro bono*).

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

During the time that I was with Sidley & Austin, I appeared in court once, on a *pro bono* matter. While I was with the Department of Justice (1984-89) I was frequently before U.S. Courts of Appeals. I have argued cases before the Second, Third, Fifth (three cases), Ninth (two cases), Tenth, Eleventh (two cases), and Federal Circuits (two cases). I have not appeared in court since I left the Department of Justice in 1989.

2. What percentage of these appearances was in:
(a) federal courts;
(b) state courts of record;
(c) other courts.

With the exception of one case I argued before the D.C. Court of Appeals, all of my arguments have been before federal courts of appeals.

3. What percentage of your litigation was:
(a) civil;
(b) criminal.

All of my litigation was civil, except for one criminal matter in which I consulted with a Nevada attorney on a *pro bono* basis (that case was resolved without going to trial).

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

None. All of my cases were handled on appeal. Of the thirteen cases I have argued before federal courts of appeals or the D.C. Court of Appeals, we settled one case before the court issued an opinion and judgment. In all of the cases that I argued, I served as chief counsel.

5. What percentage of these trials was:
(a) jury;

(b) non-jury.

Not applicable.

16. Litigation: Describe the ten most significant litigated matters which you personally handled. 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 representations;
(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.

For each of the following cases, I was the principal author of at least one of the briefs filed in the case. Where possible, I have listed the most recent address available in the Martindale-Hubbell directory; otherwise, I have listed the last address I have for principal counsel of other parties in the case.

1. *Hohri v. United States*, 847 F.2d 779 (Fed. Cir.), *cert. denied*, 488 U.S. 925 (1988). This was a class-action suit for reparations by 120,000 Japanese-Americans interned during World War II. The suit was originally filed in the U.S. District Court in the District of Columbia. The district court dismissed the suit on the grounds that the statute of limitations had run. The D.C. Circuit reversed on the grounds that the Solicitor General had mislead the U.S. Supreme Court in the cases of *United States v. Hirabayashi* (1943) and *United States v. Korematsu* (1944). I became involved in the government's suggestion for rehearing en banc and then worked on the brief in the Supreme Court. The Court reversed on the grounds that the appellants should have taken their appeal to the Federal Circuit, not the D.C. Circuit. I wrote the brief for the United States on remand to the Federal Circuit, and on March 8, 1988, I argued the case before the Federal Circuit. In a split decision, the Federal Circuit dismissed the suit on the grounds that the statute of limitations had run. In August 1988, Congress voted reparations to the Japanese Americans in Pub. L. No. 100-383. The panel in the Federal Circuit consisted of Judges Rich, Nies, and Baldwin. Principal counsel for the plaintiffs was Benjamin Zelenko, Baach, Robinson & Lewis, One Thomas Circle, Washington, DC 20005. (202) 833-8900.

2. *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549 (9th Cir. 1990). This was a class-action by Salvadorans intercepted by U.S. immigration officials. The plaintiffs sought various relief against INS; probably the most prominent relief sought was a requirement that INS give Salvadorans notice of their right to apply for political asylum. The district court found against the United States on nearly all claims. I co-authored the brief for the United States (the named defendants included Attorney General Dick Thornburgh and the Immigration and Naturalization Service) and argued the appeal before the U.S. Court of Appeals for the Ninth Circuit on

September 12, 1989. The panel consisted of Judges Schroeder, Beezer and Vukasin, and it affirmed the decision of the district court. Lead counsel for the plaintiffs was Mark Rosenbaum, ACLU Foundation of Southern California, 1616 Beverly Blvd, Los Angeles, California 90005. (213) 977-9500.

3. *High Tech Gays v. Defense Industrial Security Clearance Organization*, 895 F.2d 563 (9th Cir.), *rehearing denied*, 909 F.2d 375 (9th Cir. 1990). This was a challenge to the Defense Department's security clearance procedures for DoD contractors. Under DoD procedures, the Defense Investigative Service conducts background checks before DoD will issue a security clearance to the employees of DoD contractors working on classified projects. If the Service finds adverse information, it will conduct an expanded background investigation and a personal interview. The expanded investigation could delay the issuing of the security clearance for weeks or months. The plaintiffs argued that DoD considered evidence of homosexual behavior to be adverse information and challenged DoD's procedures under the Equal Protection Clause of the Fifth Amendment. The district court held in favor of the plaintiffs. I briefed the case for the Defense Industrial Security Clearance Organization and its director, the Defense Investigative Service and its director, and the Secretary of Defense, and argued it December 16, 1988, before a panel consisting of Judges Brunetti, Leavy and Curtis. The Ninth Circuit reversed the judgment of the district court and held in favor of the DoD defendants. Lead counsel for the plaintiffs was Richard Gayer, 5 Lindsay Circle, San Francisco, California 94114. (415) 821-1716.

4. *National Grain and Feed Association v. Occupational Safety and Health Administration*, 858 F.2d 1019 (5th Cir. 1988), *on rehearing*, 866 F.2d 717 (5th Cir. 1989) (*per curiam*), *on petition for enforcement*, 903 F.2d 308 (5th Cir. 1990). This was a challenge to a final rule issued by OSHA dealing with grain handling. The rule provides minimum requirements for the control of fires, explosions, and related hazards in grain handling facilities I represented OSHA and the Secretary of Labor, briefed the case, and argued it on June 8, 1988, before a panel of Judges Garza, Williams and Smith. The Fifth Circuit upheld most of the rule. We filed a petition for rehearing and a suggestion for rehearing en banc, and the court issued an amended opinion that responded to our petition. Lead counsel for the numerous parties involved in the appeal were Marc Fleischaker, Arent, Fox, Kintner, Plotkin & Kahn, 1050 Connecticut Avenue, NW, Washington, DC 20036. (202) 857-6000; Randy Rabinowitz, 5818 Sherrier Place NW, Washington, DC 20016. (202) 362-3817; and David Vladeck, Public Citizen Litigation Group, Suite 700, 2000 P Street, NW, Washington, DC 20036. (202) 588-1000.

5. *DeCuellar v. Brady*, 881 F.2d 1561 (11th Cir. 1989), *cert. denied*, 498 U.S. 895 (1990). In this suit, Mrs. DeCuellar sought a writ of mandamus against the Secretary of Treasury to issue her a license to redeem bonds issued by the Republic of Cuba in 1937. These bearer bonds had been frozen by presidential order under the Trading With the Enemy Act and the Cuban Assets Control Regulations. The district court held that Mrs. DeCuellar was entitled to a license under the regulations. The Eleventh Circuit, in a panel of Judges Fay, Hatchett, and Hoffman, reversed. I represented the Secretary of the Treasury, briefed the case, and argued it on May 23, 1989. Principal counsel for the other parties were Alexander Arandia, Arandia & Perez, 1313 Coral Way, Miami, Florida 33145, and Christian Keedy, Aran, Correa & Guarch, 710 South Dixie Highway, Miami, Florida 33146. (305) 665-3400.

6. *Medical Center Hospital v. Bowen*, 839 F.2d 1504 (11th Cir. 1988). The Medical Center Hospital of Punta Gorda, Florida sought reimbursement under the Medicare program for certain expenses. HHS allowed reimbursement under its regulations, but denied payment of the hospital's costs in excess of the amount provided by regulation. The district held in favor of the hospital, and the Eleventh Circuit affirmed. The panel consisted of Judges Tjoflat, Anderson and Moore. Representing the Secretary of HHS, I briefed the case and argued it on August 3, 1987. Opposing counsel was Carel Hedlund, Ober, Kaler, Grimes & Shriver, 120 East Baltimore Street, Baltimore, Maryland 21202. (410) 685-1120.

7. *Piechowicz v. United States*, 885 F.2d 1207 (4th Cir. 1989). Mr. and Mrs. Piechowicz were employed at a hotel in Baltimore when they witnessed drug activity. Shortly before they were called to testify during a suppression hearing, the Piechowicz's were threatened. They reported the threat to a DEA agent and an Assistant U.S. Attorney. A week before they were scheduled to appear as government witnesses in a criminal trial, the Mr. Piechowicz and his sister (who evidently was mistaken for Mrs. Piechowicz) were murdered at the hotel. Mrs. Piechowicz brought suit against the United States, the DEA agent and the Assistant U.S. Attorney under 42 U.S.C. § 1983 and the Federal Torts Claims Act for failure to protect the Piechowicz's and to place them in the Federal Witness Protection Program. The district court dismissed the Section 1983 claims against the individual defendants on the basis of qualified immunity; it dismissed the suit against the United States under the FTCA on the basis of the "discretionary function" exception in the FTCA. I briefed the case for the United States and its employees but not argue the case because of a conflict in my schedule. The court of appeals (Judges Ervin, Murnaghan, and Young) affirmed the judgment of the district court. Opposing counsel was Stephen N. Goldberg, Cohn, Goldberg & Deutsch, 600 Baltimore Avenue, Towson, MD 21286. (410) 296-2550.

8. *Williams v. Secretary of the Navy*, 787 F.2d 552 (Fed. Cir. 1986). Williams was a member of the U.S. Navy who was court-martialed for drug use. He brought this suit as a collateral attack on his general discharge. His appeal raised issues as to whether he had exhausted his administrative remedies, whether a unit sweep urinalysis violated the Fourth Amendment, and whether introduction of a urinalysis test violated the Fifth Amendment. Representing the Secretary of the Navy, I briefed the case and argued it December 1, 1985, before Judges Markey, Baldwin and Nies of the Federal Circuit. The court upheld the court martial. Opposing counsel was Edward F. Halloran, 5233 Princess Anne Road, Virginia Beach, Virginia 23452. (757) 456-5757

9. *Trichilo v. Secretary of Health and Human Services*, 832 F.2d 743; 823 F.2d 702 (2d Cir. 1987); and *Allen v. Bowen*, 821 F.2d 963 (3d Cir. 1987). These were cases in the Second and Third Circuits raising identical issues. The issue was whether under the Equal Access to Justice Act, which provides that attorneys fees may be awarded against the United States when the government's position was not substantially justified, inflationary adjustments to the $75 cap were to be calculated by reference to the original date of enactment (1981) or the effective date of the present act (1985). In *Trichilo*, we also disputed whether the Act required the United States to pay for counsel's time litigating the attorney's fees question as well. I represented the

Secretary of HHS, and briefed and argued these cases, which were argued on consecutive days, May 15-16, 1987, before panels of the Second (Judges Van Graafeiland, Pratt and Altimari) and Third (Judges Gibbons, Mansmann and McCune) Circuits. Both courts ruled against our position. Counsel were James Baker, Baker & Clark, 1104 State Tower Building, Syracuse, New York 13202; and Eric Fisher, Community Legal Services, Law Center North Central 3638 N. Broad Street, Philadelphia, Pennsylvania 19140. (215) 923-4357.

10. *Fleetwood Enterprises, Inc. v. United States Department of Housing and Urban Development*, 818 F.2d 1188 (5th Cir. 1987) and No. 87-1987 (5th Cir.). HUD brought an action under the National Manufactured Housing Construction and Safety Standards Act against Fleetwood for inadequate construction. Fleetwood sought an injunction against the HUD proceeding in a federal district court in Texas on the grounds that HUD had announced that it would conduct a formal, adversarial hearing; Fleetwood argued that HUD could only conduct an informal, nonadversarial hearing. I represented HUD and briefed and argued this case on March 15, 1987, before a panel (Judges Rubin, Randall and Johnson) of the Fifth Circuit. We prevailed in that case. On remand, the district court again enjoined HUD, so we returned to the Fifth Circuit to enforce the mandate. I argued the case on September 7, 1988. HUD and Fleetwood settled the case, and we withdrew our appeal. Opposing counsel was Lawrence Henneberger, Arent, Fox, Kintner, Plotkin & Kahn, 1050 Connecticut Avenue NW, Washington, DC 20036. (202) 857-6000.

I would like to add to this list attorneys and academics with whom I have worked since I entered teaching in 1991. These are familiar with my scholarly work and/or my work as a consultant.

Terry John Care, Hunterton & Associates, 333 South Sixth Street, Las Vegas, NV 89101 (I served as an expert witness in a First Amendment case being handled by Mr. Care. Mr. Care is also a Nevada State Senator and Chairman of the Nevada Democratic Party).

William R. Corbett, Paul M. Hebert Law Center, Louisiana State University, Baton Rouge, LA 70803-1000. (225) 388-8701. (Professor Corbett is a former colleague who is familiar with my teaching and scholarship.)

Frederick M. Gedicks, J. Reuben Clark Law School, Brigham Young University, Provo, UT 84602 (801) 378-4533. (Professor Gedicks is a familiar with my scholarship.)

Stuart P. Green, Paul M. Hebert Law Center, Louisiana State University, Baton Rouge, LA 70803-1000. (225) 388-8701. (Professor Green is a former colleague who is familiar with my teaching and scholarship.)

John T. Kelleher, Kelleher & Kelleher, 700 South Third Street, Las Vegas, NV 89101. (702) 384-7494. (I worked, *pro bono*, with Mr. Kelleher on a criminal case brought under a Nevada statute we believed was unconstitutional.)

Ronald D. Maines, Maines & Loeb, 1827 Jefferson Place, NW, Washington, DC 20036.

which matters?

(202) 223-2817. (I consulted with Mr. Maines on several matters in the courts of appeals and the U.S. Supreme Court.)

John O. McGinnis, Benjamin N. Cardozo School of Law, Yeshiva University, 55 Fifth Avenue, New York, NY 10003. (212) 790-0318. (Professor McGinnis is familiar with my scholarship. He is also a former Deputy Attorney General for the Office of Legal Counsel.)

Steven D. Smith, University of Virginia School of Law, 580 Massie Road, Charlottesville, VA 22903. (804) 924-7354. (Professor Smith is familiar with my scholarship. The Robert & Marion Short Professor of Law at the Notre Dame Law School, Professor Smith is a visiting professor at the University of Virginia.)

Carl Tobias, William S. Boyd School of Law, University of Nevada, Las Vegas, 4505 Maryland Parkway, Box 451003, Las Vegas, NV 89154-1003. (702) 895-2405. (Professor Tobias is a current colleague who is familiar with my teaching and scholarship.)

17. 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 the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

AT&T

Most of my legal practice was litigation oriented. While an associate at Sidley & Austin, I worked on one unusual transaction. In connection with the breakup of the Bell System, for which Sidley served as counsel to AT&T, the district court's order required AT&T and the Bell Operating Companies (BOCs) to divide buildings and property. Each surviving company was to calculate the portion of the building that it occupied; whichever of the two held a majority of the building would become the owner of the building and the other would have to vacate. This arrangement was not possible with the equipment buildings – buildings that contained switching and long-distance equipment. For these buildings, AT&T and the BOCs calculated which of the two occupied a majority of the building; that party became the owner of the building. The other party secured a long-term lease on its share of the building. I was the principal attorney for AT&T for three buildings in the Washington, DC area–one in the District, one in Silver Spring, and one in Baltimore. I worked closely with outside counsel for C&P Telephone to obtain a metes and bounds description of each floor (effectively these were metes and bounds descriptions of air space); divide the work space on the blueprints; and negotiate the lease, the utilities and related matters. It was a very interesting project. In fact, the Clerk of Montgomery County, Maryland initially refused to file the lease because he didn't know what it was.

In 1991, I left government service for academe, first at Louisiana State University and now at the University of Nevada, Las Vegas. The academy afforded me the opportunity to do two things that I really wanted to do: teach and pursue legal research to a depth not possible in litigation. LSU gave me the chance to teach constitutional and administrative law, two areas in

which I had had substantial experience with the government and in which I intended to conduct research. I also took on teaching civil procedure. Although I have not engaged in any significant research and writing in the area of civil procedure, I have thoroughly enjoyed teaching first year students in a course that is far less intuitive for them than traditional first year courses like contracts, torts, and property.

At UNLV, I assumed similar teaching responsibilities and continued my scholarly efforts in constitutional and administrative law. I also took on the challenge of being a member of the founding faculty of a new state school. Nevada established its first law school in the Fall of 1998–the only state in the continental United States that did not have any law school within its borders. Being one of the founding faculty meant that I (along with my colleagues) had to assume all kinds of administrative responsibilities that members of faculties elsewhere usually take for granted. For example, we had to determine such fundamental matters as how many credit hours it would take to graduate, what kind of grading scale we would have, what would constitute the first year curriculum, policies for promotion and tenure, and whether to have a student honor code. We received our accreditation from the ABA at the earliest point at which we were eligible, and we graduated our first class in May 2001. It has been very rewarding to be part of building such an important public institution.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List 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. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have requested a leave of absence from the William S. Boyd School of Law at the University of Nevada, Las Vegas for the time that I serve as Assistant Attorney General. The leave of absence is without pay.

I also have a contract for a book (for which I am a co-author) with Greenwood Press of Westport, Connecticut. I have been advised by the Ethics Office at the Department of Justice that I may receive royalties for those portions of the book that I complete before beginning at the Department, but that I cannot receive royalties for any work (such as editing) that I might complete while at the Department. I do not expect any royalties from this project. This is an academic book and part of a larger series on the U.S. Constitution. The book is likely to find its way only into academic libraries.

I have retirement plans with the Thrift Savings Plan and with TIAA-CREF and VALIC for my years at LSU and UNLV. I do not have any other deferred income arrangements or other future benefits from previous businesses or customers.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

The Ethics Office at the Department of Justice has advised me orally and by letter that I must recuse myself from any matter in which I or my wife or my children would have a financial interest. In the event that any matter came before me that would present a potential conflict of interest, I would consult with the Department of Justice ethics official.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

My only interest is completing my portion of a scholarly book that is in progress. I will not receive any compensation for my work on the book once I have entered government service. I have no other plans, commitments or arrangements to pursue outside employment.

4. 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, patents, 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.)

Please find attached a copy of SF-278, "Public Financial Disclosure Form."

5. Please complete the attached financial net worth statement in detail (add schedules as called for).

I have attached the net worth statement and appropriate schedules.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

In 1972, I served as Vice President of College Republicans at Brigham Young University. I also served on a steering committee for Utah County for the Committee to Re-Elect the President. Vice President Spiro Agnew came to BYU in October 1972. I worked on the advance team for his visit.

During the 1992 presidential campaign, I volunteered and prepared a memorandum for the Bush-Quayle campaign on some issues that I considered important.

During the 2000 presidential campaign, I served as co-chairman of Nevada Lawyers for Bush-Cheney. I contacted attorneys and others in Nevada who I thought might like to be involved in the campaign. I was not involved in any fundraising, nor was I authorized to spend any money on behalf of the campaign.

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bar accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debt mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		26	500	Notes payable to banks—secured		8	500
U.S. Government securities—add schedule				Notes payable to banks—unsecured			
Listed securities—add schedule		16	000	Notes payable to relatives			
Unlisted securities—add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid tax and interest			
Doubtful				Real estate mortgages payable—add schedule		172	000
Real estate owned—add schedule		275	500	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts—itemize:			
Autos and other personal property		32	000				
Cash value—life insurance		13	000				
Other assets—itemize:							
Retirement/IRAs (see schedule)		219	000				
Buena Lomo			500				
				Total liabilities		180	500
				Net worth		402	000
Total assets		582	500	Total liabilities and net worth		582	500
CONTINGENT LIABILITIES				**GENERAL INFORMATION**			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule.)			
On leases or contracts	NONE			Are you defendant in any suits or legal actions?	NONE		
Legal Claims				Have you ever taken bankruptcy?			
Provision for Federal Income Tax							
Other special debt							

III. GENERAL (PUBLIC)

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

During the time that I was at Sidley & Austin, I worked on a couple of matters, two were small; one, more substantial. In my first year of practice I was approached by a friend who was a student at Georgetown University and had been sued in small claims court by a former roommate. She was quite nervous because her former roommate was a law student and was making all kinds of demands. I worked through the list of demands with my friend and accompanied her to small claims court. In the District, small claims court claimants were required to meet with a mediator. We spent an hour or two with the mediator and worked out a settlement of all the claims. Although this was a small case, I have never had a more appreciative client, and I learned a valuable lesson (which I have tried to convey to my students) about the value of alternative dispute resolution. I probably spent four to five hours on the matter.

I also worked briefly with another friend, a Jamaican restaurant worker who had been arrested for carrying a knife and possession of marijuana. My friend maintained that the marijuana was planted on him; he admitted that he was carrying a knife, which he used in his restaurant job to open boxes. I took him to my apartment and got him cleaned up and fed. Later, we helped him move apartments. I talked briefly with his case worker in the public defender's office and offered my legal assistance. I lost track of my friend after that and do not know what became of his case. I spent a couple of hours on this.

While I was an associate at Sidley & Austin, another associate and I accepted an appeal in a case that had been handled at trial by Neighborhood Legal Services. In this landlord-tenant case, I represented Muriel Cardenas, the last tenant of a building on Sixteenth Street in the District of Columbia. According to Ms. Cardenas, the owner of the building, the Jonathan Woodner Co., wished to convert the building to condominiums and rather than offering Ms. Cardenas and others the accommodations required by the D.C. condominium conversion law, it tried to force the tenants out. Ms. Cardenas resisted, but Woodner eventually closed and fenced the building. The trial court had held that Ms. Cardenas had relinquished her lease. We argued on appeal that she had been forced out and emphasized that relinquishment is a voluntary act, and Ms. Cardenas had not left her apartment voluntarily. We were concerned that if the judgment stood, Ms. Cardenas's rights in a related tort suit against the Woodner Co. might be affected. The D.C. Court of Appeals affirmed the trial court, but in a concurring opinion one of the judges stated that the judgment should not affect Ms. Cardenas's rights in other litigation. Ms. Cardenas and other tenants subsequently won a multi-million dollar judgment against Woodner Co. I spent over 200 hours on her appeal.

I did not engage in litigation-related *pro bono* activities while I was an attorney at the Department of Justice or at the White House, although I judged intra-mural moot court competitions at Georgetown University Law Center. As I was not a member of the bar of

Louisiana, I also did not engage in any *pro bono* local litigation-related activities during the time I taught at Louisiana State University. In 1996, I filed an amicus brief in the U.S. Supreme Court in *Boerne v. Flores*, 521 U.S. 507 (1997), on behalf of the non-profit Clarendon Foundation. I probably spent thirty to forty hours on the project.

Shortly after I joined the faculty at UNLV in January 1999, I was approached by a young attorney in Las Vegas about advising him in a criminal matter. The client had been arrested under one of the old vagrancy statutes still on the books in Nevada (specifically, the crime of "annoying or molesting a minor"). The client was accused of talking with a sixteen year old in a boorish fashion in a book store and sandwich shop, but he did not touch or threaten her, nor did he make any attempts to call her or talk with her again. My analysis was that he had not "molested" her in any way in which we usually use that term; the city, evidently, was charging him with "annoying" a minor. In my view, the statute gave no notice what kind of conduct was prohibited, and the statute was unconstitutionally vague and overbroad. I worked with the principal counsel to develop our strategy. I called the director of the local office of the American Civil Liberties Union and invited the ACLU to attend a meeting with the prosecuting attorneys. The ACLU sent a representative to our meeting. We met with the prosecuting attorneys and urged them to drop the case. I took the lead in those discussions. Initially, the prosecuting attorneys refused to drop the charges, so we went to court and set a briefing schedule for the issue. I drafted a brief challenging the constitutionality of the statute. The city ultimately offered to dismiss the charges before we filed our brief. (For reasons of client confidentiality, I would prefer not to name the client. I would happy to disclose the names of the principal counsel and counsel for the ACLU.) I spent at least forty hours on the case. In December 1999, I also filed an amicus brief in *United States v. Morrison*, 529 U.S. 598 (2000), on behalf of the non-profit Clarendon Foundation. I spent thirty to forty hours on the brief.

I have offered my services as a teacher to community and civic groups and have spoken on many occasions to Girl Scouts, Boy Scouts, Cub Scouts, elementary school classes, high school students, and history and government teachers. I have also spoken to law students, lawyers groups, the Nevada Inns of Court, and civic groups such as the Rotary. In both Louisiana and Nevada, I have participated in Continuing Legal Education (CLE) programs on matters involving administrative and constitutional law.

2. Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion – through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies.

So far as I know, I do not now belong, nor have I ever belonged to, any such organization.

JAY SCOTT BYBEE
Financial Statement
Net Worth Schedules (rounded to nearest $500)

ASSETS	
Cash in Bank Accounts	
Bank of America	$ 6,000
UBS/PaineWebber Money Market	8,500
Campus Federal Credit Union (children's accounts)	12,000
Listed Securities	
Common Stocks	
Walt Disney Co. Common Stock	2,500
General Electric Co. Common Stock	4,000
Intel Corp. Common Stock	6,000
Minimed Inc. Common Stock	2,500
Southern California Edison Common Stock	1,000
Insurance	
Acacia Life Insurance/Whole Life Policy (cash surrender value)	12,000
American General Insurance	1,000
Retirement/IRA	
Washington Mutual Investors (IRA)	11,000
Fidelity Destiny (IRA)	6,000
TIAA-CREF (retirement fund)	53,000
VALIC (retirement fund)	84,500
Thrift Savings Program (TSP)	64,500
Real Estate Owned	
Residence, Henderson, NV	275,000
Tahoe Seasons, South Lake Tahoe, CA (time share)	500
LIABILITIES	
Real Estate Mortgages	
Bank of America (Henderson, NV residence)	172,000
Note payable to Bank (secured)	
Campus Federal Credit Union (car loan)	8,500

U.S. Department of Justice

Washington, D.C. 20530

AUG - 8 2001

Ms. Amy L. Comstock
Director
Office of Government Ethics
Suite 500
1201 New York Avenue, NW
Washington, DC 20005-3919

Dear Ms. Comstock:

In accordance with the provisions of Title I of the Ethics in Government Act of 1978 as amended, I am forwarding the financial disclosure report of Jay S. Bybee who has been nominated by the President to serve as Assistant Attorney General, Office of Legal Counsel, Department of Justice. We have conducted a thorough review of the enclosed report.

The conflict of interest statute, 18 U.S.C. § 208, requires that Mr. Bybee recuse himself from participating personally and substantially in a particular matter in which he, his spouse, or anyone whose interests are imputed to him under the statute has a financial interest. We have counseled him to obtain advice about disqualification or to seek a waiver before participating in any particular matter that could affect his financial interests. Because he will be on leave of absence from the University of Nevada, we have advised him to seek advice before participating in matters involving the university.

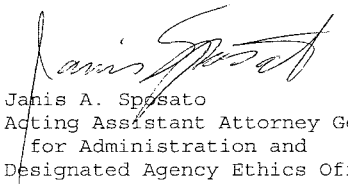
Further, we have advised him that because of the standard of conduct on impartiality at 5 CFR 2635.502 he should seek advice before participating in a particular matter having specific parties in which a member of his household has a financial interest or in which someone with whom he has a covered relationship is or represents a party. He will have a covered relationship with his wife's employer, Ballard Communications and Hunterton & Associates, a law firm for which he provided consulting services. Upon confirmation,

Mr. Bybee will withdraw from the matter on which he has served as a consultant for Hunterton which will complete his services to the firm. He understands that for at least one year he should seek advice before participating in matters involving Hunterton & Associates and he also should seek advice before participating in matters involving Ballard Communications as long as his wife is employed by the company.

Mr. Bybee entered into a contract with Greenwood Press in July, 1999 to co-author a scholarly book. He has completed all writing but may have to review and edit his part of the book. If he does not complete this additional work before assuming his position as Assistant Attorney General, he will forego any royalties resulting from the sale of the book. In reality, he expects no royalties. In addition, he has been advised that he may not permit the publisher to make use of his official title or position in connection with the book or any promotional efforts except in accordance with the requirements of 5 CFR 2635.807(b).

Based on the above agreements and counseling, I am satisfied that the report presents no conflicts of interest under applicable laws and regulations and that you can so certify to the Senate Judiciary Committee.

Sincerely,



Janis A. Sposato
Acting Assistant Attorney General
for Administration and
Designated Agency Ethics Official

Enclosure

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved:
OMB No. 3209 - 0001

Date of Appointment, Candidacy, Election, or Nomination *(Month, Day, Year)*	Reporting Status (Check Appropriate Boxes)	Incumbent ☐	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate ☑	Termination Filer ☐ Termination Date *(If Applicable) (Month, Day, Year)*
Reporting Individual's Name	Last Name: BYBEE			First Name and Middle Initial: Jay S	
Position for Which Filing	Title of Position: Assistant Attorney General			Department or Agency *(If Applicable)*: Department of Justice	
Location of Present Office (or forwarding address)	Address *(Number, Street, City, State, and ZIP Code)*: 4505 Maryland Pkwy Box 451003 Las Vegas, NV 89154-1003			Telephone No. *(Include Area Code)*: (702) 895-2404	
Position(s) Held with the Federal Government During the Preceding 12 Months *(If Not Same as Above)*	Title of Position(s) and Date(s) Held: None				
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination: Judiciary Committee			Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☑ No	
Certification: I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	Signature of Reporting Individual: [signature]			Date *(Month, Day, Year)*: 7/20/01	
Other Review (If desired by agency)	Signature of Other Reviewer: Mary Gardner			Date *(Month, Day, Year)*: 7/26/01	
Agency Ethics Official's Opinion: On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).	Signature of Designated Agency Ethics Official/Reviewing Official: [signature]			Date *(Month, Day, Year)*: 8/7/01	
Office of Government Ethics Use Only	Signature:			Date *(Month, Day, Year)*:	

Comments of Reviewing Officials *(If additional space is required, use the reverse side of this sheet)*

Annotations per conversations w/ filer. Mary Gardner - 7/26/01

(Check box if filing extension granted & indicate number of days _____) ☐

(Check box if comments are continued on the reverse side) ☐

Fee for Late Filing
Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a $200 fee.

Reporting Periods
Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

Nominees, New Entrants and Candidates for President and Vice President:

Schedule A--The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.

Schedule B--Not applicable.

Schedule C, Part I (Liabilities)--The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

Schedule C, Part II (Agreements or Arrangements)--Show any agreements or arrangements as of the date of filing.

Schedule D--The reporting period is the preceding **two** calendar years and the current calendar year up to the date of filing.

Agency Use Only: 7/26/01

OGE Use Only

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: Jay S. Bybee

SCHEDULE A

Page Number: 2

Assets and Income — BLOCK A

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse).

None ☐

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

	Assets and Income (Block A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples	Central Airlines Common				x												x						x										
	Doe Jones & Smith, Hometown, State			x																												Law Partnership Income $130,000	
	Kempstone Equity Fund					x								x										x									
	IRA: Heartland 500 Index Fund							x						x											x								
1	University of Nevada, Las Vegas																															salary 172,500	
2	Hunterton & Associates Las Vegas NV																															consulting 7,100	
3	Liberty Fund Indianapolis, IN																															Honoraria 900	May 19 2001
4	Ballard Communications Las Vegas NV (S)																															salary	
5	Walt Disney Co. common stock			X													X				X												
6	General Electric Co. common stock			X													X				X												

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot Be Used.

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: Jay S. Bybee

SCHEDULE A continued
(Use only if needed)

Page Number: 3

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Intel Corp. common stock		X														X				X												
2	Minimed Inc. common stock		X														X				X												
3	So. California Edison common stock		X														X				X												
4	Acacia Life Ins.		X																													Whole life cash surrender value	
5	American General Ins. whole life		X																X		X												
6	Washington Mutual Investors (IRA)		X											X								X											
7	Fidelity Destiny (IRA)		X											X							X												
8	TIAA-CREF (Retirement)				X									X							X												
9	VALIC (Retirement)				X									X							X												

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot Be Used.

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: Jay S. Bybee

SCHEDULE A continued
(Use only if needed)

Page Number: 4

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (Block A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Paine Webber Money Market		X											X							X	X											
2	CAMPUS FEDERAL CREDIT UNION CD		X																X		X												
3	CAMPUS FEDERAL CREDIT UNION CD (C)		X																X			X											
4																																	
5																																	
6																																	
7																																	
8																																	
9																																	

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot Be Used.

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: Jay S. Bybee

SCHEDULE C

Page Number: 5

Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. Exclude a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None ☑

	Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x): $10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			x								
	John Jones, 123 J St., Washington, DC	Promissory note	1999	10%	on demand					x						
1																
2																
3																
4																
5																

* This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None ☐

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1	Leave of Absence from position as Professor of Law	University of Nevada, Las Vegas	11/01
2	Contract to complete book (co-author), work completed except for editing. Book deals with 9th & 10th Amendments	Greenwood Press, Westport, CN	7/99
3	No expectation of royalties.		
4			
5			
6			

Prior Editions Cannot Be Used.

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name	SCHEDULE D	Page Number
Jay S. Bybee		6

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	William S. Boyd School of Law, University of Nevada, Las Vegas	Nonprofit, education	Professor of Law	1/99	Present
2	Hunterton & Associates * Las Vegas, NV	Law firm	Consultant	1/00	Present
3	* will withdraw upon confirmation				
4					
5					
6					

Part II: Compensation in Excess of $5,000 Paid by One Source

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

None ☐

	Source (Name and Address)	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	William S. Boyd School of Law, University of Nevada, Las Vegas	Professor of Law
2	Hunterton & Associates (Terry Lane, Esq.) Las Vegas	Expert witness in defamation suit arising out of hotel construction
3		
4		
5		
6		

Prior Editions Cannot Be Used.

Senator KOHL. I thank you.

Professor Bybee, the events of September 11 have given us all a heightened awareness of the critical importance of our civil liberties, of the many possible threats to those freedoms, and of the necessity of an effective response to terrorism.

You appear before this committee today as a nominee to head the Justice Department's Office of Legal Counsel. As you well know, the Assistant Attorney General in the Office of Legal Counsel is the constitutional adviser to the administration, the key lawyer examining both legislative and executive actions, and a central participant in the ongoing effort to win the battle against terrorism without sacrificing American freedom.

How do you think we can best strike this balance? And be as specific as you would like.

Mr. BYBEE. Thank you, Mr. Chairman. There is probably no question that is more timely than the question of how do we address terrorist activities consistent with maintaining our civil liberties.

Let me first note, Mr. Chairman, there are a couple of points I would like to make. First, let me note that I understand that both the Attorney General and the President have committed themselves to protecting our civil liberties while addressing this problem, and I think that that is a very, very important commitment.

I was very pleased, in the wake of the events of September 11, to see how many members of this body, how many other public servants, members of the executive branch and people generally had heartfelt expressions of outrage, quite understandable, against these terrorist actions, desires to move quickly against those perpetrators—people within our borders, people who might be outside of our borders—but at the same time cautioned that we must be very careful that in the process we don't trample the very liberties that have made our country great and that have made it a target of foreign terrorism.

If I can be forgiven for a personal note, Mr. Chairman, when I was a young lawyer and had recently joined the Justice Department's appellate staff, one of my first assignments was a civil suit by the 120,000 Japanese-Americans who were interned during World War II. This was a suit seeking reparations for their belongings that had been lost by the War Relocation Authority, among others, during their internment. They were seeking about $24 billion in reparations.

I worked with the Justice Department for a couple of years on cases before the District of Columbia Circuit, before the U.S. Supreme Court, and finally before the Federal Circuit, and through my work on those cases became very aware or very much—I became a student of the Supreme Court's decisions in *Hirobayashi* and *Korematsu*. I learned a lot more history about World War II than I had ever known before and I have since taken quite an interest in that period.

And it became clear to me that even though I had to defend the Justice Department in that case until Congress could award reparations to Japanese-Americans that the United States had made a terrible mistake under very difficult decisions. And I believe that

the Supreme Court made a very difficult—made a very bad decision under very difficult circumstances.

I would hope, Mr. Chairman, that if I am fortunate enough to be confirmed to this position that I would bring an additional sensitivity to the rights of all Americans and a resolution not to trample their civil rights in the pursuit of terrorism.

Senator KOHL. Good.

Professor Bybee, what specific qualifications and experience do you bring to this job on constitutional issues, especially those surrounding terrorism, Federal crimes and civil liberties?

Mr. BYBEE. Mr. Chairman, last week as I met on Friday with my classes in civil procedure and constitutional law and told that I would not be here this week in class because I would be appearing before this committee, I told them what a humbling experience this was and that this was the opportunity to do everything that I have been trained to do for the last 20 years since I graduated from law school. It is daunting to be in this position. It is very humbling to be in this position.

Mr. Chairman, I have been fortunate in my career, and I can't always explain why, but I have been very fortunate in the opportunities that have been presented before me. I have had opportunities in private practice. I have had five years with the Department of Justice. I have litigated many cases before the courts of appeals and I have worked on cases in the U.S. Supreme Court.

I served for two years as Associate White House Counsel during the Bush administration. I was there during the Gulf War, the invasion of the Panama, and the fall of the Berlin Wall. In 1991, I decided to leave government service and to enter a different kind of government service and became a professor at Louisiana State University. And I am pleased that for the last 10 years that both the State of Louisiana and the State of Nevada, through its new law school at the University of Nevada–Las Vegas, have given me the opportunity to teach law students about the Constitution and to learn about the Constitution from my students.

I don't think that I have ever taught a class in civil procedure, administrative law or constitutional law that I have failed to learn something new. And I welcome this opportunity, Mr. Chairman, again, if I am fortunate enough to be confirmed, to learn more about the Constitution.

What do I bring to the questions of terrorism, civil liberties and crime? I have authored pieces on Congress' powers to address crime. I have not done quite frankly, Mr. Chairman, a lot in the area of terrorism. Most of my work has been on the civil side rather than on the criminal side, with the exception of discussing Congress' jurisdiction over crime. I have done some work in the area of civil liberties, although much of my writing has been in the area of federalism and separation of powers.

Senator KOHL. Thank you.

Professor Bybee, what will be your primary goals in your role as Assistant Attorney General?

Mr. BYBEE. Mr. Chairman, I think that the first goal for anyone appointed to this office is to maintain the tremendous tradition of the Office of Legal Counsel. Ever since the Office of Legal Counsel was established, it has been the purpose of that office to provide

objective legal advice, free from other political constraints or influence. And it would be my objective to continue to hire the best lawyers that the Justice Department can find to come and afford the Attorney General, the President of the United States and other executive agencies the best objective legal advice that we can give them.

Senator KOHL. In connection with that, do you consider your job primarily, not exclusively, to be the people's attorney, the Attorney General's attorney, or the President's attorney?

Mr. BYBEE. Mr. Chairman, I will try and be very, very specific. You have given me sort of an A, B and C, and I will try and be very specific.

As Assistant Attorney General, it is clear that I report to the Attorney General. In that capacity, the Attorney General has opened the channels of communication between White House Counsel's Office and the Office of Legal Counsel.

But my principal responsibility is to report to the Attorney General, who in turn serves at the pleasure of the President. We all serve at the pleasure of the President, but I serve at the pleasure of both the President and the Attorney General, and it is the Attorney General's responsibility to advise the President. I will advise the Attorney General and, at this direction, will advise other executive agencies and the White House.

Senator KOHL. But where you have a conflict in your own mind—if you are deeply troubled with the direction of the Attorney General and/or the President in any particular matter, do you feel it is your responsibility to voice those objections very strongly, even if the Attorney General is very unhappy with some of the things you might be saying?

Mr. BYBEE. Mr. Chairman, it is a very good question, and particularly for any nominee in this position. In my conversation with members in White House Counsel's Office and in my conversations with the Attorney General, both of those offices have made it very clear to me that if I am confirmed for this position that what they want is my objective, frank and honest legal opinion. We let the chips fall where they do after that.

And I would pledge to the committee that if I am confirmed for this position that I would continue the tradition of that office to offer my best legal advice. And I will leave to others to figure out the policy that conforms with the law.

Senator KOHL. All right. Finally, perhaps in line with the questions that I have been asking you, when you are finished, what will make you happiest in terms of how you have conducted yourself in this position? How will you judge yourself at the end of your term of office?

Mr. BYBEE. Thank you, Mr. Chairman, for giving me the opportunity to answer that question. I wish that I had the quotation in front of me, but there is a wonderful quotation from George Bernard Shaw. I think it is in an introduction or a letter that he wrote that accompanies his play "Man and Superman," in which George Bernard Shaw says that the real joy in life is being thoroughly worn out. It is being thrown on the dust heap, knowing that you have engaged in a purpose recognized by yourself as a mighty one, and that you have devoted yourself to causes that are above your-

self instead of—I am trying to remember the phrase that George Bernard Shaw uses because it is such a wonderful phrase—instead of complaining because the world will not devote itself to making you happy.

I hope that at the end of my time, Senator, if I have this position, that I will be thoroughly worn out in a cause recognized by all of us as a mighty one.

Senator KOHL. Very good. I think you have done a great job and we will make every effort to expedite your confirmation.

Mr. BYBEE. Thank you very much, Mr. Chairman.

Senator KOHL. Thank you, and this hearing is closed.

[Whereupon, at 3:11 p.m., the committee was adjourned.]

[Questions and answers and a submission for the record follow.]

QUESTIONS AND ANSWERS

Responses of Karen Caldwell to questions submitted by Senator Patrick Leahy

Question 1: In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? Does the commitment to stare decisis vary depending on the court?

Response: Federal district judges are bound by the doctrine of stare decisis and, therefore, are committed to following precedent established by superior courts. If confirmed as a district judge, I would be bound by the decisions of the United States Supreme Court and the United States Court of Appeals for the Sixth Circuit.

Question 2: I'm sure that you have followed debate here on Capitol Hill, and in fact across the country, about the need for legislation to address the risk of more terrorist attacks. Without getting into any specific proposals, what do you think the trade-off needs to be between liberty and security?

Response: In these difficult times of national grief and uncertainty, I have closely followed debates in both houses of Congress regarding legislation proposed to address terrorism in our country. In my observation, it is clear that members of Congress are struggling to adopt measures that will secure the safety of our citizens without sacrificing their important civil liberties. I commend the Congress for its work and am confident that every effort has and will be made to pass constitutional legislation that secures our free society.

Question 3: Ms. Caldwell, you have been involved in a number of pro bono activities throughout your career-you are a life fellow of the Kentucky Bar Foundation, you have represented individuals free of charge, and your firm supports pro bono projects taken on by its members. Recent reports suggest that the number of hours devoted to pro bono work recently have fallen in some areas, and if the economic situation worsens any they may fall further. Given your experience, what do you think can be done to continue to encourage young attorneys to take on more pro bono work?

Response: Pro bono service is one of the most gratifying components of my personal and professional life. Therefore, I am surprised and saddened to learn that lawyers are devoting less time to this important work. Some measures that might encourage young attorneys to take on more pro bono work would include, but not be limited to the following:

1. Experienced attorneys should involve associates or other young attorneys in volunteer activities not only for the purpose of providing training, support and expertise, but also for the purpose of leading by example.

2. Local bar associations might establish and fund pro bono programs that promote volunteerism and provide a network for volunteers. For example, in my home county, our pro bono program supports a small professional staff, which works with social service organizations and other volunteer organizations to identify individuals in need of pro bono representation. The organization also recruits attorney volunteers who might not otherwise be cognizant of the potential client's needs. In addition, the staff coordinates assignments so that volunteers are not over-utilized and that matters are assigned to attorneys who possess the requisite skills and experience in specific practice areas. For lawyers who may not be skilled in specific areas of need, the pro bono office provides opportunities for lawyers to contribute financially in support of the services provided by other volunteers. For example, a cor-

porate attorney, who might be uncomfortable representing an individual in a domestic matter, might make a financial contribution, which could be applied to expert witness or filing fees.

3. State and local bar associations might provide special recognition for lawyers who provide pro bono services. In addition, the state and local bar associations might provide discounts on association dues for those who volunteer to help those in need.

4. Large law firms might consider community service, including pro bono activities, as a factor in awarding bonuses or other forms of recognition within the organization.

5. Retired attorneys might organize either to represent indigent clients or to serve as mentors to younger or inexperienced attorneys in assuming responsibility for cases.

Question 4: In the past few years, the Supreme Court has struck down a number of federal statutes, most notably several designed to protect the civil rights and prerogatives of our more vulnerable citizens, as beyond Congress's power under Section 5 of the Fourteenth Amendment. The Supreme Court has also struck down a statute as being outside the authority granted to Congress by the Commerce Clause: These cases have been described as creating new power for state governments, as federal authority is being diminished. At the same time, the Court has issued several decisions, most notably in the environmental arena, grating states's significant new authority over the use of land and water, despite long-standing federal regulatory protection of the environment. Taken individually, these cases have raised concerns about the limitations imposed on Congressional authority; taken collectively, they appear to reflect a "new federalism" crafted by the Supreme Court that threatens to alter fundamentally the structure of our government. What is your view of these developments?

Response: Although the fundamental relationship between federal and state governments is established by the Constitution, there has historically been a tension between federal and state power. Over the course of American history, the Supreme Court's interpretation of Constitutional limitations on the power of the central government has shifted. From the 1890's until the mid1930's, federalism was vigorously used to narrow Congressional power and to maintain state sovereignty. From the mid1930's until recently, the Court adopted a more expansive concept of federal authority.

Recent Supreme Court decisions, including *United States* v. *Lope*, 514 U.S. 549 (1995), have recognized certain limits on Congress' legislative powers, which may reflect a "new federalism." While the political and theoretical ramifications of the decisions are important and of interest to many in the larger community, if confirmed as a district judge, I will be bound by the doctrine of stare decisis, which requires the application of superior court precedent. As a cornerstone of our American common law method, stare decisis provides legal stability and assists in preserving the fundamental structure of our government.

Question 5: Can Congress can ever subject states to private suits for damages for discrimination based on classification to which the Supreme Court does not give heightened or strict scrutiny?

Response: Congress can subject nonconsenting states to private suits for damages pursuant to Section Five of the Fourteenth Amendment. *Seminole Tribe of Florida* v. *Florida*, 517 U.S. 44 (1996). However, legislation that reaches beyond the precise scope of the protections embodied in Section One of the Fourteenth Amendment must exhibit congruence and proportionality between the injury to be prevented and the means adopted to that end. *City of Boerne* v. *Flores*, 521 U.S. 507 (1997). *Board of Trustees of the University of Alabama* v. *Garrett*, 531 U.S. 356 (2001). *In Alabama* v. *Garrett*, a case which involved a classification requiring a lower level of scrutiny known as a "rational-basis review", the Supreme Court found among other things that the rights and remedies created by the ADA against the states would raise concerns regarding congruence and proportionality. While the Court in *Alabama* v. *Garrett* did not find that the standard had been met in that particular case, Congress could define a history or pattern of irrational behavior in some other context.

This is an evolving issue and if confirmed as a district judge, I will be especially mindful of any higher court decisions, which may clarify the matter in the future.

Question 6: If Congress provides money to a state on the condition that it use the money in certain ways, can Congress constitutionally require a state that accepts such funding to waive its sovereign immunity to private actions for money damages if the state is misusing such funds?

Response: The United States Supreme Court has held that Congress cannot override the Eleventh Amendment simply by mandating state action pursuant to one of

its enumerated powers. *Seminole Tribe of Florida* v. *Florida*, 517 U.S. 44 (1996). However, the Court has also held that Congress may encourage states to consent to suit by offering them federal funding in exchange for the states' waiver of sovereign immunity. *South Dakota* v. *Dole*, 483 U.S. 203 (1987). *College Savings Bank* v. *Florida Prepaid Post secondary Education Expense Board*, 527 U.S. 666 (1999).

Question 7: Does Congress have the Constitutional authority to pass laws that regulate air quality and water quality or other environmental protections?

Response: Congress has the Constitutional authority to pass laws that regulate air quality, water quality and to enact other environmental protections.

Question 8: Are there any federal statutes or sections thereof concerning which the Supreme Court has not yet ruled that violate the state sovereign immunity doctrine under the U.S. Constitution?

Response: It would be inappropriate for me to indicate how I might rule on the constitutionality of any particular statute or section thereof. However, a federal statute is presumed to be constitutional in the absence of a binding judicial determination that it is unconstitutional.

Question 9: Are there any federal statutes or sections there of that go beyond Congress' enumerated powers under the Constitution?

Response: As noted above in my response to Question #8, it would be inappropriate for me to indicate how I might rule with respect to the constitutionality of any federal statute or sections thereof. However, a federal statute is presumed to be constitutional in the absence of a binding judicial determination that it is unconstitutional.

Question 10: You state in your questionnaire: "I routinely assist small and large companies, including Fortune 500 companies, in developing corporate plans for environmental . . . compliance. Additionally, I have assisted many of those same clients in developing environmental auditing and reporting programs. The identify of my clients is protected by the attorney-client privilege."

A: Without divulging any privileged information, can you describe what type of environmental plans you developed?

Response: Businesses must comply with a myriad of federal, state and local environmental rules and regulations. Toward that end, I have assisted clients in identifying applicable regulatory requirements and in implementing specific plans for achieving, maintaining and/or improving environmental compliance. Depending on the specific circumstances, I have assisted clients in developing plans that have included the following components: (1) written policies integrated into the daily work environment; (2) training programs for managers and employees; (3) commitment of funds for monitoring systems along with equipment to insure employee safety and health; (4) independent review of compliance monitoring systems; (5) employee incentive programs designed to elevate employee commitment to compliance with environmental policies and procedures; (6) mechanisms for internal enforcement of environmental compliance policies; and (7) self-evaluation and reporting procedures.

B: How did the plans you developed improve the environment?

Response: Environmental laws and regulatory programs are intended to protect the environment. To the extent that I have assisted my clients in identifying and complying with relevant laws and regulations, the environment has been protected. In some instances, however, the process of developing an environmental compliance plan has inspired clients to adopt more stringent compliance measures than those imposed by law. In those cases, the plans have not only protected, but also possibly improved the environment.

C. As a federal judge, how would your experience in developing these plans assist you in deciding environmental cases?

Response: While my experience in developing environmental compliance plans would be of limited assistance in deciding environmental cases, my general familiarity with federal environmental laws could be helpful in applying the law to the facts presented in specific cases.

D: Are there any environmental statutes that cause constitutional concerns?

(i) Under the commerce clause?

> It would be inappropriate for me to indicate how I might rule with respect to the constitutionality of any particular statute or body of statutes. However, all federal environmental statutes are presumed to be constitutional and I am not aware of any such statute, which on its face, causes constitutional concerns under the commerce clause. Concerns could arise, however, from the application of any statute in specific factual circumstances.

(ii) Under the non-delegation doctrine?

As stated above, it would be inappropriate for me to indicate how I might rule with respect to the constitutionality of any particular statute or body of statutes. However, federal environmental statutes, like all federal statutes, are presumed to be constitutional. I am not aware of any environmental statutes that cause concern under the anti delegation doctrine in view of the United States Supreme Court's decision in *Whitman* v. *American Trucking Association*, 531 U.S. 457 (2001).

(iii) Under the takings clause?

As stated above, it would be inappropriate for me to indicate how I might rule regarding the constitutionality of any particular statute or body of statutes. However, all federal environmental statutes are presumed to be constitutional and I am not aware of any such statutes, which on a facial basis, cause constitutional concerns. Application of such statutes to specific factual circumstances could, however, trigger an obligation to provide just compensation.

E. Are there any environmental agency regulations that cause constitutional concerns? Do any regulations go beyond the scope of agency authority?

Response: It would be inappropriate for me to indicate how I might rule regarding the constitutionality of any particular agency regulation or body of agency regulations. However, agency regulations, like statutes are presumed to be valid and/or promulgated within the agency's delegated authority. Presently, I am unaware of any such regulations, which on a facial basis, cause constitutional concerns.

Question 11: In your questionnaire, you also stated that you also helped to develop corporate plans for safety and health compliance.

A. Again, without divulging any privileged information, can you described the types of health and safety plans you developed?

Response: Generally, I assisted companies in developing employee health and safety measures as a component of an overall environmental compliance plan. While compliance with occupational safety and health laws was clearly an element of the process, my primary assignment was to develop strategies for educating and enlisting workers not only to protect themselves from injury or illness, but also to assist the employer in achieving environmental compliance goals. Toward that end, safety and health objectives were integrated into the daily work environment through additional provisions in employee handbooks, human resources programs, targeted safety training and employee incentive programs. In many safety and health plans, I suggested the use of "worker help lines," which enabled employees to report environmental, safety and health violations anonymously, without fear of retribution from management or fellow employees.

B. How did the plans you developed improve worker health and safety?

Response: As occupational safety and health laws were developed to protect workers, promoting compliance with those laws protects worker health and safety. However, educating employees, involving them in the company's overall compliance strategy, and providing incentives for compliance with environmental safety and health programs provide employees with an investment in the process, which should not only serve to protect worker safety and health but also to improve it.

C. As a federal judge, how would your experience assist you in deciding worker health and safety claims?

Response: While my experience in developing worker safety and health plans would be of limited assistance to me in deciding worker health and safety claims, my general knowledge of statutory and regulatory provisions may be of some assistance in applying the law to the specific cases presented.

D. Do you believe that there are any current health and safety administrative regulations that are unconstitutional or go beyond the scope of agency authority?

Response: It would be inappropriate for me to indicate how I might rule regarding the constitutionality of any particular agency regulation or body of agency regulations. However, agency regulations, like statutes are presumed to be constitutional and/or validly promulgated within the agency's delegated authority. While I do not profess to be familiar with all federal regulations related to worker safety and health, I am presently unaware of any such regulations that cause concerns on a facial basis.

Question 12: You state in your questionnaire that you are a member of the Federalist Society.

A. Describe the Federalist Society activities that you have attended.

Response: To the best of my knowledge, I have attended the following events:

a.Local event sponsored by the University of Kentucky Student Chapter featuring Hon. Diarmuid O'Scannlain, Judge, United States Court of Appeals for the Ninth Circuit, (2000).

b. Three or four local luncheons, (2000–2001).
c. Local event featuring Hon. Danny Boggs, Judge, United States Court of Appeals for the Sixth Circuit, (2001).
d. Annual lawyers convention, (2000).
e. Southern conference, (2001).

B. Describe the Federalist Society events in which you have participated as a guest or as a speaker.

Response: I have not participated at a Federalist Society event as a guest or speaker.

C. Do you share a judicial philosophy with the Federalist Society?

Response: I am not aware that the Federalist society has a judicial philosophy. However, in its promotional material, the Federalist Society asserts, ". . . that it is a emphatically the province and duty of the judiciary to say what the law is, not what it should be." To the extent that the Federalist Society's promotional statement suggests that judges should not legislate from the bench, I agree with that interpretation.

D. With what (if any) Federalist Society positions do you disagree? (including positions that are shared by a large majority of its members, but may not be formal positions of the organization.)

Response: I am unaware of any positions held by the Federalist Society or a large majority of its members. It is my understanding that the Federalist Society promotes debate regarding issues of law and public policy without taking positions on such issues. The programs I have attended have included spirited debate and discourse. Generally speaking, however, I am an independent thinker who is not bound by the thoughts or positions of those with whom I am affiliated.

E. Are there any cases or categories of cases in which your membership in the Federalist Society would cause you to recuse yourself?

Response: None that I am aware of at this time.

F Will you continue your membership in the Federalist Society if you are confirmed?

Response: If confirmed, I intend to evaluate all of my civic and professional affiliations in the context of the Canons of Judicial Ethics, federal law and my personal work schedule. Moreover, I will attempt to avoid even the appearance of an impropriety.

Responses of Laurie Smith Camp to questions submitted by Senator Patrick Leahy

Question 1: In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? Does the commitment to stare decisis vary depending on the court?

Answer: Judges of the United States District Courts are bound to follow precedent of the United States Supreme Court and the U.S. Court of Appeals for the Circuit in which the district lies. U.S. District Court judges should also give serious consideration to opinions issued by other U.S. Courts of Appeals and by other U.S. District Court judges. District Court judges may have some cases of first impression, and may distinguish cases from prior decisions based upon fact. They should bear in mind, however, that consistent application of the law helps citizens to guide their conduct, and helps to curb litigation which would proliferate if precedent were not considered binding.

Question 2: A review of your background shows that you have bud some trial experience, but it was lien in your career. What in your background has prepared you to conduct trials, as a judge, on both criminal and civil matters?

Answer: Throughout the 1980's, I served as an administrative law judge, issuing findings of fact and conclusions of law in over 300 cases per year. I received training through the National Judicial College of Reno, Nevada. As an Assistant Attorney General and Deputy Attorney General. I have served as lead counsel in over 550 cases, not including administrative actions. Sixty-four of those cases have been in federal court. I have second chaired many other trials as a supervisory attorney, and have advised the 22 lawyers under my supervision regarding their civil and criminal caseloads. I have served on Nebraska's Federal Practice Committee longer than any other attorney, and currently serve as its Chair. If confirmed, I will augment my experience through the programs offered by the Administrative Office of the Courts and the National Judicial Center, as well as the advice and counsel of Nebraska's current U.S. District Court Judges which have very generously been offered to me.

Question 3: In the past few years, the Supreme Court has struck down a number of federal statutes, most notably several designed tee protect the civil rights and prerogatives of our more vulnerable citizens, as beyond Congress's power under Section 5 of the Fourteenth Amendment, The Supreme Court has also struck down a statute as being outside the authority granted to Congress by the Commerce Clause. These cases have been described as creating new power for state governments, as federal authority is being diminished. At the same time, the Court has issued several decisions, most notably in the environmental arena, granting states significant new authority over the use of land and water. despite long-standing federal regulatory protection of the environment. Taken individually, these cases have raised concerns about the limitations imposed on Congressional authority; taken collectively, they appear to reflect a "new federalism" crafted by the Supreme Court that threatens to alter fundamentally the structure of our government. What is your view of these developments?

Answer: If confirmed to be a United States District Court Judge, I would uphold the United States Constitution as interpreted by the United States Supreme Court. If the constitutionality of a federal statute were challenged in a case presented to me as a matter of first impression. I would give the statute a strong presumption of constitutionality. I respect the constitutional Separation of Powers and, if confirmed, I will not intrude in my decisions on the prerogatives of the legislative branch except as required by the Constitution.

Question 4: Can Congress ever subject states to private suits for damages for discrimination based on classifications; to which the Supreme Court does not give heightened or strict scrutiny?

Answer: Earlier this year, the Supreme Court noted that Congress can abrogate the states' Eleventh Amendment immunity when it both unequivocally intends to do so and acts pursuant to a valid grant of constitutional authority. While the Supreme Court found that Congress may not base abrogation of state immunity upon Article I powers, it may subject states to federal court suit when it does so pursuant to a valid exercise of its power under Section 5 of the Fourteenth Amendment.

Question 5: Congress provides money to a state on the condition that it use the money in certain ways, can Congress constitutionally require a state that accepts such funding to waive its sovereign immunity to private actions for money damages if the state is misusing such funds?

Answer: This issue has not yet been clearly resolved. There are cases containing dicta indicating that if the state is dependent on the federal funding for the continuation of the program, the threat of removal of the funding might be considered "coercive" and the forfeiture of sovereign immunity invalid. Again, I would give a strong presumption of constitutionality to any statute so challenged.

Question 6: Are there any federal statutes or sections thereof concerning which the Supreme Court has not yet ruled that violate the state sovereign immunity doctrine under the U.S. Constitution?

Answer: I am not aware of any which constitute a f4cial violation of the doctrine. If a federal statute were challenged in a case before me as a matter of first impression, I would give the statute a strong presumption of constitutionality.

Question 7: Are there any federal statutes or sections thereof that go beyond Congress's enumerated powers under the Constitution?

Answer: I am not aware of any which exceed the enumerated powers of Congress. Again, if a federal statute were challenged in a case before me as a matter of first impression, I would give the statute a strong presumption of constitutionality.

Question 8: Deputy Attorney General of Nebraska, you have been in charge of matters relating to criminal enforcement. In that capacity, you supported several bills that many would consider controversial. One of them, a 1996 anti-crime bill that was never passed but was, at the time, endorsed by Attorney General Stenberg and Omaha Mayor Daub. The bill required that juveniles accused of violent crimes be tried and sentenced us adults. It would have replaced existing law that permitted but did not compel such action.

(A) Did your support of this bill reflect your personal views as well as the views of the Attorney General? If not, how are your personal views different?

Answer: Whenever I have testified before the Nebraska Legislature's Judiciary Committee, it has been at the request of the Nebraska Attorney General. My testimony has been prepared in writing and has been reviewed, edited and approved by the Attorney General before the hearing. If confirmed, I will decide cases before me based upon principles of stare decisis and without regard to my personal views.

(B) As a federal judge, how would you rule in a habeas case in which a juvenile who had committed a violent crime was sentenced to a life term in an adult prison?

Answer: I would give careful consideration to the issues raised in the briefs for both the juvenile and the government, and would research applicable constitutional law, statutory law, and case law. I would give due deference to the legislature which enacted the law under which the juvenile was sentenced, and due deference to the court or jury which sentenced the offender.

(C) Would you advise the Judicial Conference to support such a bill for federal crimes?

Answer: I have no intention of advising the Judicial Conference to support any legislation related to sentencing or any other issue.

(D) Do you believe that it is constitutional for minors to be sentenced to death? If so, under what circumstances? What would be the age limit?

Answer: The term "minor" is defined differently among states, and even within states. In Nebraska, the age of majority is 19, but a person is considered to be a minor for certain other purposes until attaining the age of 21. In Nebraska, the death penalty is not available for offenders under the age of 18 at the time of the offense, and youth is a mitigating factor in the sentencing process. Whether a sentence of death would be unconstitutional because of the defendant's a youth can only be answered in proper context.

(E) Would this practice raise constitutional concerns under the 8th, 14th Amendment or other provisions?

Answer: The sentencing of a youthful offender to death could give rise to constitutional challenges under the Eighth Amendment and the Fourteenth Amendment.

Question 9: Another issue currently under debate among federal judges and also of issue in Nebraska is that for standards for those sentenced to death for crimes. As deputy attorney general, you testified against a bill that would have banned the execution of mentally retarded people.

(A) Did this testimony reflect your personal views on this subject as well as the views of the Attorney General? If not, how are your views different?

Answer: All my testimony before the Nebraska Judiciary Committee was at the request of the Nebraska Attorney General. My testimony was prepared in writing, reviewed, edited approved by the Attorney General prior to each hearing. It was the position of the Attorney General that existing statutes provided protection for mentally retarded criminal defendants, Specifically, before a criminal defendant stands trial, it is determined whether he or she has the capacity to understand the charges and to assist in the preparation of a defense. During trial, the judge or jury considers the defendant's mental capacity when terming whether sufficient intent was present for each element of the offense. If the defendant was unable to understand the nature of his or her actions, or unable to control those actions, a "not guilty" verdict should result. A diminished mental capacity is also a mitigating factor under Nebraska's death penalty statutes. During my testimony, I described the Nebraska statutes on each of those issues. I recognize the merits of arguments on both sides of this subject.

(B) You stated that such a bill would be an insult to retarded people, since they know right from wrong and IQ has nothing to do with that ability. Do you believe that IQ is irrelevant in evaluating a person culpability?

Answer: Intelligence is relevant in evaluating a person's culpability.

Responses of Edith Brown Clement to questions submitted by Senator Patrick Leahy

Question 1: There is a lot of work being done by this committee right now on the question of balancing civil liberties and national security interests. What is the constitutional test of whether the government can deprive an individual of his or her constitutional rights on a plea of military necessity?

Answer: As with any other statute that affects constitutional rights, military orders must afford adequate due process protections, but such orders must be judged in the context in which they arise. It is important to balance individual civil liberties against the government's interest in national security. The government, of course, cannot violate constitutional rights, but the specific answer to your question depends on the particular legal and factual context.

Question 2: Are all measures deemed expedient from a national security viewpoint necessarily constitutional?

Answer: No. Although it is settled law that courts should defer to Congress and the executive branch in matters of national security, such deference does not extend to automatic validation of governmental action.

Question 3: Is the case of *Korematsu* v. *U.S.*, 323 U.S. 214 (1944), still good law? Do you believe, as Justice Rehnquist has written, that on matters like Korematsu, "[t]here is no reason to think. . .that future Justices of the Supreme Court will decide questions differently from their predecessors"?

Answer: While the Supreme Court has not specifically overruled Korematsu and, to that extent, it remains good law, it has been interpreted in subsequent decisions to which courts must adhere. How such decisions apply to a future case will depend on the specific facts and circumstances presented in that controversy.

Question 4: In the past few years, the Supreme Court has struck down a number of federal statutes, most notably several designed to protect the civil rights and prerogatives of our more vulnerable citizens, as beyond Congress' power under Section 5 of the Fourteenth Amendment.' The Supreme Court has also struck down a statute as being outside the authority granted to Congress by the Commerce Clause. These cases have been described as creating new power for state governments, as federal authority is being diminished. At the same time, the Court has issued several decisions, most notably in the environmental arena, granting states significant new authority over the use of land and water, despite long-standing federal regulatory protection of the environment. Taken individually, these cases have raised concerns about the limitations imposed on Congressional authority; taken collectively, they appear to reflect a "new federalism" crafted by the Supreme Court that threatens to alter fundamentally the structure of our government. What is your view of these developments?

Answer: As a trial judge and, if confirmed as an appellate judge, I am bound to follow the precedent established by the Supreme Court.

Question 5: Can Congress ever subject states to private suits for damages for discrimination based on classification to which the Supreme Court does not give heightened or strict scrutiny?

Answer: Under existing Supreme Court precedent, Congress has the authority to subject nonconsenting states to suit pursuant to a valid exercise of its power under Section 5 of the Fourteenth Amendment. Private individuals may recover damages from a state, provided there is a pattern of discrimination by a state in violation of the Fourteenth Amendment.

Question 6: If Congress provides money to a state on the condition that it use the money in certain ways, can Congress constitutionally require a state that accepts such funding to waive its sovereign immunity to private actions for money damages if the state is misusing such funds?

In exercising its power under the spending clause, Congress may place restrictions or obligations on states that choose to accept federal funding, including the waiver of immunity to private actions, if the restrictions comply with the constitutional tests established by Supreme Court precedent.

Question 7: Are there any federal statutes or sections thereof concerning which the Supreme Court has not yet ruled that violate the state sovereign immunity doctrine under the U.S. Constitution?

Answer: As I said in my confirmation hearing, statutes passed by Congress are presumed to be constitutional. It is difficult to address, in the absence of specific facts, whether or not a statute violates the doctrine of sovereign immunity. As a jurist, I will faithfully follow Supreme Court precedent.

Question 8: Are there any federal statutes or sections thereof that go beyond Congress' enumerated powers under the Constitution?

Answer: Similar to challenges based on sovereign immunity grounds, challenges based on Congress' constitutional power must be examined on a fact-specific basis. While statutes are presumed to be constitutional, I will be bound by Supreme Court precedent in evaluating whether federal statutes violate the Constitution.

Question 10A: Describe the Federalist Society's Advisory Council and your role as a member of it.

Answer: The Advisory Council for the Louisiana Lawyers Chapter of the Federalist Society provides support from the legal community for selection of appropriate Programs, including to Pits for debate and speakers to be presented at Louisiana law schools.

Question 10B: Describe the Federalist Society activities (including activities of the Advisory Council) in which you have participated as a federal judge.

Answer: The Federalist Society presents panel discussions of issues focused on constitutional law. I have participated as a panelist with government officials, law

school professors, practitioners and members of the state and federal judiciary. I have also participated in the activities of the advisory council discussed above.

Question 1OC: Describe the ways in which your membership in the Federalist Society and/or its Advisory Council has influenced your decisions as a judge.

Answer: My membership in the Federalist Society and/or its Advisory Council has not had any influence on my decision malting as a judge.

Question 10D: Are there any cases or categories of cases in which your membership in the Federalist Society would cause you to recuse yourself?

Answer: If the Federalist Society were party to litigation in a case before me, recusal may be required under the Canons of Ethics or statutes defining reasons for recusal.

Question 10E: What does it mean to be a member of the Federalist Society as a judge?

Answer: Membership in the Federalist Society has no particular or general meaning to being a judge.

Question 1OF: Do you share a judicial philosophy with the Federalist Society?

Answer: I am unaware of any judicial philosophy articulated by the Federalist Society.

Question 1OG: With what (if any) Federalist Society positions do you disagree?

Answer: I am unaware of any positions announced by the Federalist Society.

Question 11A: Describe the Federalist Society activities in which you participated as an attorney.

Answer: I attended and participated in panel discussions and debates at law schools.

Question 11B: Did you consider resigning from the Federalist Society when you became a judge? If not, why not?

Answer: Because the Federalist Society does not take positions on political issues, I did not consider resigning. However, were the Federalist Society to alter the manner in which it functions, I would reassess my membership.

Question 12: Could you please clarify your answer (to Senator Kohl), end in particular, the relationship between the federal right to privacy and the Due Process clause?

Answer: The Supreme Court has recognized the right of privacy in a number of different constitutional provisions, and the due process protection attendant to that right varies according to the particular constitutional provision and factual context. In light of the varied contexts in which privacy rights arise, the boundaries of a right and the due process protections afforded to that right should be determined on the facts of a specific case.

Responses of Edith Brown Clement to an additional question submitted by Senator Patrick Leahy

Question 1: Please state whether you have ever been arrested for, charged with or convicted of a crime, within twenty years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public. If your answer is "yes," please provide the relevant dates of arrest, charge, and disposition and then describe the particulars of the offense.

Answer: I am informed that background investigation reports on nominees prepared by the Federal Bureau of Investigation (FBI) routinely address the type of information called for by this question. Without waiving the confidentiality of the FBI background investigation report prepared on me, I respectfully direct your attention to that report for a response to this question.

Responses of Edith Brown Clement to questions submitted by Senator Edward Kennedy

Question 1: Please explain the basis of your decision in Cholak, including why your conclusion on the question of the constitutionality of indefinite detention differed from the ultimate conclusion of the U.S. Supreme Court.

Answer: Kestutis Zadvydas and Majid Cholak faced materially different factual scenarios. Although Zadvydas represented that he was a German citizen, the Ger-

man government informed the INS that he was not deportable to that country. As a result, Zadvydas faced a strong likelihood of permanent confinement because there was no country to which he could be released. Unlike Zadvydas, Cholak was an Iraqi citizen whose deportation was actively pursued by the INS. Accordingly, Cholak's case did not present the factual scenario of an alien who faced probable permanent confinement.

In addition, the Cholak decision was ultimately based on procedural, and not substantive, due process grounds. Specifically, the INS violated Cholak's procedural due process rights by failing to adequately consider the factors enumerated in 8 C.F.R. § 242.2(h) in its six month periodic evaluation of Cholak's status. Therefore, Cholak's case was remanded to the INS for reconsideration of his request for release, with the recommendation that it consider his probation officer's recommendation that Cholak was not a danger to the community or a flight risk.

Question 2A: What is your approach to constitutional interpretation where the text of the constitution is ambiguous?

Answer: I would, of course, be bound by Supreme Court precedent and would evaluate the decisions of other courts. The history, text, and purpose of the provisions should be studied as well as considerations of how the text should be applied to the specific facts and circumstances.

Question 2B: Do you believe the constitution contemplates a "right to privacy"?

Answer: Yes, as I stated in my responses to the follow-up questions asked by Senator Kohl, I do believe that the Constitution contemplates a right to privacy. The Supreme Court has repeatedly held that the Constitution encompasses a right to privacy.

Question 2C: Do you believe the constitutional right to privacy encompasses a woman's right to have an abortion?

Answer: The Supreme Court has clearly held that the right to privacy guaranteed by the Constitution includes the right to have an abortion. The cases handed down by the Supreme Court on the right to abortion have reaffirmed and redefined this right, and the law is settled in that regard. If confirmed, I will faithfully apply Supreme Court precedent.

Responses of Judge Edith Brown Clement to questions submitted by Senator Herb Kohl

Question 1: Do you believe there is a guaranteed right to privacy in the Constitution?

Answer: The Supreme Court has made clear that the Constitution guarantees a right to privacy.

Question 2: What are the elements of that right?

Answer: The elements of the right to privacy depend on the aspect of that right at issue in a particular case. Different factual situations call for different definitions of privacy. The Supreme Court has made it clear that the right to privacy exists in multiple facets of a person's life. For example, the right to privacy found in the First Amendment focuses on a person's right to make certain personal decisions without government interference. The right found in the Fourth Amendment gives heightened protection to what a person does in the sanctity of the home.

Question 3: Which Supreme Court Cases do you consider the most important in defining the right to privacy? I believe that one of the most important decisions with respect to the right of privacy was actually Justice Brandeis' dissent in *Olmstead* v. *United States*, 277 U.S. 438 (1928), in. which he analyzed the concept of the right to privacy. He wrote:

Answer: The makers of our constitution. . .recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found is material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the government, the right to be let alone the most comprehensive of rights and the right most valued by civilized men.

Courts have expanded on Brandeis' language and held that zones of privacy exist within several constitutional guarantees, and that an individual's right to privacy needs to be balanced with the government's interest in enforcing the laws.

Question 4: Do limits exist on the right to privacy? If so, what are they?

*Answer:*Limits on the right to privacy will vary based on the aspect of the right at issue in a given case, just as the elements of that right will vary in the same

way. The Supreme Court has set forth certain standards regarding the limits of this right that guide courts in making determinations in specific cases and context involving the right to privacy. For example, the Court has held that a person must have a legitimate expectation of privacy in that which is sought to be protected.

Question 5: Please explain the relationship between the right to privacy and due process protections.

Answer: The Supreme Court has carefully delineated the due process protections accorded to a particular privacy right within the background of the right itself. In light of the varied contexts in which privacy rights arise, the boundaries of a right and the due process protections afforded to that right should be determined on the facts of a specific case.

Question 6: When Congress defines by statute, Congressional findings, and legislative history, some aspect of the right to privacy, what amount of deference to these findings of fact do the federal courts need to afford to Congress?

*Answer:*As I stated at my confirmation bearing, statutes passed by Congress are presumed to be constitutional. Courts should uphold statutes based on rational legislative judgments because courts must defer to Congress' intent when it has exercised discretion within its constitutional powers. Although Congress has never been required to support its statutes with formal factual findings, legislative findings of fact have great value in creating a realistic background for a particular statute and in pointing out the specific applications Congress intended.

Responses of Judge Edith Brown Clement to questions submitted by Senator Russell Feingold

Question 1: Sen. Kohl asked you questions at your confirmation hearing concerning the private judicial education seminars you have attended in recent years, including seminars hosted by the Foundation for Research in Economics and the Environment (FREE), George Mason's Law & Economics Center (LEC) and the Liberty Fund.

You testified as follows:

"My experience has shown that the panels end the speakers are from a widely" diverse group, that there is a representation from private industry as well as from government and public officials, as well as from the law schools, including the deans of the law schools and the faculty members.

"So to that extent, my participation in programs, either as a speaks or as a participant, has reflected that there is a wide variety of opinions expressed. I think it is a very broad-based presentation of issues dealing with constitutional law, as well as antitrust and economics, as well as environmental issues. So to that extent, I don't see a problem with the educational opportunities ,afforded to the judiciary."

A recent article published in the Harvard Environmental Law Review examines a September 1996 FREE seminar you attended is considerable detail and concludes that the seminar offered "no views contrary to the seminar's principle themes" (25 Hare. Env. L. Rev. 405, 447 (2001)).

a. Do you wish to revise or elaborate on your answer to San. Kohl's question?

b. Attached is a list of privately trips funded tripe that you reported an you financial disclosure forms since 1992. To the extend that you remember or can locate is your files information concerning these trips, please provide the following information on the private educational seminars you attended:

i. The subject matters covered;

ii. The identities of the lecturers or presenters of information;

iii. Copies of the seminar schedules and other written material you received.

c. Do you contend that each of the educational seminars you attended were diverse and broad based?

Answer 1a: After having evaluated the article, "Nothing for Free: How Private Judicial Seminars are Undermining Environmental Protections and Breaking the Public's Trust" recently published in the Harvard Environmental Law Review, I remain of the opinion that the seminars presented by FREE, LEC and the Liberty Fund focused on problems and solutions from varied perspectives. The opinions of private industry, as well as public governmental regulatory bodies were presented. The views of academics were supportive of industry in some instances, and of governmental officials in others.

b. Attached are the seminar schedules which identify the following:

i. Subject matter

ii. Lecturer

iii. Materials for assigned reading

c. The educational seminars were focused on particular environmental, economic or constitutional issues end problems. I felt that the presentations of the competing solutions represented a variety of interesting and important viewpoints.

Question 2: I am concerned about the appearance that corporate litigants fund groups such as FREE in order to get an audience before judicial decision make. I note, for example, that the September 1996 FREE seminar you attended, Texaco's retired CEO, Alfred DeCrane gave a lecture entitled "The Environment—A CEO's perspective" and Michael Harboldt of Temple-Inland lectured on "Temple-Inland's Environmental Program." Texaco and Temple-Inland are both Fenders of FREE.

Judicial Conference Committee on Codes of Conduct Advisory Opinion 67 considers the issue of a judge's participation in a privately funded education seminar. It states in part:

"It would be improper to participate in such a seminar if the sponsor, or source of funding, is involved litigation, or likely to be so involved, and the topics covered in the seminar are likely to be in some manner related to the subject matter of such litigation. If there is a reasonable question concerning the propriety of participation, the judge should take such measures as may be necessary to satisfy himself or herself that there is no impropriety. To the extent that this involves obtaining further information from the sponsors of the seminar, the judge should make clear an intent to make the information public if any questions should arise concerning the propriety of the judge's attendance."

a. Did you inquire into FREE's and other the seminar hosts' sources of funding before attending these privately funded seminars? If so, how did this information affect your decision of whether to attend the seminars? If not, how did you comply with your obligations under Advisory Opinion 67?

b. Having attended the 1996 FREE seminar, would you participate in an environmental case involving Texaco or Temple-Inland? How would you analyze a recusal motion based on your attendance at one of these seminars?

c. Does it concern you that corporations appear to befunding judicial seminars in part to secure access to the federal judiciary and advance their own view of the law?

d. Do you understand the perception problem created by judges attending these types of seminars? What have you done to address that perception problem in your own court, and what would you do to address the problem if you are confirmed to the U.S. Court of Appeals?

e. If you are confirmed to the U.S. Court of Appeals, would you continue to attend judicial seminars sponsored by organizations such as FREE, LEC, and the Liberty Fund?

Answer 2a: The letter of invitation stated that the conferences were sponsored by FREE and the Lewis and Clark Law School, supported by the M.J. Murdock Charitable Trust and John M. Olin Foundation. The Liberty Fund letter of invitation identified its sponsors as a foundation to encourage study of the ideal of a society of free and responsible industries and the Center for Judicial Studies, a non-profit educational organization for advanced study of the Constitution. Corporate sponsors were never identified and to this day I do not know who they were. Several judges had attended prior seminars and recommended them highly. The issue of sponsorship never seemed relevant to the discussions, and no judicial opinion I have rendered was the result of information provided at an educational seminar.

b. The disclosure requirement imposes on the judge the obligation to provide public information regarding reimbursement of expenses. Perhaps a more appropriate disclosure would include listing the-sponsors. More generally, a motion for recusal would be considered by evaluating any actual bias as well as any perception of bias, which must be avoided.

c.It is always an appropriate concern if an interest group has unfairly sought to influence judicial decision making. At the same time, is i5 important that different perspectives be aired and heard. I do not feel that I was misinformed yr persuaded to evaluate the law inappropriately in that varied views of issues were consistently presented. The identity of corporate sponsorship would assist a judge in evaluating whether attendance was appropriate.

d. Depending upon the circumstances, a judge's participation in certain events could create the perception of bias which must be avoided. A judge should recuse from any case where there is a perception of bias. As I stated in response to sub paragraph a, I have not ever rendered an opinion which resulted from views presented at any seminar attended nor has any patty before me suggested that they perceived any bias as a result of my participation is the seminars.

e. I would evaluate the faculty and topics to determine if the seminars would grove helpful. I would also be attuned to the need to identify any appearance of impropriety from my attendance.

Responses of Claire V. Eagan to questions submitted by Senator Patrick Leahy

Question 1: In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? Does the commitment to stare decisis vary depending on the court?

Answer: Adherence to precedent is the cornerstone of the rule of law. Trial judges, in particular, should commit themselves absolutely to the doctrine of stare decisis and should not overrule a case based solely on a belief that it was wrongly decided. The only exception may be an instance where, such as in *Brown* v. *Bd. of Education of Topeka*, 347 U.S. 483 (1954), exceptional conditions dictate that a careful reexamination of a prior decision by the Supreme Court is not only justified but required. History, however, makes clear how rare such an occasion would be.

Question 2: Judge Eagan, among the classes you have taught as an adjunct professor is one on alternative dispute resolution. Could you tell us how you will use ADR tools to manage the docket in your courtroom if you are confirmed to the District Court?

Answer: As a magistrate judge and administrator of the settlement program for the Northern District of Oklahoma, I have gained experience and insight into the use of ADR in docket control. Historically, over 90 percent of civil cases are resolved before trial. An integral reason for this in our district is a mandatory settlement program under the auspices of the Court. If confirmed as a district judge, I will continue to use and support this process. In addition, I will be actively involved in the scheduling process, which allows for consideration of the timing and type of ADR process to achieve maximum benefit. I am committed to using all ADR tools available to encourage case resolution short of trial.

Question 3: In the past few years, the Supreme Court has struck down a number of federal statutes, most notably several designed to protect the civil rights and prerogatives of our more vulnerable citizens, as beyond Congress's power under Section 5 of the fourteenth Amendment. The Supreme Court has also struck down a statute as being outside the authority granted to Congress by the Commerce Clause. These cases have been described as creating new power for state governments, as federal authority is being diminished. At the same time, the Court has issued several decisions, most notably in the environmental arena, granting states' significant new authority over the use of land and water, despite long-standing federal regulatory protection of the environment. Taken individually, these cases have raised concerns about the limitations imposed on Congressional authority; taken collectively, they appear to reflect a "new federalism" crafted by the Supreme Court that threatens to alter fundamentally the structure of our government. What is your view of these developments?

Answer: In the last six years, the Supreme Court has significantly altered jurisprudence in the areas of state power and Congressional authority. Among other cases, *Seminole Tribe of Fla.* v. *Florida*, 517 U.S. 44 (1996), *City of Boerne* v. *Flores*, 521 U.S. 507 (1997), and *United States* v. *Lopez*, 517 U.S. 549 (1995), articulate the fundamental principles of this jurisprudence. The application of these principles, however, is not yet clear. The Supreme Court has recently applied these principles to individual statutes, such as the ADEA (*Kimel* v. *Florida Bd. of Regents*, 528 U.S. 62 (2000)) and the ADA (*Bd. of Trustees of Univ. of Ala.* v. *Garrett*, 531 U.S. 356 (2001)); yet, these principles may not be applied in future cases. It is not for a trial court to expand these principles in the absence of clear Supreme Court precedent.

Question 4: Can Congress ever subject states to private suits for damages for discrimination based on classification to which the Supreme Court does not give heightened or strict scrutiny?

Answer: The Supreme Court set forth the test of "congruence and proportionality" in *City of Boerne, supra*. Since then, the Supreme Court has applied this test to the ADEA (*Kimel, supra*) and the ADA (*Garrett, supra*). Each of these cases turned on an exhaustive examination of the legislative history of the statute at issue to determine if the congruence and proportionality test had been satisfied. In *Garrett*, the Court addressed the specific role of equal protection jurisprudence in this analysis by stating that the first step in the analysis is to identify with precision the scope

of the constitutional right at issue. Clearly, this language contemplates that the more fundamental the right and the stricter the scrutiny required by equal protection jurisprudence, the more likely the abrogation of sovereign immunity will be upheld. The language also leaves open the question of whether a strict scrutiny classification is always required. Whether the Supreme Court will so hold depends on the facts of a case yet to come before it.

Question 5: If Congress provides money to a state on the condition that it use the money in certain ways, can Congress constitutionally require a state that accepts such funding to waive its sovereign immunity to private actions for money damages if the state is misusing such funds?

Answer: It is settled law that, as part of the Congressional exercise of the spending power, Congress may attach conditions to the receipt of federal funds. Exercise of the spending power is not unlimited, however, and must be in pursuit of the general welfare, with unambiguous conditions, and related to the federal interest in a particular program. Other constitutional provisions may also provide an independent bar to the conditional grant of federal funds. *South Dakota* v. *Dole*, 483 U.S. 203 (1987). This precedent establishes the constitutionality of a Congressional requirement of sovereign immunity waiver. However, the state must be fully aware of the waiver requirement when it accepts the subject funds. In the event of such a waiver, sovereign immunity would not bar a private action.

Question 6: Are there any federal statutes or sections thereof concerning which the Supreme Court has not yet ruled that violate the state sovereign immunity doctrine under the U.S. Constitution?

Answer: All federal statutes enjoy a presumption of constitutionality. Thus, for those statutes concerning which the Supreme Court has not yet ruled, there is a presumption that they do not violate the Eleventh Amendment or any other constitutional provision. To answer more specifically could appear to be giving an advisory opinion on an issue which might come before me if I am confirmed. I would emphasize, however, as stated above, trial judges in particular should commit themselves to the doctrine of *stare decisis*.

Question 7: Are there any federal statutes or sections thereof that go beyond Congress' enumerated powers under the Constitution?

Answer: All federal statutes enjoy a presumption of constitutionality. Thus, for those statutes concerning which the Supreme Court has not yet ruled, there is a presumption that they do not go beyond Congress' enumerated powers. To answer more specifically could appear to be giving an advisory opinion on an issue which might come before me if I am confirmed. I would emphasize, however, as stated above, trial judges in particular should commit themselves to the doctrine of *stare decisis*.

Responses of James Payne to questions submitted by Senator Patrick Leahy

Question 1: In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? Does the commitment to stare decisis vary depending on the court?

Answer: The doctrine of stare decisis, which requires adherence to judicial precedents, is at the very core of our American system of jurisprudence and is equally applicable to trial and appellate courts.

Question 2: Judge Payne, you've done quite a bit of work on Civil Justice Reform, Could you tell us what you think are the three most important reforms to the civil justice system in our country?

Answer: Modern civil justice reform emanates from the Civil Justice Reform Act of 1990 (28 U.S.C. §§ 471–482) which required all federal district courts to implement a plan to reduce expense and delay. As a result of developing and working with our plan in the Eastern District of Oklahoma, the following arc the three prominent reforms that were achieved:

(1) Reduction in discovery cost through the court's early involvement at Rule 16 conferences encourages parties to participate in voluntary discovery, thus avoiding costly time consuming court hearings.

(2) Consistent disposition of Rule 16 cases in loss than 12 months.

(3) Implementation of an active alternative dispute resolution program that has not only led to settlement of more than 500 cases since 1993, but has

also given litigants the opportunity to be intimately involved in the dispute resolution process.

Question 3: In the past few years, the Supreme Court has struck down a number of federal statutes, most notably several designed to protect the civil rights and prerogatives of our more vulnerable citizens, as beyond Congress's power under Section 5 of the Fourteenth Amendment. The Supreme Court has also struck down a statute as being outside the authority granted to Congress by the Commerce Clause, These cases have been described as creating new power for state governments, as federal authority is being diminished. At the same time, the Coup has issued several decisions, most notably in the environmental arena, granting states' significant new authority over the use of land and water, despite long-standing federal regulatory protection of the environment, Taken individually, those cases have raised concerns about the limitations imposed on Congressional authority; taken collectively, they appear to reflect a "new federalism," crafted by the Supreme Court that threatens to alter fundamentally the structure of our government, What is your view of these developments?

Answer: Congress has authority to gather evidence demonstrating that federal legislation is needed to remedy certain problems. *See Kimel* v. *Florida Rd. Of Regents*, 528 U.S. 62, 89–91 (2000). After Congress enacts statutes in response to its fact gathering. the Supreme Court decides the constitutionality of the laws. Under the doctrine of stare decisis, district judges are obligated to follow precedent as set forth by the Supreme Court

Question 4: Can Congress can ever subject states to private suits for damages for discrimination based on classification to which the Supreme Court does not give heightened or strict scrutiny?

Answer: The Supreme Court has held that, "Congress's power to enforce the [Fourteenth] Amendment includes the authority both to remedy and to deter violation of rights guaranteed thereunder by prohibiting a somewhat broader swath of conduct, including that which is not itself forbidden by the Amendment's text." *Kimel* v. *Florida Bd. of Regents*, 578 U.S. 507, 536 (1997). *See also Bd of Trusties of the Univ. of Alabama* v. *Garrett*. 531 U.S. 356,——, 121 S.Ct. 955, 963 (2001); *City of Boerne* v. *Florae*, 521 U.S. 507, 536 (1997). However, the Court has also held that § 5 [of the Founecnth Amendment] legislation reaching beyond the scope of § 1's actual guarantees must exhibit "congruence and proportionality between the injury to be prevented or remedied and the means adopted to that and." *City of Boerne*, 521 U.S. at 520. As a district court judge, I would be obliged to follow these decisions, as well as any future decisions, that tray further clarify the matter.

Question 5: If Congress provides money to a state on the condition that it use the money in certain ways, can Congress constitutionally require a state that accepts such funding to waive its sovereign immunity to private actions for money damages If the state is misusing such funds?

Answer: The Supreme Court has held that Congress may encourage a state that accepts funding to waive its sovereign immunity. However. the funding legislation must comply with the "coercion" limitation to Congress's Spending Clause power articulated in *Dakota* v. *Dole*, 493 U.S. 203, 211 (1997) (the financial Inducement offered by Congress may not be so coercive as to pass the point at which encouragement turns into compulsion). Further, Congress must "manifest a clear intent to condition participation in the programs funded on a state's consent to waive its constitulional immunity" *Alascadero State Hosp.*v. *Seanlon, 473 U.S. 234, 247 (1935).*

Question 6: Are there any federal statutes or sections thereof concerning which the Supreme Court has not yet ruled that violate the state sovereign Immunity doctrine under the U.S. Constitution?

Answer: All federal statutes are presumed to be a "constitutional exercise of legislative power." *Reno* v. *Condon*, 528 U.S. 141, 148 (2000) (quoting *Close* v. *Glenwood Cemetery*, 107 U.S. 466, 475 (1883)). Consequently, all federal statutes concerning state sovereign immunity are constitutional until arid unless there is a binding judicial determination to the contrary.

Question 7: Are there any federal statutes or sections thereof that go beyond Congress' enumerated powers under the Constitution?

Answer: As mentioned in the answer to question 6, all federal statutes are presumed to be constitutional. Therefore, all federal statutes arc deemed constitutional until there is a binding judicial determination to the contrary.

Question 8: A 1985 case you handled, *United Sates* v. *Claire Spencer*, involved questions of eminent domain, and recovery by a landowner against the U.S. Army Corps of Engineers. You were also active in the Greater Muskogee Development

Corporation, part of whose mission was the, "procurement of real estate through the eminent domain process."

(A) In what type of case is it appropriate for the government to exercise its powers of eminent domain to take private property?

Answer: The power of eminent domain is properly invoked when a federal, state or local government, acting pursuant to a properly enacted statute in conformance with the Constitution, condemns private property for legitimate public use.

(B) Did the Spencer case fulfill those standards?

Answer: In the Spencer case, the U.S. Army Corps of Engineers, acting on behalf of the federal government pursuant to a duly enacted statute, fulfilled the public use standard by condemning privately owned agricultural land for the purpose of constructing the Arcadia Reservoir. The Arcadia Reservoir was built to increase the water supply for nearby communities and provide additional public recreational facilities.

(C) What standards did the Greater Muskogee Development Corporation use to determine when it would procure real estate through the eminent domain process?

Answer: The Greater Muskogee Development Corporation, acting with other city and state entitles, including but not limited to the Muskogee Urban Renewal Authority, complied with the public use standard mentioned above in condemning private property for the public's benefit (i.e. acquiring right-of-way easements and developing blighted areas of the City of Muskogee).

SUBMISSION FOR THE RECORD

Statement of Hon. Orrin G. Hatch, a U.S. Senator from the State of Utah

It is both an honor and a pleasure to be here this afternoon with six extremely well-qualified nominees for important positions in the Federal Judiciary and the Department of Justice. I congratulate all of you on being selected by President Bush to serve in high office. After reviewing your distinguished records, I have no doubt that you will do great service for the citizens of this country upon confirmation.

Edith Brown Clement, our nominee for the Fifth Circuit Court of Appeals, has distinguished herself—among many other ways—as a prolific writer of opinions as a Judge on the U.S. District Court for the Eastern District of Louisiana. During the past decade in that position, Judge Clement has authored over 1,300 opinions—and only 17—a minute fraction—of those were reversed, partially reversed, remanded, or vacated. That's an astonishing record. Judge Clement is particularly known for her expertise in the fields of admiralty and maritime law. She will make an excellent addition to the Fifth Circuit Court.

Karen Caldwell, the nominee for the Eastern District of Kentucky, also has a background of distinguished federal government service. She spent six years in the United States Attorney's Office for the Eastern District of Kentucky—working her way up from Assistant U.S. Attorney, then Chief of Financial Litigation, then Chief of General Civil Litigation, and was then appointed by former President Bush to be the United States Attorney for that District. She is well prepared for her new role as a District Judge.

Our next nominee, Laurie Smith Camp, will also make a superb judge—for the District of Nebraska. Ms. Camp's 24-year legal career has included private practice, government service, and a great deal of community service as well. Since graduating from Stanford University and the University of Nebraska College of Law—where she served as editor-in-chief of the Nebraska Law Review—she has personally handled over 500 cases in state and federal courts, and thousands of administrative proceedings, in her roles as private practitioner, as General Counsel to Nebraska's Department of Corrections, and as the Nebraska Attorney General's chief for both civil rights and for criminal matters.

Judge Claire V. Eagan, our nominee for the Northern District of Oklahoma, is another law review editor—this time for the Fordham Law Review at Fordham University. Since that auspicious beginning to her legal career, Judge Eagan has served as a law clerk to the Chief Judge for the court to which she now has been nominated, has worked in private practice, and has earned an outstanding reputation as a Magistrate Judge. Judge Eagan's activities in the bar and the community are just as impressive as her career.

It appears that our final judicial nominee, Judge James H. Payne, is someone who transcends the typical lines—that must be why he's been nominated to be a judge for three federal districts: the Northern, Eastern, and Western Districts of Okla-

homa. That is also why, as U.S. Magistrate Judge for the Eastern District of Oklahoma since October 1988, Judge Payne has—by consent of the parties—made final dispositions of more than 800 cases. Judge Payne has clearly earned the trust of Oklahomans as a judge and as a leader in Alternative Dispute Resolution, and I am pleased that he—like the rest of our judicial nominees here today—will be able to take his experience and skills into a new forum for serving the citizens of the United States.

Last but certainly not least, we have the nomination of Jay S. Bybee to serve as the Assistant Attorney General for the Office of Legal Counsel. Professor Bybee graduated cum laude from the J. Reuben Clark Law School at Brigham Young University (which is a sufficient credential by itself in my opinion), and then went on to a prestigious clerkship and a prominent law firm. He then served in the Department of Justice as an attorney-advisor in the Office of Legal Policy and worked on the appellate staff in the civil division. He also worked as an associate White House counsel before becoming a professor of law. He will be a great addition to the Department.

Again, it is a great pleasure to welcome all of you to the Committee. I look forward to this hearing, and to working with Chairman Leahy and others to make sure the Committee and the full Senate hold timely votes on your nominations.