S. HRG. 107–584, PT. 5

CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

AUGUST 1, SEPTEMBER 18, SEPTEMBER 26, AND OCTOBER 7, 2002

PART 5

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NOMINATION OF REENA RAGGI, NOMINEE TO BE CIRCUIT JUDGE FOR THE SECOND CIRCUIT; JAMES KNOLL GARDNER, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA; RONALD H. CLARK, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF TEXAS; AND LAWRENCE J. BLOCK, NOMINEE TO BE JUDGE FOR THE UNITED STATES COURT OF FEDERAL CLAIMS

THURSDAY, AUGUST 1, 2002

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

The Committee met, pursuant to notice, at 2:00 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Richard J. Durbin presiding.

Present: Senators Durbin, Schumer, Hatch, Specter, and Sessions.

OPENING STATEMENT OF HON. RICHARD J. DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator DURBIN. I want to welcome you all and thank you for coming.

There is a force more powerful than a locomotive, and it is an adjourning Congress, and we are now in the closing hours of the session and many members are anxious to get back to their States and their families and other plans. We are going to have a series of roll calls that begin at about three o'clock, maybe a few minutes before, that may take up our time until four o'clock, or even later.

It is my intention to try to move with dispatch through this portion of the hearing so that we can get everybody considered today. Many of you have made great sacrifices to be here and I do not want to put this off any period of time or delay you in your efforts.

Our colleagues are going to join us in the beginning here to say kind words of praise, and I would ask my friend, Senator Gramm, and all who are here to suppress the urge to cover the nominees with great praise so that we might be able to actually have a hearing and consider them today before we are forced to go vote and adjourn.

Today marks the 23rd judicial nomination hearing since the Senate reorganization took place less than 13 months ago. The Senate, under Democratic leadership, has now confirmed 64 Federal judges, including 13 to the U.S. Courts of Appeals. Fourteen more nominees have been reported out of committee and will likely be confirmed in the days and weeks ahead.

I will put the rest of this statement in the record. I am proud of the record of Chairman Leahy on this committee and am happy to work with him. I am hoping that we can move through these nominees today with dispatch, and to start that ball rolling I will now defer to my colleague, Senator Hatch, for his opening remarks.

[The prepared statement of Senator Durbin appears as a submission for the record.]

STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Senator HATCH. Thank you, Mr. Chairman, and I think what I will do is defer my comments. We are just very pleased to have all of you. We welcome you here. We are proud of each and every one of you who has been nominated for a judgeship.

In particular, we are very proud of Larry Block, who has served this committee well and who has been nominated for the Court of Claims, and we are very pleased that he is having his hearing today and we expect all to go well.

So with that, we will just save the time and get right on with it.

Senator DURBIN. Thank you very much, Senator Hatch.

Senator HATCH. And we will put our statements in the record.

Senator DURBIN. Both of our statements will be entered into the record in their entirety.

[The prepared statement of Senator Hatch appears as a submission for the record.]

Senator HATCH. And also a statement by Patrick J. Toomey, submitted to the Senate Committee on the Judiciary on behalf of Judge James Knoll Gardner.

Senator DURBIN. Without objection.

[The prepared statement of Mr. Toomey appears as a submission for the record.]

Senator DURBIN. Senator Gramm?

PRESENTATION OF RONALD H. CLARK, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF TEXAS BY HON. PHIL GRAMM, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator GRAMM. Well, Mr. Chairman, thank you very much. I appreciate your holding the hearing. I am very happy to be here to recommend Ron Clark to you. He graduated with high honors from the University of Connecticut, Phi Beta Kappa. He was an outstanding law student at the University of Texas. He is board-certified in both civil trial law and civil appellate law. He is simply one of the most outstanding lawyers in the Sherman–Denison area. He has been a leader of the Boy Scouts. He has been honored by the NAACP.

If anybody has ever said anything bad about Ron Clark, I haven't heard it. I would have to say that I thought Ron was doing an excellent job in the legislature. It never makes me happy to see a great office-holder become a Federal judge. Other than killing somebody or sending them into exile, when you put them on the Federal bench, that is as close as you can come to eliminating them from the political process, and it should be.

But in any case, he is qualified. He is a top hand, as we would say in our State, and while I would have preferred that he follow a political career, he is a brilliant lawyer and deserves to be on the Federal bench and I commend him to you.

Senator HATCH. Thank you.

Senator DURBIN. Thank you very much, Senator Gramm. We appreciate your testimony.

Although there are other Senators who may come and join us, I am going to proceed, if it is all right with Senator Hatch, to call on the first panel, Judge Raggi, to come forward to the witness table, and if you would remain standing while I administer the oath.

Do you solemnly swear that the testimony you are about to give is the truth, the whole truth and nothing but the truth, so help you God?

Judge RAGGI. I do.

Senator DURBIN. Thank you.

Let the record reflect that the nominee has answered in the affirmative.

Thank you for being with us today.

Senator DURBIN. If you would at this time be kind enough to introduce family and friends who have joined you here today and then proceed with your opening statement.

STATEMENT OF REENA RAGGI, OF NEW YORK, NOMINEE TO BE CIRCUIT JUDGE FOR THE SECOND CIRCUIT

Judge RAGGI. I would be happy to. I would like to introduce my mother, Mrs. Edward Raggi, who was also here when I was considered for the district court; my husband, David Denton, and my son, David Denton, Jr. I also have a number of friends here. I am not going to introduce all of them, but I do have some really outstanding lawyers, my former law clerks. All of them are here.

Senator DURBIN. Thank you. If you would be kind enough to suspend for a moment, I notice that our colleague, Senator Santorum, has joined us. You may stay seated. Please do.

In the interest of time, we are expediting opening statements, and if the Senator would like to make reference to the record—

PRESENTATION OF JAMES K. GARDNER, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA BY HON. RICK SANTORUM, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SANTORUM. Let me ask consent that my full statement be made a part of the record.

Senator DURBIN. Without objection.

Senator SANTORUM. I just want to thank the chairman for holding this hearing. As I am sure you have heard, Judge Gardner has

an incredible record of educational accomplishment, has served with great distinction both as a Common Pleas Court judge in the Lehigh Valley, as well as a distinguished career in the Judge Advocate Corps in the U.S. Navy. He is someone who I think will just do an incredible job as an Eastern District Court judge in Pennsylvania and I am here to heartily recommend his nomination to this committee.

Thank you, Mr. Chairman.

[The prepared statement of Senator Santorum appears as a submission for the record.]

Senator DURBIN. I am sure Senator Hatch joins me in thanking you, Senator Santorum.

I notice that Senator Kay Bailey Hutchison has arrived.

We are expediting opening remarks because of a pending roll call, so if you would like to give us the condensed version, with leave, we will enter your entire statement in the record.

PRESENTATION OF RONALD H. CLARK, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF TEXAS BY HON. KAY BAILEY HUTCHISON, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator HUTCHISON. You don't want my 30-minute, major address? Well, I could talk 30 minutes about Ron Clark, but I won't. Ron is one of our outstanding public servants in Texas. As I am sure you know, he is a member of the State legislature, but he also has a distinguished legal career. He has practiced law with a law firm in Sherman, Texas, and he is the author of a book *The Texas Municipal Law and Procedure Manual*, which is used by cities throughout Texas.

Ron has been actively involved in his community, participating as committee chairman for the Boy Scouts of America and as president of the Sherman Kiwanis Club. He received the 2000 Political Involvement Award from the Sherman Chapter of the NAACP. He served in the Army as an Airborne Ranger.

I will just say, Mr. Chairman, from my experience I have known Ron Clark for a long, long time, from before he was a member of the State legislature. He was an outstanding lawyer, recognized as such and board-certified in his field, in Texas, and I know he will be one of our outstanding Federal judges.

Senator DURBIN. Thank you, Senator Hutchison. I have no questions.

Senator Hatch, do you?

Senator HATCH. No.

Senator DURBIN. Your entire statement will be made part of the record, and thank you for your cooperation.

Senator HUTCHISON. Thank you.

Senator DURBIN. Judge Raggi, as a mother, you are used to being interrupted and so I hope that you will understand that we are trying to move this along expeditiously.

Judge RAGGI. Of course.

Senator DURBIN. Now, we would certainly welcome your opening statement at this point.

Judge RAGGI. I don't have an opening statement, except to thank the committee for considering my nomination today. I would be happy to answer any questions that you might have for me.

Senator DURBIN. Let me start, then, and just go directly to questions of interest.

Of course, you are seeking an appointment to one of the highest levels of the judiciary in the Federal court system, a lifetime appointment which involves more authority in reviewing decisions, as well as legislation, than many Federal judges—Senator Clinton, please come forward. I will interrupt myself at this point.

Stay right where you are, Judge Raggi, and please remain.

Senator Clinton, we are doing expedited opening remarks. So we are happy to have you and we will put your entire statement in the record.

PRESENTATION OF REENA RAGGI, NOMINEE TO BE CIRCUIT JUDGE FOR THE SECOND DISTRICT BY HON. HILLARY RODHAM CLINTON, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator CLINTON. Thank you so much, Senator Durbin and Senator Hatch. I am absolutely delighted to be here to support the nomination of a very distinguished judge who also has private practice experience. Among her many accomplishments, she is a graduate of Wellesley College, which I think above all else qualifies her for this very important position.

Judge Raggi is, as you, I am sure, have determined from the record, someone who has acquitted herself admirably on the bench, has handled some very tough trials in New York, and has done so with a demeanor and a competence that is well-known to everyone who follows the courts in New York. I am just delighted to be here to introduce her to you.

Senator DURBIN. Thank you very much for that, and your entire statement will be made part of the record.

We will watch the door to see who else is going to show up. Senator Hatch tells me he will keep an eye on the door.

Judge Raggi, thank you for understanding. I hope you do understand—

Judge RAGGI. Of course.

Senator DURBIN. —that this is the orderly method in the United States Senate.

The point I was getting to and one I would like to ask your opinion on is this whole question of judicial activism and the responsibility of the court when it comes to legislation—whether or not you serve as the so-called bulwark against legislative excess or feel that you play a different role. I would like to just leave that as an open-ended question to hear about your philosophy.

Judge RAGGI. Well, at both the district and circuit court level, what a judge has to do is decide cases, and so we don't, I don't think, get into broad policy questions the way you do in enacting legislation. We have to decide the dispute between the parties and if a statute comes into play in that, then we have to try to decide what Congress intended when it passed that statute.

Senator DURBIN. And that is it?

Judge RAGGI. Well, unless there is some concern that I am not appreciating, Senator. I mean, I have had cases where I have had to apply statutes sometimes that have not been on the books for a long time, and I do think some of my opinions show how I have tried to approach that by showing respect for Congress' legislation and what you all were trying to enact. I don't see my role as trying to put anything into the statute or taking anything away.

Senator DURBIN. Let me give an illustration. As we review your record, you have repeatedly turned away attempts to use the Constitution to strike down legislation, rejecting constitutional challenges to the Federal death penalty in *U.S.* v. *Pitera*, the Mail Order Drug Paraphernalia Act in *U.S.* v. *Main Street Distributing*, a Federal statute requiring the Secretary of State to extradite U.S. citizens even absent a treaty obligation in *Hilario* v. *United States*, and a New York City ordinance that criminalizes the possession or transfer of assault weapons and ammunition in the *Richmond Boro Gun Club* case.

I guess what I am really coming to is under what circumstances would you rule that a Federal statute is unconstitutional? What kinds of standards and guidance are you looking for in making that decision?

Judge RAGGI. Well, it would very much depend what the challenge was. In many of the cases that you have just cited, I had rationality challenges, which is, of course, the lowest standard of review. If there was any rational basis between what Congress was trying to remedy or address and the statute passed, then it survives constitutional challenge.

But, of course, there could be other kinds of challenges to statutes that would trigger stricter scrutiny. I don't think any of the cases that you cited involved stricter standards of scrutiny. Even the death penalty case was very much an "as applied" challenge. It was an attack on the particular criteria that Congress had enunciated for that statute. It wasn't a broad challenge on the death penalty, for instance.

Senator DURBIN. Let me stick with the *Richmond Boro Gun Club* case from another angle. You considered a challenge brought by gun owners and several gun groups to an assault weapons ban passed by the New York City Council. As a judge on the Second Circuit, directly below the Supreme Court, you will be called upon to decide a lot of hot-button issues, like the gun control case, with some frequency.

In these high-profile cases, how can a judge insulate himself or herself from popular sentiment and try to reach the decision on the merits?

Judge RAGGI. Well, I think again by starting with the principle that you are deciding a discrete case. You are not legislating or writing a policy, law review article or anything like that. You are deciding a discrete case. And particularly where, as in a case like that, there are good briefs on both sides, you should be in a position to have the principled arguments of both sides and then try to apply the law.

To use that case as the example for our discussion, I had to deal with statutes both at the Federal and local level. So I had to consider what those statutes said, what principles the legislatures, na-

tional and local, were trying to apply, and then try to reconcile them.

Senator DURBIN. Can you cite any examples from your career on the bench when you have faced similar public scrutiny over controversial decisions?

Judge RAGGI. Well, certainly, in dealing with the death penalty, because I did have one of the first five death penalty cases tried, brought by the Justice Department after new legislation. And I have recently been in a high-profile case. It doesn't involve a statutory question or a constitutional question, but it certainly attracts a lot of press in New York because it involved a question of police brutality.

Senator DURBIN. I thank you for that. I am going to at this point defer to Senator Hatch. But if you wouldn't mind, I believe our colleague, Senator Schumer, would like to make a statement on behalf of this nominee.

PRESENTATION OF REENA RAGGI, NOMINEE TO BE CIRCUIT JUDGE FOR THE SECOND DISTRICT BY HON. CHARLES SCHUMER, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator SCHUMER. Well, thank you, Mr. Chairman. First, I would like my entire statement to be read into the record.

Senator DURBIN. Without objection.

Senator SCHUMER. I appreciate the courtesy, and I am happy to be here today to join Senator Clinton in introducing Judge Raggi, who has been nominated to the Second Circuit Court of Appeals.

I have long said I, at least for myself, have three standards when it comes to judicial nominees—legal excellence, moderation—I don't think judges should be too far left or too far right—and diversity. I am happy to say Judge Raggi meets all three of these qualifications.

She was born in New Jersey—we won't hold that against her—went to college and law school in Massachusetts—we also can't hold that against you—and clerked on the Seventh Circuit. But she has been proud to call herself a New Yorker for the past 25 years.

As you know, she has excellent private practice experience, being an associate and a partner at major New York law firms; significant public sector experience; was known as a top-notch prosecutor in the Eastern District, one of the premier districts in the country. She ran the narcotics section—because the airports are in that district, narcotics is extremely important—and the special prosecutions section, before serving as interim U.S. Attorney. She has an extensive record before us, having served with distinction as a judge in the Eastern District.

Mr. Chairman, in all frankness, we have seen a lot of nominees, in my judgment, who are ideologically way over come from this administration, but I can say with some confidence that Judge Raggi isn't one of them. So I am looking forward to the rest of her testimony and to supporting her confirmation in the weeks ahead.

Senator DURBIN. Thank you, Senator Schumer.

Senator Hatch?

Senator HATCH. Well, let me just say this, Judge Raggi. You have performed remarkably as a judge, admirably, dealing with some of the most difficult cases to face the Federal courts in New

York, including the second trial of the former New York City police officer in the Abner Louema case, the first Federal death penalty case in New York in three decades, and the Golden Venture trials which rose out of the illegal smuggling of Chinese aliens, ten of whom died when their freighter ran aground off Rockaway, New York.

In each case, you have met and surpassed the highest standard for judicial excellence and I think we are going to be very lucky to have you as a circuit court of appeals judge.

Judge RAGGI. Thank you.

Senator HATCH. So I very strongly support you, and hopefully that is expedited enough.

Senator DURBIN. It certainly is.

Senator Schumer has departed.

May I ask one last question?

Judge RAGGI. Please.

Senator DURBIN. You have had a background on the bench, as Senator Hatch has noted, and prior to that a background as a Federal prosecutor. How would you respond to concerns about whether those who come before you representing criminal defendants will have fair treatment when you consider reviewing the decisions at the trial court level?

Judge RAGGI. I would hope that the 15 years of service I have had on the district court have answered that question for everyone. It was, of course, a question when I was first considered for the district court when my prosecutorial experience was pretty recent. But I think there is no doubt that I am prepared to see that justice is done for every party that appears before me, defense as well as prosecution.

Now, because we have an excellent United States Attorney's office in the Eastern District, their cases are often very well presented and juries often do vote for convictions. But that is not my job anymore. My job is making sure every defendant gets a fair trial. If I were lucky enough to be confirmed to the court of appeals, my job would be to make sure that every litigant who raised a question before the court got a fair hearing on that.

Senator DURBIN. Well, I thank you very much. I have no further questions. I don't know if Senator Hatch does.

Senator HATCH. I don't either. I am just happy to have you being willing to do this.

Judge RAGGI. Thank you so much, Senator.

Senator DURBIN. Judge Raggi, thank you for joining us. With the end of questioning, you are now free to go. We will leave the record open to allow committee members to submit written statements and any follow-up questions. Thank you for joining us today.

Judge RAGGI. Thank you.

[The biographical information of Judge Raggi follows.]

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY, UNITED STATES SENATE

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

   REENA RAGGI
   REENA RAGGI DENTON (married name)

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

   United States Circuit Judge
   United States Court of Appeals for the Second Circuit

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

   Office: **United States Courthouse**
   225 Cadman Plaza East
   Brooklyn, New York 11201
   (718) 260-2490

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

   May 11, 1951 **Jersey City, New Jersey**

5. **Marital Status**: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please also indicate the number of dependent children.

   Husband: **David W. Denton**

   Occupation: **Attorney**
   Self-employed
   123 Pierrepont Street
   Brooklyn, New York 11201

   Dependents: **One child**

6. **Education**: List in reverse chronological order, listing most recent first, each college, law school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   1973-76 **Harvard Law School** **J.D. June 17, 1976**
   (cum laude)

1969-73	**Wellesley College**	**B.A. June 2, 1973**
Spring term 1972	**Princeton University**	**No degree. Guest student in History Department**
Summer 1972	**Fairleigh Dickinson University**	**No degree. Summer art course**

7. **Employment Record**: List in reverse chronological order, listing most recent first, all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

1987-present	**U.S. District Court E.D.N.Y. 225 Cadman Plaza East Brooklyn, N.Y. 11201**	**District Judge**
Jan.-May 1993	**Brooklyn Law School 150 Joralemon St. Brooklyn, N.Y. 11201**	**Adj. Professor**
1986-87	**Windels, Marx, Davies & Ives 51 West 51st St. New York, N.Y. 10019 (the firm is now known as Windels, Marx, Lane & Mittendorf 156 W. 56th St. New York, N.Y. 10019)**	**Partner**
1979-86	**U.S. Attorney's Office E.D.N.Y. 225 Cadman Plaza East Brooklyn, N.Y. 11201**	**U.S. Attorney; Assistant U.S. Attorney**
1977-79	**Cahill, Gordon & Reindel 80 Pine Street New York, N.Y. 10005**	**Associate**
1976-77	**U.S. Court of Appeals Seventh Circuit 215 South Dearborn Street Chicago, Ill. 60604**	**Law Clerk to C.J. Thomas E. Fairchild**

Summer 1976	**Paul, Weiss, Rifkind, Wharton & Garrison 345 Park Avenue New York, N.Y. 10019 (the firm is now located at 85 Avenue of the Americas New York, N.Y. 10019)**	**Summer Associate**
Summer 1975	**Cahill, Gordon & Reindel 80 Pine Street New York, N.Y. 10005**	**Summer Associate**
Summer 1974 Summer 1973	**Continental Group, Inc. 633 Third Avenue New York, N.Y. 10017 (company no longer exists)**	**Summer secretarial job**

8. **Military Service**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge received.

None.

9. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

-- Cum laude degree from Harvard Law School
-- Phi Beta Kappa at Wellesley
-- Senior Honors for work in American legal history
-- Recipient of Wellesley's Bollard Prize in American constitutional history
-- Carle C. Conway Foundation Scholarship (awarded by Continental Group, Inc.)

10. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

-- United States Judicial Conference
Second Circuit representative to Judicial Resources Committee (1991-97)

-- Federal Judges Association
One of three Second Circuit representatives (early 1990s)

-- Association of the Bar of the City of New York

-- Federal Bar Council

11. **Bar and Court Admission**: List each state and court in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

March 29, 1977	**Admitted to New York bar**
April 18, 1977	**U.S. Court of Appeals - Seventh Circuit**
April 10, 1979	**U.S. Court of Appeals - Second Circuit**
July 17, 1979	**U.S. District Court - Southern District of New York**
August 16, 1979	**U.S. District Court - Eastern District of New York**

12. **Memberships**: List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, charitable, or other organizations since graduation from college, other than those listed in response to Questions 10 or 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion - either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

– **Since graduation from college, I have belonged to the parishes of a number of neighborhood Catholic churches. My present parish is**

Church of the Assumption
Brooklyn, N.Y.

– **I have belonged to the parents' association of various schools attended by my child.**

– **Pierrepont Street Tenants' Association**
123 Pierrepont Street
Brooklyn, N.Y.
(served one-year term as co-op president in early 1990s)

I have never belonged to an organization with a discriminatory membership policy.

13. **Published Writings**: List the titles, publishers, and dates of books, articles, reports, or other material you have written or edited, including material published on the Internet. Please supply four (4) copies of all published material to the Committee, unless the Committee has advised you that a copy has been obtained from another source. Also, please supply four (4) copies of all speeches delivered by you, in written or videotaped

form over the past ten years, including the date and place where they were delivered, and readily available press reports about the speech.

Publications (not including judicial opinions):

1. **"Federal Statutory Rights," 12th Annual Section 1983 Civil Rights Litigation, Vol. I (Practising Law Institute 1996)**

2. **Foreword to Garoppolo, T., The Sentencing Reform Act: A Guide for Defense Counsel, Federal Bar Foundation (2d ed. 1994).**

3. **"Local Concerns, Local Insights: Further Reasons for More Flexibility in Guideline Sentencing," Federal Sentencing Reporter, Vol. 5, No. 6 (May/June 1993).**

4. **"Prosecutors' Offices: Where Gender Is Irrelevant," 57 Fordham L. Rev. 975 (1989).**

5. **"An Independent Right to Freedom of Association," 12 Harv. Civ. R.-Civ. L. Law Rev. 1 (1977).**

Speeches

Over the past ten years I have spoken on a wide variety of legal topics at bar association and continuing legal education programs run by the Second Circuit Judicial Conference, the Federal Judicial Center, the American Bar Association, and the Practising Law Institute. I have enclosed videotapes from the two Judicial Center programs (one of the death penalty; the other on Fed. R. Evid. 604) and one PLI program (on 42 U.S.C. § 1983 statutory litigation). I do not have written or taped copies of other remarks, which were delivered more informally.

In the spring 2001, I participated in a panel discussion at my alma mater, Wellesley College, on women in the legal profession. The program was informal, and I do not have a written or taped copy of my remarks.

14. **Congressional Testimony**: List any occasion when you have testified before a committee or subcommittee of the Congress, including the name of the committee or subcommittee, the date of the testimony and a brief description of the substance of the testimony. In addition, please supply four (4) copies of any written statement submitted as testimony and the transcript of the testimony, if in your possession.

April 1, 1987	**Appearance before Judiciary Committee in connection with judicial nomination to United States District Court for the Eastern District of New York. Copy of transcript enclosed.**

1983 **Appearance before Judiciary Committee in New York City. As Chief of Narcotics for the U.S. Attorney's Office in the Eastern District of New York, I testified as to recent drug prosecutions. I do not have a copy of this transcript.**

15. **Health**: Describe the present state of your health and provide the date of your last physical examination.

Excellent.
Last physical: December 10, 2001.

16. **Citations**: If you are or have been a judge, provide:

(a) a short summary and citations for the ten (10) most significant opinions you have written;

One two occasions, when sitting by designation in the Second Circuit, I wrote the published opinions of the panel:

1. **Walczak v. Florida Union Free School Dist., 142 F.3d 119 (2d Cir. 1998). Discussing standard of federal review under Individuals with Disabilities Education Act when parents disagree with school district's placement of disabled child.**

2. **Enercomp, Inc. v. McCorhill Publishing, Inc., 873 F.2d 536 (2d Cir. 1989). Holding that in case involving unsuccessful merger (1) evidence was insufficient to establish tortious interference with contract, (2) limitations on defense proof and argument were unwarranted, and (3) breach of Contract claim should have been left to jury.**

The following are ten significant legal opinions written as a district court judge:

1. **Webb v. Goldstein, 117 F. Supp. 2d 289 (E.D.N.Y. 2000). Holding that defendants' disclosure of prisoner's medical records to law enforcement officials then engaged in legitimate investigation did not violate Constitutional rights under Fourth, Fifth, Eighth, or Fourteenth Amendments.**

2. **In re Grand Jury Subpoenas Dated January 20, 1998, 995 F. Supp. 332 (E.D.N.Y. 1998). Holding that no privilege shielded communications between police officers and union representatives regarding excessive force investigation for which union retained private criminal defense lawyers for the officers.**

3. **Brooklyn Bridge Park Coalition v. Port Authority of N.Y. and N.J., 951 F.**

Supp. 383 (E.D.N.Y. 1997). Dismissing claims that Port Authority (1) acted ultra vires the powers conferred in its compact by leasing Brooklyn pier to private company, and (2) is a "federal agency" subject to the terms of the National Environmental Protection Act or the Coastal Zone Management Act.

4. **Pitter v. Prudential Life Ins. Co., 906 F. Supp. 130 (E.D.N.Y. 1995). Granting motion to compel arbitration of a Title VII claim filed by plaintiff sales representative who had agreed to arbitrate any disputes with Prudential pursuant to NASD rules.**

5. **Richmond Boro Gun Club, Inc. v. City of New York, 896 F. Supp. 276 (E.D.N.Y. 1995), aff'd 97 F.3d 681 (2d Cir. 1996). Holding that New York City law criminalizing certain assault weapons was neither unconstitutional nor preempted by federal law.**

6. **Gonzalez v. Rutherford Corp., 881 F. Supp. 829 (E.D.N.Y. 1995). Holding that New York would apply strict products liability to regular dealers in used machinery.**

7. **Hilario v. United States, 854 F. Supp. 165 (1994). Rejecting constitutional challenge to 18 U.S.C. § 3176, which empowers Secretary of State to extradite United States citizens even absent a treaty obligation to do so.**

8. **Evelyn V. v. Kings County Hosp. Ctr., 819 F. Supp. 183 (E.D.N.Y. 1993) and 965 F. Supp. 288 (E.D.N.Y. 1997). Holding that plaintiff patients who alleged inadequate care at county hospital could not sue city and state health care officials under 42 U.S.C. § 1983 for violating federal rights under various provisions of the Medicaid program.**

9. **United States v. Pitera, 795 F. Supp. 546 (E.D.N.Y. 1992). Rejecting constitutionality challenge to federal death penalty as provided in 21 U.S.C. § 848. Conviction aff'd 5 F.2d 624 (2d Cir. 1993).**

10. **United States v. Main Street Distributing, Inc., 700 F. Supp. 655 (E.D.N.Y. 1988) Rejecting constitutionality challenge to Mail Order Drug Paraphernalia Act, 21 U.S.C. § 857.**

(b) a short summary and citations for all rulings of yours that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court; and

1. **Zarvela v. Artuz, 254 F.3d 374 (2d Cir. 2001). Although state prisoner's habeas petition was not filed within one-year period provided by AEDPA, Court of Appeals reverses dismissal on timeliness grounds. Petitioner had**

earlier filed a timely petition and withdrawn it to exhaust state avenues of review. Circuit holds that district should consider staying such petitions and affording reasonable time limits to return to federal court to avoid an unduly harsh application of the statute. The Court notes that "Judge Raggi's contrary decision is entirely understandable, inasmuch as she could not have anticipated our decision calling for a properly conditioned stay in circumstances like those confronting Zarvela."

2. Spence v. Superintendent, 219 F.3d 162 (2d Cir. 2000). In this case, petitioner challenged an incarceratory sentence for robbery imposed after he was found to have violated the "no arrest" clause of his plea bargain by being arrested for another robbery of which he was subsequently acquitted. He argued that to be found in violation of the "no arrest" agreement, due process demanded a preponderance of proof rather than probable cause to believe he had committed a new crime. In the alternative, he argued that his plea agreement should be interpreted to bar further misconduct, not simply rearrest. The Court of Appeals agreed with the district court that the latter claim was defaulted, but excused the omission and ruled in petitioner's favor, thereby finding it unnecessary to reach the initial due process challenge. The district court's discussion of that challenge as well as the prohibition against applying new constitutional rules to collateral attacks on conviction is reported at 987 F. Supp. 151.

3. United States v. Troches, 208 F.3d 203 (table) (unpublished opinion at 2000 WL 268580 (2d Cir. Mar. 8, 2000). Where plea agreement provides for ten-year sentence running from a specific date, and where Bureau of Prisons refuses to credit state time served from that date, Court of Appeals holds that district court does have the authority to reduce the sentence to effect the agreement and remands for that purpose.

4. Coulter v. Chater, 172 F.3d 843 (table) (unpublished opinion at 1999 WL 236888 (2d Cir. Apr. 21, 1999)). Court of Appeals holds that in the case of a social security claimant unable to perform his past work, the agency had failed to meet its burden of showing that there were available sedentary jobs comporting with plaintiff's limitations.

5. United States v. Kingdom (U.S.A.), Inc., 157 F.3d 1333 (2d Cir. 1998). Interpreting U.S.S.G. § 7B1.1(b) to recommend against consecutive sentences for supervision violations, the Court of Appeals remands to allow the district court to clarify whether it misunderstood the guideline or consciously chose to depart from it in imposing consecutive sentences.

6. United States v. Ellis, 155 F.3d 582 (2d Cir. 1998) (table) (unpublished opinion at 1998 WL 385809 (2d Cir. 1998). Guilty plea for murder vacated because district court erred in advising defendant that she faced zero-to-life

sentence when, in fact, mandatory minimum was life imprisonment. The Court did not discuss the fact that defendant's cooperation exempted her from the mandatory minimum such that the district court could indeed have imposed any sentence from zero to life.

7. **Adams v. United States, 155 F.3d 582 (2d Cir. 1998). Court of Appeals holds that in light of AEDPA's strict limits on successive habeas petitions, district courts should no longer convert motions erroneously filed under other statutes or rules into § 2255 petitions without first affording prisoner the opportunity to withdraw.**

8. **Agard v. Portuondo, 117 F.3d 696 (2d Cir. 1997), rev'd sub nom. Portuondo v. Agard, 529 U.S. 61 (2000). In a sodomy case in which defendant testified, the prosecutor attacked his credibility by noting in summation that he had been able to hear every other witness's testimony before offering his own version of events. While the district court criticized the particular argument made, it found no constitutional violation to warrant vacating the conviction. The Court of Appeals reversed, holding that the comments infringed defendant's absolute right to be present at trial. On certiorari review, the Supreme Court reversed the Circuit and affirmed the district court, holding that the challenged argument was permissible.**

9. **United States v. Ming He, 94 F.3d 782 (2d Cir. 1996). Court of Appeals holds that defendant who chooses to cooperate with prosecution has a right to have counsel present for debriefing interviews. Without express waiver of that right, falsehoods told by defendant in debriefing session cannot be considered by district court in evaluating a § 5K1.1 departure from the sentencing guidelines. Case remanded for resentencing.**

10. **United States v. Malpiedi, 62 F.3d 465 (2d Cir. 1995). Conviction vacated because defense attorney's conflict of interest in cross-examining prosecution witness he had represented before the grand jury infringed defendant's Sixth Amendment right to counsel. Parties criticized for not bringing conflict issue to the attention of the district court before trial commenced.**

11. **United States v. Abrar, 58 F.3d 43 (2d Cir. 1995). Court of Appeals affirms conviction but remands for resentencing on supervised release, holding that district court was not empowered to order defendant's repayment of personal debts as a special condition of supervision.**

12. **Lopez v. Scully, 58 F. 3d 38 (2d Cir. 1995). Court of Appeals agrees with district court that habeas petitioner who challenged the effectiveness of his trial counsel had failed to show that he was entitled to withdraw his guilty plea. Nevertheless, it holds that his attack on counsel's competency prior to sentence created a conflict of interest such that he was entitled to a new**

sentencing proceeding with new counsel.

13. **United States v. Thomas, 54 F.3d 73 (2d Cir. 1995). Court of Appeals rejects myriad challenges to fraud conviction, but orders resentencing in light of miscalculation as to defendant's criminal history category.**

14. **United States v. Kassar, 47 F.3d 562 (2d Cir. 1995). Court of Appeals affirms conviction and sentence, but remands for district court to fix fine payment schedule, holding that this task may not be delegated to Probation Department.**

15. **United States v. Gangi, 45 F. 3d 28 (2d Cir. 1995). Court of Appeals holds that Rule 35 motion for reduction in sentence cannot be denied without affording defendant an opportunity to be heard and remands for that purpose. On remand, the district court detailed its extensive correspondence with defendant, which counsel failed to disclose to the Court of Appeals. 881 F. Supp. 820 (E.D.N.Y. 1995).**

16. **United States v. Wong, 40 F.3d 1347 (2d Cir. 1994). Upholds convictions in multi-defendant case, but vacates fines, holding that court may not fine indigent defendants on the chance they may in the future have the means to pay.**

17. **United States v. Mora, 22 F.3d 409 (2d Cir. 1994). While Court of Appeals upholds in principle a district court's ability to upwardly depart on supervised release component of a sentence, it finds that lifetime supervision for defendant committing second drug offense within two years was not reasonable.**

18. **Eatz v. DME Unit of Local Union No. 3 of IBEW, 973 F.2d 64 (2d Cir. 1992). In addressing what it described as a "close" question bordering on the "metaphysical," the Court of Appeals rules that where NLRB has declined jurisdiction over plaintiff's unfair representation claim, defendant's duty was a function of state law. Accordingly, the district court erred in not dismissing the case for lack of subject matter jurisdiction.**

19. **United States v. Lin, 962 F.2d 251 (2d Cir. 1992). Court of Appeals reverses conviction under Mail Order Drug Paraphernalia Control Act, finding that crack vials dealt by defendant were not prohibited by the Act.**

20. **Bellamy v. Cogdell, 952 F.2d 656 (2d Cir. 1991), rev'd 974 F.2d 302 (2d Cir. 1992) (en banc). Habeas petitioner supported claim of ineffective assistance of counsel by pointing to his attorney's contemporaneous assertion that he was too ill to appear at an unrelated disciplinary proceeding. The district court rejected the argument that this demonstrated per se ineffectiveness**

and, applying the two-prong test of Strickland v. Washington, denied the petition. 802 F. Supp. 760 (E.D.N.Y. 19910. The Court of Appeals reversed, finding that counsel was per se ineffective. When the case was heard en banc, the full Circuit rejected this view of per se ineffectiveness and affirmed the district court's Strickland analysis.

21. **Adkins v. Trezins, 920 F.2d 164 (2d Cir. 1990). This case raised questions as to a workman's ability to sue under various sections of New York's Labor Law for brain injuries sustained in a fall from a damaged tree being removed from developed property. The Court of Appeals affirms the district court's conclusion that no claim could be maintained under N.Y. Labor Law § 240, since that statute applied only to work performed on a building or structure. But it reverses a jury verdict in favor of plaintiff under Labor Law § 214(g), finding that the broader language of that statute did not extend to the circumstances of this particular case.**

22. **United States v. Cardenas, 917 F.2d 683 (2d Cir. 1990). The Court of Appeals affirms the incarceration portion of defendant's sentence but reverses the term of supervised release noting that drug conspiracy crime differed from substantive offenses in not providing for supervision in excess of three years.**

23. **American Airlines, Inc. v. Block, 905 F.2d 12 (2d Cir. 1990). In interpleader action brought by husband's employer, Court of Appeals uphold that part of district court's award of funds to wife that related to support arrears reduced to final judgment in state court. As to delinquent continuing payments, the district court should have abstained from exercising federal jurisdiction in deference to the state courts.**

24. **United States v. Stroud, 893 F.2d 504 (2d Cir. 1990). Reverses district court's finding that defendant's flight from arrest constituted obstruction of justice. Court of Appeals holds that more than "mere flight" is required to support enhancement under sentencing guidelines.**

c. a short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions.

1. **Webb v. Goldstein, 117 F. Supp. 2d 289 (E.D.N.Y. 2000). Holding that defendants' disclosure of prisoner's medical records to law enforcement officials did not violate constitutional rights under Fourth, Fifth, Eighth, or Fourteenth Amendments.**

2. **Richmond Boro Gun Club, Inc. v. City of New York, 896 F. Supp. 276**

(E.D.N.Y. 1995), aff'd 97 F. 3d 681 (2d Cir. 1996). Holding that New York City law criminalizing certain assault weapons was not unconstitutional.

3. **Hilario v. United States, 854 F. Supp. 165 (E.D.N.Y. 1994). Rejecting constitutionality challenge to 18 U.S.C. § 3176, which empowers Secretary of State to extradite United States citizens even absent a treaty obligation to do so.**

4. **United States v. Pitera, 795 F. Supp. 546 (E.D.N.Y. 1992), conviction aff'd 5 F.3d 624 (2d Cir. 1993). Rejecting constitutionality challenge to federal death penalty as provided in 21 U.S.C. § 848.**

5. **United States v. Main Street Distributing Inc., 700 F. Supp. 655 (E.D.N.Y. 1988). Rejecting constitutionality challenge to Mail Order Drug Paraphernalia Act, 21 U.S.C. § 857.**

I have also written scores of decisions in cases involving petitions for habeas corpus relief based on constitutional challenges to federal or state convictions. All have been affirmed with the exception of the three noted in part (b), i.e.:

1. **Spence v. Superintendent, 987 F. Supp. 151 (E.D.N.Y. 1997). After exploring the due process implications of incarcerating a defendant who breaches the "no arrest" provisions of a plea agreement but is thereafter found not guilty of committing the crime for which he was arrested, this court held that petitioner was seeking the collateral application of a "new rule" of due process, which was prohibited by Teague v. Lane. In reversing this court's denial of habeas relief, the Court of Appeals interpreted the plea agreement so as to avoid these issues. 219 F.3d 162 (2d Cir. 2000).**

2. **Agard v. Portuondo. In an unpublished oral opinion, this court ruled that defendant was not prejudiced by prosecutor's summation reference to defendant's ability to hear the testimony of all other witnesses before he himself took the stand. Although the Court of Appeals reversed, 117 F.3d 696 (2d Cir. 1997), finding that the comments violated defendant's rights to confrontation, to testify in his own defense, and to due process, this ruling was in turn reversed by the Supreme Court, Portuondo v. Agard, 529 U.S. 21 (2000), which found that the comments did not violate the Constitution.**

3. **Bellamy v. Cogdell, 802 F. Supp. 760 (E.D.N.Y. 1991). This court's rejection of a claim of per se ineffective assistance of counsel was initially reversed by the Court of Appeals, 952 F.2d 256 (2d Cir. 1991), but subsequently affirmed en banc, 974 F.2d 302 (2d Cir. 1992).**

If any of the opinions or rulings listed were in state court or were not officially reported, please provide copies of the opinions.

Not applicable.

Public Office, Political Activities and Affiliations:

1. List chronologically any public offices you have held, federal, state or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or nominations for appointed office for which were not confirmed by a state or federal legislative body.

   - **United States Attorney**
     Eastern District of New York
     Served from March to June 1986
     Appointed by Eastern District Board of Judges to fill interim vacancy

   - **Assistant United States Attorney**
     Eastern District of New York
     Served from July 1979 to March 1986
     Appointed by then U.S. Attorney (now U.S. District Judge)
     Edward R. Korman

   No unsuccessful candidacies or unconfirmed nominations.

2. 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.

Legal Career: Please answer each part separately.

(a) Describe chronologically your law practice and legal experience after graduation from law school including:

   (1) whether you served as clerk to a judge, and if so, the name for the judge, the court and dates of the period you were a clerk;

   Law Clerk to Hon. Thomas E. Fairchild
   United States Court of Appeals for the Seventh Circuit
   Served from September 1976 to September 1977

   (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 affiliated, and the nature of your affiliation with each.

1986-87	**Windels, Marx, Davies & Ives** **51 West 51st St.** **New York, N.Y. 10019** **Partner** **(the firm is now known as** **Windels, Marx, Lane & Mittendorf** **156 W. 56th St.** **New York, N.Y. 10019)**
1979-86	**United States Attorney's Office** **Eastern District of New York** **225 Cadman Plaza East** **Brooklyn, N.Y. 11201**
– 1986	**United States Attorney** **(Appointed by Board of Judges)**
– 1979-86	**Assistant U.S. Attorney**
– 1984-86	**– Chief, Special Prosecutions**
– 1982-84	**– Chief, Narcotics Section**
1977-79	**Cahill, Gordon & Reindel** **80 Pine Street** **New York, N.Y. 10005** **Associate**
1976-77	**U.S. Court of Appeals for the Seventh Circuit** **215 S. Dearborn St.** **Chicago, Ill. 60604** **Law Clerk to C.J. Thomas E. Fairchild**
Summer 1976	**Paul, Weiss, Rifkind, Wharton & Garrison** **345 Park Avenue** **New York, N.Y. 10019** **Summer Associate** **(the firm is now located at** **85 Avenue of the Americas** **New York, N.Y. 10019)**

(b) (1) Describe the general character of your law practice and indicate by date if

and when its character has changed over the years.

1987 - present:	**Federal trial judge presiding over civil and criminal cases.**
1986-87	**Civil litigation in state and federal courts.**
1979-86	**Criminal prosecution in federal court.**
1977-79	**Civil litigation in state and federal courts**
1976-77	**Federal appellate work as law clerk to Circuit Judge**

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

During my seven years in the U.S. Attorney's Office, I specialized in federal criminal law. I represented the United States in cases involving allegations of official corruption, international narcotics trafficking, economic fraud, gun trafficking, and organized crime activities. I drafted numerous affidavits in support of arrest warrants, search warrants, and orders to permit electronic surveillance. I tried nineteen criminal cases to verdict and handled any and all appeals resulting therefrom. Between 1982 and 1986, I supervised other lawyers representing the United States and participated in policy making regarding the United States' litigation posture in the Eastern District of New York. I also handled a number of international extraditions.

My civil experience involved the representation of corporate and individual clients in federal and state litigation. Among the subjects at issue were Title VII claims, trademark infringement, breaches of contract, and libel and slander.

(c) (1) Describe whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe each such variance, providing dates.

Frequently.

(2) Indicate the percentage of these appearances in

(A) federal courts;

95%

(B) state courts of record;

5%

(C) other courts.

0

(3) Indicate the percentage of these appearances in:

(A) civil proceedings;

10%

(B) criminal proceedings.

90%

(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.

As an attorney, I tried nineteen federal criminal cases to jury verdict. On thirteen, I was sole counsel. On six, I was chief counsel.

(5) Indicate the percentage of these trials that were decided by a jury.

100%.

(d) Describe your practice, if any, before the United States Supreme Court. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the U.S. Supreme Court in connection with your practice.

None.

(e) Describe legal services that you have provided to disadvantaged persons or on a *pro bono* basis, and list specific examples of such service and the amount of time devoted to each.

While in private practice, I did *pro bono* work for the City of New York, which was then in the midst of an acute fiscal crisis. I wrote a number of appellate briefs for the Manhattan District Attorney's office in criminal cases and prepared a civil personal injury case for trial.

19. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handied, and for each provide the date of representation, the name of the court, 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. In addition, please provide the following:

(b) the citations, if the cases were reported, and the docket number and date if unreported;

(c) a detailed summary of the substance of each case outlining briefly the factual and legal issues involved;

(d) the party or parties whom you represented; and

(e) describe in detail the nature of your participation in the litigation and the final disposition of the case.

The following matters all predate my 1987 appointment as a federal district judge.

1. **Case:** **In the Matter of the Estate of Margaret de Lorraine**
   Date: **1986-87**
   Court: **Surrogate's Court - Manhattan – Surrogate Marie Lambert (now deceased)**
   Citation: **None**

   Co-Counsel: **Paul Windels, Jr.**
   Windels, Marx, Lane & Mittendorf
   156 W. 56th St.
   New York, N.Y. 10019
   (212) 237-1000

   Opposing Counsel: **Milton Gould, Esq.**
   Shea & Gould
   (Mr. Gould is now deceased and his firm dissolved)

   Summary: This case involved the estate of Margaret de Lorraine, the eldest grandchild of John D. Rockefeller. I represented decedent's adult children from her first marriage who found themselves disinherited in favor of Count Raymondo de Lorraine, the young Chilean husband who wed decedent when she was 80 and confined to a wheel chair.

   Role: I conducted the investigation necessary to defeat various asset transfers made by decedent to her husband in the months before her death. Toward this end I located and interviewed scores of witnesses. I conducted numerous depositions, including that of decedent's husband. I drafted legal memoranda and argued various motions before the Surrogate's Court.

Disposition: I worked on this case until I became a district judge. Soon thereafter, de Lorraine was persuaded to settle the case with a substantial asset transfer to decedent's children.

2. **Case**: U.S. v. Jay Turoff
Date: 1986
Court: U.S.D.C. – E.D.N.Y. – Hon. I. Leo Glasser

Citations: U.S. v. Turoff, 853 F.2d 1037 (2d Cir. 1988);
U.S. v. Turoff, 691 F. Supp. 607 (E.D.N.Y. 1987); 652 F. Supp. 707 (E.D.N.Y. 1987)
(These decisions all provide background to this case. I did not, however, participate in briefing or oral argument since, as explained in the summary, I left the U.S. Attorney's office after indictments were returned.)

Co-Counsel: Michael Gold, Esq.
645 Madison Ave. 20th fl.
New York, N.Y. 10022
(212) 838-0699

Opposing Counsel: (As the summary indicates, I handled this case up until indictment when I left the U.S. Attorney's office. I did not deal with defense counsel in the case.)

Summary: In the three months I served as U.S. Attorney, I directed a major corruption investigation involving the New York City Taxi and Limousine Commission, its Chairman Jay Turoff, and the HYFIN credit union, the third largest in New York State. Evidence was developed showing that HYFIN, which ironically stood for "Help Your Friend In Need," agreed to help Turoff and various of his associates conceal taxable income in exchange for confidential Commission information. HYFIN also participated in a kick-back scheme in connection with the development and financing of an electronic taxi meter. When various targets learned of the investigation, they endeavored to destroy computerized banking records. That conduct, coupled with the discovery that credit union loans were inadequately collateralized prompted federal authorities to close down the credit union.

Role: I handled all aspects of this fast-paced investigation, including the development of key insider witnesses, the procurement of search warrants for both Commission and credit union offices, and the ultimate decision to close down HYFIN credit union. Indictments were procured in the days immediately before I left the U.S. Attorney's office.

Disposition: In the short time I handled the case, the U.S. Attorney's office secured the cooperation of key insiders at HYFIN, including its treasurer, Edmond Lee, who pleaded guilty to his leading role in the scheme. We also procured an indictment against Jay Turoff, who would later be convicted at trial. Over the next several years, the U.S. Attorney's office successfully prosecuted numerous other persons involved in the criminal scheme. Meanwhile the Civil Division and state and federal banking authorities tried to recover monies improperly diverted from credit union customers or government authorities.

3. **Case:** U.S. v. Craig Arthur Leitner
Date: 1986
Court: U.S.D.C. - E.D.N.Y. – Hon. Eugene H. Nickerson (now deceased)
U.S.C.A. - Second Circuit

Citations: U.S. v. Leitner, 784 F.2d 159 (2d Cir. 1986)

Opposing Counsel: Stanley Lupkin, Esq.
Decision Strategies
505 Park Avenue, 7th Fl.
New York, N.Y. 10022
(212) 935-4040

Jack Litman, Esq.
Litman, Asche & Gioiella
45 Broadway Atrium – 30th Fl.
New York, N.Y. 10006
(212) 809-4500

Summary: The State of Israel sought the extradition of U.S. citizen Craig Arthur Leitner to stand trial for alleged terrorist acts against members of the Arab community in Israel. Israel considered it important to show the world that the rule of law would be applied evenly whether terrorist acts were committed by Jews against Arabs or Arabs against Jews. Leitner had, in fact, been arrested in Israel in 1984 but had managed to flee.

Role: In this, as in all subsequently listed cases, I represented the United States. I argued the question of bail orally before the Magistrate Judge, the district court, and the Court of Appeals. I drafted the government's papers in support of extradition.

Disposition: The Court of Appeals upheld Leitner's detention without bail.

Ultimately, he consented to return to Israel.

3. **Case:** U.S. v. Martin Light
Date: 1984-85
Court: U.S.D.C. - E.D.N.Y. – Hon. Eugene H. Nickerson
U.S.C.A. - Second Circuit

Citations: U.S. v. Light, 599 F. Supp. 874 (E.D.N.Y. 1984), aff'd without opinion, dkt. No. 94-1073 (2d Cir. 1985).

Opposing Counsel: Frank A. Lopez, Esq.
20 Vesey St., Suite 310
New York, N.Y. 10007
(212) 964-2121

Summary: Martin Light, an active criminal defense lawyer, was convicted of heroin trafficking between the Middle East and New York in a ring that involved various former clients. After a sentencing hearing at which evidence was adduced of Light's involvement in or encouragement of other criminal conduct, including murder, obstruction of justice, perjury, cocaine dealing, and robbery, the district court imposed the maximum sentence of fifteen years. Light had been indicted twice before, in state court for attempted bribery of a police officer, and in federal court for bank fraud. He won acquittals both times. After his heroin conviction, Light proffered cooperation to the President's Commission on Organized Crime regarding the role some lawyers play in organized crime families.

Role: I handled all aspects of this case for the United States, from advising federal agents as to the controlled delivery that led to Light's arrest, to presenting the case to the grand jury, trying the case to verdict, presenting evidence at the sentencing hearing, and arguing the appeal before the Second Circuit.

Disposition: Light was convicted on one count and acquitted on two others. The district court imposed the maximum sentence under the law. The Court of Appeals affirmed.

4. **Case:** U.S. v. Michele Sindona, et al.
U.S. v. Rocco Messina, et al.
Date: 1983-84
Court: U.S.D.C. - E.D.N.Y. – Hon. I. Leo Glasser
U.S.C.A. - Second Circuit

Citations: **U.S. v. Messina, 566 F. Supp. 740 (E.D.N.Y. 1983); Messina v. U.S., 728 F.2d 77 (2d Cir. 1984); Matter of Sindona, 584 F. Supp. 1437 (E.D.N.Y. 1984), aff'd without opinion, dkt. No. 84-2172 (2d Cir. 1984).**

Co-counsel: **Victor J. Rocco, Esq.**
Heller & Ehrman
711 Fifth Avenue
New York, N.Y. 10022
(212) 832-8300

Opposing counsel:

1. **Andrew J. Maloney, Esq.**
   Kramer & Levin
   919 Third Avenue
   New York, N.Y. 10022
   (212) 715-9100
   (for Michele Sindona)

2. **Jeffrey Weisenfeld, Esq.**
   Paul A. Goldberger, Esq.
   401 Broadway
   New York, N.Y.
   (212) 925-8640
   (for Robert Venetucci)

3. **Louis M. Freeman, Esq.**
   101 E. 52 St. 9th fl.
   New York, N.Y.
   (212) 608-0808
   (for William Arico and Charles Arico)

4. **Kenneth A. Reiver, Esq.**
   123 Grove Avenue, Rm. 109
   Cedarhurst, N.Y.
   (516) 374-0808
   (for Rocco Messina)

Summary: These extraditions to Italy involved murder and extortion charges in that country stemming from a campaign of intimidation and terrorism directed against various persons involved in the investigation of Michele Sindona's collapsed financial empire. The most serious and tragic act in furtherance of this campaign was the murder of Giorgio Ambrosoli outside his Milan home on the very day he had given a disposition for the Southern District of New York against Sindona. Then Attorney General William French Smith gave Italian authorities his personal assurance of U.S.

cooperation in the case.

A successful extradition requires the foreign country to produce sufficient evidence to establish probable cause that the accused committed the crimes for which extradition is sought. This was a difficult concept for some in the Italian government to understand. They saw the Fourth Amendment probable cause requirement as an insult to their own legal system. After numerous discussions on this point and months of close joint investigative work, sufficient evidence was adduced to obtain successful extradition rulings in the U.S. courts.

Role: I worked closely with Italian authorities to develop evidence sufficient to support extradition demands for five individuals. I represented the United States at the extradition hearings in district court and argued the appeals to the Second Circuit. I drafted various memoranda of law for the district court and the United States' brief on appeal.

Disposition: Rocco Messina, Charles Arico, Robert Venetucci, and Michele Sindona were all ordered extradited by the district court. The case was dismissed against William Arico after his death in an escape attempt from the Metropolitan Correction Center. The Court of Appeals affirmed as to Messina, Arico, and Venetucci. Sindona chose not to appeal.

6. **Case:** U.S. v. Mohammed Khan
Date: 1983-84
Court: U.S.D.C. - E.D.N.Y. – Hon. Charles P. Sifton
U.S.C.A. - Second Circuit

Citation: Aff'd without opinion, dkt. No. 84-1118 (2d Cir. 1984).

Opposing Counsel: Marion Seltzer, Esq.
1725 York Ave., Suite 16A
New York, N.Y.
(212) 289-8798

Summary: This case involved the importation of a significant quantity of heroin from India. The actual courier of the heroin pleaded guilty, but refused to comply with a court order requiring him to testify as to his confederates. The government put on a circumstantial case that the ringleader was in fact Mohammed Khan. The dramatic increase in the quantity and quality of heroin then entering New York from the Indian subcontinent made vigorous prosecution important.

Role: As Chief of Narcotics, I took over the case for trial when the Assistant U.S. attorney in my unit to whom it was originally assigned found herself committed to two trials on the same date. In addition to trying the case, I drafted the United States' brief on appeal and argued before the Second Circuit.

Disposition: Khan was convicted by a jury on all counts. The Court of Appeals affirmed.

7. **Case**: U.S. v. Fortunato Inzone
Date: 1983
Court: U.S.D.C. - E.D.N.Y. – Hon. Edward R. Neaher (now deceased)
U.S.C.A. - Second Circuit

Citation: Aff'd without opinion, dkt. No. 84-0401 (2d Cir. 1984)

Co-counsel: Mark A. Summers, Esq.
Florida Coastal School of Law
7555 Beach Boulevard
Jacksonville, Fla.
(904) 680-7751
(Although not co-counsel at the Inzone trial, Mr. Summers had developed much of the evidence in the case and had tried other defendants charged in the indictment.)

Opposing Counsel: Michael Querques, Esq.
433 Central Ave.
Orange, N.J.
(201) 673-1400

Summary: In 1979, a multi-kilogram shipment of heroin was discovered concealed in baby powder containers at the Alitalia cargo facility at John F. Kennedy Airport. Months of investigation exposed a ring of organized crime linked importers who had re-established a Palermo, Sicily to New York connection. Inzone was one of these importers. He fled shortly after indictment and, thus, was tried only after several years as a fugitive.

Role: I tried the case to a jury, drafted the United States' brief on appeal, and argued before the Court of Appeals.

Disposition: Inzone was found guilty on all counts and sentenced to fifteen years' incarceration. The Court of Appeals affirmed.

8. **Case:** U.S. v. Frederick W. Richmond
Date: 1982
Court: U.S.D.C. - E.D.N.Y. – Hon. Joseph R. McLaughlin
Hon. Jack B. Weinstein
U.S.C.A. - Second Circuit

Citation: In re Grand Jury Subpoenas Dated December 18, 1981 and January 4, 1982, 561 F. Supp. 1247 (E.D.N.Y. 1982).

Co-Counsel: Francis Murray, Esq.
100 Merrick Rd., Suite 514-W
Rockville Centre, N.Y.
(212) 921-9500

Opposing Counsel: Kalman V. Gallop, Esq. (no longer practicing law)

Samuel Dawson, Esq. (now deceased)
305 Madison Avenue
New York, N.Y. 10165
(212) 922-1080

Summary: Congressman Frederick W. Richmond, who represented Brooklyn's 14th Congressional District was investigated in connection with a series of criminal allegations, many of which related to the use of his office. For example, Richmond was alleged to have continued to run his former corporation in violation of House rules and to have made perjurious statements to the contrary on Congressional documents. He was alleged to have paid a naval employee in exchange for assistance with Brooklyn Navy Yard projects. He purportedly used his staff members to obtain drugs for him. He was believed to have obtained employment on the House payroll for an escaped felon under an assumed name.

Role: My role on the investigative team was to respond to all written motions in the hard-fought grand jury phase of the case. I drafted numerous memoranda and briefs for the district court and the Court of Appeals and argued orally before those courts.

Disposition: Richmond raised various privileges to avoid compliance with grand jury supoenas, including the attorney-client privilege, the privilege against self-incrimination and the Speech and Debate Clause. He lost all such arguments. One appeal was still pending before the Second Circuit when Richmond pleaded guilty to a three-count indictment and resigned his office.

9. **Case:** U.S. v. Vincent Beltempo, et al.
Date: 1981-82
Court: U.S.D.C. - E.D.N.Y. – Hon. Jacob Mishler
U.S.C.A. - Second Circuit

Citations: U.S. v. Beltempo, 675 F.2d 472 (2d Cir. 1982);
Walberg v. U.S., 763 F.2d 143 (2d Cir. 1985)

Co-counsel: Richard Appleby, Esq.

Opposing Counsel:

1. Gustave H. Newman, Esq.
950 Third Ave. 32 fl.
New York, N.Y.
(212) 308-7900
(for Vincent Beltempo)

2. Ivan S. Fisher, Esq.
251 E. 61 St.
New York, N.Y.
(212) 486-0001
(for Barbara Waldberg)

3. James A. Druker, Esq.
1325 Franklin Ave., Suite 225
Garden City, N.Y.
(516) 746-4300
(for Giuseppe Gallina)

4. Emanuel Moore, Esq.
119-29 80th Rd.
Kew Gardens, N.Y. 11415
(718) 261-7695
(for Giuseppe Aiello)

Summary: This case involved an organized crime linked heroin importation ring that operated between Sicily and New York. Between January and February 1981, it imported over 40 pounds of heroin through John F. Kennedy Airport. A courier for the group exposed its members, the scope of the operation, and its importation techniques. Involved were a number of individuals long suspected as major narcotics violators who had previously avoided prosecution. Travel records and Swiss banking documents were important to proving defendants' guilt.

Role: I handled this case from its inception, presenting evidence to the grand jury, trying the case to verdict, and drafting legal memoranda and briefs for

the district court and Court of Appeals.

Disposition: Three of the four defendants tried were found guilty on all counts. One was acquitted. A number of others entered guilty pleas. The Court of Appeals affirmed all conviction.

10. **Case:** **U.S. v. Angelo Randazzo, et al.**
Date: **1981-82**
Court: **U.S.D.C. - E.D.N.Y. – Hon. Mark A. Costantino (now deceased)**
U.S.C.A. - Second Circuit

Citation: **Aff'd without opinion, dkt. no. 82-1002 (2d Cir. 1982)**

Opposing Counsel: **John Iannuzzi, Esq.**
233 Broadway
New York, N.Y.
(212) 227-9595

Michael Pollack, Esq.
1370 Avenue of the Americas
New York, N.Y.
(212) 888-3400

Summary: Angelo Randazo was an organized crime linked heroin importer who had been convicted in the 1970s for orchestrating the transportation of heroin from Sicily to New York. He was given early parole because of his own and his child's poor health. Within weeks of his release, he devised a scheme to get back in the heroin business through a Far East connection. His involvement would have been impossible to prove but for admissions he made to a courier who consensually recorded the conversation.

Role: I handled the case from its inception, presenting evidence to the grand jury, trying the case to verdict, and drafting memoranda and briefs for the district court and Court of Appeals.

Disposition: The two defendants who went to trial were convicted on all counts. A third pleaded guilty. Randazzo was sentenced to twenty-five years' incarceration. The Court of Appeals affirmed.

20. **Criminal History**: State whether you have ever been convicted of a crime, within ten years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and

disposition and describe the particulars of the offense.

No.

21. **Party to Civil or Administrative Proceedings**: State whether you, or any business of which you are or were an officer, have ever been a party or otherwise involved as a party in any civil or administrative proceeding, within ten years of your nomination, that is reflected in a record available to the public. If so, please describe in detail the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings in which you were a guardian *ad litem*, stakeholder, or material witness.

I have never been involved in any civil or administrative proceeding as a private person. Like most federal judges, I have been sued by disgruntled litigants. All such cases have been dismissed before discovery on grounds of judicial immunity.

22. **Potential Conflict of Interest**: 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 expect to resolve any conflict of interest by adhering strictly to the provisions of 28 U.S.C. § 455. Any question as to whether there is or is not a conflict in a particular matter will be resolved in favor of disqualification. As a district court judge, I already follow procedures established by the Judicial Conference and my court for checking -- both electronically and manually -- a "conflict list" of persons and entities against all case assignments. These conflicts generally relate to my family's financial holdings and my husband's law practice.

23. **Outside Commitments During Court Service**: Do you have any plans, commitments, or arrangements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

24. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding the nomination, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500. 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 attached.

25. **Statement of Net Worth**: Complete and attach the financial net worth statement in

detail. Add schedules as called for.

Net worth statement attached.

26. **Selection Process**: Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?

(a) If so, did it recommend your nomination?

I am unaware of any judicial commission in the Second Circuit that recommends candidates for nomination to the Court of Appeals. Various bar associations may express opinions once a candidate is actually proposed to the Senate.

(b) Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.

In the fall of 2001, I was contacted by a member of the White House counsel's staff and invited to Washington to discuss a possible future vacancy on the Second Circuit. In Washington, I was interviewed first by Judge Gonzales and then by his Chief Deputy Timothy Flanigan. Other members of counsel's staff were present as well as Assistant Attorney General for Legal Policy Viet Dinh.

In November 2001, the Justice Department asked me to fill out various forms detailing my personal, educational, and professional background.

On May 1, 2002, the President formally nominated me to the Second Circuit.

(c) 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 or seeking a commitment as to how you would rule on such case, issue, or question? If so, please explain fully.

No.

AO-10 (w)
Rev. 1/2002

FINANCIAL DISCLOSURE REPORT
Nomination Report

Report required by the Ethics in Government Act of 1978, as amend. (5 U.S.C. App. Sec. 101-111)

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Repo
RAGGI, REENA	U.S. COURT OF APPEALS, 2nd CIR	05/03/2002
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**
UNITED STATES CIRCUIT JUDGE	X Nomination, Date 05/01/2002 ___ Initial ___ Annual ___ Final	01/01/2001 to 04/30/2002
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. Courthouse 225 Cadman Plaza East Brooklyn, NY 11201	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)
[ ]	NONE (No reportable non-investment income.)		
1	Annual	(S) Citigroup salary	
2	Annual	(S) Self-employment income from legal and consulting practice	
3			
4			

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	RAGGI, REENA	05/03/2002

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

(Includes those to spouse and dependent children. See pp. 25-27 of Instructions.)

	SOURCE (No such reportable reimbursements.)	DESCRIPTION
☐ NONE		
1	Exempt	
2		
3		
4		
5		
6		
7		

V. GIFTS

(Includes those to spouse and dependent children. See pp. 28-31 of Instructions.)

	SOURCE (No such reportable gifts.)	DESCRIPTION	VALUE
☒ NONE			
1			
2			
3			

VI. LIABILITIES

(Includes those of spouse and dependent children. See pp 32-33 of Instructions.)

	CREDITOR (No reportable liabilities.)	DESCRIPTION	VALUE CC
☒ NONE			
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: RAGGI, REENA | Date of Report: 05/03/2002

VII. Page 1 INVESTMENTS and TRUSTS– income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

A. Description of Assets (including trust assets) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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 CITIBANK ACCOUNTS	D	Interest	M	T					
2 BROKERAGE ACCOUNT NO. 1:									
3 - Money Market Fund	A	Interest	J	T					
4 - Citigroup Common	C	Dividend	N	T					
5 BROKERAGE ACCOUNT NO. 2:									
6 - Money Market Fund	A	Interest	J	T					
7 - Citigroup Common	C	Dividend	M	T					
8 BROKERAGE ACCOUNT NO. 3:									
9 - Money Market Fund	B	Interest	M	T					
10 - Citigroup Common	C	Dividend	N	T					
11 - NYS Dorm. Auth. Zero Bonds		None	K	T					
12 - NYC Gen. Obl. Zero Bonds		None	K	T					
13 BROKERAGE ACCOUNT NO. 4:									
14 - Money Market Fund	B	Interest	L	T					
15 - DTE Energy Common	B	Dividend	K	T					
16 IRA ACCOUNT NO. 1:	A	Interest	L	T					
17 - Money Market Fund									

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: RAGGI, REENA | Date of Report: 05/03/2002

VII. Page 2 INVESTMENTS and TRUSTS– income, value, transactions *(Includes those of spouse and dependent children. See pp. 54-57 of Instructions.)*

A. Description of Assets (including trust assets) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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 - Treasury Zeroes									
19 IRA ACCOUNT NO. 2:	C	Interest	M	T					
20 - Money Market Fund									
21 Citigroup 401K Plan	A	Div. & Int.	M	T					
22 NY College Savings Acct. R	B	Interest	K	T					
23 NY College Savings Acct. D	B	Interest	K	T					
24 Greenwich St. Employees Fund	C	Div. & Int.	L	U					
25 Keogh Plan (Money Market)			J	T					See Part VIII.
26 Charles Schwab Money Market Funds	A	Interest							See Part VIII.
27 CHARLES SCHWAB (IRA)	A	Div. & Int.							See Part VIII.
28 - Money Market Fund									See Part VIII.
29 - Strong Short Term Hi-Yield Bond Func									See Part VIII.
30 Strong Advantage Fund	A	Dividend							See Part VIII.
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

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	RAGGI, REENA	05/03/2002

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

Part VII:

Asset shown in Line 25 was funded in 2002 and therefore shows no income for calendar year 2001 but had a value under $15,000 as of 4/30/02.

Assets shown in Lines 26 to 30 had income over $200 during 2001 but were closed or transferred to other accounts during 2001, and therefore show no value as of 4/30/02.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	RAGGI, REENA	05/03/2002

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 Reena Raggi Date May 3, 2002

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.

VALUED AS OF 5/1/02

ASSETS		LIABILITIES	
Cash on hand and in banks	489,497	Notes payable to banks-secured	-
U.S. Government securities-add schedule	822*	Notes payable to banks-unsecured	-
Listed securities-add schedule	172,282	Notes payable to relatives	-
Unlisted securities--add schedule	54,373	Notes payable to others	-
Accounts and notes receivable:		Accounts and bills due	-
Due from relatives and friends	-	Unpaid income tax	-
Due from others	15,460	Other unpaid income and interest	-
Doubtful	-	Real estate mortgages payable-add schedule	-
Real estate owned-add schedule	700,000	Chattel mortgages and other liens payable	-
Real estate mortgages receivable	-	Other debts-itemize:	-
Autos and other personal property	50,000		
Cash value-life insurance	-		
Other assets itemize:			
IRA ACCOUNTS	231,445		
401(K) & KEOGH PLANS	220,720		
PENSION PLAN	150,000	Total liabilities	-
NY COLLEGE SAVINGS PLANS	42,796	Net Worth	2,827,755
Total Assets	2,827,755	Total liabilities and net worth	2,827,755
CONTINGENT LIABILITIES		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	-		

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY, UNITED STATES SENATE

AFFIDAVIT

I, REENA RAGGI, being duly sworn, hereby state that I have read and signed the foregoing Questionnaire for Nominees Before the Committee on the Judiciary and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

Reena Raggi

SUBSCRIBED AND SWORN TO before me this 3rd day of May, 2002.

Catherine A. Wolff
Notary Public

CATHERINE A. WOLFF
NOTARY PUBLIC, State of New York
No. 02WO6020481
Qualified in Kings County
Commission Expires March 1, 2003

If all three of you wouldn't mind standing for the oath and if you would raise your right hand, do you solemnly swear that the testimony you are about to give is the truth, the whole truth and nothing but the truth, so help you God?

Judge GARDNER. I do.

Mr. CLARK. I do.

Mr. BLOCK. I do.

Senator DURBIN. Thank you very much. The record will reflect that all three nominees answered in the affirmative.

Before introducing them, I would like to defer to my colleague from Pennsylvania, Senator Specter, if he has any opening statement.

PRESENTATION OF JAMES K. GARDNER, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA BY HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Thank you very much, Mr. Chairman. I am delighted to see this distinguished group of nominees here today. I would like to comment especially about a distinguished Pennsylvanian, Judge James Gardner, who comes to the nomination process with a very, very distinguished record.

Judge Gardner is a graduate of Yale University, magna cum laude. He has his law degree from Harvard Law School. So he would take the comment of President Kennedy, who received an honorary degree from Yale and said he had the best of both worlds—a Yale degree and a Harvard education. Judge Gardner has the best of both worlds both ways, has a Yale degree and a Harvard degree and an education from both of the schools.

He served in the Judge Advocate General Corps of the United States Navy Reserve. He served on active duty for three years. He has been an assistant district attorney and First Assistant District Attorney of Lehigh County from 1972 to 1981, and he has been a judge of the Court of Common Pleas of Lehigh County, a very populace county in Pennsylvania—it has Allentown in it—and is President Judge at the present time.

I have gotten to know Judge Gardner over the years and have seen his excellent work on the bench and his high character. He was recommended to Senator Santorum and myself by our bipartisan nominating committee, and he has been, of course, nominated by the President and gone through very rigorous examination and I think will make an outstanding jurist on the United States District Court for the Eastern District of Pennsylvania.

So while I welcome all of the nominees here today, I give a special word of welcome to Judge James Knoll Gardner.

Thank you, Mr. Chairman.

Senator DURBIN. Thank you very much, Senator Specter.

Let me begin with you, Judge Gardner, if I might. Would you like to introduce any of your family members or friends who have joined you today?

STATEMENT OF JAMES KNOLL GARDNER, OF PENNSYLVANIA, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Judge GARDNER. Thank you, Mr. Chairman. I would like to introduce my wife, Linda Gardner, and one of my daughters, Stephanie Gardner, who is junior in high school; my secretary of 25 years in law practice and on the bench, Cheryl Sinclair; my law clerk, Mike Daigle, a member of the Pennsylvania, New Jersey, and New York bars.

My daughter, Victoria Gardner, can't be with us. She is in Spoleto, Italy, singing at an opera festival as we speak. She is a Senior at Yale University. My daughter, Andrea Merrill, is in Rochester, where she just bought a home with her husband, Paul, and is about to enter a doctorate degree program in piano at Eastman Music School. My daughter, Christine, and her husband, Christopher, and my granddaughter, 2-year-old Alexis, are at home in Allentown, where Christine is a social worker.

I am very proud of my family and I am very proud of being here.

Senator DURBIN. Well, we are happy to have you here. It sounds like you have had a life with great musical accompaniment. At this point, would you like to make an opening statement?

Judge GARDNER. I don't have a formal opening statement, Mr. Chairman, other than to thank you all for affording me and my colleagues today the opportunity for this hearing. And I am willing, of course, to answer any questions you may have.

Senator DURBIN. Thank you very much.

Let me at this point make the same offer to Ron Clark, from Texas, if you would be kind enough to introduce family and friends who have joined you today, and then you have an opportunity for your own opening statement.

STATEMENT OF RONALD H. CLARK, OF TEXAS, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF TEXAS

Mr. CLARK. Thank you, Mr. Chairman. I would like to introduce my mother, Catherine Clark, from Green Valley, Arizona, where she serves on the elected board there, and my aunt, Julia Plotnick, from New Jersey, recently retired as an admiral from the Public Health Service; also, my brother-in-law, Colonel John Long, stationed at the Pentagon right now, and his son, my nephew, William Long, who attends school in Annandale.

I would like to thank you very much, Mr. Chairman and Senator Hatch and, of course, the staff members, for affording us this opportunity to be here, as you say, just before you adjourn. I understand the pressure to adjourn.

Senator DURBIN. Thank you very much. Do you have an opening statement that you would like to make?

Mr. CLARK. I think I just made it, Mr. Chairman.

Senator DURBIN. Perhaps I would allow Senator Hatch to introduce the next nominee.

PRESENTATION OF LAWRENCE J. BLOCK, NOMINEE TO BE JUDGE FOR THE UNITED STATES COURT OF FEDERAL CLAIMS BY HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Senator HATCH. Well, I am not going to take a lot time, but Larry Block has served this committee very well. I am very proud to have had him for all these years working so hard. He has been a major counsel on this committee for a long time and has worked with all of us. We all know him. He has an excellent academic record, an excellent record in working in Government and, of course, has an excellent record around here.

So we are just pleased to have you nominated and finally have this hearing, Larry.

I will put the rest of my remarks in the record.

Senator DURBIN. Thank you, Senator Hatch.

Mr. Block, you couldn't have a stronger friend than Senator Hatch. I can say that because my arm is still hurting from being twisted to move quickly; let's get this moving. We are today, and we are happy to, and at this point invite you to introduce family and friends and make an opening statement.

STATEMENT OF LAWRENCE J. BLOCK, OF VIRGINIA, NOMINEE TO BE JUDGE FOR THE UNITED STATES COURT OF FEDERAL CLAIMS

Mr. BLOCK. Thank you, Mr. Chairman. It was my great hope to have my mother, Eve Silver, here. My mother is a refugee from Nazi Germany and she came here to this great country in 1938. Unfortunately, she was just too ill to come down here.

My brother, Lee Syrkin, is a cardiologist in North Carolina, and unfortunately his patients demand his attention today. My sister, Lynn Zymet, Jersey, in the New York area, could not be here today.

But I am not without family because I have my Senate family here, and friends I would like to introduce. I asked Trish Knight to sit behind me. She was behind me. She still is. Good. She represents the Hatch family and she represents all my friends here.

I had the opportunity to work a little bit in the Reagan, Bush 1 and Clinton administrations. I have friends these administration and Bush 2 here, and I want to thank all the staffers, Democrat and Republican, whom I have worked with over the last nine years. So that is my surrogate family.

Senator DURBIN. Thank you, and would you like to make any statement beyond that?

Mr. BLOCK. I would love to thank the committee and the chairman for scheduling this hearing and for you chairing it. Above all, I would like to thank Senator Hatch, who over the past about nine years has been a mentor and a friend, and has shown me that integrity and honesty and love is very important in public life.

Senator DURBIN. Thank you very much.

Since we are considering nominees for the Federal district court as well as the Court of Federal Claims, perhaps the questioning will be a little different for the nominees, but I would like to start, if I could, with Judge Gardner and Representative Clark and a question relative to an issue which is in the headlines constantly.

It is the issue of equal justice in this country, particularly the issue of racial profiling, and concerns that have been expressed both in this committee as well as in the media about whether our system of justice is indeed fair and color-blind in terms of the administration of justice.

The statistics are sobering concerning the incarceration of people of color in our Nation. For example, it is, I think, well known and established that when it comes to the African American population, it represents about 12 percent of our population and according to Federal statistics about 11 percent of current drug users, and yet 35 percent of those arrested for drug violations are African American. Fifty-three percent of those convicted for drug felonies are African American, and 58 percent of those currently incarcerated in State prisons for drug felons are African American—by most measures, a disproportionate share of those who are being punished from those who are actually thought to have violated the law.

In administering justice in this country, we have to maintain the belief, the honest, sincere and real belief, that this system is fair. Tell me, as judges considering this situation, what you believe is your responsibility in the administration of justice to make certain that it is fair for all groups in this country, regardless of color, creed, or ethnic origin.

Judge Gardner?

Judge GARDNER. Well, I think you have said it, Mr. Chairman. My responsibility as a judge is to treat everyone who comes into my courtroom, regardless of station in life, regardless of race, color, creed, national origin, gender, sexual preference, equally, on a level playing field.

I pride myself that in 21 years as a trial judge, and in some 8 or 9 years as a military court martial judge and a military appeals judge, that I have done that. And that hasn't been difficult for me to do; that comes naturally for me.

And in terms of the concerns that you mention, if the statistics are not in conformity to the population percentages of a particular group, then, of course, we have to look at it to make sure that this is not representing some inappropriate arresting, selective prosecuting, or some kind of bias in sentencing, and that it isn't explained by other factors such as more people being arrested legitimately for those crimes. But either way, the job of the judge is to deal fairly and even-handedly with everyone.

Senator DURBIN. My State statistics are even worse than those of your state of Pennsylvania, but there was a recent report that the rate of incarceration of African Americans in Pennsylvania is 14 times that of white Americans.

What do you think we should do affirmatively to convince African Americans and other people of color that this system is not profiling, that this system is, in fact, color-blind?

Judge GARDNER. Lead by example, state openly that we abhor any kind of discrimination in any level of society, including the judicial and legal profession, and walk the walk and talk the talk.

Senator DURBIN. Mr. Clark, would you comment on the same questions?

Mr. CLARK. I think it is very important that we not only have a system that is just and fair, but it has to be perceived to be just

and fair. And you are exactly right. There is a large portion of our population that right now does not perceive it that way. I know that in my district and I know that in my area that there is a perception among many African Americans that the system is not fair to them, and I think a judge has a responsibility to work to do that.

At a political level, you can try to single out any prosecutor, elected prosecutors, who are not being fair and try to eliminate them through the electoral process. As a judge, you have the opportunity to, if you will, make sure that the person you perceive as being disadvantaged has the scales tilted to level that playing field for them.

Senator DURBIN. One of the areas that comes up frequently is the question of competent counsel when it comes to the defense of those charged with crimes. It has been dramatized in this committee particularly in our debate over the death penalty.

Certainly, we can understand that in capital cases competent counsel should be sitting at both tables in the courtroom. But clearly there are many people who may not be sentenced to life imprisonment or face a death penalty who may still spend a huge number of years in jail because of the incompetency of counsel.

What obligation do you feel that we have as a Nation when it comes to holding our system to the standard of establishing that competent counsel will be present in the courtroom?

Mr. CLARK. Well, I think both legislatively and judicially you ought to be sure that the people being appointed especially on major cases, but even on some of the minor ones, are competent. We recently passed a statute in Texas to try to ensure that only people with death penalty experience got appointed to death penalty cases, and then they could have an assistant who perhaps had not previously tried a death penalty case. That would be a way for that person to get experience and it would give the older attorney someone to help. Many of our local judges have had that procedure for years before that statute was in. At least in my area they did, and I think that is an important thing.

I have prosecuted criminal cases and I have defended criminal cases and I am aware of the imbalance of power between the prosecution and defense, and I have always felt it needs to be leveled out.

Senator DURBIN. Let me ask you this, Judge Gardner, on a related issue about mandatory minimum sentencing. I can tell you as a person who served in the House and the Senate on Capitol Hill, and I am sure those in State legislatures can affirm it is a popular vote to establish mandatory minimum sentences for certain crimes, to basically say that the judge won't have discretion, will not have flexibility when it comes to sentencing.

I think we are learning that we have gone too far in some areas. I have visited Federal prisons in my own State, particularly penitentiaries for women, where you see people spending an inordinate amount of the rest of their lives in these prison situations. And as you hear about the cases, it appears that their devotion to a boyfriend, who was not a particularly good individual, ended up being repaid by the boyfriend ratting them out and subjecting them to mandatory minimum sentences on drug crimes. That is happening more and more frequently.

What is your theory or philosophy when it comes to mandatory minimum sentencing?

Judge GARDNER. Well, as a trial judge, of course, it is necessary and appropriate for me to follow the sentence guidelines and to apply the mandatory sentences. I have no choice. It is the legislature's duty to set those policies and it is my duty to carry them out, whether I agree with them or not.

Most trial judges will tell you, and I am no exception, that anything that takes away sentencing discretion from the judges in that scenario is not necessarily a good thing. But it is also appropriate that we don't have sentencing all over the lot, and so to have certain standards and guidelines is helpful to even out appropriate punishments for appropriate crimes so that there aren't inconsistent results, on the one hand, and on the other hand to avoid sentences that are either too harsh or too lenient for the circumstances.

Having said that, we can disagree with individual minimums or individual guidelines, but it is a tradeoff. If you are going to ask for tougher sentences, then you are going to need more prisons to put these people in, and they may or may not be appropriate for long terms in prison.

Senator DURBIN. Thank you.

Mr. Clark, would you respond to that same question?

Mr. CLARK. Mr. Chairman, I think you are exactly right. It is always an easy vote going in for law and order in a legislature. But, of course, I think we need to look at the original purpose, and it was to avoid that appearance of the rich white kid getting off easy and the poor black kid getting a heavy sentence. And if you have mandatory sentencing, you get away from that.

I have been told that in some of the—I don't do a lot of criminal work now, but I have been told in some of the counties where we have elected judges that that kind of thing can happen. So the minimum mandatory sentencing of the Federal system has much to be said for it, and since it is legislatively decided, I understand that as a judge I will apply it.

Senator DURBIN. Thank you.

Senator Hatch?

Senator HATCH. I am satisfied. I have the read the history of all three of these gentlemen. I just want to congratulate each of you for the excellent lives that you have lived, the law that you have practiced, in your case the work that you have done on the court, and, of course, in Larry's case the work he has done on this committee. We are just very proud of you and pleased to be able to support you.

Senator DURBIN. Thank you, Senator Hatch.

Senator Sessions, do you have some questions of the panel?

PRESENTATION OF LAWRENCE J. BLOCK, NOMINEE TO BE JUDGE FOR UNITED STATES COURT OF FEDERAL CLAIMS BY HON. JEFF SESSIONS, A U.S. SENATOR FROM THE ALABAMA

Senator SESSIONS. Well, Mr. Chairman, I would just say likewise this is a distinguished panel, each with a fine record, and I am delighted to support each of them. I must say that I do know Law-

rence Block. He has been a tremendous asset to Senator Hatch and this committee for quite a number of years. He has had a distinguished career as a lawyer. He is respected by all of us here.

In fact, I can't think of anyone more respected who has worked around here during the time he has been here. I think he has the temperament and judgment and integrity to be a really terrific judge. I am delighted to see him be nominated.

We wish you the best of luck, Larry, and each of you, also.

Mr. BLOCK. Thank you, Senator.

Senator DURBIN. Thank you, Senator Sessions.

If I might, then, I would like to ask Mr. Block a few questions because there is an area of concern here expressed by many groups relative to the responsibility of the Court of Claims, and it particularly relates to the issue of takings and some of the statements you have made and perhaps some of the things that you have written on this issue.

I was surprised to learn that a variety of different environmental groups have written concerning your nomination, expressing concern about your reading of the so-called Takings Clause.

As you know, the Court of Federal Claims has exclusive jurisdiction over claims of $10,000 or more against the United States under the Takings Clause, and I would like to explore for a moment for the record your opinion about this particular issue.

Let me ask you, in the 1993 *Concrete Pipe* case the Supreme Court unanimously stated, and I quote, "Our cases have long established that mere diminution in the value of property, however serious, is insufficient to demonstrate a taking." They were dealing with a case that had significant diminution. They refer to two particular cases. One was a 75-percent diminution in value, another a 92.5-percent diminution.

Do you interpret that language, which cited zoning and land use cases, as the holding that would guide you in terms of your work on the Court of Claims?

Mr. BLOCK. Yes, I do, Senator. The Supreme Court has adopted a balancing test to determine—we are talking about regulatory takings here, not eminent domain cases—in terms of regulatory cases, and that is the *Penn Central* case of 1978. The *Penn Central* case has adopted a three-part test to determine what is a taking.

The other exception to that is the *Lucas* case, which says basically if virtually all value of property is taken by government, that is considered a taking. Other than that, the Court has used the balancing test to determine what is a taking, and it is a balancing test balancing three factors.

The problem with regulatory takings really started with a Justice Oliver Wendell Holmes case back in 1922, and he wrote that a mere diminution of value is not a taking. If it was, then government could hardly regulate. But somewhere along this continuum, he wrote, if the government goes too far, then it is considered a taking, and primarily the Supreme Court has adopted that balancing test to determine how far is too far. So, yes, the answer is I would follow that.

Senator DURBIN. Can you cite any Supreme Court opinion that has held that a mere diminution in value of an affected portion of property, however serious, is sufficient to demonstrate a taking,

without consideration of investment-backed expectation and other factors?

Mr. BLOCK. No, I cannot.

Senator DURBIN. Do you agree that takings legislation that would have entitled property owners to compensation merely by showing that an agency action diminished the value of an affected portion of property by a certain percentage, without consideration of investment-backed expectations and other factors—do you agree that that would be violative, then, of court precedent?

Mr. BLOCK. I understand you are referring to both the House and the Senate takings legislation which I had the honor of working on. Let me say two things. The Senate and House bills were not law then and they are not law now. My role as a staffer is to zealously advocate the position of Senator Hatch and the Senators who worked on that bill.

It is much akin to being an attorney when you zealously advocate the position of your client, but that is not the law and it is far different than being a judge. Those bills were designed to change the law and didn't represent the law then, and they were not enacted into law and they do not represent the law now.

Senator DURBIN. Well, as my staff would not like to be held accountable for my peculiar legislative views, I am sure that Senator Hatch understands that you may not want to be held accountable for his insights into the law as we know it today.

Senator HATCH. I feel confident in that statement.

Mr. BLOCK. That was a good-faith attempt to change the law.

Senator DURBIN. But the point I want to make clear for the record is that was a controversial bill that really would have expanded the concept of takings by the Government. You are asking for appointment to a court that will be considering issues relative to takings by regulation, and there is a concern by groups that you will use the standards espoused in that bill as your standard in applying the law.

Mr. BLOCK. Let me assure the committee of this: Those bills tried to put in concrete terms what a so-called partial taking was. And there were two Senate bills. One defined it by 33 percent and the other by 50 percent, so there was a concrete, bright line test of what a partial taking was. That does not exist in the law then and it does not exist in the law now.

Senator DURBIN. And for the record, your passionate advocacy for that law and that change in the law does not reflect—or let me not put words in your mouth. Does it reflect your view on the standard that you would apply as a judge on the Court of Claims?

Mr. BLOCK. It does not reflect the standard that I would apply because the Supreme Court has basically adopted a balancing test and has eschewed bright line tests.

Senator DURBIN. Let me ask you about your courtroom experience. Can you for the record tell the committee the experience that you have had to prepare yourself for this appointment?

Mr. BLOCK. Oh, yes, thank you. I had the opportunity to work in basically all three branches of Government, so I know the difference between being an advocate and working in the judicial branch.

I was a law clerk in the Federal court for Judge Miner. I served as an associate in Skadden Arps, in New York City, where I had primarily a motion practice. I joined the Department of Justice in 1986. I worked in the commercial litigation branch and appeared in front of the Court of Federal Claims, then worked in OLP.

I joined the Department of Energy and worked on environmental and energy law, and I worked on this committee and we handled all sorts of legal issues. So I am familiar with the jurisdiction of the Court of Federal Claims. Of course, as a committee staffer, I helped prepare hearings, some of which the Senator knows involved very complex issues of law.

Senator DURBIN. The last area I would like to ask you about is relative to an article that you wrote, I guess, 12 years ago in a Heritage Foundation publication and it related to the 14th Amendment.

You coauthored an article which said, and I quote, "It is distressing that many Americans, including most members of the bench and bar, look to the Bill of Rights and the 14th Amendment as the principal protection of individual rights, while overlooking the all-important safeguards contained in the structure of the Constitution itself," end of quote.

Given our Nation's historical legacy, I find your expression of distress about the prominent role of the 14th Amendment to be worrisome. Until the passage of the 14th Amendment, most African Americans were denied the right to vote and were counted as three-fifths of a person for apportionment purposes. The 14th Amendment reversed the Supreme Court's infamous *Dred Scott* decision and the 14th Amendment guaranteed equal protection of the laws.

I would like you now for the record to tell this committee your impression or your views about the role of the 14th Amendment and whether that quote from the article fairly characterizes your point of view.

Mr. BLOCK. Chairman Durbin, I agree with you a hundred percent about the importance of the 14th Amendment. We had a great Civil War, a bloody Civil War in this country. The 14th Amendment was promulgated in response to the Civil War to give people of African American descent equal rights in this country. I firmly believe in equal justice under the law and the jurisprudence under the 14th Amendment.

The article was written in the bicentennial celebration of the Bill of Rights, which was promulgated in 1791, I believe, finally passed by the States. And that article is really an article about political philosophy and it said sometimes Americans forget that the Framers intended that the primary—and maybe not even the most important, but one of the great protections that we have of our liberties is the structure of the Constitution.

The Constitution protects liberty in various ways and one of the most important ways is the role that this body has elected representatives. They represent people in this country and they represent laws and they pass civil rights bills, like the great civil rights acts of 1871 and the civil rights acts of the 20th century.

So the role that the structure of the Constitution has—separation of powers, checks and balances, limited government, enumerated

powers that Congress has, a strong executive, the power of the veto—the Constitution works as a machine and the result of that machine is to protect individual liberties from intrusive government.

I in no way denigrate in that article the role of courts. All I meant was in that article is that there are other protections that Americans have and we sometimes forget the role the Constitution and the political process plays in protecting our liberties.

Senator DURBIN. Thank you. I have one last question, if it is all right, of Mr. Block and it goes back to an earlier issue.

I understand that in your answers to the questionnaire that you submitted to this Committee, you characterized this takings legislation that we were discussing earlier as codifying and enforcing the Takings Clause of the Fifth Amendment.

As I understood your response, it was somewhat different. Earlier, you stated that this would have been a new standard, a new approach, other than currently existing in law. By your response to that questionnaire, I would ask you to explain that response and your earlier response to my question.

Mr. BLOCK. I really appreciate the opportunity to clarify what I wrote there, and I really apologize to the committee for any confusion that might be created.

When I use the term "codify"—first, I was responsible for legislative projects. I want to reveal everything to be forthcoming to the committee on what I worked on. Or course, takings legislation, which is certainly a hot-button issue, is something I revealed.

When I wrote that it codified standards, we are actually talking about two separate types of bills. One is the bill that you referred to before, and that is the compensation bill which established partial takings. Another bill that I also worked on was a ripeness bill which tried to grant access from State litigation to Federal courts on the ripeness issues, and that is when can you go to Federal court, especially if you arise from State cases. And there were many Senators who felt that it was very difficult to get into Federal court.

The bill contained standards of defining what ripeness is, and when I wrote in my questionnaire, I wrote that what I worked—that bill I characterized as containing standards, codifying standards. I think that was the term I used, "codifying standards." I didn't say whether they codified former Supreme Court standards or present standards. I didn't write whether they were good or bad standards. All I said was they literally codified standards, and I thought I was being very accurate.

Senator DURBIN. If you would be kind enough—and in fairness to you, I would like to give you a chance to send us an amendment, then, to your questionnaire and express what you have just said to the committee—

Mr. BLOCK. Certainly.

Senator DURBIN. —and give you a little time to put this in words so that we can appreciate exactly the distinction you were trying to make. There may be other questions that could be submitted. Obviously, having worked here, you know how that works.

Mr. BLOCK. Oh, I sure do.

Senator DURBIN. Thank you very much.

Senator Hatch?

Senator HATCH. I just want to thank all three of you for being willing to serve, and Judge Raggi as well, and I believe you will be very excellent judges, without question.

Larry, we are very proud of you. We are looking forward to seeing you serve with great distinction down there and we expect you, all of us on this committee, to do a very good job.

Mr. BLOCK. Thank you, Senator.

Senator DURBIN. Senator Specter?

Senator SPECTER. Thank you, Mr. Chairman.

Mr. Block, the analysis that you have made of the Constitution and the balance and the inner workings—and you mentioned separation of powers—it is a marvelous document, beyond any question, especially with the doctrine of separation of powers, even though separation of powers was never mentioned.

I think that when Senator Durbin has gone into the issues of the 14th Amendment, that has been really a critical part of the Constitution for many, many years. This committee is now considering DNA legislation which would make it a constitutional right to have access to DNA information. But when you consider treatment of defendants by the States, especially the Southern States, Mississippi, in *Brown* v. *Mississippi*, it took a long time to bring some Federal limitation on State court abuses. And it wasn't only Mississippi, in *Brown* v. *Mississippi*. It was Pennsylvania in the *Treetop Turner* case and many other cases. So it has been an interesting comment.

They have just started a vote, so it may be too late to be brief at this point, but I am going to be brief from this point on.

Thank you for being willing to serve. The Federal judiciary is the backbone of the American democratic system, and with the life tenure which you have you are in a position to undertake decisions which may be unpopular which the Congress doesn't have the courage to do, nor does the executive branch so frequently.

I want to repeat a colloquy that Senator Thurmond had as chairman of this committee shortly after I joined the committee after the 1980 election. There was a nominee seated where you men are and Senator Thurmond said, if confirmed, do you promise to be courteous? And I thought to myself, what kind of a question is that? What does he expect the nominee to say?

And not unexpectedly the nominee said, yes, I promise to be courteous. And then Senator Thurmond said the more power a person has, the more courteous the person should be. He said it in a much more charming dialect, but the more power a person has, the more courteous the person should be. I have spent a lot of time behind this dais in the last 22 years and a long time in the Senate, and I have not heard anything nearly as erudite as that.

There is a temptation, once you put on that black robe with a lifetime appointment, to sometimes forget that when—and I know this will never happen in any of your courtrooms—a lawyer is not prepared or his not coherent, or witnesses or not responsive, or you have had a bad day and it is a bad process.

Whenever Senator Thurmond is not here, I give his little speech, and I have talked to many judges years after confirmation who repeat that speech to me. But I am sorry to say that I have also

heard many cases where judges whom I have recommended have not followed that process.

So I just wanted to be as emphatic as I could. Be courteous. You have a lot of power as a Federal judge, and a lifetime appointment really insulates you from everything. But just remember what Senator Thurmond said: the more power a person has, the more courteous the person should be.

Thank you, Mr. Chairman.

Senator DURBIN. Thank you, Senator Specter.

Senator Sessions, do you have any further questions?

Senator SESSIONS. No.

Senator DURBIN. We are in a roll call and my colleagues may have to leave. I understand if they do, and I understand Senator Schumer may be on the way. Well, we will see if he can make it.

Let me ask, if I can, to Mr. Clark, as a member of the Texas Legislature you supported in 1999 the establishment of the Texas Parental Notification Act, which generally requires parental notification before minors can receive an abortion.

The legislation includes a procedure for so-called judicial bypass, where a minor can avoid parental notification by petitioning a court. One of the factors the court should consider, according to the language of the statute, is whether the notification would not be in the minor's best interest.

In March of 2000, you were in a group of Texas legislators who signed an amicus brief in support of an interpretation of that Act. In part, the brief argued that a court must determine not just that notification is not in the minor's best interest, but that the abortion procedure itself is in the minor's best interest.

As you know, a majority of the Texas Supreme Court rejected the position on this amicus brief. The court concluded the legislature did not impose this additional requirement that an abortion itself, the procedure, be in the minor's best interest.

Can you explain to me how, having voted for the bill with the language in it the Texas Supreme Court said was clear, you would return to that court in a very short period of time and argue that it really wasn't about notification being in the minor's best interest, but the abortion procedure itself?

Mr. CLARK. Well, Mr. Chairman, at the time that brief was submitted—and I was not the attorney on it, but I was one of the legislators who agreed to be an amicus. I think 5 opinions had come out shortly after the law was passed, or 5 decisions, with something like 19 different opinions. And unfortunately, while I think we thought we had written something pretty clearly, it was pretty evident from the dispute going on in the supreme court that maybe we had not passed a bill that was quite as clear as it might have been.

I have had appellate judges raise that to me before in oral argument. When you have 19 different opinions coming out, obviously something is not as clear as it could be. The supreme court did finally in 2000 come down with its final opinion, a majority decision, and since that time we have had very few appeals.

We had another session of the legislature and no one brought another bill to amend the statute to somehow overturn or modify the supreme court's decision. I don't even remember any serious discus-

sion about that happening. So I think it was pretty well agreed that the supreme court has finally made a decision. The trial courts know what they are supposed to be doing and the trial courts can now move forward and the issue is basically settled.

There was a lot of dissent going on at the time, and that is one of the reasons that a number of the legislators thought, well, maybe we need to—and legislators probably shouldn't be trying to help the court out, but that, I think, was what was happening there.

Senator DURBIN. I think that is what leads to the question. It is not uncommon for a citizen or his or her attorney to go into court and question what a provision in the statute really means. It is an odd situation when the very legislator who wrote the statute, or voted for the statute, would come to the court and say that isn't what we meant at all; we didn't mean that the notification was in the best interest, we meant that the procedure was in the best interest.

Well, the court rejected that, so you were in an unusual position trying to amend your statute in court, which raises a question whether you, as a judge, will be amending statutes in court.

Mr. CLARK. Actually, having been a legislator, I take it very personally when judges try to amend statutes. I, probably more than most candidates, really understand what goes on in committee, Mr. Chairman, and I know that no judge can have the kind of input that comes through the committee process, all of the stakeholders, all of the interest groups, all of the lobbyists coming in, everybody who puts in.

And you have a group, a committee from 9 to 21, depending on the body you are in. You then have the process that it has gone through both houses of the legislature. There is no way a judge can have that kind of information. So I believe very strongly that unless a statute is clearly unconstitutional, clearly is working some kind of unfairness, that you basically apply it as written. That is the legislative decision.

This was an odd case, and at the time we thought we had written something fairly clear. These are very intelligent people on the supreme court. I have the greatest respect for all of them. It obviously wasn't as clear as we thought. I have seen that happen before in other statutes, but they did finally come up with a decision.

I respect the debate they had, but once they made that decision, we have had very few appeals. And like I say, in the following session I don't recall anybody bringing a bill or even seriously talking about a bill to overturn them or change what their decision was.

Senator DURBIN. Thank you very much.

I am going to now turn to Senator Schumer and ask him, first, have you voted?

Senator SCHUMER. Not yet.

Senator DURBIN. Well, we have about six or seven minutes, so that is good news for the panel. So if you would like to proceed with your questions.

Senator SCHUMER. Thank you. I have a number of questions in writing, but I just wanted to ask Mr. Block a couple of questions on the issue of judicial activism, which I know is an important issue here.

In your Judiciary Committee questionnaire you wrote that, quote, "Judicial activism—that is, policymaking by judges—is an unfortunate product of the 20th century." That is your quote.

Elsewhere, you have written that such cases as *Brown* v. *Board of Education* and *Reynolds* v. *Sims*, the historic Supreme Court case clarifying the one man, one vote principle, are examples of social engineering by the courts. The last one is sort of impossible to understand because if the courts didn't do it, who would, since you would have a self-perpetuating legislature that didn't have one man, one vote?

But aside from that, *Dred Scott* was decided in 1857. As you know, the Court in that case reached out and overturned the Missouri Compromise regarding slavery on the grounds that the law deprived a slave owner of his property without due process of law, notwithstanding Congress' express power to determine matters of citizenship. *Plessy* v. *Ferguson* is another 19th century case. The Court there reached out and made up the notion of "separate but equal." They said that that is constitutional, notwithstanding the express provisions of the 14th Amendment.

So it strikes me as sort of odd that you have pointed to progressive landmark civil rights cases as examples of judicial activism and ignored regressive, some would say backward—I think most would say backward anti-civil rights cases. Those are not mentioned as activism.

So the first question I have—and I will let you do both at once, since we are under time pressure, and then I would ask for elaboration in writing. Can you explain your thinking here? I want to know whether you consider *Plessy* and *Dred Scott* to also be examples of judicial activism the way you consider *Brown* v. *Board*.

The next question is this: I am sort of struggling to reconcile your contention that judicial activism is a creation of the 20th century, when we have all those 19th century cases that seem to me to be every bit as "activist" as your examples.

Brown v. *Board*, in my mind, is one of the three or four most important cases the Court has ever rendered. Yet, you cite it as an example of social engineering and judicial activism. Are you saying that the Court in *Plessy* was right when it held that separate but equal is justified by the Constitution? Are you saying that *Brown* v. *Board* was wrong when the whole Court held that separate but equal was not equal at all?

There are several cases from this century that one can look at and say they constitute judicial activism that might not go along with your ideological views, but seem to me to be activist, breaking new ground. One is *Brancala*, the VAWA case. I would put that one high up on the list.

Since the mid–1990s, we have seen a whole bunch of cases that seem to me to look like conservative judicial activism. This body knows very well that I don't like so-called activism from the right or the left, although we might have different definitions of that term.

Can you tell me, for instance, what cases, if any—the first question I have is the *Brown* v. *Board* case. The second is what cases, if any, from the Rehnquist you would characterize as examples of judicial activism.

Mr. BLOCK. Okay, thank you. Senator Schumer, the references to *Brown* and the Warren Court precedents came from a blue booklet called "Plurality Decisions," which is sort of a tongue-twister sometimes to say it fast. I believe that was written in 1988. It was prepared, not exactly written by me. It was prepared for the Office of Legal Policy, Department of Justice, at the end of the Reagan administration.

It was a work that was a collaborative effort. I was the main researcher; I was the main writer of that. And my main contribution, for which I won an award, was an analysis of plurality decisions. On that footnote—

Senator SCHUMER. The *Brown* footnote?

Mr. BLOCK. The *Brown* footnote. I will say this: At that time and now, I disagree with that footnote, my personal opinion.

Senator SCHUMER. But you put your name as one of the—

Mr. BLOCK. Well, my name is not on there. It is not on there. I was a preparer. I had to write in my judicial—what did you write on? What did you author? What did you prepare? I prepared that for the Department of Justice. It was a collaborative effort.

But I will say this: I disagree with that footnote completely. I believe in equal protection under the law. I believe that people of race, national origin, and different creeds ought to have equal protection of the law and I just disagree with that footnote.

Senator SCHUMER. Okay.

Mr. BLOCK. Number one. Number two—

Senator SCHUMER. How about *Reynolds* v. *Sims*, same thing?

Mr. BLOCK. Same thing. Number two—

Senator SCHUMER. Was that in the same footnote?

Mr. BLOCK. That was in the same footnote. All those were in the same footnote.

The term "social engineering" now, if I can explain further, is a most unfortunate use.

Senator SCHUMER. It sure was.

Mr. BLOCK. It was written in a different context, if I can go back to plurality decisions and explain that. The main criticism of plurality decisions of the Court—and as you know, that is decisions where there is no majority opinion of the Supreme Court—is that it doesn't stand for a proposition of law. There is no clear-cut decision, and therefore the Court is reneging on its social guidance function.

And that article criticized that and said actually plurality decisions may be a good thing because it helps develop the law. And my conclusion doing the research, by the way—it was not because a lot of conservatives criticized the Court for use of substantive due process, which is I think what you are getting at—judicial activism.

But my conclusion was not that it was a result of substantive due process. It was a result that simply because of the use of certiorari, they just hear very hard cases and they can't agree, and that was the real reason. So that is my explanation of that.

Senator HATCH. Would the Senator yield for just one question on this?

Senator SCHUMER. Yes.

Senator HATCH. I am in agreement with Senator Schumer. I don't think judicial activism on the left or on the right is valid.

What is your position on that?

Mr. BLOCK. That was my next point. I absolutely agree with you, Senator. Examples of judicial activism in the 20th century from the right are the *Lochner* case, the *Schechter Poultry* case, and *Carter Coal Company*, which overturned the New Deal. I disagree with those cases. I think there is nothing—

Senator SCHUMER. How about *Brancala*? What would you consider that?

Mr. BLOCK. I have to refresh my memory, Senator.

Senator SCHUMER. That was the VAWA case. I will ask you that in writing because I know we are in trouble—in trouble time-wise.

[Laughter.]

Senator SCHUMER. I guess we don't have much time left. I am going to submit other questions in writing for you.

Mr. BLOCK. Sure.

Senator SCHUMER. One of them—in your report to General Meese, "A New Look at Plurality," you called on the Supreme Court and you said they should abandon substantive reasoning in favor of textual or other interpretivist methods.

So my question—and you can answer this in writing, but I think we ought to just air it here so my colleagues can hear it, too. Do you believe there are any legitimate rights not mentioned explicitly in the Constitution? You can answer that one in writing because it takes some thinking.

Mr. BLOCK. Yes is my answer.

Senator DURBIN. Thank you, Senator Schumer.

Mr. Block, we will give you the opportunity, as well as the other nominees, to answer questions in writing. I hope that the hurried nature of this hearing is not a poor reflection on this committee, but I can assure that there has been a substantial amount of work done by staff and others in preparation for this and that follow-up questions will fill in any omissions or areas of concern.

Without objection, I will ask that statements by both Chairman Leahy and Senator Grassley be made part of the record.

[The prepared statement of Senator Leahy appears as a submission for the record.]

[The prepared statement of Senator Grassley appears as a submission for the record.]

Senator DURBIN. I want to thank all the witnesses for their appearance and patience. As I indicated earlier, we will leave the hearing record open to allow committee members to submit written statements and follow-up questions.

[The biographical information of Judge Gardner, Mr. Clark, and Mr. Block follow:]

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY, UNITED STATES SENATE

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

   James Knoll Gardner

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

   Judge of the United States District Court for the Eastern District of Pennsylvania.

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

   Office: Lehigh County Courthouse
   Judge's Chambers
   455 W. Hamilton Street
   Allentown, Pennsylvania 18101

   Office Telephone: (610) 782-3122

   State of residence is the same as place of employment.

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

   September 14, 1940
   Allentown, Pennsylvania

5. **Marital Status: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please also indicate the number of dependent children.**

   I am married to Linda Kay (Klenk) Gardner. Her occupation is Realtor. Her employer's name is Patt, White-Butz Company. Her business address is 232 Main Street, Emmaus, Pennsylvania, 18049.

   She is also self-employed as a piano teacher.

   We have two dependent children.

6. **Education: List in reverse chronological order, listing most recent first, each college, law school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.**

Law School

Harvard Law School
September 1962 to June 1965
J.D., June 17, 1965

College

Yale University
September 1958 to June 1962
B.A., magna cum laude, June 11, 1962
"High Orations"
"Ranking Scholar"
American Studies Honors Major

Higher Education for which no degree was awarded includes the following:

National Judicial College
Reno, Nevada

Advanced Evidence Course
June 29, 1992 to July 3, 1992

General Jurisdiction Course
October 13-22, 1982

United States Naval Justice School
Newport, Rhode Island

Military Judges Course
July 29, 1985 to August 15, 1985

Military Lawyers Course
May 13, 1966 to July 1, 1966

National Defense University
Pensacola, Florida

"Reserve Components National Security Course" for senior reserve officers from all branches of the armed forces and National Guards. (Graduated 4th in class of 217)
February 7-19, 1982

National College of District Attorneys
Arlington, Virginia

"Prosecution of Arson Cases"
June 3-6, 1979

United States Naval Officer Candidate School
Newport, Rhode Island

Officer Indoctrination Department
March 13, 1966 to May 13, 1966

7. **Employment Record: List in reverse chronological order, listing most recent first, all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.**

May 29, 1981 to present, Judge of the Court of Common Pleas of Lehigh County, Pennsylvania (elected public official), 455 W. Hamilton Street, Allentown, Pennsylvania, 18101.

September 1, 1970 to May 28, 1981, Partner in the law firm of Gardner, Gardner & Racines, 546 W. Hamilton Street, Allentown, Pennsylvania, 18101.

January 24, 1977 to May 28, 1981, First Assistant District Attorney of Lehigh County, Lehigh County Courthouse, 455 W. Hamilton Street, Allentown, Pennsylvania, 18101.

March 7, 1972 to January 23, 1977, Assistant District Attorney of Lehigh County, Lehigh County Courthouse, 455 W. Hamilton Street, Allentown, Pennsylvania, 18101.

May 15, 1971 to December 31, 1977, Solicitor to Lehigh County Treasurer, Lehigh County Courthouse, 455 W. Hamilton Street, Allentown, Pennsylvania, 18101.

July 1, 1969 to August 31, 1970, and July 1, 1965 to March 12, 1966, Associate in the law firm of Duane, Morris & Heckscher, 1617 Land Title Building, Broad and Sansom Streets, Philadelphia, Pennsylvania, 19110.

July 10, 1966 to June 1, 1969, Chief Staff Judge Advocate, Legal Advisor to the Base Commander, Legal Officer, Legal Assistance Officer, Benefits and Insurance Officer, Voting Officer, Zone Inspection Officer, Assistant Equal Employment Opportunity Officer, Equal Employment Opportunity Investigating Officer, Boy Scout Liaison Officer, Acting Security Officer and Command Duty Officer, Naval Construction Battalion Center, 33rd Avenue, Gulfport, Mississippi, 39501.

May 13, 1966 to July 1, 1966, Student, Naval Justice School, U.S. Naval Base, Newport, Rhode Island, 02840.

March 13, 1966 to May 13, 1966, Student, Officer Indoctrination School, Naval Schools Command, U.S. Naval Base, Newport, Rhode Island, 02840.

June 1964 to September 1964, Law Clerk for Attorney Theodore R. Gardner (deceased), 546 W. Hamilton Street, Allentown, Pennsylvania, 18101.

August 1964 to September 1964, Ticket Taker at the Allentown Fair, Lehigh County Agricultural Society, 302 North 17th Street, Allentown, Pennsylvania, 18104.

July 1963 to August 1963, Carpenter's Helper (constructing a Montgomery Ward store), Canoga Park, California, 91309. (I do not recall the name or address of the construction company which employed me.)

June 1963 to July 1963, Delivery Man (Yellow Pages telephone book), Lindgren & Swinerton, Inc., 1631 Beverly Boulevard, Los Angeles, California, 90026.

July 1962 to September 1962, Landscape Architect, and Construction Foreman, Beach Head, Limited, Paradise Island, Box 594, Nassau, Bahamas, British West Indies.

Member, Board of Directors, Allentown Symphony Association, 23 North 6th Street, Allentown, Pennsylvania, 18101 (1988-present); First Vice President (1992-present); Acting President (1992); Second Vice President (1989-1992).

Member, Board of Directors, Boys and Girls Club of Allentown, Inc., 720 North 6th Street, Allentown, Pennsylvania, 18102 (1985-present).

Member, Board of Directors, Police Athletic League, Inc. (PAL), Allentown Police Department, City Hall, 435 W. Hamilton Street, Allentown, Pennsylvania, 18101 (1984-present).

Elder, St. John's United Church of Christ, 139 North 4th Street, Emmaus, Pennsylvania, 18049 (1997-present); Deacon (1984-1989).

Member, Board of Directors, United Way in Lehigh County (now known as United Way of the Greater Lehigh Valley), 2200 Avenue A, Bethlehem, Pennsylvania, 18017-2189 (1987-1992).

Member, Board of Directors, and Solicitor, The Emaus Building and Loan Association (now known as Patriot Bank), 1130 Chestnut Street, Emmaus, Pennsylvania, 18049 (1973 to May 28, 1981).

Member, Board of Directors, Abco Abstracting Company of Lehigh County, Inc., Allentown, Pennsylvania (no current address) (December 17, 1977-May 28, 1981).

Solicitor of P.H.O.N.E., Inc., a non-profit corporation providing a volunteer telephone answering and referral service and assistance to respond to the emergency needs of local residents, Emmaus, Pennsylvania (no current address) (1971-1979).

Assistant Legal Counsel, Republican Committee of Lehigh County, 1544 W. Hamilton Street, Allentown, Pennsylvania, 18102 (1972-1978).

Member, Board of Directors, President and Solicitor of East Penn Center, Inc., a non-profit corporation for the operation of a teen center, Emmaus, Pennsylvania (no current address) (1971-1978).

Solicitor, East Penn Area Jaycees, Emmaus, Pennsylvania (no current address) (1973-1977).

8. **Military Service: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge received.**

I served on active duty from March 13, 1966 to June 1, 1969 as a Lieutenant Junior Grade and Lieutenant in the Judge Advocate General's Corps, United States Naval Reserve. My serial number was initially 698723, and thereafter 196-32-9844. I received an Honorable Discharge from active duty.

From August 5, 1965 to March 13, 1966, and from June 1, 1969 to September 1, 1993 I was a drilling reservist in the Naval Reserve. I advanced from my initial Rate of Seaman Recruit (E-1) to the rank of Captain (0-6) in the Judge Advocate General's Corps.

From May 5, 1992 until September 1, 1993 I served as an Appellate Military Judge on the United States Navy-Marine Corps Court of Military Review in Washington, D.C. This is an intermediate appeal court which hears and decides automatic appeals from every serious Navy and Marine Corps Courts-Martial conviction worldwide. This is the highest judicial appointment available to a military officer. Prior to my appointment by the Judge Advocate General of the Navy, no Navy Reservist had ever served on this active duty military appeal court.

From October 1, 1990 to September 30, 1991 I served as Commanding Officer of the Naval Reserve Trial Judiciary Activity (NR TRIJUDACT), a national military unit, located in New Orleans, Louisiana, consisting of 14 Naval Reserve Military Judges, who presided over active duty military courts-martial worldwide.

I retired from the Naval Reserve with the rank of Captain on September 1, 1993.

9. **Honors and Awards: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.**

Received from the President of the United States the Meritorious Service Medal "for outstanding meritorious service as a Military Judge while serving with the Naval Reserve Trial Judiciary from October 1985 to October 1991", October 11, 1991.

Awarded the Navy Commendation Medal for Heroism (May 12, 1967), Navy Meritorious Unit Commendation (September 7, 1971), National Defense Service Medal (June 27, 1967), (with "Bronze Star" for second award (October 9, 1991)), Armed Forces Reserve Medal (November 3, 1976), (with "Hourglass Device" for second award (December 16, 1985)), Navy Expert Rifle Medal (July 9, 1983), Navy Expert Pistol Shot Medal (November 12, 1982).

Received the Pennsylvania Bar Association Special Achievement Award "Presented to Honorable James Knoll Gardner In recognition of his tremendous service as Chair of the PBA Council on Judicial Independence Education Subcommittee", May 12, 2000.

Received the Bar Association of Lehigh County Liberty Bell Award for outstanding service and contributions in the justice field, May 1, 2000.

Presented a Proclamation from the County of Lehigh, Commonwealth of Pennsylvania wherein Lehigh County Executive Jane S. Baker and the Lehigh County Board of Commissioners "do hereby commend The Honorable James Knoll Gardner, Liberty Bell Award recipient, for his outstanding dedication to the Lehigh Valley community and urge all individuals, businesses and organizations to join in expressing gratitude for his distinguished service to our residents", May 1, 2000.

Boy Scouts of America: Explorer Silver Award (1955); Eagle Scout (1954) with Silver Palm (1955); God and Country Award (1952).

Received the Distinguished Eagle Scout Award conferred by The National Eagle Scout Association of the Boy Scouts of America bestowed upon individuals who earned the Eagle Scout award in their youth, distinguished themselves in their career for more than twenty-five years, and established a record of volunteer service in their community, May 27, 1999.

Designated Class Honoree of the Eagle Scout Recognition Program, Minsi Trails Council, Boy Scouts of America (five counties in Pennsylvania and New Jersey), Bethlehem, Pennsylvania, May 27, 1999.

Received a Resolution from the County of Lehigh, Commonwealth of Pennsylvania, Board of Commissioners, Resolution 1999—No. 56, May 26, 1999; presented a Citation from the Senate of Pennsylvania, May 11, 1999; and presented a Citation from The House of Representatives of the Commonwealth of Pennsylvania, May 6, 1999, upon receipt of the Distinguished Eagle Scout Award, recognizing Judge Gardner's numerous contributions and service to the community, commonwealth and nation.

Designated Regent for Life of the National Eagle Scout Association, May 5, 1999.

Received Marine Corps League Distinguished Service Medal, and Marine Corps League Bethlehem Detachment Distinguished Citizen Award "in recognition of your dedication and unwavering commitment to the Constitution of the United States of America", March 6, 1998.

Received Certificate of Appreciation from Howard L. Peter Post 576, The American Legion, Allentown, Pennsylvania for "outstanding service and assistance which contributed to the advancement of The American Legion programs and activities dedicated to God and Country", January 30, 1991.

Received Jurist of the Year Award from the Lehigh Law League, June 5, 1989.

Received Recognition Award from the Members Committee on Areawide Relationships of the United Way in Lehigh County for "an extraordinary man with extraordinary dedication", December 1988.

Awarded Certificate of Appreciation by Lehigh-Northampton Counties Legal Secretaries Association, September 15, 1987.

Received Appreciation Award from the United Veterans of Wars of the United States "In recognition of exemplary display of citizenship", April 25, 1987.

Presented a Letter of Commendation from Captain William R. Galliani, JAGC, USNR-R, President Fiscal Year 1984 Inactive Reserve Lieutenant/Lieutenant Commander JAG Corps Selection Board, Naval Military Personnel Command, The Pentagon, Washington, D.C., October 12, 1983.

Awarded Certificate of Merit by Admiral T. B. Hayward, Chief of Naval Operations, May 8, 1982.

Awarded Certificate of Recognition by the Pennsylvania Police Officer's Association "In recognition of outstanding contributions to the concept of leadership", September 22, 1981.

First recipient of East Penn Area Jaycees "Distinguished Service Award", January 17, 1972.

Presented a Letter of Commendation from Captain James M. Hill, Jr., CEC, USN, Commanding Officer, Naval Construction Battalion Center, Gulfport, Mississippi, "to commend you for your outstanding performance...upon your departure from the active service....", July 1, 1969.

Awarded "High Orations" at commencement from Yale University, June 11, 1962.

Awarded Bachelor of Arts Degree "magna cum laude" from Yale University, June 11, 1962.

Ranking Scholar, Yale University (1959-1960, 1960-1961).

Designated "Honor Student" at Emmaus (Pennsylvania) High School Commencement, June 3, 1958.

10. **Bar Associations: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.**

Member, Pennsylvania Conference of State Trial Judges (1981-present):
Immediate Past President (1997-1998);
President (1996-1997);
President-Elect (1995-1996);
First Vice President (1994-1995);
Second Vice President (1993-1994);
Treasurer (1992-1993);
Secretary (1991-1992);
Editor and creator of Jurispondence (Conference Newsletter) (1989-1996);
Juvenile Court Section (2000-present);
Judicial Economics Committee (2000-present);
Long Range Planning Committee (1998-present);
Chairman, Insurance and Benefits Committee (1987-1988);
Civil Procedure Committee (1987-1988);
Annual Meeting Committee (1985-1987);
Judicial Code Committee (1982-1985).

Member, National Conference of State Trial Judges (1993-present);
Delegate (1993-1998);
Member, Judicial Immunity Committee (1996-present);
Member, Evaluation and Judicial Performance Committee (1996-present);
Member, Courts in the Community Committee (1996-present).

Member, Third Circuit Task Force on Management of Death Penalty Litigation of the United States Court of Appeals for the Third Circuit (1998-present); Habeas Corpus Workshop Planning Committee (1998-present); Procedural Bar PCRA [Post Conviction Relief Act] Procedures Subcommittee (1998-present).

Member, Pennsylvania Bar Association Council on Judicial Independence (1998-2001); Chair, Council Education Committee (1998-2001); Member Ex-Officio of Constitution Week Subcommittee, Law Day 2000 Subcommittee, Pennsylvania Cable Network Monthly Broadcasts Subcommittee, and Jury Brochure Subcommittee (1998-2001).

Master of the Bench, The Donald E. Wieand, Sr. American Inn of Court (formerly The Lehigh County American Inn of Court) (1995-present).

Member, American Judges Association (1990-present);
American Bar Association (1965-1982, 1991-present):
(Judicial Administration Division (1993-present));
Pennsylvania Bar Association (1965-present);
Mississippi Bar Association (1969-1987, 1996-present);
Bar Association of Lehigh County (1965-present):
County Bench-Bar Liaison Committee (1981-present);
Okinawa Bench and Bar Association (1991-present);
Harrison County (MS) Bar Association (1966-1969);
Biloxi, Mississippi Bar Association (1966-1969);
Gulfport (Mississippi) Junior Bar Association,
Member, Board of Directors (1968-1969).

Committee memberships in the Bar Association of Lehigh County have included the Bench-Bar Liaison Committee, Fee Dispute Committee (Chairman), Board of Censors, Unauthorized Practice of Law Committee, and Clients' Security Fund Committee.

Member ex-officio, Lehigh County Family Court Rules Committee (1998-present); Member ex-officio, Lehigh County Orphans' Court Rules Committee (1996-present); Member ex-officio, Lehigh County Civil Procedure Rules Committee (1995-present); Chairman, Lehigh County Criminal Division Computer User Group (1993-1994); Member ex-officio, Lehigh County Criminal Procedure Rules Committee (1992-1994); Chairman, Lehigh County Intermediate Punishment Committee (1992-1994); Chairman, Lehigh County Prison Population Control Committee (1991-1994); Judicial Representative to the Lehigh County Law Library Committee (1991-1995); Member, Lehigh County Computer Steering Committee (1991-1995); Chairman, Lehigh County Court Facilities Management Committee (2002-present).

11. **Bar and Court Admission: List each state and court in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.**

Licensed to practice law, by virtue of passing bar examinations, in Pennsylvania (1965), Washington, D.C. (1966), and Mississippi (1969).

November 15, 1965	Supreme Court of Pennsylvania
November 23, 1965	Court of Common Pleas of Lehigh County (PA)
December 7, 1965	United States District Court for the Eastern District of Pennsylvania
December 13, 1965	Superior Court of Pennsylvania
December 23, 1965	Orphans' Court of Lehigh County (PA)
January 4, 1966	Court of Common Pleas of Philadelphia County (PA)
January 6, 1966	United States Court of Appeals for the Third Circuit
January 24, 1966	United States District Court for the District of Columbia

January 25, 1966	Orphans' Court of Philadelphia County (PA)
February 21, 1966	United States Court of Appeals for the District of Columbia Circuit
June 23, 1966	United States Court of Military Appeals
November 25, 1969	All Courts of Law and Equity of Mississippi
March 18, 1970	Court of Common Pleas of Montgomery County (PA) Orphans' Court of Montgomery County (PA)
July 7, 1970	Supreme Court of Mississippi
December 31, 1970	Commonwealth Court of Pennsylvania

In addition to the foregoing, I have practiced before the Courts of Common Pleas of Berks, Bucks, Dauphin, Monroe, Montour, Northampton, and York Counties, Pennsylvania, the Pennsylvania Public Utility Commission and the Commonwealth of Pennsylvania Arbitration Panels for Health Care.

I have no lapse of membership with any court or administrative body.

12. **Memberships: List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, charitable, or other organizations since graduation from college, other than those listed in response to Questions 10 or 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion - either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.**

None of the organizations of which I have ever been a member have discriminated on the basis of race, sex, or religion. I do not currently belong, nor have I belonged, to any organization which discriminates through either formal membership requirements or the practical implementation of membership policies.

In addition to those organizations listed in response to questions 10 or 11, above, all other organizations to which I belong are listed below:

Member, The Pennsylvania Society (1999-present).

Member, Board of Regents, National Eagle Scout Association (1999-present).

Charter Member, Friends of the Emmaus Public Library (1998-present); Governmental Relations Committee (1998-present); Program Committee (1999-present); Poster Contest Judge (1999, 2000, 2001).

Member, 15th Congressional District Military Academy Selection Board (1994-present).

Member, Board of Associates for Muhlenberg College, Allentown, Pennsylvania (1991-present).

Member, Yale Alumni Schools Committee (1986-present).

Member, Board of Directors, Allentown Symphony Association (1988-present); First Vice President (1992-present); Acting President (1992); Second Vice President (1989-1992); Executive Committee (1989-present); Chairman, Nominating Committee (1991-present); Chairman, Long Range Planning (1990-1999); Capital Campaign Planning Committee (2000-2001); Strategic Planning Task Force (1999); Chairman, Administrative Task Force (1997); Chairman, Long Range Artistic Planning Task Force (1997); Executive Director Search Committee (1997-1998); Reconstruction Committee (1989-1991); Host and Performer, annual Holiday Carousel (1987-1991).

Member, Board of Directors, United Way in Lehigh County (1987-1992); Chairman, Committee on Areawide Relationships (1987-1988); Donor Choice Committee (1990-1992); Agency Relations Committee (1990-1992); Nominating Committee (1984-1988); Jack P. Houlehan Community Volunteer Award Committee (1983-1985).

Member, Advisory Committee, ALERT Partnership for a Drug-Free Lehigh Valley (1992).

Member, Board of Directors, Boys and Girls Club of Allentown, Inc. (1985-present); Executive Committee (1995-present); Chairman, Scholarship Committee (1987-present); Operational Oversight Committee (1999-present); Program Committee (1996-1999); Program and Personnel Committee (1990-1996); Member, Scholarship Committee (1985-present).

Member, Board of Directors, Police Athletic League, Inc. (PAL) (1984-present).

Member, Harvard Law School Association of Greater Philadelphia (1990-present).

Member, Navy-Marine Corps Retired Judge Advocates Association (1999-present);
Member, Judge Advocates Association (1989-present);
Member, Naval Reserve Association (1972-present);
Member, Naval Enlisted Reserve Association (1985-1993).

Member, Honorary First Defenders, Allentown, Pennsylvania (1979-present).

Member, Advisory Committee, Minsi Trails Council, Boy Scouts of America, five counties in Pennsylvania and New Jersey (1989-present); Chairman, Trexler District Nominating Committee (2001); Member, Lehigh Council Explorer Scouting Leadership Nominating Committee (1976).

Member, Brookside Country Club, Macungie, Pennsylvania (1980-present).

Life Member, The Mory's Association, New Haven, Connecticut (1958-present).

Chairman, Emmaus (Pennsylvania) High School 30th Class Reunion Committee (1988) and 25th Class Reunion Committee (1983); Member, 35th Class Reunion Committee (1993) and 40th Class Reunion Committee (1998).

Solicitor of P.H.O.N.E., Inc., a non-profit corporation to provide a volunteer telephone answering and referral service and assistance to respond to the emergency needs of local residents, Emmaus, Pennsylvania (1971-1979).

President, Solicitor, Co-founder and Member, Board of Directors of East Penn Center, Inc., a non-profit corporation for the operation of a teen center, Emmaus, Pennsylvania (1971-1978).

Solicitor, East Penn Area Jaycees, Emmaus, Pennsylvania (1973-1977).

Chairman, East Penn School District Year-Round School Study Committee (1972-1974).

Chairman, Young Republicans of Lehigh County (1973-1974); Assistant Legal Counsel and Member of Executive Committee, Republican Committee of Lehigh County (1972-1978); Advisory Committee (1979-1981); Finance Committee (1977-1981).

Member, Griswold Law Club, Harvard Law School, Cambridge, Massachusetts (1962-1965); Treasurer (1963-1964); Vice President (1964-1965).

Member, The Lincoln's Inn Society, Cambridge, Massachusetts (1962-1965).

Lifelong member, St. John's United Church of Christ, Emmaus, Pennsylvania; Elder (1997-present); Spiritual Council (1997-present); Chairman, Worship and Music Committee (1999-present); Lay Liturgist (1997-present); Member, Parish Life Committee (1997-present); Deacon (1984-1989); Chairman, Long Range Planning Committee (1985-1989) (authored church's first Long Range Plan); Member, Pastoral Search Committee (1985-1987); Member, Church and Ministry Committee (1985-1986, 1988); Sunday School Teacher (Adult Friendly Class) (1987-present); Member, Senior Choir and Folk Choir (1984-1987); Acolyte (1950-1952).

Member, East Penn Ministerium Ecumenical Choir (1985, 1987, 1989-1993).

Member, Emmaus Moravian Church Senior Choir (1987-1990).

13. **Published Writings: List the titles, publishers, and dates of books, articles, reports, or other material you have written or edited, including material published on the Internet. Please supply four (4) copies of all published material to the Committee, unless the Committee has advised you that a copy has been obtained from another source. Also, please supply four (4) copies of all speeches delivered by you, in written or videotaped form over the past ten years, including the date and place where they were delivered, and readily available press reports about the speech.**

Publications

My publications include the following. (Copies of these publications are attached as Appendix I.):

"The Importance of the Rule of Law in Our Society", Op-Ed Column, Comments & Viewpoints section, The Morning Call, Allentown, Pennsylvania, page A19, May 5, 2000.

Apples and Oranges: A comparison of civilian and military trial courts, Federal Bar News & Journal, Volume 38, No. 4, May 1991, pages 192-201.

Editor and creator of Jurispondence, the newsletter of the Pennsylvania Conference of State Trial Judges, and author of several articles (1989-1996).

Report of the Insurance and Benefits Committee of the Pennsylvania Conference of State Trial Judges (1 volume), February 3, 1989.

Report of the Members Committee on Areawide Relationships of the United Way in Lehigh County (1 volume), November 1, 1988.

East Penn School District Year-Round School Study Committee Report (2 volumes), July 24, 1974.

"A Drastic Change in Military Justice", Anchor Clanker, Naval Reserve Training Center, Allentown, Pennsylvania, Newsletter, Vol. 1, No. 2, March 1972, pages 5-7.

"The Reservist and the U.C.M.J." (Uniform Code of Military Justice), Fourth Naval District Sailing Directives (Periodical), January 3, 1972.

Speeches and Presentations

Following are the speeches and presentations that I have given in the past ten years. (Copies of representative speeches and presentations are attached as Appendix II.):

Delivered lay sermon at Zion Reformed United Church of Christ, Allentown, Pennsylvania, "You be the Judge", Noontime Lenten Services, March 27, 2002.

Panelist-Presenter of "Last Chance to Win: Closing, Jury Instruction, Verdict Slips", The Bar Association of Lehigh County 2001 Bench Bar Conference, Atlantic City, New Jersey, October 12, 2001.

Taught "New Rules of Civility: Customs and Courtesies in the Practice of Law, The Bar Association of Lehigh County, Allentown, Pennsylvania, March 29, 2001.

Moderator and Co-Presenter of "Electronic Surveillance: The New Technology verses Privacy Rights", for The Donald E. Wieand, Sr. American Inn of Court, Allentown, Pennsylvania, November 15, 2000.

Taught "Child Support Laws" to the Family Law Section of The Bar Association of Lehigh County, Allentown, Pennsylvania, October 24, 2000.

Guest Speaker, "Debunking the Myths (about Criminal Justice)":

Emmaus Women's Club
Emmaus, Pennsylvania
September 25, 2000

United Veterans of Wars of the United States
Allentown, Pennsylvania
March 28, 1992

Taught "Church, State and the Schools", Lutheran Church of the Holy Spirit, Emmaus, Pennsylvania, September 17, 2000.

Panelist-Presenter at Pennsylvania Bar Institute Continuing Legal Education Program, "Civil Practice in Eastern Pennsylvania", Bethlehem, Pennsylvania, July 25, 2000, April 30, 1997.

Delivered Law Day presentation, "Celebrate Students—Judges and Lawyers Go Back to School", to all eighth grade classes, Eyer Middle School, Macungie, Pennsylvania, May 4, 2000.

Delivered Keynote Address, "Celebrate Your Freedom—The Importance of the Rule of Law" at The Bar Association of Lehigh County 2000 Law Day Luncheon, Allentown, Pennsylvania, May 1, 2000.

"Child Support Laws", a panel discussion and call-in show concerning child support payments in Pennsylvania and the new support guidelines, sponsored by the Pennsylvania Bar Association, produced by PCN, Pennsylvania Cable Network, Camp Hill, Pennsylvania, April 13, 2000.

Delivered "The Eagle Charge" to Eagle Scout Richard C. Kipp, Boy Scout Troop 12, North Valley, Minsi Trails Council, Asbury United Methodist Church, Allentown, Pennsylvania, November 8, 1999.

Panelist and Presenter at The Bar Association of Lehigh County 1999 Bench Bar Conference, Annapolis, Maryland:

Panelist on "Practice, Procedures and Rules for the New Millennium", October 1, 1999

Panelist on "Open Mike: Local Rules and Procedures", October 1, 1999

Co-Presenter of "Corporate and Business Law: In-House Counsel, the Attorney-Client Privilege and Ethical Considerations in Pennsylvania", October 2, 1999

Panelist on "How to Irritate a Judge...and Vice Versa", October 2, 1999.

Panelist-Presenter on "The President Judge's Role with District Justices and Constables" at the President Judges/Pennsylvania Association of Court Management 1999 Annual Conference, State College, Pennsylvania, June 8, 1999.

Delivered main address at Emmaus Memorial Day Services, Memorial Triangle, Emmaus, Pennsylvania, May 31, 1999.

Guest Speaker, "The Judicial System, the Courts and Citizenship", Troop 191, Boy Scouts of America, Friedens Lutheran Church, Friedensville, Pennsylvania, April 5, 1999.

Moderator of "Post Conviction Relief Act Procedure and Problems", panel discussion concerning the procedural and substantive aspects of post-conviction relief in Pennsylvania courts, United States Court of Appeals for the Third Circuit Joint Federal-State Workshop on Habeas Corpus Law, State College, Pennsylvania, March 28-30, 1999.

Co-presenter of "The Press's Responsibility and Duty in Highly Publicized Cases-Relations (Inappropriate and Otherwise) with the Press", for The Donald E. Wieand, Sr. American Inn of Court, Allentown, Pennsylvania, October 21, 1998.

Moderator-Presenter of "New Court Structure-New Court Procedures" and "'A Whole New Ballgame'-1999 and Beyond", The Bar Association of Lehigh County 1998 Bench Bar Conference, Baltimore, Maryland, October 16, 1998.

Panelist-Presenter in daylong Intensive Training Session: "A Mock Trial: William Stewart v. Miguel Ibarra" focusing on the constitutional issues and legal requirements of probation officers' use of force, for the American Probation and Parole Association, 23rd Annual Training Institute, Norfolk, Virginia, August 30, 1998.

Taught "Does our System Insure Justice?", Lutheran Church of the Holy Spirit, Emmaus, Pennsylvania, February 10, 1998.

Panelist-Presenter on "New Developments in the Court of Common Pleas of Lehigh County", on the "Lehigh Law Line" television series sponsored by the Bar Association of Lehigh County, produced by WLVT-TV, Channel 39, Lehigh Valley Public Television, Bethlehem, Pennsylvania, aired at 8:00 P.M., January 21, 1998.

Delivered address on "State of the Judiciary", The Bar Association of Lehigh County Bench-Bar Conference, Tamiment, Pennsylvania, October 25, 1997.

Presenter on "Training the Trainers—Liability for Negligent Failure to Train Probation Officers", National Institute of Corrections and the American Probation and Parole Association, Huntsville, Texas, July 21, 1997.

Moderator-Presenter for the President Judge/Pennsylvania Association of Court Management 1997 Annual Conference, State College, Pennsylvania:

"Managing Change: 'The Only Person Who Likes Change is a Wet Baby: Lessons in Organizational Transitions'", June 3, 1997

"Pennsylvania Rule of Judicial Administration 703: New Roles for President Judges and Court Administrators", June 1, 1997.

Celebrity Reader, Community Read Aloud Week, Central Elementary School, Second Grade, Allentown, Pennsylvania, May 12, 1997.

Co-presenter of "Troublesome Evidentiary Issues", for The Donald E. Wieand, Sr. American Inn of Court, Allentown, Pennsylvania, April 15, 1997.

Taught "Attacks Upon the Validity of a Will" and "Attacks Upon the Validity of Inter Vivos Conveyances" at Continuing Legal Education Seminar "Local Orphans' Court Practice", Allentown, Pennsylvania, April 11, 1997.

Delivered address on "Judicial Power" to art students from six school districts during seminar on protraying power through art, Allentown Art Museum, Allentown, Pennsylvania, November 10, 1996.

Delivered main address at the 50th Anniversary Banquet, Claude E. Fischer, Post 7088, Veterans of Foreign Wars of the U.S., Emmaus, Pennsylvania, October 18, 1996.

Panelist-Presenter for the American Probation and Parole Association, 21st Annual Training Institute, Chicago, Illinois:

"Are you Suit-Proof?: Negligence and Legal Liability in the Staff Safety Area", July 2, 1996

"Staff Safety Training: Anticipatory or Reactive", June 30, 1996.

Co-presenter of "Don't Slip on Appeal", for The Lehigh County American Inn of Court, Allentown, Pennsylvania, April 17, 1996.

Taught "Separation of Church and State", St. John's United Church of Christ, Allentown, Pennsylvania, February 18, 1996.

Instructor at Lehigh-Carbon County Community College, Criminal Law Class, Schnecksville, Pennsylvania in "The Role of a Judge", October 24, 1994.

Panelist-Presenter on "Negligent Failure to Train Probation Officers" and mock trial, for the American Probation and Parole Association, 19th Annual Training Institute, Phoenix, Arizona, September 12, 1994.

Delivered main address at Allentown Police Commendation Award Ceremonies, Allentown, Pennsylvania, May 18, 1994.

Panelist at "Meet Your Judges" program, sponsored by League of Women Voters of the Allentown Area, Bar Association of Lehigh County, and Lehigh County Court of Common Pleas, Muhlenberg College, April 12, 1994.

Taught "Render Unto Caesar--Christians and the Constitution", Lutheran Church of the Holy Spirit, Emmaus, Pennsylvania:

"The Fourth Amendment: Unreasonable Search", January 16, 1994

"The First Amendment: The Establishment Clause", December 12, 1993.

Panelist-Presenter on "Law and Politics—The Opinions of U.S. Supreme Court Justice William O. Douglas", Pennsylvania Stage Company, Allentown, Pennsylvania, January 13, 1993.

Instructor at Naval and Marine Corps Reserve Center, Allentown, Pennsylvania in "Standards of Conduct/Conflict of Interest", "Debunking the Myths about the Criminal Justice System", "Income Tax Tips for Reservists", "Mobilization", "Personal Legal Affairs", and "The Reservist and the Uniform Code of Military Justice" (1976-1993).

Delivered lay sermon at St. John's United Church of Christ, Emmaus, Pennsylvania: "What My Faith Means To Me", November 15, 1992.

Appointed by Admiral E. R. Zumwalt, Jr., Chief of Naval Operations as a member of the speakers team established with the District Commandants to help create an awareness and appreciation of Sea Power. Admiral Zumwalt cited "Your effectiveness as a speaker and your demonstrated interest in Sea Power." (1971-1993).

Numerous presentations (98) made to civic and religious organizations since 1970 on "The Trial of Jesus From a Judge's Point of View" (each given from the outline included in Appendix II).

14. **Congressional Testimony: List any occasion when you have testified before a committee or subcommittee of the Congress, including the name of the committee or subcommittee, the date of the testimony and a brief description of the substance of the testimony. In addition, please supply four (4) copies of any written statement submitted as testimony and the transcript of the testimony, if in your possession.**

I have never appeared before a committee or subcommittee of the Congress.

15. **Health: Describe the present state of your health and provide the date of your last physical examination.**

The present state of my health is excellent. The date of my last physical examination was October 22, 2001.

16. Citations: **If you are or have been a judge, provide:**

(a) a short summary and citations for the ten (10) most significant opinions you have written;

(b) a short summary and citations for all rulings of yours that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court; and

(c) a short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions.

If any of the opinions or rulings listed were in state court or were not officially reported, please provide copies of the opinions.

(a) a short summary and citations for the ten (10) most significant opinions you have written:

It is difficult to select ten opinions from the 982 Opinions and Adjudications which I have authored as Judge of the Court of Common Pleas of Lehigh County, or from among the 143 of these opinions which have been published. However, among the most significant opinions which I have handed down, are the following. (Copies of these opinions are attached as Appendix III):

1. Hacker v. Colonial League, 49 Leh.L.J. 757 (2001).

In this case I granted a temporary injunction to 93 high school cheerleaders from 12 high schools against the Colonial League, temporarily enjoining the athletic league from enforcing a newly adopted league rule prohibiting cheerleaders from performing certain stunts including pyramids, mounts, rolling and tumbling. The injunction was granted temporarily until a hearing could be held on the cheerleaders' request for a preliminary injunction.

I agreed with the league that ordinarily the judiciary should not interfere with affairs of high school athletic associations, unless the action complained of is fraudulent or constitutes capricious or arbitrary discrimination. However, I agreed with the cheerleaders that because the regulations were

enacted by the league at closed door meetings which were not open to the public, the cheerleaders would be likely to establish at a final injunction hearing that the regulation was enacted in violation of Pennsylvania's open meeting law (the "Sunshine Act"). Under the Sunshine Act, the court has the discretion to declare invalid any official action taken at the closed meeting.

I concluded that the league was not required to hold all of its meetings in conformity with the Sunshine Act. However, the meetings enacting this regulation were required to be open to the public. Under the terms of the statute all school board meetings where official action is taken are subject to the open meeting provisions of the Sunshine Act.

The Pennsylvania legislature has authorized individual school boards to promulgate rules and regulations concerning interscholastic athletics and other school activities. The 12 member schools of the Colonial League have empowered the league to make such determinations in the realm of interscholastic athletics. In this context the league is acting as a de facto school board. Therefore, the league would be subject to the requirements of the Sunshine Act.

2. Hannis v. Sacred Heart Hospital [Hannis number 1], 49 D.&C.4th 13 (2000).

Plaintiffs brought this action in negligence and professional negligence against defendant pediatrician, and defendant hospital which employed him. Plaintiffs alleged that the doctor treated them, or had other contact with them, at a time when he knew, or should have known, that he had infectious tuberculosis, without advising them of his condition or taking other precautions to protect them from exposure to the disease. Plaintiffs also contend that the hospital permitted the doctor to treat them, and failed to warn them or protect them, when it knew, or should have known, that the doctor had infectious tuberculosis.

I certified the matter as a class action. I conditionally certified a class of 277 adults and minor children who were either treated by the defendant physician or who might have been in the hospital or clinic while he was actively infected with tuberculosis, and who received prophylactic antibiotic medication and suffered a range of reactions. I determined that there were questions of law and fact common to the class.

At this stage of the proceedings there was a sufficient predominance of common issues of liability and damages to permit the matter to proceed through discovery as a class action. The need for special handling of the damages phase, where damage claims might have to be dealt with on an individual basis, did not justify denying class certification. I observed that following further pretrial discovery, I could designate subclasses or entertain defendants' motions for summary judgment or class decertification.

I noted that although class actions are more typically brought in cases involving products liability, passenger airline crashes, interpretation of insurance policies, or other standard contracts, I knew of no reason why a class action should not be certified in an appropriate professional negligence case such as this one.

3. Hannis v. Sacred Heart Hospital [Hannis number 2], 49 Leh.L.J. 276, 52 D.&C.4th 153 (2000), affirmed No. 643 C.D. 2001 (Pa. Commw. 2001) (Colins, J.).

Plaintiffs filed a motion to compel production of the list of 277 people identified by the Allentown Bureau of Health as having been exposed to the pediatrician with tuberculosis. The bureau said it would not comply with the request because the documents are privileged, protected and confidential under the Pennsylvania Disease Prevention and Control Act.

The plaintiff class argued that the health bureau is the only entity that has the names of the potential class members. The plaintiffs said that their concern is that without the list, they would be unable to contact the members of the class and potentially some members would lose their right to compensation.

I denied plaintiffs' motion to compel and ruled that the Allentown Bureau of Health does not have to produce the names of the possible class members. The Disease Prevention and Control Act specifically says that confidential reports and records cannot be released "except where necessary to carry out the purpose of the act." The Supreme Court of Pennsylvania has declared that the purpose of the act is "to assign primary responsibility for the prevention and control of diseases to local health departments, and to institute a system of mandatory reporting, examination, diagnosis and treatment of communicable diseases."

I concluded that while the interests of plaintiffs, which are geared toward vindication of their injuries, are important, the state Legislature

and Supreme Court have made the judgment that attempting to remedy the serious problem of communicable diseases in our society is of superior importance. Therefore, I found that the purpose advanced by plaintiffs does not further the purpose of the act as defined by the state Supreme Court.

I acknowledged that my ruling would make it more difficult for plaintiffs to identify and notify members of the prospective class. But my ruling did not make it impossible for them to do so. I suggested advertising for prospective class members and perhaps using sources other than the bureau to obtain the information. Because my decision would make it more difficult to identify the class, I relaxed the discovery deadlines and rescheduled the hearing to designate all class members and to establish the final definition of the class and any subclasses.

On December 10, 2001 the Commonwealth Court of Pennsylvania affirmed my decision. Hannis v. Sacred Heart Hospital, No. 643 C.D. 2001 (Pa. Commw. 2001) (Colins, J.).

4. Bosco v. Joseph, No. 1998-C-3052 (C.P. Lehigh September 6, 2000) (Gardner, P.J.).

Plaintiff was a residential tenant in a building owned by defendant. Defendant maintained a real estate office on the first floor. The landlord and tenant shared certain common areas of the building, including a front porch and eight steps separated by a small landing. As plaintiff exited the building and descended the stairs from the front porch, she slipped and fell on a thin accumulation of smooth ice.

The tenant brought this lawsuit against the landlord to recover damages for her personal injuries. Defendant landlord filed a motion for summary judgment, asserting that he was entitled to judgment as a matter of law under the "hills and ridges" doctrine. In Pennsylvania this doctrine provides that unless the snow or ice had accumulated in ridges or elevations of such size and character as to reasonably obstruct travel and constitute a danger to pedestrians, the property owner has no duty to remove the ice or snow.

I denied the motion for summary judgment and allowed the suit to continue. The Supreme Court of Pennsylvania has adopted the Restatement of Torts, Section 360 as the law of Pennsylvania. Under this section a landlord is liable for any physical harm caused to a tenant by a dangerous condition upon that part of the land retained in the landlord's control if

the landlord by the exercise of reasonable care could have discovered the condition and could have made the condition safe.

Accordingly, if the landlord knew or should have known that a film of slick ice was present on the steps, and that it created a dangerous condition, and the landlord had sufficient time to make the condition safe (for example, by removing the ice or salting the steps), the landlord is liable to the tenant for any injuries she sustained in falling down the steps, despite the fact that there were no hills and ridges on the steps.

In other words, Section 360 obligates a landlord to a higher standard of care. Therefore, the hills and ridges defense is not available where a tenant is injured by falling on slick ice on the common areas of the landlord's property.

5. Wimberly v. Wyeth Laboratories, Inc., 48 Lehigh L.J. 47 (1998).

I granted a motion for summary judgment in favor of a pharmaceutical laboratory and dismissed plaintiff's lawsuit against it. Plaintiff sued the laboratory for strict liability, negligence and breach of warranty alleging she suffered a stroke because of using Norplant, a birth control system which defendant manufactured and distributed. Norplant is a contraceptive system in which six capsules of levonorgestrel are inserted under the skin of the upper arm. It is reported to prevent pregnancy for five years. Plaintiff suffered a stroke seven months after Norplant was inserted in her arm.

Plaintiff's expert neurologist, Dr. Robert I. Winer, tried to establish a causal relationship between Norplant and plaintiff's stroke. He testified in a deposition that plaintiff would not have had a stroke if she had not used Norplant. However, he conceded that presently it is not generally accepted in the medical community that Norplant is causally related to strokes. Dr. Winer only predicted that at some point in the future the medical community will accept that causal relationship exists.

I ruled that the expert's prediction of future acceptance by the medical community is insufficient to support his opinion that a causal relationship exists between Norplant and plaintiff's stroke. I held that in order for scientific evidence indicating one event has caused another to be admissible, it has to be shown that the causal relationship is generally accepted in

the medical community. It is not enough that the methods used in a study are accepted, the existence of a causal relationship has to be accepted.

6. Upper Saucon Township v. Air Products and Chemicals, Inc., No. 1992-C-1535 (C.P. Lehigh 1998) (Gardner, P.J.)

In a case of first impression I agreed to enforce a limited liability provision contained in a contract for the building of a public wastewater treatment plant, despite concerns from Upper Saucon Township that the provision violates public policy. The contract called for Air Products and Chemicals, Inc. to build a wastewater treatment plant for roughly $5.4 million. The township sued Air Products for a number of alleged construction defects.

The contract contained a clause limiting the liability of Air Products to 20% of the agreed price, or $1.1 million. The township argued that the limitation of liability clause was void as against public policy because the subject matter of the contract, a public wastewater treatment plant constructed for a municipality, involved a public interest.

Exculpatory and indemnity clauses are disfavored by the courts because they permit a party to insulate himself from all liability for his own negligence. However, I ruled that there is a difference between a contract which insulates a party from liability and a contract which merely places a limit upon that liability. A contract which insulates a party from liability removes all incentive to perform with due care. On the other hand, if the potential liability of the party protected by a limitation of liability clause is reasonable and not nominal, the party has an incentive to perform with due care.

Because Air Products could be liable for more than $1 million, Air Products had a sufficient incentive to perform with due care. Accordingly, the limitation of liability was reasonable, and could be enforced.

7. Collazo v. E-Z TV & Appliance Rentals, Inc., 44 Leh.L.J. 817 (1991).

I granted a Motion for Class Certification and permitted a group of representative plaintiffs to file a class action against defendant E-Z TV and Appliance Rentals, Inc. Plaintiffs are all of the past and present customers of defendant, who operates a "rent to own business", where customers lease furniture or

appliances with an option to purchase the goods. I permitted the class to seek to recover all illegal overcharges, improper finance charges, undisclosed service charges, illegal home collection fees, late fees, hidden interest charges and treble damages.

8. Gallo v. Miletto, 44 Leh.L.J. 688 (1991).

Plaintiff Anna A. Gallo was a passenger in a car driven by her fiance Anthony DaNofa. When the DaNofa vehicle was struck in the rear by a sanitation truck it caught on fire. Mr. DaNofa could not be removed from the burning vehicle, and plaintiff witnessed the death of her friend. I held that she had a right to sue the truck driver and sanitation company for negligent infliction of emotional distress even though she was not married to Mr. DaNofa. Previous Pennsylvania cases implied that the victim must be the spouse or child of the party witnessing the accident in order to recover. I held that whether one has suffered such emotional distress depends upon the status of the social relationship, and not upon the legal technicalities of the relationship.

9. Martin v. Jaeger, 44 Leh.L.J. 54 (1990).

I granted defendants' motions to preclude testimony by two expert witnesses who were identified by plaintiff after expiration of the discovery deadline established by a pre-trial conference officer, where the experts identified new theories of liability on the eve of trial, seven years after suit was instituted and nine years after the occurrence of the alleged medical malpractice. I approved establishment of court-supervised pre-trial conferences for medical malpractice cases, and held that the pre-trial conference officer is empowered to establish reasonable discovery deadlines.

10. Szmodis v. Geiger, 41 Leh.L.J. 404, 43 D.&C.3d 484 (1985).

I sustained an objection to expert testimony, because the science of thermography is still in the experimental stage, and, therefore, is not yet sufficiently established to have gained general acceptance in the scientific community. Thermography attempts to test for the existence of soft tissue injuries by photographing cold spots and hot spots in the area of an irritated nerve.

(b) a short summary and citations for all rulings of yours that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court:

Among the 982 Opinions and Adjudications, and countless other Orders, which I have authored as Judge of the Court of Common Pleas of Lehigh County, I have had three cases remanded but not reversed, four cases reversed based on a subsequent change in the law, one case reversed based on a conflict in appellate authority, two reversals in cases of first impression and twelve other reversals. Following is a summary of those opinions. (Copies of my trial court opinions and the corresponding appellate opinions in each case are attached as Appendix IV.)

Cases Remanded But Not Reversed

1. Midas Service Center v. Commonwealth of Pennsylvania, Department of Transportation, Bureau of Motor Vehicles, No. 2342 C.D. 2000 (Pa. Commw. 2001) (Ross, S.J. Order, July 5, 2001), remanding Lehigh County case numbers 2001-C-1200 and 2001-C-1201.

   This case involved an appeal de novo (rehearing) by the owners of two motor vehicle service stations from the determination of the Pennsylvania Bureau of Motor Vehicles to suspend their licenses to conduct state inspections of motor vehicles for inadequate record keeping. After conducting a rehearing, I affirmed the decision of the Bureau to suspend the licenses.

   The owner of the service stations appealed to the Commonwealth Court of Pennsylvania. Before the Commonwealth Court considered the appeal, the Bureau settled with the stations' owner by agreeing to assess two points against each inspection station (a lesser sanction) in lieu of suspension. Accordingly, the Commonwealth Court remanded the case to the Bureau of Motor Vehicles for assessment of the points. My decision was not reversed.

2. Sears Roebuck and Company v. Seiss, 736 A.2d 691 (Pa. Super. 1999), remanding Lehigh County case number 1993-C-1749.

   This case involved a suit by the Sears store to collect the balance due for various credit card purchases made by defendant wife and her sons. In a trial without jury I found in favor of the department

store. Defendants appealed and Sears filed a motion for costs and counsel fees. The Superior Court quashed defendants' appeal. Initially, the appeal court also quashed Sears' motion as untimely. Later, the Superior Court reinstated Sears' cross-appeal to reinstate costs and counsel fees and remanded the case to the trial court for consideration of Sears' claim for fees and costs. I was not reversed.

3. Armbruster v. Barron, 341 Pa. Super. 409, 491 A.2d 882 (1985), remanding Lehigh County case number 1980-C-2135.

This case involved a suit by a general contractor to enforce an oral personal guaranty by a 1/3 shareholder of a corporation which hired the contractor to construct a bowling alley. In a trial without jury, I ruled that the guaranty was enforceable although not in writing because the main purpose of the shareholder was to subserve a business purpose of his own (the "leading object" exception to the Statute of Frauds).

On appeal by the shareholder, the Superior Court of Pennsylvania agreed with my findings and conclusions that the leading object rule applied and that the shareholder's personal guaranty was enforceable. I was not reversed. However, the appellate court remanded the case back to the trial court to determine the extent of the shareholder's monetary liability under the guaranty.

Reversals Based on a Subsequent Change in the Law

1. Stellar Construction, Inc. v. Sborz, 561 Pa. 124, 798 A.2d 667 (2000), reversing No. 1234 Philadelphia 1998 (Pa. Super. 1999) (Memorandum Opinion), which affirmed Lehigh County case number 1994-C-1556.

This is a suit by plaintiff construction company against defendant building owners to collect payment for demolition and reconstruction of defendants' damaged building. The matter proceeded to compulsory judicial arbitration, and the arbitrators found in favor of plaintiff construction company. The building owners appealed from the arbitrators' award seeking a trial de novo (a retrial) before the trial court.

I granted plaintiff's motion to quash defendants' appeal as untimely. A Pennsylvania Rule of Civil Procedure (Pa.R.C.P. 1308(a)(1)) promulgated by the Supreme Court of Pennsylvania provides that an appeal from an arbitration award shall be taken not later than 30 days after the entry of the award on the docket. In

this case the Clerk of Courts entered the award on the docket on August 7, 1997. The building owners filed their appeal on the 34th day (September 10, 1997). Because our appellate courts have ruled that the timeliness of an appeal is a jurisdictional matter, I did not have the authority to grant an extension of the 30-day appeal period. Therefore, I quashed the appeal.

The building owners argued that the appeal period is governed by a Pennsylvania Rule of Appellate Procedure (Pa.R.A.P. 108(b)) also promulgated by our state Supreme Court. The appellate rule provides that the date of entry of an Order shall be the day on which the clerk makes the notation in the docket that notice of entry of the Order has been given. The clerk made that notation in the docket on August 11, 1997. By this interpretation defendants' September 10, 1997 appeal was timely filed on the 30th day.

I concluded that Pennsylvania Rule of Appellate Procedure 103 makes it clear that the appellate rules do not govern appeals to a trial court arising from compulsory arbitration hearings, which are governed by the rules of civil procedure. Rather the appellate rules govern appeals from the trial court to the appellate courts. Therefore, Pa.R.C.P. 1308 required dismissal of the action. The Superior Court of Pennsylvania agreed with my interpretation and affirmed my ruling.

On further appeal by the building owners, the Supreme Court of Pennsylvania reversed the Superior Court (thus reversing my ruling), and applied the rule of appellate procedure to this case. In my opinion, and in the opinion of the Superior Court, this changed the state of the law as it existed at the time I made my ruling.

2. Miers/Johnson Printing Corporation v. Bucks County Bank and Trust Company, 550 Pa. 577, 707 A.2d 1144 (1998), reversing No. 1921 Philadelphia 1996 (Pa. Super. 1997) (Memorandum Opinion), and vacating and remanding Lehigh County case number 1992-C-2442.

In this lawsuit plaintiff printing company sought $338,000 damages for defendant bank's use and occupation of premises owned by plaintiff but occupied by defendant bank as the result of a default on a loan from the bank by a former tenant of the premises.

The matter came before me initially on a motion by the bank for a judgment non pros (requesting that the case be dismissed) for the printing company's lack of diligent prosecution for a period in excess of two

years. On December 7, 1995, I ruled in favor of the bank and dismissed the case. In doing so, I relied upon a decision of the Supreme Court of Pennsylvania, Penn Piping, Inc. v. Insurance Company of North America, 529 Pa. 350, 356, 603 A.2d 1006, 1009 (1992), for the proposition that in cases involving a delay for a period of two years or more, the delay will be presumed prejudicial.

On February 12, 1997 my decision was affirmed by the Superior Court of Pennsylvania, No. 1921 Philadelphia 1996 (Pa. Super. 1997) (Memorandum Opinion). On April 22, 1998 the Supreme Court of Pennsylvania vacated my December 1, 1995 Order and remanded the case for reconsideration in light of Marino v. Hackman, 551 Pa. 369, 710 A.2d 1108 (1998) and Jacobs v. Halloran, 551 Pa. 350, 710 A.2d 1098 (1998). See 550 Pa. 577, 707 A.2d 1144 (1998).

Although the 1992 Penn Piping case was good law when I relied on it in 1995, three years later in 1998 the Supreme Court of Pennsylvania abandoned Penn Piping in Jacobs. As a result, the Supreme Court required there to be actual prejudice in order to dismiss a case for inactivity. Accordingly, the matter was remanded to the trial court for a determination of whether defendant experienced actual prejudice as a result of the delay.

Subsequently, after reargument, I ruled that the delay of the printing company caused actual prejudice to the bank. Accordingly, once again I dismissed the case for failure to prosecute it.

Once again the printing company appealed my decision. On July 19, 2001 the Superior Court of Pennsylvania concluded that I correctly disposed of the issues and affirmed my decision.

3. Underwriters at Lloyds London v. Commonwealth of Pennsylvania, Department of Transportation, No. 654 C.D. 1991 (Pa. Commw. 1992) (Lord, S.J.), reversing and remanding Lehigh County case number 1980-C-2571.

This case arises out of a motor vehicle accident. A tractor trailer skidded through the center medial barrier and collided head-on with a camper pick-up truck, killing all of the occupants of the camper. A number of lawsuits were filed and settled for $775,000.

In this suit the insurers of the various defendants sought contribution from the Pennsylvania Department of Transportation (PennDOT). Plaintiffs contended that PennDOT contributed to the accident by

negligently designing, constructing, inspecting and maintaining the highway, and by failing to provide adequate medial barriers.

On October 24, 1990 I granted defendant PennDOT's motion for summary judgment and dismissed the case. I relied upon the then-recent Commonwealth Court of Pennsylvania decision in Crowell v. City of Philadelphia, 131 Pa. Commw. 418, 570 A.2d 626 (1990). Crowell held "that if an accident involves the concurrent negligence of a local governmental agency and a third party, the governmental agency is immune. I held that there was no distinction between a local agency and the Pennsylvania Department of Transportation for these purposes.

Plaintiffs appealed my grant of summary judgment. The Commonwealth Court of Pennsylvania stated that I "understandably" relied on their decision in Crowell because as a trial judge I was obligated to follow that appellate court decision. However, approximately one year after my decision, the Commonwealth Court in the case of Buschman v. Druck, 139 Pa. Commw. 182, 187, 590 A.2d 53, 55 (1991) held that "Crowell erred when it suggested that joint tortfeasor liability was no longer available against a governmental unit." Because the Commonwealth Court changed the law after my decision relying upon it, it reversed my decision and remanded the case to the trial court for trial.

4. Commonwealth v. Rivera, No. 2132 Philadelphia 1990 (Pa. Super. 1991) (Memorandum Opinion), vacating and remanding Lehigh County criminal case number 289/1986.

This is an appeal from a sentence against defendant following his conviction for multiple rapes of his 12-year old daughter. At the trial the Commonwealth offered the expert testimony of Allentown Detective Carol Bennis to explain the Child Sexual Abuse Accommodation Syndrome. Specifically, Detective Bennis testified as to the five recognized stages that child sexual assault victims are said to experience: (1) secrecy; (2) helplessness; (3) accommodation and entrapment; (4) delayed, unconvincing disclosure; and (5) retraction.

Over defense objection I allowed the testimony explaining the syndrome. However, I did not permit the detective to testify that she believes the victim, or that the victim fits this syndrome, those matters being in the exclusive province of the jury. My rulings were required by several appellate decisions which were in

effect at the time of the trial. Indeed under the law at that time, it would have been error for me to preclude the Bennis testimony.

After my rulings and after defendant's conviction, the Pennsylvania appellate courts reversed those decisions and prohibited expert testimony on the Child Sexual Abuse Accommodation Syndrome, making it error to allow such testimony. Because the Superior Court of Pennsylvania applied the new rulings retroactively, the appellate court vacated defendant's sentence and remanded the case to the trial court for a new trial.

Reversal Based on a Conflict in Appellate Authority

1. Bishop v. Zimmerman, No. 41 EDA 2000 (Pa. Super. 2000) (Memorandum Opinion), reversing and remanding Lehigh County case number 1999-N-606.

In this case the plaintiff landlord confessed judgment against defendant tenants for $48,000 for allegedly improperly subletting a commercial lease. The tenants filed a petition to strike and/or open the judgment. I scheduled their petition for oral argument.

A Lehigh County Rule of Civil Procedure requires the moving party (tenants) to file a written brief not later than three weeks prior to oral argument. Consistent with the local rule, I entered an Order requiring tenants to file their brief by that date. Counsel for tenants violated both my Order and the local rule. Rather than requesting a time extension or informing the court of a problem, tenants filed their brief five days before oral argument. Accordingly, I entered an Order dismissing the tenants' petition. The tenants appealed.

Pennsylvania Rule of Civil Procedure 239(f) states "No civil action or proceeding shall be dismissed for failure to comply with a local rule...."

Pennsylvania has two equal intermediate appellate courts, the Commonwealth Court of Pennsylvania and the Superior Court of Pennsylvania. As a trial judge I am required to follow and apply the law as interpreted by both of these courts. However, on this issue the two intermediate appellate courts have promulgated conflicting lines of authority.

The Commonwealth Court has ruled that the dismissal of post-trial motions for failure to file a brief in violation of a local rule does not fall within the purview of Pa.R.C.P. 239(f) because post-trial motions were neither an "action" or "proceeding" for

the purposes of the rule. In contrast, the Superior Court has ruled that the dismissal of post-trial motions for failure to file a brief within the time required by a local rule is the dismissal of a "proceeding" and, therefore, in violation of Rule 239(f).

Because I found the Commonwealth Court analysis more persuasive, I followed its ruling and dismissed tenants' petition. The Superior Court disagreed. It reversed my ruling and remanded the case to the trial court for a hearing on the merits.

Reversals in Cases of First Impression

1. Roth v. Schankowitz, 905 Philadelphia 1997 (Pa. Super. 1997) (Memorandum Opinion), reversing and remanding Lehigh County case number 1996-N-1198.

Plaintiff landlord brought this action against defendant tenant for physical damage to the leased property. After a hearing the trial court entered final judgment in the landlord's favor for $2,927.10. Thereafter, plaintiff filed a Motion for Wage Attachment, seeking to collect on the judgment by attaching the tenant's wages earned at her employer Wal-Mart.

The Pennsylvania statute permitting a judgment creditor-landlord to attach the wages of a tenant in a residential lease provides: "In the case of wage attachment for damages arising out of a residential lease, to implement the wage attachment, the judgment creditor-landlord shall comply with the Pennsylvania Rules of Civil Procedure and any applicable local rules." Because no such Pennsylvania Rules of Civil Procedure were promulgated by the Supreme Court of Pennsylvania, I denied the landlord's Motion for Wage Attachment.

On appeal by plaintiff, in what I believe to be a case of first impression, the Superior Court of Pennsylvania ruled that I should implement such procedures, "consistent with our general rules of civil procedure, local rules, and due process considerations, as are necessary to enforce the statute fairly and reasonably." Accordingly, the appeal court reversed my Order and remanded the matter to the trial court for further proceedings.

2. Martin v. ITM/International Trading & Marketing Ltd., 343 Pa. Super. 250, 494 A.2d 451 (1985), reversing and remanding Lehigh County case number 1983-C-512.

This case involved an agreement to purchase gold bars. The parties entered a written agreement calling for plaintiff to advance defendant $18,000 for the specific purpose of purchasing gold bars. Plaintiff was to receive a demand note plus the right to receive a return on his investment of 25% of the profit. The written agreement contained a clause requiring any dispute under the agreement to be submitted to binding arbitration.

Plaintiff advanced the $18,000, but sought to withdraw the acceptance by sending a Notice of Withdrawal under the Pennsylvania Securities Act of 1972, which demanded the return of the $18,000 plus interest. Defendant refused, and plaintiff filed his complaint in the trial court. Defendant moved to strike the complaint for violating the compulsory arbitration clause of the agreement. I agreed, and struck the case for arbitration.

On appeal, plaintiff contended that an agreement to arbitrate issues involving alleged violations of the Pennsylvania Securities Act is unenforceable. Defendant relied on section 507 of the act, which provides, "Any condition...binding any person acquiring any security to waive compliance with any provision of this act...is void."

No Pennsylvania appellate case had previously held that an agreement similar to this is an "investment contract" and thus a "security" under the Pennsylvania Securities Act. Hence, this was a case of first impression.

The Superior Court of Pennsylvania ruled that this agreement was a "security" under the Pennsylvania Securities Act. The appellate court also ruled that the compulsory arbitration clause was unenforceable under the act. Accordingly, my ruling was reversed and the case remanded to the trial court to proceed on plaintiff's complaint.

Reversals

1. Beach v. Mathis, No. 2152 Philadelphia 1997 (Pa. Super. 1999) (Memorandum Opinion), vacating and remanding Lehigh County case number 1993-C-1129.

This was a personal injury action arising from a motor vehicle accident at an intersection. The jury found each driver 50% responsible for the accident. They assessed plaintiff's compensatory damages at $2,650. Because plaintiff was 50% negligent, the verdict was molded to an award of $1,325 for plaintiff. Plaintiff filed post-trial motions. I affirmed the jury's verdict on the grounds that the jury is free to believe all, some, or none of the testimony of plaintiff concerning the extent of injuries and damages.

On appeal by plaintiff, the Superior Court of Pennsylvania vacated the judgment and remanded the case to the trial court for a new trial on damages. The appeal court reasoned that because the amount of damages assessed by the jury ($2,650) was equal to the stipulated amount of plaintiff's wage loss, that the jury awarded no damages for pain and suffering. The appeal court concluded that an award of nothing for pain and suffering was inappropriate.

2. TEP Company Industries, Inc. v. Consolidated Rail Corporation [TEP number 1], No. 2919 Philadelphia 1995 (Pa. Super. 1996) (Memorandum Opinion), reversing and remanding Lehigh County case number 1992-C-2238.

This is a lawsuit seeking damages for breach of a lease. Fifty years ago plaintiff's predecessor leased a railroad sidetrack from defendant's predecessor for five dollars annually with rental payments to increase periodically in accordance with cost of living adjustments. Over the years these payments increased to the amount of $218.76 per year. The purpose of the lease agreements was to provide a working railroad sidetrack for plaintiff's predecessor (and subsequently for plaintiff) permitting access by rail to and from plaintiff's manufacturing plant.

On June 14, 1982 defendant Conrail removed the switch mechanism without notice to plaintiff TEP. The switch enables the sidetrack to access the main Conrail railroad lines. Without the switch, the sidetrack into TEP's main building could not function. Because TEP was not attempting to use the sidetrack, it did not learn that the switch had been removed for ten years. During this period defendant continued to bill

plaintiff for the annual rental for the sidetrack, and plaintiff continued to pay it. This practice continued until October 1991 when plaintiff discovered that the sidetrack was inoperable. Plaintiff paid defendant $1,850.89 in rental payments for the ten-year period from June 14, 1982 through April 30, 1992.

On October 16, 1991 TEP entered a three-year lease with Electro-Chemical and Manufacturing Company, Inc. (Electro-Chem) for part of TEP's facilities at a monthly rent of $7,500. A working sidetrack was an integral part of that sublease. During negotiations on that lease TEP discovered that the sidetrack was inoperable because Conrail had previously removed the switch mechanism. At that time, Conrail refused to reinstall a switch unless TEP paid approximately $75,000. Because the railroad sidetrack was an integral part of the lease, TEP reneged on the lease once it determined that a new switch would not be installed without the $75,000 payment.

Subsequently TEP found a substitute tenant, ACME Cyrogenics (ACME). ACME, which did not require a rail line, leased the property for rent of $5,050 per month. TEP earned less from the ACME tenancy than it could have earned from the Electro-Chem lease. This was because the property had a higher rental value with a railroad sidetrack than without one.

In this lawsuit plaintiff TEP sued defendant Conrail for all rentals paid by TEP to Conrail for the ten years after Conrail removed the switch, plus the lost profits on TEP's Electro-Chem lease. Defendant Conrail filed a motion in limine to limit the lost rental profits to a 60-day period. The TEP sidetrack agreement with Conrail provided that either party could terminate the lease agreement upon 60 days advance written notice to the other. I interpreted Pennsylvania appellate law as providing that where a contract has been illegally terminated by one party in violation of a notice provision in the contract (in this case 60 days), lost profit damages are limited to any losses accruing during the length of the termination period (60 days).

Here, defendant Conrail removed the switching mechanism on June 14, 1982 without giving plaintiff the 60-days written notice required under their agreement. I concluded that my colleague, Honorable Carol K. McGinley had held in a previous decision in this case that the removal of the switching mechanism by Conrail constituted a termination of the contract. Therefore, I ruled that plaintiff was limited to the profits which

it would have earned during the 60-day period following the improper June 14,1982 termination, or $1,850.89.

Plaintiff appealed my decision to the Superior Court of Pennsylvania. A three-judge panel of that Court reversed me regarding the lost profits, concluding that the original lease contracts between TEP and Conrail were breached but not terminated (contrary to Judge McGinley's determination). The Superior Court stated that plaintiff "should be awarded the difference in the monthly rentals of the Electro and the Acme leases multiplied by thirty-six months, so long as appellant [TEP] can prove that it is entitled to consequential damages." Accordingly, the Superior Court remanded the case to the trial court for an evidentiary hearing on damages.

3. TEP Company Industries, Inc. v. Consolidated Rail Corporation [TEP number 2], No. 0150 and 0151 Philadelphia 1998 (Pa. Super. 1998) (Memorandum Opinion), reversing Lehigh County case number 1992-C-2238.

On remand of TEP number 1 from the Superior Court of Pennsylvania, I concluded that in order to show it is entitled to lost profits as compensatory damages, TEP must show that those profits were reasonably foreseeable. I also concluded from the language of the lease that the use of the sidetrack by third parties was foreseen and considered at the time the lease agreements were entered in 1946.

Based on the lease terms, it was reasonably foreseeable to conclude in 1946 that the sidetrack would enhance the value of TEP's property, such that subleases of TEP's facilities including the sidetrack would be more profitable than without the sidetrack agreement. I concluded that it was also reasonably foreseeable to conclude that TEP might sublease the property and that the value of a sublease would decline without a functioning sidetrack.

I also concluded that the lost profits suffered by TEP from substituting ACME for Electro-Chem as a sublessee for a 36 month period to be $152,760.53, together with pre-judgment interest of $33,165.91. Accordingly, I awarded plaintiff total damages of $185,926.44. Additional pre-judgment interest prior to the recording of the verdict, post-judgment interest and costs of suit brought the total judgment to $191,934.34.

Defendant Conrail appealed the judgment to the Superior Court of Pennsylvania. On this appeal (TEP

number 2) a different three-judge panel of the Superior Court ruled that consequential damages on a theory of rent differentials arising from the removal of the switch connection was not reasonably foreseeable. Accordingly, the judgment for plaintiff taken on my verdict was reversed.

4. Karoly v. First Lehigh Bank, No. 00414 Philadelphia 1997 (Pa. Super. 1997) (Eakin, J.), affirming, in part, and reversing and remanding, in part, Lehigh County case number 1991-C-2138.

This case involves the purchase of a restaurant business in Allentown, Pennsylvania, known as the Haviland Inn. The Inn's real estate business equipment, inventory and liquor license was purchased for $225,000 by plaintiffs Peter J. Karoly and Nathan A. Selden and their spouses (the "Karoly group") from defendant First Lehigh Bank. The bank had acquired the business, property and assets as the result of a mortgage foreclosure against former owners Gregory and Dorothy Newhard.

At settlement the bank transferred the real estate, equipment and inventory, but not the liquor license. The bank told the Karoly group it did not own the restaurant's liquor license, nor could it convey the license without the express consent of the Newhards. Nevertheless, the bank's representative insisted that the Newhards would cooperate in transferring the license. Accordingly, the Karoly group agreed to close. However, $25,000 was placed in escrow pending transfer of the license. When the bank subsequently failed to transfer the license, the escrowed money was returned to the Karoly group.

The Karoly group tried to purchase another liquor license, but discovered that the Liquor Code prohibited any other license being used at that location because of the proximity of the restaurant to a church and school. The Newhard license did not have that restriction because it was purchased before the present church and school restrictions were enacted in the Liquor Code. Therefore, under the "grandfather clause" in the liquor regulations, the Newhard license could continue to be used at this location, and could be transferred to a new owner of the Haviland Inn.

Therefore, the Karoly group negotiated with the Newhards to purchase their license, and opened their restaurant without a liquor license. Seven months later the Karoly group purchased the Newhard license

and began selling alcoholic beverages at their restaurant.

The Karoly group instituted this lawsuit against the bank for breach of contract and fraud. The Karoly group alleged that the bank breached its agreement to convey the liquor license. The Karoly group also alleged that it was fraudulently induced to complete the purchase of the business by the bank's misrepresentation of the Newhards' cooperation.

The Karoly group also alleged that the bank failed to disclose that it could have transferred the liquor license to the Karoly group without the Newhards' cooperation, because the bank had an assignment of all the stock in the Newhards' business. However, the bank did not wish to exercise its rights under the stock pledge agreement to obtain title to the liquor license, because it would have involved the bank's assuming all liabilities of the Newhards' corporation, including state and federal tax liens, in order to be able to transfer a free and clear license to the Karoly group.

In its suit, the Karoly group sought $133,630.65. Of this amount $128,165.21 was for lost profits for the seven-month period during which they were operating without a liquor license. The other $5,465.44 was to reimburse the Karoly group for a Newhard federal tax lien on the license paid by the Karoly group.

The bank denied making any misrepresentations. The bank also contended that it was not guilty of breach of contract. The bank maintained that a Letter of Intent subsequently entered into by the Karoly group and the bank, canceled, replaced and superseded the original agreement of sale. In this Letter of Intent, the bank agreed to lend the Karoly group $17,500 relating to additional costs involved in acquiring the Newhards' liquor license (tax liens, a deficiency judgment and accounting fees).

A jury found in favor of the Karoly group and against the bank on both the breach of contract and fraud counts. The jury awarded the Karoly group damages of $115,400. The bank filed a motion for post-trial relief, which I denied. The bank appealed. On appeal the bank argued that there was insufficient evidence to support the jury's finding that the Letter of Intent did not supersede the sales agreement. (I had ruled that there was sufficient evidence to support the jury's finding in that regard.)

The bank also argued on appeal that I committed error in failing to impose sanctions on the Karoly group for filing a late expert report. (I had denied

the bank's request to preclude the Karoly group from presenting the testimony of that expert.) The bank also asserted that I committed error in denying the bank request for a six-month continuance to obtain a bank rebuttal expert witness.

Seven months prior to trial the bank formally requested the Karoly group to identify its trial expert witnesses and to provide a copy of any expert's written report of his or her findings and conclusions. At the same time the bank requested copies of any documents relied upon by the expert. Under Pennsylvania's discovery rules, such information must be provided within 30 days of the request.

Here the Karoly group did not provide the written expert report of its accountant until 12 days before the trial. Some of the documentation was provided 15 days before the trial. The rest was provided four days before trial.

The bank sought an Order precluding the Karoly group accountant from testifying at trial. Without the accountant's testimony, the Karoly group would not have been able to establish any damages for lost profits. That would have been tantamount to directing a verdict against the Karoly group. I concluded that the requested sanction was too harsh, and denied the bank's request.

The bank also requested a continuance of the trial to obtain an expert to review the materials produced four days before trial. Because of the large numbers of jury trials assigned to me, my trial schedule was filled with other cases for six months. This case had been listed for trial for at least six months. A continuance would have meant a postponement for a minimum of six months.

Accordingly, I denied the bank's request for a continuance. However, I delayed the start of trial for a day and a half to permit the bank and its accountants to review the recently provided documentation. Considering that the Karoly group as plaintiffs presented their witness first, and that the bank had several other witnesses to present before presenting the testimony of a bank rebuttal expert, the bank had 14 days from denial of its motion for continuance until the last day of testimony in which to produce an expert. I concluded under all the circumstances that this was sufficient time and that the bank would not be prejudiced.

On appeal, the Superior Court of Pennsylvania affirmed my findings that there was sufficient evidence

to support the jury's conclusion regarding the Letter of Intent. The Superior Court also affirmed my finding denying the bank's request to disallow the Karoly group's expert witness. However, the appeal court reversed my ruling denying a continuance. The appellate court remanded the case to the trial court for a new trial on the issue of damages only to give the bank more time to produce a rebuttal expert.

The Superior Court concluded that the bank and I were "equally ambushed" by plaintiff's "tardy disclosure". Nevertheless, it also concluded that two weeks was not sufficient time for the bank to deal with information it took the Karoly group seven months to produce. The appeal court reasoned that because it was the Karoly group's lack of diligence which created the problem, it should not be the bank which suffers the consequences of the solution.

5. Greubel v. Dorney Park Coaster Company, No. 00312 Philadelphia 1997 (Pa. Super. 1997) (Memorandum Opinion), reversing and remanding Lehigh County case number 1994-C-1265.

This is a personal injury case. Plaintiff Noreen Greubel was a patron at defendant's amusement park, known as Dorney Park and Wildwater Kingdom. While riding on a waterslide ride known as the Torpedo, plaintiff flipped off her innertube and allegedly suffered a herniated disk and a bulging disk. As a result, she sued the amusement park.

The waterslide ride requires the patron to sit in an innertube. Prior to entering the ride, a park employee places an innertube in the water for the patron to climb onto. Each innertube has two handles on it. Defendant had issued a manual for policies and procedures for the waterslide which required employees to place the handles in the front for adults and in the rear for children. The evidence suggests that, although plaintiff was an adult, a park employee placed her innertube in the water with the handles in the rear, and that she got into the innertube in that position and commenced her ride.

The matter came before me on defendant's motion for summary judgment. Under Pennsylvania law the operator of a place of amusement is not an insurer of his patrons. The amusement park owner has no duty to protect a patron from risks inherent in the activity. Movies must be seen in a darkened room; roller coasters must accelerate and decelerate rapidly; and baseball players will bat balls into the bleachers.

Therefore, when plaintiff alleges no more than injury caused by a risk inherent in the activity in question, plaintiff is not entitled to a recovery. Only when the plaintiff introduces adequate evidence that the amusement facility in which she was injured deviated in some relevant respect from established custom will it be proper for an "inherent-risk" case to go to the jury.

I ruled, as a matter of law, that the risk of falling off an innertube while riding down a waterslide on it at an amusement park is the type of predictable risk contemplated by Pennsylvania's "no-duty" rules. In the absence of evidence that defendant deviated from the customary practices in the amusement park industry (that is at other amusement parks), I held that plaintiff had failed to establish any duty or liability on defendant's part. I concluded that it was not sufficient for plaintiff to establish that Dorney Park deviated from its own custom of placing innertube handles in the front for adult patrons. Therefore, I granted defendant's motion for summary judgment and dismissed plaintiff's complaint.

In addition, I ruled that expert testimony is necessary to establish what the standard of care is in the amusement park industry or to establish a deviation from it. I agreed with defendant that the engineering dynamics, laws of physics, and safety standards in the amusement park industry are not readily ascertainable and knowable by the average lay juror. Because plaintiff did not have an expert witness, I ruled that plaintiff would be unable to establish those things.

Plaintiff appealed. The Superior Court of Pennsylvania characterized my conclusion that defendant had no legal obligation to plaintiff in the absence of evidence that plaintiff failed to adhere to industry standards "accurate in the abstract". The Superior Court concluded that the risk at issue in this case is not the risk inherent in riding a waterslide, but rather the risk created when the amusement park's employee allegedly failed to place the handles of the innertube in front of the patron and to instruct her to hold on to them as plaintiff's written procedures required.

The appellate court concluded that failure of a park employee was to follow those instructions was not an inherent risk of riding the Torpedo, but that it was foreseeable. Moreover, the Superior Court held that because this case is not one of inherent risk, plaintiff did not have an obligation to produce expert

testimony on the standard in the industry for operating a waterslide.

Accordingly, the Superior Court reversed my Order granting summary judgment and remanded the case to the trial court for trial.

6. Griffin v. Nassry, No. 2635 Philadelphia 1996 (Pa. Super. 1997) (Memorandum Opinion), reversing and remanding Lehigh County case number 1995-C-1768.

This is a personal injury action arising from a motor vehicle accident. Defendant driver Gabriel Feliciano alleged that the case was settled for $100,000, the limits of his motor vehicle liability insurance policy coverage. Plaintiff disagreed. Accordingly, defendant filed a Petition to Enforce Settlement Agreement. After hearing and argument, I found that plaintiff made a settlement offer which was accepted by defendant and I granted defendant's petition. Plaintiff appealed.

I concluded that plaintiff made a binding settlement offer which defendant accepted for the following reasons. On March 1, 1996 plaintiff's counsel wrote a letter to defense counsel saying, "We hereby demand that policy limits be paid." On May 14, 1996 plaintiff filed a complaint against defendant's liability insurance companies for their alleged bad faith in failing to settle the case within policy limits. Paragraph 26 of the complaint provides, "On March 1, 1996, plaintiff made another offer to compromise and settle the action for the sum of $100,000, which was within the coverage limits of the insured's policy with the defendant."

There is no dispute that on May 29, 1996 defense counsel, with the authorization of defendant's liability insurance carrier, telephoned counsel for plaintiff and offered $100,000 in settlement of the case, and that thereafter plaintiff's counsel advised defense counsel that neither plaintiff nor plaintiff's counsel was willing to settle the matter for $100,000.

The parties also agree that the bad faith complaint contained a paragraph 28, as follows: "On or about March 29, 1996, counsel for [defendant] Gabriel Feliciano via telephone stated that his principal would pay the $100,000." It is also undisputed that, prior to defendant's acceptance, plaintiff never withdrew the offer. Accordingly, I ruled that there was a binding contract to settle this case at policy limits.

Plaintiff contended that his counsel's letter of March 1, 1996 was not an offer to settle or a

settlement demand. Rather, plaintiff contended that the intent of the letter was to merely "set up" defendant to reject the offer, as further evidence to bolster plaintiff's separate bad faith action. On rejecting plaintiff's position, I reasoned, in part, that plaintiff cannot have it both ways. Plaintiff cannot tender a policy-limits offer in order to set up a bad faith claim if defendant rejects the offer, but then withdraw the offer when defendant accepts. To attempt to do so is, itself, an exercise of bad faith.

The Superior Court of Pennsylvania concluded that plaintiff's letter was merely "preliminary negotiations" and not a binding settlement offer. The appellate court also concluded that plaintiff's bad faith in attempting to set up defendant was irrelevant, because the test for determining whether the March 1 letter was a settlement offer is an objective one, not a subjective one. The Superior Court stated that the test is whether a reasonable person reading that letter would have concluded that it invited their assent to a binding agreement, not what plaintiff intended in writing it. The appellate court concluded that this letter fails that test.

Accordingly, the Superior Court reversed my decision and remanded the case to the trial court for a damages hearing.

7. Cuevas v. Muhlenberg MRI Center, No. 04023 Philadelphia 1995 (Pa. Super. 1997) (Memorandum Opinion), vacating and remanding Lehigh County case number 1992-C-0068.

This is a medical malpractice case brought by plaintiff patient against a magnetic resonance imaging (MRI) center. Plaintiff alleges that her treating doctor, Dr. Parowski, ordered a "stat" MRI of the lumbar spine and that plaintiff underwent the MRI scan on Friday, November 16, 1990. Plaintiff alleges that the MRI center did not communicate the results quickly enough. Plaintiff contends that she did not receive the results of the MRI scan until 8:00 A.M. Monday morning, November 19, 1990. Plaintiff contends that the delay in diagnosis caused complications with her herniated disk.

The liability dispute involved what a "stat" request meant in terms of response time and what was a reasonable standard of care in that regard for a magnetic resonance imaging center. Plaintiff retained a neurosurgeon, Dr. Donald C. Austin, as an expert witness to render these opinions. Dr. Austin's

proposed testimony was that an MRI "stat" order requires the testing center to perform an MRI test and report the results immediately. Dr. Austin would have also offered his opinion that the failure to insure that the test was read immediately and the results immediately reported to the treating physician was a breach of the applicable standard of care which had caused or aggravated the injuries suffered by plaintiff.

At trial defendant MRI center made a Motion in Limine to preclude the proposed testimony of Dr. Austin. I agreed with defendant that Dr. Austin did not have the requisite qualifications to testify as an expert witness against the center. Although he had impressive qualifications as a neurosurgeon, and was familiar with MRI testing, he had no experience in managing or administering an MRI center, nor had he participated in developing protocols for such centers. Accordingly, I ruled that he did not have sufficient qualifications to render an expert opinion on the standard of care for MRI centers. Therefore, I granted defendant's motion and precluded the testimony of Dr. Austin.

Because Dr. Austin was plaintiff's only expert witness, and because I concluded that this was an area requiring expert testimony, I granted summary judgment on behalf of defendant Muhlenberg MRI Center and dismissed plaintiff's case.

Plaintiff appealed. On appeal the Superior Court of Pennsylvania concluded that Dr. Austin had sufficient qualifications to render his opinions. The Court also held that my entry of a summary judgment Order on the day of trial constituted reversible error. Accordingly, the appellate court vacated my Order and remanded the case to the trial court for trial.

8. Pechin v. Dorney Park Coaster Company doing business as Dorney Park and Wildwater Kingdom, No. 847 Philadelphia 1995 (Pa. Super. 1996) (Memorandum Opinion), reversing Lehigh County case number 1994-C-1640.

In this case plaintiff patron sued defendant amusement park for a broken back suffered when he was allegedly negligently strapped into a roller coaster seat on a ride known as "Hercules". Plaintiff started suit against "Dorney Park Coaster Company doing business as Wildwater Kingdom".

Prior to the accident Dorney Park was owned by Dorney Park Coaster Company. Two weeks prior to the

accident Dorney Park sold the park to Cedar Fair, L.P., and a deed evidencing the transaction was recorded the next day in the Office of the Recorder of Deeds for Lehigh County, Pennsylvania. Plaintiff served the complaint personally on officials of Cedar Fair, L.P. who accepted service for Dorney Park Coaster Company.

One day following the expiration of the statute of limitations, Dorney Park Coaster Company filed an answer to the complaint, alleging that it was not the owner, operator or manager of the park because it had sold the park to Cedar Fair, L.P. Thereafter, plaintiff petitioned to amend the complaint to correct the name of defendant from Dorney Park Coaster Company to Cedar Fair, L.P. Cedar Fair was permitted to intervene to contest plaintiff's petition.

The law is well settled in Pennsylvania that a plaintiff may not amend a complaint to add a new party after the expiration of the statute of limitations. However, a complaint may be amended after the expiration of the statute of limitations to correct the name of a party. The central inquiry is whether the right party was sued, but under an incorrect designation; or whether the wrong party was sued, and the amendment of the complaint was designed to substitute a separate and distinct party. The former may be done after the statute of limitations has expired; the latter may not. Even if the wrong party were sued, the complaint may be amended after expiration of the statute of limitations if the true identity of the correct party is found to have been actively concealed from the plaintiff until after the statute of limitations had run.

I concluded that plaintiff sued the wrong party (Dorney Park Coaster Company instead of Cedar Fair, L.P.). He did not merely sue the right party under an incorrect designation (for example suing "Dorney Park Company" instead of Dorney Park Coaster Company"). Moreover, I concluded there was no concealment of the true identity of the park owner because a deed for sale of the park to Cedar Fair was publicly recorded. I also concluded that even if the identity of Cedar Fair had been concealed from plaintiff, that concealment was done by Cedar Fair's insurance company, Aetna, not by Cedar Fair itself. Accordingly, I denied plaintiff's petition to amend the complaint to add Cedar Fair, L.P. as a party.

Plaintiff appealed my decision. The Superior Court of Pennsylvania concluded that the true identity

of the park owner was concealed from plaintiff. Accordingly, my decision was reversed.

9. Commonwealth v. Williams, No. 1298 Philadelphia 1992 (Pa. Super. 1993) (Memorandum Opinion), reversing and remanding Lehigh County criminal case number 1694/1983.

Defendant entered a nolo contendere (no contest) plea to charges of criminal conspiracy and robbery. He was sentenced by my former colleague, Honorable Maxwell E. Davison, to not less than 7-1/2, nor more than 20, years in prison.

The charges arose from an incident in which the defendant, while riding in the front passenger seat of an automobile, attacked and robbed another passenger who was seated directly beyond defendant, at gunpoint. While they were struggling, the gun was discharged twice. One bullet grazed the victim's temple. The other blew out the right passenger window, through which the victim climbed out to escape.

After serving his 7-1/2-year minimum sentence, defendant was released from prison on parole for 12-1/2 years. Nine months after his release from prison, defendant filed a pro se (without counsel) petition for relief under Pennsylvania's Post Conviction Hearing Act. In his petition defendant contended that former Judge Davison's sentence was improper, and that he received ineffective assistance of counsel from his court-appointed attorneys. (Defendant was represented by eight different court-appointed attorneys throughout the proceedings. Each time he was appointed an attorney, he alleged counsel's ineffectiveness, and then was appointed a new attorney to pursue his ineffectiveness claim, and in turn alleged the ineffectiveness of new counsel, and so forth.)

I was assigned defendant's most recent Post conviction Hearing Act petition. Because defendant was already released from prison I entered an Order dismissing his petition as moot.

On appeal, the Superior Court of Pennsylvania reversed my Order and remanded the case to the trial court to hear the merits of defendant's petition. The Superior Court reasoned that because defendant was still serving his maximum sentence on parole, his petition was not mooted by the fact that he was no longer in custody.

10. Commonwealth v. Riddick, No. 2553 Philadelphia 1988 (Pa. Super. 1989) (Memorandum Opinion), reversing and remanding Lehigh County criminal case numbers 1333, 1335, 1336, 1337 and 1338 of 1987.

In this case defendant was convicted by a jury of numerous counts of corrupt organizations, conspiracy and drug charges. Defendant filed post-trial motions, and I ordered him to deposit one-half of the estimated cost of transcribing the trial testimony. In response, defendant filed a petition to proceed in forma pauperis (to be relieved of the obligation to pay) contending that he was unable to afford such costs. I denied his petition. Defendant appealed from my denial. Because my Order did not state the reasons for my denial, the Superior Court of Pennsylvania reversed my Order and remanded the case to the trial court to provide my reasons for the denial.

11. Raven Mill trading as Valley Aluminum Products Company v. Russell, No. 03191 Philadelphia 1984 (Pa. Super. 1985) (Per Curiam Memorandum Opinion) reversing and remanding Lehigh County case number 1983-C-3526.

This is a suit by plaintiff supplier against defendant building owners to recover the cost of delivering and installing aluminum doors, frames and hardware in defendants' building at the request of defendants' general contractor. After conducting a trial without jury, I entered a $22,701 verdict in plaintiff's favor. Defendants filed post-trial motions seeking a new trial and arrest of judgment.

I entered an Order denying defendants' seven grounds for post-trial relief on the grounds that defendants failed to comply with a Pennsylvania Rule of Civil Procedure (Pa.R.C.P. 227.1(b)). Rule 227.1(b)(1) requires that the grounds for the requested relief be raised in pre-trial proceedings or at trial when appropriate. Subdivision (b)(2) requires the post-trial motion to contain statements as to how the grounds for relief were asserted prior to, or at, trial.

Defendants appealed my denial of their post-trial motions. The Superior Court of Pennsylvania agreed with my dismissal of four of the seven grounds for post-trial relief. Concerning my dismissal of the remaining three grounds for post-trial relief, the appellate court agreed with my determination that defendants violated the rule, but reversed me nevertheless, stating that "While...the appellants

[defendants] failed to strictly comply with Rule 227.1(b), we are of the opinion that, given the nature of the lower court proceedings and the issues involved, appellants' allegations provided an adequate basis for meaningful post-trial review." Accordingly, the Superior Court reversed my entry of final judgment for plaintiff and remanded the case to the trial court for consideration of the merits of those three paragraphs of defendants' post-trial motions.

12. In Re: Ferdinand S. Soprano Trust, et al., No. 02206 Philadelphia 84, et al. (Pa. Super. 1985) (Memorandum Opinion), reversing Lehigh County Orphans' Court case number 1982-878 et al.

This matter involves 35 cases which were consolidated because the same primary question is involved in each of them.

In each matter the former First National Bank of Allentown ("accountant") served as a fiduciary in the administration of trust estates, decedents' estates, incompetents' estates or minors' estates. Each account filed by the accountant included credits for disbursements to the accountant. These credits were labeled as "tax return preparation" or "tax letter preparation" fees.

These credits were stated separately from, and in addition to, the accountant's standard income commissions. The accountant computed its standard income commissions as percentages of income receipts. In each case my predecessor, Honorable Martin J. Coyne, and I disallowed separately stated tax preparation charges. The disallowance was premised on our findings that the preparation and filing of tax returns and preparation of tax information letters were ordinary and necessary duties of a fiduciary, for which it is compensated by a reasonable commission determined as a percentage of gross income receipts. (The local rule allowed a 5% commission.)

The accountant filed exceptions to the respective adjudications. The accountant alleged that disallowance of credits for "tax services" constitute a new rule of law which should not be applied retroactively. At that time the accountant did not dispute the propriety of the court applying this "new rule" prospectively.

I entered a decree dismissing the accountant's exceptions. The accountant filed a petition for rehearing in order to present a more detailed factual

record. After argument I dismissed the petition for rehearing.

I reasoned that preparation of income tax returns, whether federal or state, is an ordinary and necessary duty of a fiduciary. The applicable federal and state tax statutes clearly imposed a duty upon fiduciaries to prepare and file those tax returns. Therefore compensation for such services is included in the accountant's 5% commission.

Compensation in addition to the 5% commission would be allowed upon performance by the fiduciary of "extraordinary services". However, for the foregoing reasons, I concluded that preparation of tax returns and tax information letters were part of a fiduciary's routine duties, not extraordinary services.

The Pennsylvania Probate, Estates and Fiduciaries Code provided that where "the compensation of a fiduciary is expressly prescribed" by the trust agreement, the fiduciary shall be entitled to that fee, rather than the commissions provided by the local court rule. (Emphasis added.) The trust agreements in this case included a provision which provided that the trustees shall be entitled to collect "the fees specified in its regularly adopted schedule of compensation in effect...at the time of the performance of such services, including reasonable charges for the preparation of any necessary tax returns."

I ruled that this language did not prescribe an express fee because the agreement between the settlor and trustee does not fix the terms of compensation. Rather, the agreement grants the trustee alone the power to determine its compensation unilaterally by periodically adopting schedules of compensation. I also ruled that the clause in the trust agreement was unenforceable for lack of consideration. This was because the Supreme Court of Pennsylvania has held that it is "axiomatic that the performance of an act which one party is legally bound to render to the other party is not legal consideration."

I also rejected the accountant's argument that my ruling amounted to an improper retroactive application of a "new rule" which disallowed credits for tax preparation services previously rendered by it. More than a year previously, Judge Coyne had disallowed tax preparation charges in a case involving the First National Bank of Allentown for similar reasons. Thus the accountant's contention that my ruling announced a new or unanticipated rule was without merit.

I also denied the accountant's request for a rehearing, because the accountant had numerous previous opportunities to request additional hearings in these consolidated matters, but failed to do so. The accountant did not request additional hearings when filing exceptions in each of these 35 matters, nor at any of the three arguments and rearguments of these consolidated cases where the retroactivity question was at issue.

Rather, the accountant chose to rely upon the record developed at a similar earlier case until I decided the matter against it. At that point for the first time the accountant petitioned for a rehearing to develop additional facts. In my view the actions of the accountant in those regards amounted to a waiver of additional hearings.

On appeal from my ruling to the Superior Court of Pennsylvania the accountant alleged that denial of a rehearing was an abuse of discretion, and further that this court had erred as a matter of law in applying a "new rule" retroactively. The Superior Court held that this court erred in its denial of a rehearing, and reversed and remanded these matters for further proceedings.

Miscellaneous Reversal

1. Kundahl v. Erie Insurance Group, 703 A.2d 542 (Pa. Super. 1997), reversing and remanding Lehigh County case number 1992-C-0179.

Following a trial without jury on stipulated facts, I entered a verdict on December 15, 1995 in favor of policyholder Christine M. Kundahl and against her insurance company, Erie Insurance Group, in the amount of $31,047.01. Erie filed post-trial motions, which I denied and dismissed on June 27, 1996. Prior to the trial, on April 5, 1994, my colleague Honorable Carol K. McGinley by Order and Opinion denied Erie's motion for summary judgment. By her footnoted Order of December 12, 1994, Judge McGinley denied Erie's petition for reconsideration.

In her Orders denying Erie's motion for summary judgment, Judge McGinley found and ruled that the Erie insurance policy language was ambiguous. She resolved that ambiguity in favor of the insured, and denied the motion for summary judgment. In arriving at my verdict, I was bound by Judge McGinley's findings and rulings that the policy language was ambiguous, which in turn under Pennsylvania law required a verdict in

favor of the policyholder. In rendering my verdict I stated,

> We find that Judge McGinley's rulings constitute the law of this case. They constitute res judicata and they constitute both findings of fact and conclusions of law by a Judge of a court of concomitant jurisdiction which I, as a trial judge, am obliged to follow in the same case whether I agree with the conclusions or not.
>
> Accordingly, the law of this case, as previously determined by Judge McGinley, not once but twice, is that the policy language is ambiguous, and I am bound by that determination.

Notes of Testimony of Closing Argument and Verdict, December 15, 1995, pages 43-44.

Erie appealed from the judgment of verdict to the Superior Court of Pennsylvania. In their appeal Erie attacked Judge McGinley's summary judgment rulings and findings. The appeal court concluded that the policy was not ambiguous. Accordingly, the Superior Court reversed Judge McGinley's Order denying summary judgment and remanded the case to the trial court, directing the trial court to enter summary judgment in favor of Erie Insurance Group. Although the Superior Court Opinion correctly lists me as the trial judge, it was Judge McGinley's Orders which that Court reversed. Additional details follow.

Erie issued two insurance policies to plaintiff Christine Kundahl and defendant Edward Kundahl, who were husband and wife. One covered their automobiles and one covered their home. The Kundahls developed serious marital difficulties. Edward Kundahl, while still married to Christine and while living in the residence, intentionally set fire to the Kundahls' home. The fire destroyed a substantial portion of the residence as well as Mrs. Kundahl's automobile.

Mrs. Kundahl, as co-insured, requested payment of insurance coverage from Erie. Erie denied coverage based on exclusionary provisions within both policies. Accordingly, she commenced this suit against Erie to recover the insurance proceeds.

The exclusionary provisions provided that Erie would not cover or pay for any loss "caused intentionally by...you or a relative" or "Caused by the neglect of anyone we protect...." or "Caused by intentional acts...committed by...anyone we protect

with the intent to cause a loss." The legal issue involved was whether the exclusionary provisions of the policies preclude an innocent co-insured from recovering under the policies.

Under Pennsylvania law the issue is resolved by determining whether the policy treats each insured as jointly or severally covered. The distinction is that if the parties' interests in the policy is joint, then the innocent co-insured is denied coverage if the actions of any insured would preclude coverage. On the other hand, if the parties' interests are several, an innocent co-insured cannot be denied coverage as the result of the actions of another insured. If the policy language is ambiguous on this point, then the court must interpret the ambiguity in favor of the insured and find the parties' interest to be several or separate.

I incorporated Judge McGinley's finding that the policy language was ambiguous on this point and, therefore, found the policies to create several obligations. Accordingly, I found in favor of the policyholder Christine Kundahl. The Superior Court of Pennsylvania, however, found no ambiguity. It concluded that the policy language "unequivocally" imposes joint obligations on its insureds. For that reason, the appellate court reversed Judge McGinley's Order denying summary judgment, and directed the trial court to enter summary judgment in favor of Erie.

(c) a short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions.

It is difficult to select among the numerous opinions on federal and state constitutional issues which I have authored as Judge of the Court of Common Pleas of Lehigh County. However, some of my significant constitutional opinions are as follows. (Copies of these opinions are attached as Appendix V.)

1. In Re: Estate of Darrell Dorone, 41 Leh.L.J. 204, 5 Fiduc.Rep.2d 117 (1985), affirmed, 349 Pa. Super. 59, 502 A.2d 1271 (1985), affirmed, 517 Pa. 3, 534 A.2d 452 (1987).

In an emergency telephone hearing conducted while an unconscious adult patient was on the operating table, I appointed a temporary guardian for the purpose of consenting to a blood transfusion for the patient, despite the opposition of his parents on religious grounds as members of the Jehovah's Witness faith, when withholding blood from the patient would have likely resulted in his death. This was a case of first impression in Pennsylvania, pitting the patient's right to freely practice his religion against the doctor's conscience and professional oath. My decision was affirmed by the Superior Court of Pennsylvania and Supreme Court of Pennsylvania.

2. Commonwealth v. Banner, 17 Med.L.Rptr. 1434 (1989), affirmed, No. 111 Philadelphia 1997 (Pa. Super. 1997) (Memorandum Opinion).

I denied the motion of a newspaper to quash the subpoena of its reporter who published numerous statements made to her by a murder defendant, and who identified defendant as the source of those statements. I held that the reporter had waived the protection of the Shield Law of Pennsylvania, and had waived the privileges of freedom of the press provided in the United States and Pennsylvania Constitutions, by attributing the quotations to defendant in her article. However, I ruled that the reporter could invoke the journalistic privilege for anything not contained in her published article. I held that the freedom of press protections found in the Federal and State Constitutions are not absolute and do not protect the non-disclosure of sources of information. Because of the significance of this opinion it was published in the national Media Law Reporter.

3. Commonwealth v. Warner, 39 Leh.L.J. 516 (1982).

This case concerned the clash between the constitutional rights guaranteeing a fair trial and a free press. I denied defendant's motion for change of venue in a homicide by vehicle case where defendant tractor-trailer operator collided with a school bus killing the driver and injuring several children. I found that in this instance the press coverage was factual and objective and not inflammatory, and I found that the publicity was not so sustained, pervasive or inflammatory as to require a change of venue. My decision was not appealed.

4. Commonwealth v. Bonnor (No. 1), 33 D.&C.3d 115 (1982).
Commonwealth v. Bonnor (No. 2), 41 Leh.L.J. 79, 33 D.&C.3d 124 (1984).

I determined that under the federal and state constitutional provisions guaranteeing the right to counsel, a defendant school teacher of modest means whose debts exceeded his assets was entitled to be represented by a court-appointed attorney at no cost to defendant on a charge of criminal homicide, despite the fact that approximately $5,000 was credited to his Public School Employes' Retirement Account. I found that it would be inappropriate to require defendant to resign from his job in order to acquire his pension funds to use to pay an attorney. Such a requirement would have imposed a substantial hardship upon defendant by requiring him to give up both his livelihood and pension.

However, after an attorney was appointed, and defendant pled guilty to murder of the third degree, was sentenced to prison, voluntarily resigned as a teacher and requested his pension funds, I determined that it did not violate his constitutional due process or equal protection rights to order payment of a portion of those funds to reimburse the county for his counsel fees and case costs.

5. Commonwealth v. Mulzet, 41 Leh.L.J. 347 (1985).

I found that the practice of the county Probation Officer in obtaining agreements from defendants to extend their parole for periods which exceed the maximum term of the original sentence, and in obtaining waivers of parole violation hearings, without the advice of counsel and without a colloquy, violated defendant's Federal and State constitutional rights of due process and double jeopardy, where the waivers of hearing and counsel were not knowing, intelligent, and voluntary. My decision was not appealed.

6. Commonwealth v. Shankweiler, No. 985 of 1994 (C.P. Lehigh 1996) (Gardner, J.), affirmed, No. 1108 Philadelphia 1995 (Pa. Super. 1997) (Memorandum Opinion).

Defendant was arrested and convicted for possession with intent to deliver 87.4 grams of cocaine found by the police in a search of his closet. Previously another Lehigh County Judge ordered the forfeiture of $7,733 cash seized during the search of his room. After defendant's conviction, I sentenced him to the mandatory minimum $15,000 fine and imprisonment for not less than three years nor more than six years.

In his Motion to Modify and Reduce Sentence defendant argued that because of the previous forfeiture, my fine constituted double jeopardy, in violation of the Fifth Amendment to the Constitution of the United States and the equivalent provision of the Pennsylvania Constitution. I ruled that because Judge Backenstoe's forfeiture Order had been vacated at the direction of both the Commonwealth Court of Pennsylvania and the United States District Court for the Eastern District of Pennsylvania, defendant's double jeopardy argument was premature and moot.

I also ruled on the merits that forfeiture proceedings which are civil in nature do not constitute double jeopardy when criminal penalties are imposed for the same activities. I concluded that the Pennsylvania Forfeiture Act is remedial in nature, not punitive. Its purpose is to deprive defendant of the means to commit additional offenses and also helps the state defray the costs of investigation and prosecution.

On appeal I was affirmed by the Superior Court of Pennsylvania which agreed that defendant's double jeopardy claim was premature.

7. Commonwealth v. Nelson, 45 Leh.L.J. 422 (1993).

I denied the Petition for Release on Parole of seven co-defendants who were found guilty and sentenced by me for defiant trespass, disorderly conduct and conspiracy. Defendants were part of a group of 10 pro-life advocates who invaded the reception room of the Allentown Women's Center, attached themselves to a 200-pound iron device which they brought, remained for more than eight hours, attempted to dissuade patients from utilizing the services of the clinic, and refused to leave until the center discontinued operations. The center, which performs gynecological services, counseling, pregnancy testing, and first trimester abortions, is a private business open to patients only.

I found that while the rights of freedom of speech and dissent are vital to a democracy and must be scrupulously protected, no one has the right to interfere with the private property rights of others under the guise of freedom of expression, irrespective of what views they are espousing. The parole petitions were denied because defendants did not adhere to prison rules and regulations, refused to execute parole plans or agree to standard conditions of parole, and indicated they would continue to violate the trespass laws upon their release.

8. Commonwealth v. Rosado, No. 617 of 1982 (C.P. Lehigh 1982) (Gardner, J.).

The police respond to a burglary call at a garage. The owner observed a pair of feet climbing out the broken back window of the business. Hub caps had been removed from a car, and money was missing. There was oil on the floor with footprints made by sneakers. The police took an envelope and a cloth from the floor with impressions of a footprint made by oil.

A van was parked in the parking lot ten feet from the broken window. Three males were removed from the vehicle by the police, handcuffed and transported to police headquarters. A police officer observed that the footprint impression on the cloth and envelope were identical in shape to the tread on defendant's sneakers.

I ruled that the police had probable cause to arrest defendant for burglary. The taking of defendant's sneakers by the officer without a search warrant was a lawful seizure incident to a lawful arrest. Defendant had no standing to object to the search and seizure of the cloth and envelope from the garage because he had no reasonable expectation of

privacy in the area searched. Because it was routine police procedure to remove the shoes and other personal items of suspects after an arrest, their taking was lawful pursuant to a reasonable routine police caretaking function.

9. Commonwealth v. Gonzalez, No. 1895 of 1989 (C.P. Lehigh 1991) (Gardner, J.).

Police had probable cause to arrest defendant for disorderly conduct and resisting arrest. Because defendant kept resisting officers' efforts to pat him down and to feel defendant's shirt pocket; because defendant repeatedly tried to pull away; because defendant kept trying to remove the packet from his shirt pocket, and to prevent the officer from removing it; and because defendant broke loose and ran away, and scuffled when the police caught him, the police had a reasonable belief that defendant had contraband, stolen property, or evidence of crime in his pocket which could be destroyed or removed by defendant, unless they immediately took it from him. Thus the warrantless seizure was permissible under the exigent circumstances doctrine. The item removed from defendant's pocket contained 50 packets of heroin.

Moreover, the heroin was also admissible at trial under the inevitable discovery rule. Even if the police had not removed the heroin from defendant's pocket at the scene, the heroin would have been discovered as part of an administrative inventory search during the booking of defendant at police headquarters when defendant would have been lawfully directed to remove the contents of his pockets.

10. Commonwealth v. LaPenna, No. 2302, 2303, 2309 and 2313 of 1988 (C.P. Lehigh 1990) (Gardner, J.).

I ruled that exigent circumstances authorized the police to enter a motel room without a search warrant. I concluded that the need for prompt police action was imperative because the police had a reasonable belief that evidence of illegal drug activity was about to be destroyed and because there existed a threat of physical harm to police officers and other innocent individuals from a handgun.

Once inside the police were authorized to seize drugs and drug paraphernalia in plain view, without a search warrant, but not cocaine inside a closed dresser drawer. Seizure of that cocaine, however, was authorized by the consent of the room occupant. The fact that the occupant had just been taken into police

custody did not invalidate the voluntary nature of the consent. I also concluded that under the circumstances of this case, the fact that the police officer told the room occupant that a search warrant could be obtained, did not constitute an improper coercive factor.

11. Commonwealth v. Banner, No. 1290 of 1989 (C.P. Lehigh 1989) (Gardner, J.), affirmed, No. 111 Philadelphia 1997 (Pa. Super. 1997) (Memorandum Opinion).

Manya Shipreck Banner was found dead from a gunshot wound to her chest in her car approximately 250 feet from the apartment which she shared with her husband, defendant Frederick Earl Banner. She was dressed in her nightgown. No murder weapon had been recovered at the scene. Using a house key found on the car ignition key ring, the police and District Attorney entered the victim's apartment with guns drawn. Their purpose was to look for the perpetrator of this offense and for other possible victims.

For about two minutes the police walked through the apartment looking for Mr. Banner or other victims. Finding no one there, they re-locked the apartment and left.

In walking through the apartment the police observed the television on and the living room and dining room lights on. They observed a pile of dishes in the kitchen sink. The water was running and overflowing onto the kitchen carpet. They also observed men's toiletries in the bathroom area. They also observed that the laundry hamper was overflowing with dirty clothing, which included men's clothing.

The police obtained a search warrant for the apartment. The search warrant application stated that the condition of the apartment was consistent with a rapid exit indicating that the incident may have originated at that location. It also stated that the fact that the victim was dressed in her night clothing was consistent with rapidly leaving her address.

Upon searching the apartment the police removed several items, including a telephone answering machine cassette tape. The Commonwealth contended that a certain telephone conversation recorded on the victim's telephone answering machine between defendant and a third person implicated defendant. These conversations referred to threats to the victim and a trip to Philadelphia to obtain a gun.

Defendant filed a Motion to Suppress Evidence. In denying the motion, I ruled that the initial police

entry was a valid "security check" which comes within the emergency exception to the search warrant requirement, which applies when police reasonably believe that a person inside is in need of immediate aid. Similarly, when the police come upon the scene of a homicide, they may make a prompt warrantless search of the area to see if there are other victims or if a killer is still on the premises.

The police may seize any evidence in plain view during the course of their legitimate emergency activities. I ruled that if the police had the right to immediately seize those items (which they did not do), clearly they had the right to rely upon their observations of such conditions in obtaining a subsequent search warrant.

I also ruled that the police observations in their first visit to the apartment were admissible under the "inevitable discovery" rule. Based upon the police testimony I concluded that the police would have obtained a search warrant for the apartment under the circumstances of this case whether or not the apartment had previously been entered to look for the perpetrator or other victims, and would have discovered these things in any event.

I concluded that under the law of Pennsylvania, search warrant affidavits are to be reviewed in a sympathetic, common sense manner, with due regard for the hectic conditions under which they are often prepared. Under this common sense reading I found the search warrant valid and enforceable.

Finally, I ruled that the fruits of the search were admissible under the good-faith exception to the exclusionary rule. Because the police officer entered the victim's apartment in the presence of the District Attorney, and because he subsequently obtained the approval of an independent magistrate, a District Justice, and because there was no other evidence of bad faith, I found that the evidence was obtained by the police in the reasonable good faith belief that a search and seizure was in accordance with the Fourth Amendment.

12. Commonwealth v. Arzuaga, 46 Leh.L.J. 255 (1994).

A narcotics agent received a tip that "a light-skinned Hispanic male" wearing blue jeans, a sweatshirt, blue sneakers, and a Yankees baseball cap had taken a 5:15 p.m. bus from Allentown to New York City. The bus was scheduled to arrive in New York at 8:00 p.m. and to depart at 9:20 p.m. for the return

trip to Allentown, to arrive at 11:55 p.m. with defendant on it. The narcotics agent and an Allentown police officer were waiting at the bus station for defendant's return.

Defendant exited the bus. He matched the description given in the tip. The officers questioned him about why he had made such a brief trip into New York City. He responded that he went into the city to buy clothes, but when he discovered that the stores were all closed, he returned to Allentown. When the police officer asked him why he would go to New York City to buy clothes, when common sense would tell him that the stores would be closed Sunday evening, defendant became defensive and asked why the offers were questioning him and not the other people. Defendant was advised that the officers were conducting a drug investigation relative to his brief stay in New York City.

Upon the officers' request, defendant was unable to produce any identification. However, he identified himself as Juan Jose Arzuaga, with a date of birth of March 25, 1970. He also gave the officers his social security number.

The narcotics agent asked defendant if they could search him but defendant refused. Defendant appeared nervous and jittery during the questioning and continued to move away from the officers.

The police officer contacted the Communications Center to determine whether defendant was wanted for any outstanding crimes. The dispatcher reported to the officer that there was an outstanding warrant for "Hector Arzuaga" with a birth date of March 25, 1970. Hector Arzuaga was wanted for a parole violation stemming from a drug conviction. The dispatcher was relaying incorrect information. There was not an arrest warrant outstanding for Hector Arzuaga. Rather there was a warrant for Hector Aguallo.

The dispatcher informed the officer that Hector Arzuaga was 5'6" tall and weighed 120 pounds. The officer indicated in his testimony that at 5'9" tall and 190 pounds, defendant looked taller and heavier than the dimensions given by the dispatcher.

Defendant was patted down. No weapons or contraband was found. The officers transported defendant to police headquarters. When they arrived the officer obtained a list of parolees with defendant's name on it. Defendant's parole officer told the police officer that defendant's trip to New York City constituted a parole violation.

Defendant was patted down. No weapons or contraband was found. The officers transported defendant to police headquarters. When they arrived the officer obtained a list of parolees with defendant's name on it. Defendant's parole officer told the police officer that defendant's trip to New York City constituted a parole violation.

Defendant was transferred to the county prison as a parole violator. There he was searched by a corrections officer who found two bags containing a total of 997 grams of cocaine.

I ruled that the Constitution does not prohibit a police officer from approaching an individual in a public area and questioning that person. At the time defendant was initially questioned at the bus station about his trip to New York City, he was not "seized" for Fourth Amendment purposes. I also ruled that after learning of the alleged arrest warrant outstanding on defendant, the officers arrested him at the bus station.

I concluded that the officers did not have sufficient probable cause to arrest defendant for an alleged outstanding parole violation, or for anything else, without an arrest warrant. Although the officers had probable cause to believe that the offense of parole violation had been committed by someone, they did not have probable cause to believe that defendant was the one who committed the parole violation.

I reasoned that in arresting defendant, the officers had to ignore a discrepancy in the first name ("Hector" not "Juan", a three-inch height discrepancy and a 70-pound weight discrepancy. Moreover, they had no social security number match in making the arrest. In actual fact, defendant was not wanted on any outstanding warrants at the time. Therefore, I concluded that defendant was subject to an illegal arrest.

Defendant was ultimately arrested at the police station a second time for an actual parole violation of which the officers became aware only as a result of defendant's first illegal arrest. It was while undergoing a search incident to the second arrest that the corrections officer discovered cocaine on defendant. Because this search stemmed from defendant's original illegal arrest, I held that the cocaine must be suppressed as being the fruit of the illegal arrest.

13. Commonwealth v. Iannuzzi, No. 2430 of 1992 (C.P. Lehigh 1993 (Gardner, J.).

Defendant was charged with criminal homicide and endangering the welfare of a child in the beating death of his two-month-old son. Prior to trial defendant filed a Motion to Suppress Physical Evidence taken from his residence pursuant to a search warrant and a Motion to Suppress Statements taken by the police at his home and later at the emergency room of the hospital where the child was taken. Defendant was not advised of his Miranda rights prior to giving either statement.

I ruled that affixing a magistrate's seal on a search warrant is ministerial in nature. Omission of the seal is not an error of constitutional dimension, and did not require invalidating the search warrant. However, I ruled that the search warrant was a nullity because the magistrate did not sign that portion of the warrant showing that he rendered a judicial determination on the issue of probable cause, nor did the magistrate indicate the time within which the warrant should be served.

I also ruled that defendant was not in custody when he made either statement, and, accordingly, Miranda warnings were not required. I reasoned that "seizure" and "custody" are analytically distinct concepts. The mere fact that an individual is subject to a stop and a period of detention during which the individual is subject to the control of the police and is not free to leave (a seizure) does not necessarily render such detention "custodial" so as to require Miranda warnings. Indeed, police detention only becomes "custodial" when under the totality of the circumstances the conditions or duration of the detention become so coercive as to constitute the functional equivalent of formal arrest.

14. Commonwealth v. Kiefer, No. 1406 of 1987 (C.P. Lehigh 1988) (Gardner, J.).

I ruled that even if defendant were the focus of a police investigation, or a suspect, or both, but was not in custody when interrogated, Miranda warnings are not required. The Fifth Amendment of the United States Constitution does not require that Miranda warnings be given when an individual becomes the focus of a criminal investigation. It is the compulsion inherent in the custodial surroundings, not focus, which triggers the necessity for the Miranda warnings.

15. Commonwealth v. Fatzinger, No. 478 of 1985 (C.P. Lehigh 1986) (Gardner, J.).

Because I found that defendant was not interrogated and because his statements to the police were spontaneously and voluntarily made, I held that it was not necessary for the police to obtain an explicit waiver of his right to have counsel present during interrogation. Even subtle compulsion is not police interrogation.

16. Commonwealth v. Williams, No. 981 of 1984 (C.P. Lehigh 1985) (Gardner, J.), affirmed, 537 Pa. 1, 17-18, 640 A.2d 1251, 1259 (1994).

Prior to advising defendant of his Miranda rights, police officers advised defendant of the nature of the charges against him (criminal homicide), of the maximum penalty (death), told him of the evidence they had against him, and called it a "very strong case", where "all the pieces fit together". The officers suggested it would be to defendant's benefit to cooperate.

Thereafter defendant was advised of his Miranda rights. During subsequent interrogation defendant confessed to killing the victim. In his pre-trial Motion to Suppress Evidence defendant sought to exclude his confession on the grounds that the "totality of the police conduct" placed him in a situation which took his free will away, and, therefore, his statements were not voluntary.

I ruled that the confession was voluntary and admissible. I concluded that the officers' statements were merely comments, not likely to elicit an incriminating response from defendant, and, therefore, were not "interrogation" for the purpose of the Miranda rule.

The Supreme Court of Pennsylvania affirmed my pre-trial evidence suppression rulings. 537 Pa. at 17-18, 640 A.2d at 1259.

17. Commonwealth v. Ortiz, No. 621 of 1985 (C.P. Lehigh 1985) (Gardner, J.).

After defendant sold miscellaneous items of stolen jewelry to a pawn shop, he was arrested for receiving stolen property. After advising defendant of his Miranda rights at police headquarters, a police detective asked defendant if he understood these rights. Defendant responded "yes".

The detective then asked defendant if he wished to make a statement. Defendant responded with a gesture consisting of a shrug of his shoulders and his hands.

He did not respond verbally; but the detective interpreted defendant's gesture to mean, "Go ahead." Defendant was given a Miranda rights acknowledgement, statement and waiver form to read, but he refused to sign it.

The detective interrogated defendant for approximately one hour. Initially defendant indicated he knew nothing about a burglary or jewelry. Later in the interrogation, and after the interrogation, defendant made a series of incriminating statements concerning his involvement in this incident.

Defendant filed a pre-trial motion to suppress the statements. At the hearing on the motion I interpreted the gesture as demonstrated on the stand by the detective as indicating that the defendant did not know whether or not he wished to make a statement, rather than an explicit assent and waiver of his right to remain silent. Accordingly, the narrow issue before the court was as follows: Where a defendant is properly and thoroughly advised of his Miranda rights, understands them, states that he understands them, and implicitly waives them but does not explicitly waive them, are any statements made by him admissible in evidence under the law of the Commonwealth of Pennsylvania.

I ruled that the answer is "No". Accordingly, I granted the motion to suppress and precluded the Commonwealth from admitting defendant's statements.

The United States Supreme Court has ruled that an implicit waiver of rights is all that is required for a statement to be admissible. Moreover, the United States Supreme Court found an implicit waiver of rights where, as here, the accused expressed an understanding of his rights and gave a statement without expressly waiving his rights.

However, the Supreme Court of Pennsylvania has gone further than the United States Supreme Court and created a requirement for prosecutors more stringent than that followed by the highest court of the land. The Pennsylvania Supreme Court ruled that an explicit waiver is a mandatory requirement for confessions in Pennsylvania.

Although the Pennsylvania Supreme Court decision was announced in a plurality opinion, a number of majority decisions of the Superior Court of Pennsylvania have followed the plurality opinion. As a trial judge I am constrained to follow the opinions of all the appellate courts of Pennsylvania. Accordingly, I suppressed the statements.

Public Office, Political Activities and Affiliations:

(a) **List chronologically any public offices you have held, federal, state or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or nominations for appointed office for which were not confirmed by a state or federal legislative body.**

Appointed by the United States Ambassador to Spain, Joseph Zappala, as a United States Observer at trials before the courts of Spain, pursuant to the North Atlantic Treaty Organization (NATO) Status of Forces Agreement, which requires a United States representative to be appointed by the chief of the diplomatic mission to attend the foreign trial of any person subject to U.S. military jurisdiction (March 20, 1990 to September 1, 1993).

First Assistant District Attorney of Lehigh County (January 24, 1977 to May 28, 1981).

Assistant District Attorney of Lehigh County (March 7, 1972 to January 23, 1977).

Solicitor to Lehigh County Treasurer (May 15, 1971 to December 31, 1977).

All of these positions were appointive. I have never been a candidate for such offices.

I have never had any unsuccessful candidacies for elective public office. I have never been nominated for an appointive office for which I was not confirmed by a state or federal legislative body.

(b) 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.

Yes.

Chairman, People Backing Backenstoe for Judge (successful 1971 general election bid of John E. Backenstoe for position of Judge of Court of Court of Common Pleas of Lehigh County, Pennsylvania); Chairman, Samuel E. Cooperman for Treasurer (two successful general election bids (1971 and 1975) for position of Treasurer of Lehigh County); Chairman, Bill Platt for District Attorney Committee (successful 1979 general election bid by William H. Platt).

In 1981 I ran for a 10-year term as Judge of the Court of Common Pleas of Lehigh County, Pennsylvania. Initially, I ran unopposed, and was selected as nominee of both the Republican and Democratic parties at the Primary Election on May 19, 1981. Subsequently, I was elected in the General Election as nominee of both parties on November 3, 1981.

Thereafter, at the General Election on November 5, 1991, I was retained by the electorate of Lehigh County for an additional 10-year term in office in a non-partisan retention election.

Recently, at the General Election on November 6, 2001, I was retained by the electorate of Lehigh County in a non-partisan retention election for an additional 10-year term in office commencing January 7, 2002.

<u>Legal Career</u>: Please answer each part separately.

(a) Describe chronologically your law practice and legal 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 dates of the period you were a clerk;

No.

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

From March 13, 1966 to June 1, 1969 I served as Chief Staff Judge Advocate, Legal Advisor to the Base Commander and Legal Assistance Officer at the Naval Construction Battalion Center, 33rd Avenue, Gulfport, Mississippi, 39501. Because I was the only military attorney stationed at that command during this period, I practiced alone.

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

Legal Employment

July 1, 1965 to March 12, 1966 and July 1, 1969 to August 31, 1970, Associate in the law firm of Duane, Morris & Heckscher, 1617 Land Title Building, Broad and Sansom Streets, Philadelphia, Pennsylvania, 19110.

July 10, 1966 to June 1, 1969, Chief Staff Judge Advocate, Legal Advisor to the Base Commander, Legal Officer, Legal Assistance Officer, Benefits and Insurance Officer, Voting Officer, Zone Inspection Officer, Assistant Equal Employment Opportunity Officer, Equal Employment Opportunity Investigating Officer, Boy Scout Liaison Officer, Acting Security Officer and Command Duty Officer, Naval Construction Battalion Center, 33rd Avenue, Gulfport, Mississippi, 39501.

September 1, 1970 to May 28, 1981, Partner in the law firm of Gardner, Gardner & Racines, 546 W. Hamilton Street, Allentown, Pennsylvania, 18101.

May 15, 1971 to December 31, 1977, Solicitor to Lehigh County Treasurer, Lehigh County Courthouse, 455 W. Hamilton Street, Allentown, Pennsylvania, 18101.

March 7, 1972 to January 23, 1977, Assistant District Attorney of Lehigh County, Lehigh County Courthouse, 455 W. Hamilton Street, Allentown, Pennsylvania, 18101.

January 24, 1977 to May 28, 1981, First Assistant District Attorney of Lehigh County, Lehigh County Courthouse, 455 W. Hamilton Street, Allentown, Pennsylvania, 18101.

Governmental Affiliations

March 13, 1966 to May 13, 1966, Student, Officer Indoctrination School, Naval Schools Command, U.S. Naval Base, Newport, Rhode Island, 02840.

May 13, 1966 to July 1, 1966, Student, Naval Justice School, U.S. Naval Base, Newport, Rhode Island, 02840.

Judicial Office

While an officer on active duty in the United States Navy (1966-1969), and during a portion of my service as an officer in the United States Naval Reserve (1969 to 1993), I served as trial judge in military Summary Courts-Martial proceedings. These were periodic appointive positions on a case-by-case basis.

From October 1, 1985 to September 30, 1991 I served as a Military Judge of Courts-Martial of the Armed Forces of the United States, including General Courts-Martial and Special-Courts-Martial. I was appointed to this position on August 15, 1985 by Rear Admiral Thomas E. Flynn, JAGC, USN, The Judge Advocate General of the United States Navy.

As a Military Judge, I presided over 77 active duty military courts-martial, including 9 General Courts-Martial and 68 Special Courts-Martial. My military judicial duties took me to locations around the world, from the United States to Europe and the Far East. In that position I presided both on land and aboard ship. I presided as a Military Judge in Norfolk, Virginia; Pensacola, Jacksonville and Orlando, Florida; San Diego and Coronado, California; Corpus Christi, Texas; Rota, Spain; and Okinawa, Japan (1986-1991).

From October 7 to 18, 1991 I was assigned as Acting Circuit Military Judge (the Chief Judge) at the Tidewater Judicial Circuit in Norfolk, Virginia. During this assignment I was in charge of a group of four Naval Reserve Military Judges who replaced the five Active Duty Military Judges assigned to that circuit. The Tidewater Circuit is one of the busiest judicial circuits in the Navy-Marine Corps Trial Judiciary which covers courts-martial worldwide.

From May 5, 1992 until September 1, 1993 I served as an Appellate Military Judge on the United States Navy-Marine Corps Court of Military Review in Washington, D.C. (now known as the United States Navy-Marine Corps Court of Criminal Appeals). I was appointed to this position by The Judge Advocate General of the Navy, Rear Admiral John C. Gordon, JAGC, USN. This is an intermediate appeal court which hears and decides automatic appeals from every Navy and Marine Corps Courts-Martial conviction worldwide, where the punishment includes either incarceration for one year or more, or a punitive discharge from the armed forces. This is the highest level judicial appointment available to a military officer. (All of the judges on the military's highest appeal court, the United States Court of Appeals for the Armed Forces, are civilians appointed by the President of the United States.) I served on this court in my capacity as a Navy Reserve officer. The court consisted of six active duty Navy Captains, three active duty Marine Colonels, two Marine Reserve Colonels and two Navy Reserve Captains (including me). Prior to my appointment, no Navy Reservist had ever served on this military appeal court.

Presently I serve as Judge of the Court of Common Pleas of Lehigh County, Pennsylvania. I was initially nominated to the position of Judge of the Court of Common Pleas by former Pennsylvania Governor Dick Thornburgh on December 8, 1980. I was confirmed by the Pennsylvania Senate (2/3 required) on April 28, 1981. I was installed on May 29, 1981.

I was elected to an additional 10-year term as Judge of the Court of Common Pleas of Lehigh County. Initially, I ran unopposed, and was selected as nominee of both the Republican and Democratic Parties at the Primary Election on May 19, 1981. Subsequently, I was elected in the General Election as nominee of both parties on November 3, 1981. In that election I received the most Lehigh County votes among all the candidates for any state or local office on the ballot. I was reinstalled to commence my elected term on January 4, 1982.

In October 1991, 87% of the members of The Bar Association of Lehigh County in a plebiscite voted by secret ballot to recommend my retention for an additional term as Judge. Thereafter, at the General Election on November 5, 1991, I was retained by the electorate for an additional 10-year term in office by 77% of the popular vote. On January 6, 1992 I was reinstalled to commence my second elected term.

In October 2001, 83% of the members of The Bar Association of Lehigh County in a plebiscite voted by secret ballot to recommend my retention for an additional term as Judge. Thereafter, at the General Election on November 6, 2001, I was retained by the electorate for an additional 10-year term in office by 82% of the popular vote. On January 7, 2002 I was reinstalled to commence my current elected term.

Presently I am one of nine judges serving an urban-suburban-rural county with a population in excess of one-quarter million.

The Court of Common Pleas is a trial court of unlimited general jurisdiction. It hears all matters, including civil, criminal, juvenile, domestic, equity, injunctions, adoptions, incompetencies, and estates. The court also functions as an appeal court as the first level of appeal from its orders and verdicts. (In this capacity, I have written 652 legal opinions, and presided over 266 jury trials.) The court also hears de novo appeals from summary criminal convictions, drivers license suspensions, liquor license suspensions, and District Justice small claims courts.

From 1981 to 1991 I served in all divisions of the court. I presided over civil and criminal jury trials, non-jury trials, hearings, settlements, sentencings, injunctions, motions and appeals. Since 1984 I have functioned as auditing judge for estate, guardianship and trust accounts, including the Harry C. Trexler Trust, the Dorothy Rider Pool Health Care Trust, the Century Fund, and the Dexter F. and Dorothy H. Baker Foundation. (In this capacity, I have authored 330 orphans' court opinions and adjudications.)

From 1987 to 1991 I was in charge of major complex civil cases, the civil pre-trial settlement program, and the medical malpractice conciliation program, which I developed in 1988 to speed up the disposition of cases, encourage settlements, and free judges to perform other duties. In 1991 I served as Administrative Judge in charge of the Adult Probation Department.

On April 16, 1989 I was appointed by Chief Justice Robert N.C. Nix, Jr. of the Supreme Court of Pennsylvania to preside as Trial Judge by special assignment in the Philadelphia Court of Common Pleas in Bradley, et al. v. Goode, et al., a lawsuit by all of the Judges of the Court of Common Pleas, the Municipal Court, the Traffic Court, the Sheriff, Clerk of Quarter Sessions and Register of Wills, in Philadelphia against the Mayor, Finance Director, Treasurer and City Council of Philadelphia, seeking adequate funding for the Philadelphia Judicial budget. In part as a result of my efforts, this lawsuit, which involved a twenty million dollar dispute, settled out of court.

For three years from 1992 through 1994 I served as Administrative Judge of the Criminal Division. As such I was in charge of the criminal and juvenile courts, the three judges who served those courts, the Adult Probation Department and the Juvenile Probation Department. In this position I presided, almost exclusively, over criminal trials, hearings, motions, arguments, appeals, guilty pleas and sentencings, as well as juvenile hearings, including dependency and delinquency matters.

As part of a major court reorganization in 1992, I designed the new Criminal Division and its procedures to speed the flow of cases, including judicial control of the docket, continuous jury trials and hearings, mandatory arraignments and list calls, diversionary programs, streamlined procedures, appointment of a full-time and a part-time Juvenile Master, a one-day/one-trial jury service system, and so forth.

From January 1, 1995 to January 5, 1997 I served as a Judge in the Civil Division. In this position I presided over civil jury and non-jury trials, hearings, motions, arguments and appeals in all civil litigation matters. These included personal injury, products liability, professional negligence, commercial litigation, banking litigation, real estate disputes, mortgage foreclosures, and so forth. I handled all pre-trial, trial, and post-trial, aspects of nearly 600 civil cases on my individual calendar.

From January 1, 1996 to January 5, 1997 I also served as Administrative Judge of the Orphans' Court Division. As such, I was in charge of the orphans' court, the three judges who served that court, the Director of Orphans' Court Operations, the Clerk of the Orphans' Court and staff. This court handles all matters concerning wills, estates, trusts, guardianships, incompetencies, adoptions and termination of parental rights.

On December 10, 1996 I was elected by my judicial colleagues to serve in the capacity of President Judge for a five-year term from January 6, 1997 until January 6, 2002. As such I was the official in charge of the judicial branch of government in Lehigh County. In this capacity I was the overseer for nine common pleas judges, including all Administrative Judges, four Senior Judges, 14 District Justices, several Masters and Hearing Officers, and 363 judicial employees, including the Court Administrator's office, the Domestic Relations Department, the Adult Probation Department, the Juvenile Probation Department, the Protection From Abuse office, the Court Reporters and Court Monitors, the Clerk of Orphans' Court office, and the county Law Library. I had administrative responsibility for the 16,700 cases filed each year and responsibility for a $17,300,000 judicial budget. My functions also included negotiating with the Lehigh County Executive and the County Board of Commissioners concerning matters of judicial administration. (Under the rules of the Supreme Court of Pennsylvania an elected President Judge may not succeed himself or herself for an additional term as President Judge.)

During that time I continued to serve, and I still serve, as one of six judges in the Civil/Motion/ Family Court Division, and as one of six judges in the Orphans' Court Division.

Throughout my nearly 21-year judicial career I have also presided over one or two criminal homicide cases each year.

(b) (1) **Describe the general character of your law practice and indicate by date if and when its character has changed over the years.**

See joint answer to (b)(1) and (b)(2), below, at (b)(2).

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

From September 1, 1970 to May 28, 1981 I was actively engaged in the general practice of law as a partner in the law firm of Gardner, Gardner & Racines in Allentown, Pennsylvania. I was one of three partners in a family practice, together with my father and sister. Each partner in this family firm have, at one time, served as judges.

From September 1, 1970 to May 28, 1981 my practice included nearly every aspect of general legal work, including civil trial court litigation, and appellate practice at all state appellate levels. We represented both plaintiffs and defendants in most phases of litigation, including personal injury, medical malpractice, and commercial matters. Our practice included wills and estates, corporation law, domestic relations law, contract law, real estate law, public utility commission practice, landlord and tenant law, and so forth.

Although I did not specialize in any particular area, I emphasized trial advocacy and court appearances.

Our clients included individuals, small and medium size corporations, insurance companies, charitable institutions, and partnerships.

During that period I served as a member, and frequently as Chairman, of numerous Judicial Arbitration panels appointed by the Court of Common Pleas of Lehigh County and the United States District Court for the Eastern District of Pennsylvania.

During that period I also presented numerous cases to panels of the American Arbitration Association. I represented clients in several condemnation and related proceedings before the Pennsylvania Public Utility Commission. Also, I represented clients before the Pennsylvania Unemployment Compensation Board, the Social Security Administration Bureau of Hearings and Appeals, the Pennsylvania Department of Transportation Bureau of Motor Vehicles, and the United States Navy Physical Disability Review Board.

Part of my practice during this period included post-trial motions and appeals at all state levels, including the Court of Common Pleas, Superior Court of Pennsylvania, Commonwealth Court of Pennsylvania, and Supreme Court of Pennsylvania.

From July 1, 1965 to March 12, 1966, and from July 1, 1969 to August 31, 1970, I was an associate in the law firm of Duane, Morris & Heckscher in Philadelphia, Pennsylvania, in the litigation department. In this position I specialized in civil litigation, including personal injury, commercial and antitrust litigation, for plaintiffs and defendants. This experience was evenly divided between state and federal courts. Representative clients included United States Steel Corporation, State Farm Mutual Insurance Company, Sentry Insurance Company, Philadelphia Life Insurance Company, and Fairchild-Hiller (Aircraft) Corporation.

From March 7, 1972 to May 28, 1981, I was also actively engaged in the practice of criminal law as a member of the staff of the District Attorney of Lehigh County, Pennsylvania, holding the position of Assistant District Attorney from March 7, 1972 to January 23, 1977, and holding the position of First Assistant District Attorney from January 24, 1977 to May 28, 1981.

My duties as First Assistant District Attorney of Lehigh County involved prosecution of criminal cases, often major felonies. In my ten years as an assistant district attorney, I tried numerous cases involving almost every crime. These included murder, rape, arson, solicitation to commit murder and trafficking in illegal drugs. These also included theft, robbery, burglary, forgery, counterfeiting, bombings, assault, terroristic threats, sexual assaults, and so forth.

During this period I regularly appeared on behalf of the Commonwealth of Pennsylvania before indicting grand juries, District Justice's preliminary hearings, guilty plea court, sentencing court, arraignment court, accelerated rehabilitation disposition (ARD) court, motion court, miscellaneous hearing court, evidence suppression hearings, and argument court. For two years during this period, I presented nearly every Commonwealth case which came before juvenile court.

From March 13, 1966 to June 1, 1969, I specialized in military law as a member of the United States Navy Judge Advocate General's Corps. In my position as Chief Staff Judge Advocate at the Naval Construction Battalion Center, Gulfport, Mississippi, from July 10, 1966 to June 1, 1969, I served as the Legal Advisor to the Base Commander.

In addition, I was the only military attorney stationed at that command. Therefore, during this period, I practiced alone. I was solely responsible for providing legal advice and assistance to approximately 5,000 servicemen and women and their dependents. I also supervised all military justice for the Construction Battalion Center, seven battalions, a regiment, and a training command. This included Special Courts-Martial, Summary Courts-Martial, Administrative Discharge Boards, and Commanding Officer's Non-judicial Punishment.

In addition I adjudicated all claims by service personnel and civilians against the United States for that area. As Equal Employment Opportunity Investigating Officer, I investigated more than 30 complaints of racial discrimination by service personnel and civilian employees of the Navy.

18. (c) (1) **Describe whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe each such variance, providing dates.**

From September 1, 1970 until May 28, 1981 I appeared in court frequently. From July 1, 1965 to March 12, 1966 and from July 10, 1966 to August 31, 1970 I appeared in court occasionally. From March 13, 1966 to July 9, 1966, I appeared in court not at all.

(2) **Indicate the percentage of these appearances in**
(A) federal courts;
(B) state courts of record;
(C) other courts.

The percentage of these court appearances were:

		July 1966 to June 1969	July 1965 to March 1966 and July 1969 to August 1970	September 1970 to May 1981
a)	federal courts	0%	47%	0%
b)	state courts of record	0%	50%	97%
c)	other courts	100%	3%	3%

(3) Indicate the percentage of these appearances in:
(A) civil proceedings;
(B) criminal proceedings.

The percentage of my litigation was:

		July 1966 to June 1969	July 1965 to March 1966 and July 1969 to August 1970	September 1970 to May 1981
a)	civil	80%	100%	40%
b)	criminal	20%	0%	60%

(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.

As an attorney I tried approximately 570 cases to verdict, all but a few as sole counsel.

(5) Indicate the percentage of these trials that were decided by a jury.

Forty-seven percent (47%) of these trials were jury trials. Fifty-three percent (53%) were non-jury trials.

(d) Describe your practice, if any, before the United States Supreme Court. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the U.S. Supreme Court in connection with your practice.

I did not practice before the United States Supreme Court.

(e) **Describe legal services that you have provided to disadvantaged persons or on a *pro bono* basis, and list specific examples of such service and the amount of time devoted to each.**

Throughout my entire legal career I have firmly held the belief that every lawyer has a professional and societal obligation to devote some time, talent and energy to the betterment of the community, and to provide legal advice and assistance to individuals who cannot afford to pay for it. My own personal service to the disadvantaged has included both legal and non-legal services.

For the past 31 years I have served countless hours on boards and committees whose sole, or major, purpose is to serve the disadvantaged. In 1971 I was a founder of East Penn Center, Inc., a non-profit corporation for the operation of a teen center for the youth of our community. I served as President, Solicitor and Member of the Board until 1979. From 1971 to 1978 I served as Solicitor of P.H.O.N.E., Inc. (People Helping Others' Needs and Emergencies), a non-profit corporation which provided a volunteer telephone answering and referral service and assistance to respond to the emergency needs of local residents.

Since 1984 I have been a member of the Board of Directors of the Police Athletic League, Inc. which provides athletic, recreational and camping opportunities to disadvantaged youth in Allentown.

Since 1985 I have served as a member of the Board of Directors of the Boys and Girls Club of Allentown, Inc., which provides educational, social, recreational, camping and athletic programs for economically disadvantaged boys and girls in Allentown. Since 1985 I have served as Chairman of the Scholarship Committee which provides college and graduate school scholarship aid to the economically disadvantaged. In addition, for the past two years the Executive Director and I have constituted an informal search committee to identify qualified economically disadvantaged minority students to receive full scholarships to Muhlenberg College through a separate scholarship program established by a member of the Scholarship Committee.

Since 1995 I have served on the Executive Committee of the club, and I currently serve as a member of the Operational Oversight Committee. From 1990 to 1996 I served as a member of the club's Program and Personnel Committee.

From 1987 to 1992 I served as a member of the Board of Directors of the United Way in Lehigh County and was Chairman and member of several of its committees. This organization raises and distributes funds to support numerous member agencies which provide a broad spectrum of services to the disadvantaged. In 1992 I served as a member of the Advisory Board of Project Alert for a Drug Free Lehigh County.

Over the years I have served in various capacities with the Boy Scouts of America, including Cub Scout Den Chief, Boy Scout Merit Badge Counselor and Chairman of the Scouting Leadership Nominating Committee. Since 1989 I have served as a member of the Advisory Committee of Minsi Trails Council, Boy Scouts of America, serving five counties in Pennsylvania and New Jersey. In 1999 I received the Distinguished Eagle Scout Award conferred by The National Eagle Scout Association of America bestowed upon individuals who earned the Eagle Scout award in their youth, distinguished themselves in their career for more than 25 years, and established a record of volunteer service in their community.

As a Deacon and Member of the Consistory of my church from 1984 to 1989, as an Elder and member of Consistory and Spiritual Council from 1997 to the present, and as an active member before and since, I have supported a number of projects which have provided food, shelter, clothing, furniture, goods and services to the disadvantaged on the local, state, national and international level.

I estimate that since 1970 I have devoted an average of 25 hours per month to such civic and charitable endeavors. In addition, since becoming an attorney, I have utilized my legal abilities in a number of ways to serve the disadvantaged. For 3 years from 1966 to 1969 as a member of the United States Navy Judge Advocate General's Corps on active duty, I devoted a majority of my time in providing free legal advice and assistance to 5,000 service members and their dependents in

Gulfport, Mississippi, many of whom were low ranking enlisted personnel who were at or below the poverty level. During that period I received training from the United States Civil Service Commission in Atlanta, Georgia in Equal Employment Opportunity, and Investigation of Discrimination Complaints. As Assistant Equal Employment Opportunity Officer, and Equal Employment Opportunity Investigating Officer for the Naval Construction Battalion Center, Gulfport, Mississippi I investigated and resolved more than 30 complaints of racial discrimination by service personnel and civilian employees of the Navy.

When I joined the Bar Association of Lehigh County in the days before public defenders and legal aid, all new lawyers were required to represent the county's indigent criminal defendants and civil litigants by court appointment without charge for a period of two years. Thereafter, as an attorney in private practice from 1970 to 1981 I represented numerous indigent clients for no fee or at substantially reduced fees. This pro bono representation included all services generally provided by general practitioners, including landlord and tenant, domestic relations, contract, wills, estates, adoption, bankruptcy, real estate, taxation and litigation, matters.

During this period I received referrals for people needing free legal services from clients, friends, social agencies and ministers. I also continued to accept court appointments, and volunteered my services on a Bar Association panel of pro bono lawyers. In my capacity as a Navy Reserve attorney from 1969 to 1993 I provided considerable free legal advice and assistance to indigent active duty, reserve and retired military personnel.

In the 11 years from 1970 to 1981 I provided free legal advice, assistance and representation to over 500 people at the rate of approximately 50 per year. During this period I represented approximately 250 additional clients at a reduced fee at the rate of approximately 25 per year. I averaged approximately four to five hours per week of pro bono legal representation during those years.

Since becoming a judge in 1981 I have directed some of my efforts to insure the delivery of competent legal services to the needy. I was involved in establishing a procedure whereby the local Legal Service Office provides free legal representation to indigent parents of juveniles in dependency proceedings at county expense, and for several years I was the overseer of that program.

In addition, I was instrumental in getting the local Area Agency on Aging to provide free guardianship services on behalf of incompetent indigent elderly persons. I participated in establishing a panel of attorneys hired by the county to provide free legal representation to indigent defendants where there is a conflict of interest which precludes representation by the Public Defender, and for several years I was the overseer of that program.

Also, I served as the liaison between the bench and the Young Lawyers Section of the local Bar Association in re-establishing a volunteer Bar Association committee to represent indigent parties in non-criminal legal matters. And for several years I urged the Bar Association to establish a program to provide legal services at reduced or deferred fees for clients who do not satisfy the financial need eligibility requirements for free legal services, but who cannot in fact afford to pay the customary legal fees in full.

19. Litigation: **Describe the ten (10) most significant litigated matters which you personally handled, and for each provide the date of representation, the name of the court, 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. In addition, please provide the following:**

(a) the citations, if the cases were reported, and the docket number and date if unreported;

(b) a detailed summary of the substance of each case outlining briefly the factual and legal issues involved;

(c) the party or parties whom you represented; and

(d) describe in detail the nature of your participation in the litigation and the final disposition of the case.

Following are ten of the most significant matters which I personally litigated.

1. Rodale Press, Inc. v. Borough of Emmaus, 38 Leh.L.J. 404 (1980).

In 1979 and 1980 I represented Rodale Press, Inc. against the Borough of Emmaus. Rodale is a publisher of magazines and books on organic gardening, farming, nutrition, health, conservation and food. In this case Rodale sought and obtained a permanent injunction precluding the borough from enforcing its weed control ordinances against the company. The ruling permitted Rodale to continue a lawn care experiment in conjunction with the publication of several articles and a book on natural landscaping. The purpose of the experiment was to encourage the growth of wild and natural vegetation in a suburban area as an environmental reservoir and as a viable alternative to traditional lawn maintenance.

The ruling permitted the company to maintain a portion of the lawn at its corporate headquarters as a meadow and natural area where wild flowers, natural grasses and vegetation would grow. The ruling also prevented the municipality from cutting down the vegetation and fining the company as it had threatened to do.

I represented Rodale Press, Inc. as plaintiff in the action. I was the sole counsel and litigator for plaintiff in the case. The final disposition of the case was the granting of the permanent injunction sought by my client against the Borough of Emmaus. The case was not appealed. The judge involved was Honorable James N. Diefenderfer of the Lehigh County Court of Common Pleas. Principal counsel for defendant Borough of Emmaus was Charles J. Fonzone, Esquire, 33 South Seventh Street, Allentown, Pennsylvania, 18101, telephone (610) 433-0121.

2. Air Products and Chemicals, Inc. v. Johnson, 39 Leh.L.J. 292 (1981), affirmed, 296 Pa. Super. 405, 442 A.2d 1114 (1982).

In 1981 I represented Richard A. Johnson. Mr. Johnson was Vice President and General Manager of the Process Gas Division of Air Products and Chemicals, Inc. Air Products is an international supplier of chemicals, process equipment, engineering services and industrial gases. In 1981 Mr. Johnson was hired to be the Executive Vice President of Liquid Air Corporation, a competitor of Air Products, where he was to be groomed as the future President of the company's Canadian operation.

In this case I represented Mr. Johnson in defending against Air Products' efforts to permanently enjoin Mr. Johnson from working for, or communicating with, Liquid Air. Air Products alleged that Mr. Johnson possessed trade secrets and confidential information which would put Air Products at a competitive disadvantage if disclosed to Liquid Air.

After a 12-day hearing, Air Products was denied a permanent injunction, and Mr. Johnson was permitted to accept immediate employment at Liquid Air, subject only to the restriction that for a period of seven months, Mr. Johnson not work in the on-site tonnage gas department, or disclose certain information. The decision was affirmed by the Superior Court of Pennsylvania.

I represented Richard A. Johnson as defendant in the action. I was lead counsel and lead trial counsel for defendant in the case. The final disposition of the case was as described above. The trial judge involved was Judge John E. Backenstoe of the Lehigh County Court of Common Pleas.

My co-counsel were Bancroft D. Haviland, Esquire, and Philip G. Kircher, Esquire, of Schnader, Harrison, Segal & Lewis, 1600 Market Street, Suite 3600, Philadelphia, Pennsylvania 19103-7286, telephone (215) 751-2458 (Haviland) and (215) 751-2304 (Kircher).

Principal counsel for plaintiff Air Products and Chemicals, Inc. was Richard F. Stevens, Esquire, 740 Hamilton Street, Allentown, Pennsylvania, 18101, telephone (610) 439-1451. Principal counsel for defendant Liquid Air Corporation was Joseph A. McManus, Esquire (deceased).

The Superior Court Judges involved were Judge John G. Brosky, Judge Zoran Popovich and Senior Judge Harry M. Montgomery.

3. Commonwealth v. Miller, 38 Leh.L.J. 26 (1978); reversed, No. 266 Special Transfer Docket Philadelphia District (Pa. Super. 1979) (three-judge panel); reversed (reversing three-judge panel and affirming trial judge), 281 Pa. Super. 392, 422 A.2d 525 (1980); allocatur denied, ___ Pa. ___, ___ A.2d ___ (February 18, 1981).

From 1976 to 1980 I represented the Commonwealth of Pennsylvania as First Assistant District Attorney in a criminal homicide prosecution against James A. Miller. District Attorney William H. Platt voluntarily disqualified himself from the prosecution and appointed me as the Acting District Attorney concerning this matter, because of his prior involvement on the defense side of this case in his former position as Chief Public Defender of Lehigh County. Thereafter, Mr. Miller's attorney filed a petition to disqualify the entire District Attorney's staff, including me, from participating. The pre-trial judge denied the motion and appointed me as Special Prosecutor in the case.

At his trial Mr. Miller was convicted of murder of the second degree and other offenses and was sentenced to life in prison. Thereafter Mr. Miller appealed on the grounds that the entire District Attorney staff should have been disqualified from prosecuting him. I represented the Commonwealth in opposition to that appeal.

In Commonwealth v. Miller, 38 Leh.L.J. 26 (1978), an en banc panel of the trial court denied defendant's post-trial motions and held that the pre-trial judge properly appointed me as Special Prosecutor and that it was not necessary to disqualify the entire District Attorney's staff.

In Commonwealth v. Miller, No. 266 Special Transfer Docket Philadelphia District (Pa. Super. 1979), a three-Judge panel of the Superior Court of Pennsylvania reversed the conviction and granted defendant a new trial. I then filed a petition for reconsideration on behalf of the Commonwealth. The Superior Court granted the petition and the matter was then reheard by the Superior Court en banc.

In Commonwealth v. Miller, 281 Pa. Super. 392, 422 A.2d 525 (1980) the Superior Court of Pennsylvania reversed the three-Judge panel decision and affirmed the trial court's ruling and affirmed the conviction. The court ruled that only the lawyer who previously represented a defendant should be disqualified from prosecuting, not the entire staff, because the District Attorney is not an advocate in the ordinary sense of the term. His duty is to seek justice, to protect the innocent, as well as to convict the guilty. The court also reasoned that to disqualify the entire District Attorney's office in such cases would have a devastating impact statewide, and the cost to taxpayers would be enormous.

Defendant's petition for allocatur (appellate review) to the Supreme Court of Pennsylvania was denied per curiam on February 18, 1981.

I represented the Commonwealth of Pennsylvania as Special Prosecutor. I was the sole trial counsel and appellate counsel. Assisting me with research and preparation as co-trial counsel was Assistant District Attorney Edward J. Zamborski, 2030 Tilghman Street, Suite 200, Allentown, Pennsylvania, 18104, telephone (610) 439-0593.

Trial defense counsel was Assistant Public Defender Robert L. Steinberg. With him on post-trial motions was Chief Public Defender Thomas A. Wallitsch. Appellate defense counsel was Assistant Public Defender Carol K. McGinley. Attorneys Steinberg, Wallitsch and McGinley are each now a Judge of the Court of Common Pleas of Lehigh County, 455 W. Hamilton Street, Allentown, Pennsylvania, 18101, telephone (610) 782-3960 (Steinberg), (610) 782-3024 (Wallitsch) and (610) 782-3120 (McGinley).

The final disposition of the case was that the judgment of a life sentence was reinstated and affirmed.

The pre-trial judge involved was Honorable David E. Mellenberg of the Lehigh County Court of Common Pleas (deceased).

The trial judge involved was Honorable Donald E. Wieand (deceased), then of the Lehigh County Court of Common Pleas, and subsequently of the Superior Court of Pennsylvania. The judges of the trial court en banc panel which denied post-trial motions were President Judge Martin J. Coyne (deceased), Judge Wieand, and former Judge Maxwell E. Davison.

The judges of the three-Judge panel of the Superior Court were President Judge Harry M. Montgomery, Justice Henry X. O'Brien of the Supreme Court of Pennsylvania and Judge Robert W. Honeyman of the Court of Common Pleas of Montgomery County, Pennsylvania, both sitting by designation.

The Superior Court Judges involved in the en banc decision were President Judge William Franklin Cercone, Judge James R. Cavanaugh, Judge Richard B. Wickersham, Senior Judge G. Harold Watkins, Senior Judge Harry M. Montgomery, and Senior Judge J. Sydney Hoffman. The Supreme Court of Pennsylvania denied allocatur in a per curiam (no Justices named) opinion.

4. Commonwealth v. Bernstein, No. 836 of 1979 (Dauphin County, Pennsylvania); vacated and remanded, 309 Pa. Super. 573, 455 A.2d 1232 (1983); trial court afffirmed, 357 Pa. Super. 13, 515 A.2d 54 (1986); allocatur denied, 515 Pa. 598, 528 A.2d 955 (1987).

From 1979 to 1981 I represented the Commonwealth of Pennsylvania as First Assistant District Attorney of Lehigh County in the successful prosecution of a wealthy Allentown businessman, Sanford Bernstein, for criminal solicitation to murder his wife. Mr. Bernstein was found guilty of paying a "hit man" $5,000 down on a $15,000 contract to kill his wife. Unbeknownst to Mr. Bernstein, the hit man was an undercover police officer. Because of extensive pre-trial publicity, a change of venue was granted and the case was transferred from Lehigh County to Dauphin County where it was tried.

The Dauphin County jury found Mr. Bernstein guilty of solicitation to commit murder. After post-trial motions were denied, defendant was fined $25,000 and sentenced to not less than five years, nor more than ten years, in prison.

Thereafter, defendant filed a motion for new trial on the basis of after-discovered evidence. After oral argument the Dauphin County trial judge denied the motion for new trial. On appeal, the Superior Court of Pennsylvania in Commonwealth v. Bernstein, 309 Pa. Super. 573, 455 A.2d 1232 (1983), vacated the judgment and remanded the case to the trial court for an evidentiary hearing on after-discovered evidence.

On remand, the Dauphin County Court held an evidentiary hearing and once again denied defendant's motion for new trial. On re-appeal the Superior Court in Commonwealth v. Bernstein, 357 Pa. Super. 13, 515 A.2d 54 (1986) affirmed the trial court Order and reinstated the judgment of sentence. The Supreme Court of Pennsylvania per curiam denied allocatur at 515 Pa. 598, 528 A.2d 955 (1987).

I represented the Commonwealth of Pennsylvania as sole trial and appellate counsel. Trial defense and appellate co-counsel were Clayton T. Hyman, Esquire (deceased) and Mark S. Refowich, Esquire, 754 Walnut Street, Easton, Pennsylvania, 18042-4352, telephone (610) 253-6155.

The final disposition of the case was that judgment of sentence was reinstated.

The trial judges involved in Commonwealth v. Bernstein, Dauphin County No. 836 of 1979, were Honorable Richard B. Wickersham of the Dauphin County Court of Common Pleas. After Judge Wickersham was appointed to the Superior Court of Pennsylvania, Honorable John C. Dowling of the Dauphin County Court of Common Pleas was assigned to the case.

The Judges of the Superior Court of Pennsylvania who vacated the judgment were Judges John G. Brosky, Stephen J. McEwen, Jr. and Phyllis W. Beck. The Superior Court Judges who reinstated the judgment of sentence were Judge James R. Cavanaugh, William Franklin Cercone and J. Sydney Hoffman.

5. United States Steel Corporation v. Board of Assessment and Revision of Taxes, 422 Pa. 463, 223 A.2d 92 (1966).

In 1965 and 1966, as an associate in the Philadelphia law firm of Duane, Morris & Heckscher, I was co-counsel for United States Steel Corporation in a tax assessment appeal involving the Fairless Works steel plant in Bucks County, Pennsylvania. The case involved the reassessment of the $400,000,000 Fairless Works plant for property tax purposes. Included among the pivotal issues were (1) the propriety of raising additional school taxes by reassessing only this property; (2) whether the depreciated reproduction cost valuation method should be used for assessment purposes in Pennsylvania; and (3) whether certain portions of the plant were integral parts of the manufacturing process, and thereby exempt from taxation. I researched the law of all 50 states concerning these issues and wrote major portions of the brief filed in the Supreme Court of Pennsylvania.

A unique personal aspect of my involvement in this case is that I participated in the Supreme Court oral argument of this case immediately after I was admitted to the practice of law by being sworn in before the Supreme Court of Pennsylvania.

I was co-counsel for appellant, United States Steel Corporation. Lead counsel for appellant was Henry T. Reath, Esquire, Duane, Morris & Heckscher, One Liberty Place, 1650 Market Street, Philadelphia, Pennsylvania, 19103-7396, telephone (215) 979-1000. Counsel for appellants School District of Falls Township and Board of Supervisors of Falls Township was Theodore R. Mann, Esquire, 1709 Spruce Street, Philadelphia, Pennsylvania, 19103, telephone (215) 732-3120. Counsel for Respondent, Board of Assessment and Revision of Taxes of Bucks County was County Solicitor Samuel S. Gray, Jr., address unknown.

The final disposition of the portion of the case that I was involved in was that the Supreme Court of Pennsylvania rejected the attempt of United States Steel to apply depreciated reproduction cost as the value-fixing standard for tax assessment purposes. Rather, the Court ruled that the term "actual value" in the taxing statute refers to market value.

The Supreme Court agreed with United States Steel that the railroad track, craneways, ore yards, blast furnace stock bins, slag pits, sintering plant, open hearth charging platforms, soaking pit platforms and blast furnace cast houses should not be assessed because they were integral parts of the manufacturing process. However, the Court ruled that catwalks and stairways used for access to cranes and other equipment should be assessed, because they were not part of the manufacturing process. Accordingly, the Supreme Court of Pennsylvania modified the Orders of the trial court and remanded the case to the trial court for Orders in conformity with the Supreme Court opinion.

The Justices of the Supreme Court of Pennsylvania involved in the case were Chief Justice John C. Bell, Jr. and Justices Michael A. Musmanno, Benjamin R. Jones, Herbert B. Cohen, Michael J. Eagen, Henry X. O'Brien and Samuel J. Roberts.

6. Commonwealth v. Gaugler, 35 Leh.L.J. 209 (1973).

In 1972 and 1973 I represented the Commonwealth of Pennsylvania as an Assistant District Attorney in Commonwealth v. Gaugler. The case involved a prosecution for operating a motor vehicle while under the influence of intoxicating liquor. On Christmas Eve, 1971, defendant left his parents' home at 10:00 p.m. after consuming three highballs. While driving a Fiat passenger car he lost control, crossed into the opposite lane of on-coming traffic, mounted a six or seven inch high curb, proceeded over a sidewalk and traveled 45 feet across a lawn and crashed into a home. He left 200 feet of skid marks on the street and an additional 30 feet on the sidewalk and lawn.

The arresting police officer found defendant pinned in the vehicle behind the wheel in the driver's seat. The officer detected a strong odor of alcohol. Defendant was removed to a local hospital where a blood sample was taken at approximately 11:20 p.m. Analysis revealed a blood alcohol content of 0.14 percent of alcohol by weight in the blood.

At trial defendant admitted driving the vehicle and that he consumed alcohol. His parents and several other witnesses expressed the opinion that he was not under the influence. In addition, defendant blamed the accident on a pot hole in the street.

Defendant was found guilty by a jury. He filed post-trial motions for a new trial and in arrest of judgment. In support of his motion for new trial defendant contended that the verdict was contrary to the weight of the evidence because the only evidence of intoxication was the blood test.

I argued that the record demonstrated numerous additional factors from which the jury could conclude that defendant was intoxicated to the extent that he was unable to drive safely. These factors included the odor of alcohol, the rate of speed, the erratic driving, the skid marks, the damage to the vehicle, the admitted consumption of alcohol. The trial judge agreed with my arguments and denied the motion for new trial.

In his motion in arrest of judgment, defendant argued that the presumption of innocence must prevail as a matter of law over the statutory presumption of intoxication contained in that portion of the Motor Vehicle Code pertaining to chemical tests of the blood. Under the statute a blood alcohol level over 0.10 percent (here 0.14 percent) raises a rebuttable presumption that the defendant was under the influence of alcohol. Defendant argued that because the jury had before it no more than conflicting presumptions, the Commonwealth had failed to sustain its burden of proof beyond a reasonable doubt.

I argued that the jury had considerably more before it than the conflicting presumptions. In addition it had all of the evidence of intoxication enumerated above, which was sufficient to establish guilt beyond a reasonable doubt. The trial judge accepted my argument and denied defendant's motion in arrest of judgment. No appeal was taken.

I represented the Commonwealth of Pennsylvania as the sole trial and post-trial counsel. Trial and post-trial defense counsel was George A. Hahalis, Esquire (deceased). The final disposition of the case was denial of defendant's post-trial motions and imposition of sentence. The trial judge involved was former President Judge Kenneth H. Koch of the Lehigh County Court of Common Pleas (deceased).

7. Commonwealth v. Skrapits, 36 Leh.L.J. 582 (1976), affirmed, No. 2372 October Term 1976 (Pa. Super. 1977).

In 1975 and 1976 I represented the Commonwealth of Pennsylvania as an Assistant District Attorney in Commonwealth v. Skrapits. The jury found the defendant guilty of possession with the intent to deliver and delivery of methamphetamine. The sole question raised in defendant's post-trial motion for a new trial was whether a timely motion to poll the jury was made on his behalf.

When the jury announced its verdict at approximately 5:50 p.m. on December 11, 1975 the trial judge looked directly at defense counsel to ascertain if he wished to pursue anything with the jury. There being no gesture, indication or word in any way indicating such a desire, the court excused the jury. As the jury filed out of the courtroom the parents of the defendant screamed out.

At approximately 6:00 p.m. the trial judge reconvened court for the purpose of informing defendant of his post-trial rights and addressing the matter of bail. At this point defense counsel for the first time requested that the jury be polled. The trial judge informed counsel that the jury had already been excused, had dispersed and probably had departed from the building. Consequently, the motion was denied as untimely.

At oral argument on his post-trial motion, defendant's attorney, an experienced criminal trial lawyer, admitted that he had made no request that the jury be polled prior to their departure from the courtroom, that he made no objection to their departure, and candidly conceded that it was not until he observed the parents' reaction and after he learned that the jury had left the building that he requested a poll.

I argued in opposition that the purpose of a jury poll is to insure unanimity on the part of the jury and not to afford the unsuccessful party with a last minute opportunity to create grounds for a new trial. I argued that the request to poll the jury must be timely made and that it is of no avail if made after the dismissal of the jury. The trial judge accepted my arguments and denied defendant's motion for a new trial, after which defendant was sentenced. On appeal the Superior Court of Pennsylvania per curiam affirmed the trial court ruling. Commonwealth v. Skrapits, No. 2372 October Term 1976 (Pa. Super. 1977).

In this case I represented the Commonwealth of Pennsylvania as the sole trial, post-trial appellate counsel. Trial, post-trial and appellate defense counsel was W. Hamlin Neely, Esquire (deceased). The final disposition of the case was the affirmance of defendant's conviction and sentence. The trial judge involved was former Judge Maxwell E. Davison of the Lehigh County Court of Common Pleas. The Superior Court opinion was per curiam.

8. Paul v. Hess Brothers, Inc., 35 Leh.L.J. 117 (1972), reversed and remanded, 226 Pa. Super. 92, 312 A.2d 65 (1973).

From 1971 to 1973 I represented Hess Brothers department store as the defendant in a personal injury action brought by a customer for injuries sustained when a mannequin allegedly fell on her. At trial the plaintiff Anna Paul established that during the lunch hour she was examining house dresses in the basement of defendant's department store, when a mannequin from the display counter fell and struck her.

There was no evidence of what caused the mannequin to fall and no evidence that the mannequin was defective or that it had been negligently placed on the counter. Plaintiff testified that she was not within arm's length of the mannequin when it fell, but could not say whether other shoppers were in the vicinity or not.

At the conclusion of plaintiff's case in chief at trial, I made a motion for compulsory nonsuit on behalf of the department store. The judge granted my motion. Plaintiff then filed a motion to remove the nonsuit. That motion was heard by the Lehigh County Court of Common Pleas sitting en banc.

In support of a compulsory nonsuit at trial, and in opposition to removal of the nonsuit post-trial, I argued that the mere happening of an accident is not negligence. It was incumbent upon the plaintiff to produce more evidence than the mere fall of the mannequin. I argued that based on the meager evidence presented by the plaintiff, the jury would have to improperly speculate in order to find the store negligent.

I argued that the law does not require the storekeeper to be an insurer of the safety of his customers and liable for every accident that occurs in his store. Up to that point Pennsylvania decisions had uniformly refused to impose absolute liability upon storekeepers and had consistently denied liability for falling objects in the absence of evidence from which negligence could be found.

The trial court sitting en banc accepted my arguments and denied the motion to remove the compulsory nonsuit. Paul v. Hess Brothers, Inc., 35 Leh.L.J. 117 (1972). Plaintiff appealed that determination to the Superior Court of Pennsylvania where I made the same arguments.

The Superior Court concluded that the nonsuit had been improperly granted. It reversed the trial court and remanded the case back to the trial court for a new trial. Paul v. Hess Brothers, Inc., 226 Pa. Super. 92, 312 A.2d 65 (1973). The Superior Court reasoned that mannequins and advertising signs located in a store do not usually fall unless negligently placed and improperly inspected. The court was of the opinion that the totality of the facts and circumstances amounted to some evidence of negligence which, however slight, was sufficient to take this case to the jury.

I represented the defendant store as sole trial and appellate counsel. Plaintiff's trial counsel was James Menconi, Esquire, address unknown. Plaintiff's appellate counsel was Frank S. Poswistilo, Esquire, 101 Larry Holmes Drive, Suite 300, Easton, Pennsylvania, 18042-7721, telephone (610) 252-4338. The final disposition was that upon remand the case settled out of court.

The trial judge involved was Honorable Donald E. Wieand (deceased), then of the Lehigh County Court of Common Pleas, and subsequently of the Superior Court of Pennsylvania. The judges of the en banc trial court which decided the post-trial motions were Judge Wieand, former Judge Maxwell E. Davison, and Judge John E. Backenstoe. The Superior Court Judges involved in the appellate decision were President Judge J. Colvin Wright and Judges G. Harold Watkins, Robert Lee Jacobs, J. Sydney Hoffman, William Franklin Cercone and Edmund B. Spaeth, Jr.

9. Commonwealth v. Capers, Lehigh County criminal action number 14 of 1978, affirmed, No. 1605 Philadelphia 1980 (Pa. Super. 1981), allocatur denied, 656 E.D. Misc. Docket 1981 (Pa. March 22, 1982).

From 1978 to 1980 I represented the Commonwealth of Pennsylvania as First Assistant District Attorney of Lehigh County in a successful prosecution for rape and other charges. In this case, a young woman was raped by a man who broke into her apartment wearing a ski mask. Because his head was covered by the mask, the victim's description was based upon her observations of the assailant's height, weight, eyes, lips and his voice.

Shortly after the incident she reported the attack to her boyfriend and the police. She was also promptly examined in the emergency room of a local hospital in accordance with the standard medical rape protocol. In separate conversations with her boyfriend, a police officer and a nurse shortly after the event, the victim stated concerning her assailant, "I will never forget his voice."

Several weeks later the victim and her boyfriend were seated in the waiting room of the local police station waiting to speak to a detective about her case. One of the police officers was interviewing a male in a nearby office. Their conversations could be heard through the open door of the office. Upon hearing the voice of the male being interviewed, the victim exclaimed to her boyfriend, "That's the voice of the man who raped me."

At trial I prosecuted on the basis of the voice identification and the similarities between the defendant's height and weight and the victim's description of the height and weight of the perpetrator. I also presented the testimony of an expert tool and die examiner who matched the pry marks on the victim's apartment door to one of the burglary tools found in defendant's car. The jury convicted defendant of rape, terroristic threats, burglary, criminal trespass, robbery, theft, and receiving stolen property. After defendant's post-trial motions were denied by the trial court sitting en banc on April 15, 1980, defendant was sentenced to not less than 10 years, nor more than 20 years in prison, and to pay restitution to the victim.

On appeal the Superior Court of Pennsylvania affirmed the conviction and sentence. Commonwealth v. Capers, No. 1605 Philadelphia 1980 (Pa. Super. 1981). Defendant's petition for allocatur was denied by the Supreme Court of Pennsylvania per curiam in case number 656 E.D. Misc. Docket 1981 on March 22, 1982.

I represented the Commonwealth of Pennsylvania as sole trial and appellate counsel. Trial and appellate defense counsel was Assistant Public Defender John P. Karoly, Jr., Esquire, 1555 North 18th Street, Allentown, Pennsylvania, 18104, telephone (610) 820-9790.

The final disposition of the case is that the conviction and sentence were affirmed by the Superior Court. The trial judge involved was former Judge Maxwell E. Davison of the Lehigh County Court of Common Pleas. The judges of the en banc trial court which denied defendant's post-trial motions were Judge Davison and Judges John E. Backenstoe and James N. Diefenderfer of the Lehigh County Court of Common Pleas. The Judges of the Superior Court of Pennsylvania who were involved were President Judge William Franklin Cercone, and Judges John P. Hester and Justin M. Johnson.

10. Fasching v. Weiner, Lehigh County civil action number 731 January Term 1978.

In 1978 and 1979 I represented the plaintiff Frank R. Fasching in a dental malpractice case against defendant Dr. Edward Weiner and his dental group Weiner, Schwartz and Associates, Inc. The case was Fasching v. Weiner.

Defendant is an Oral Surgeon. In March 1975 plaintiff was advised by his Dentist that he required root canal therapy on one of his teeth, the upper left six-year molar. He was advised that after the root canal treatment, a portion of the root of that tooth, the distal buccal root (one of three roots in that tooth) was to be extracted and the tooth capped. The purpose of this treatment was to save the tooth, so that the tooth could be used as an abutment tooth, or anchor, for a fixed permanent upper left bridge.

Because that was the only molar left in that side of plaintiff's mouth, without that tooth a permanent bridge could not be utilized. Without the tooth, a temporary denture plate, which must be removed and cleaned and reinserted every day of plaintiff's life, would be required.

Plaintiff's Dentist recommended an Endodontist to perform the root canal. That procedure was successfully performed. After that plaintiff's Dentist recommended defendant oral surgeon to extract the root. However, instead of extracting the root, defendant pulled the whole tooth. As a result, plaintiff must wear a temporary denture plate for the rest of his life.

Defendant claimed, after the fact, that the tooth was defective and had to be removed. Plaintiff claimed that after the root canal the tooth was sound, and the extraction of the root and capping the tooth would have completed the restoration. Defendant claimed that he told plaintiff on the dental chair that he was going to extract the tooth. Plaintiff claimed that he did not.

Plaintiff engaged another lawyer to sue Doctor Weiner. That attorney filed a complaint and tried the case in arbitration. An arbitration panel consisting of three attorneys awarded plaintiff $500. Plaintiff who was dissatisfied with the results of arbitration, discharged his attorney and engaged me to represent him.

I appealed the arbitration award and retried plaintiff's case before a jury. I contended that defendant was negligent for failing to exercise the care of a reasonable Oral Surgeon. I also contended that defendant was liable to plaintiff for pulling plaintiff's tooth without obtaining plaintiff's informed consent.

In addition to plaintiff's testimony, I presented the expert testimony of plaintiff's Dentist and Endodontist. The jury found in favor of plaintiff in the sum of $7,500. Defendant filed a Motion for New Trial and Judgment N.O.V. (notwithstanding the verdict). However, defendant subsequently withdrew his appeal and paid plaintiff the full $7,500 verdict.

After the arbitration, I represented plaintiff as the sole trial and post-trial counsel. Trial and post-trial defense counsel was Charles Steven Miller, Esquire, Wiener & Wiener, Suite 400, 512 Hamilton Street, Allentown, Pennsylvania, 18101, telephone (610) 821-8600. The final disposition of the case was withdrawal of the appeal and satisfaction of the verdict. The trial judge was Judge John E. Backenstoe of the Lehigh County Court of Common Pleas.

20. **Criminal History: State whether you have ever been convicted of a crime, within ten years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and disposition and describe the particulars of the offense.**

No.

21. **Party to Civil or Administrative Proceedings: State whether you, or any business of which you are or were an officer, have ever been a party or otherwise involved as a party in any civil or administrative proceeding, within ten years of your nomination, that is reflected in a record available to the public. If so, please describe in detail the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings in which you were a guardian *ad litem*, stakeholder, or material witness.**

Yes. On April 1, 1997 I was sued by Sy Kibby and Mary Jane Kibby acting pro se (without counsel) in Kibby v. Gardner, Lehigh County case number 97-C-0743. Mr. and Mrs. Kibby were litigants in a case over which I presided, Snell v. Kibby, Lehigh County case number 95-E-0104, formerly 94-C-2574. They were unhappy with my decision in their case, which involved a boundary dispute with their residential neighbors. They alleged that I violated their rights by conducting their equity trial without a jury. On October 31, 1997 Senior Judge Michael V. Franciosa of Northampton County (appointed by the Supreme Court of Pennsylvania to preside over this matter because of my status as a Lehigh County common pleas judge) entered an Order sustaining my preliminary objection and dismissing the Kibbys' Complaint against me for failure to state a cause of action because judges are immune from lawsuits concerning decisions made in the performance of their judicial duties. On April 24, 1998 the Superior Court of Pennsylvania in docket number 05077PHL97 quashed the Kibbys' appeal.

In March and April 1996, as Executor of the estate of my mother Margaret K. Gardner, I was the Applicant in a request for approval of a minor subdivision to divide my mother's residential property into a residence and two vacant lots. The subdivision was approved by the Emmaus (Pennsylvania) Planning Commission on April 11, 1996 and by Emmaus Borough Council on April 15, 1996.

From September 1988 to April 1992 my wife and I were involved as parties in a township subdivision dispute. Initially we were "Protestants" before the Upper Milford Township (Pennsylvania) Planning Commission and Board of Supervisors. When we were successful on that level, the Applicant appealed to the Court of Common Pleas. In the Court of Common Pleas appeal, my wife and I were designated as "Intervenors".

When we were successful in the Court of Common Pleas, the Applicant appealed to the Commonwealth Court of Pennsylvania. In the Commonwealth Court my wife and I were designated as Appellees.

This dispute involved the efforts of a neighbor to subdivide his property and gain access by a road through the area of my front yard. The appeal was captioned Harold A. Smith and Naomi R. Smith, Appellants, v. Upper Milford Township, Appellee, and James Knoll Gardner and Linda Kay Gardner, Intervenors, No. 90-C-1449 (Civil Action-Zoning Appeal). The case was originally filed in the Court of Common Pleas of Lehigh County, Pennsylvania. Because of my status as a judge on that court, the matter was transferred to the Court of Common Pleas of Carbon County, Pennsylvania, where it was decided in our favor on December 20, 1991. On April 8, 1992 the Commonwealth Court of Pennsylvania, in case number 0108 C.D. 1992, entered an order dismissing the Smith appeal, and finally concluding the matter in our favor.

22. **Potential Conflict of Interest: 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 any potential conflict of interest. Should any arise, I would disclose it to the litigants and recuse myself if appropriate to do so. I intend to follow the Guidelines for the Code of Judicial Conduct in all such matters.

23. **Outside Commitments During Court Service: Do you have any plans, commitments, or arrangements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.**

No.

24. **Sources of Income: List sources and amounts of all income received during the calendar year preceding the nomination, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500. 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.**

In response to this question, I incorporate my Financial Disclosure Report dated April 22, 2002 for the reporting period January 1, 2001 to April 1, 2002, a copy of which follows:

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
dner, James Knoll	Eastern District of PA	04/22/2002
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge - Nominee	**5. Report Type (check type)** X Nomination, Date 04/22/2002 Initial Annual Final	**6. Reporting Period** 01/01/2001 to 04/01/2002
7. Chambers or Office Address Lehigh County Courthouse 455 W. Hamilton Street Allentown, PA 18101-1614	**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	Officer, Director	Allentown Symphony Association
2	Director	Boys and Girls Club of Allentown, Inc.
3	Director	Police Athetic League, Inc. (See Attachment)

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

☐ NONE (No reportable agreements.)

	DATE	PARTIES AND TERMS
1	1981	State Employees Pension Fund; pension upon retirement, includes medical insurance and long-term care benefits
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	state judicial salary	114,884.00
2	2001	state judicial salary	117,235.14
3	2002	state judicial salary	29,828.76
	000-01	self-employed realtor (See Attachment)	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Gardner, James Knoll	Date of Report 04/22/2002

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

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

	SOURCE (No such reportable reimbursements.)	DESCRIPTION
☐	NONE	
1		EXEMPT
2		
3		
4		
5		
6		
7		

V. GIFTS

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

	SOURCE (No such reportable gifts.)	DESCRIPTION	VALUE
☐	NONE		
		EXEMPT	
2			
3			

VI. LIABILITIES

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

	CREDITOR (No reportable liabilities.)	DESCRIPTION	VALUE CODE*
☐	NONE		
1	World Savings and Loan Association	1/6 share Mortgage on Rental Property #1, Torrence, California (Pt. VII, line 1)	N
2	Capital One	credit card	J
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: Gardner, James Knoll

Date of Report: 04/22/2002

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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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 Rental Property #1, Torrence, California (1997 $533,333)	G	Rent	O	Q	EXEMPT				
2 Time Share, Williamsburg, Virginia (1999 $18,700)	C	Rent	K	R	"				
3 Sovereign Bank Accounts	A	Interest	K	T	"				
4 IRA #1 (Evergreen Foundation Fund Class B)	A	Dividend	J	T	"				
5 Brokerage Account #1:									
6 CITIBANK NA Bank Deposit Program	A	Interest	J	T	"				
AMGEN Common Stock		None	J	T					
8 Disney Common Stock	A	Dividend	J	T	"				
9 TYKO Common Stock	A	Dividend			"				
10 Aim Basic Value Fund Class A - Mutual Fund	A	Dividend	J	T	"				
11 SB Small Cap Value Fund Class B - Mutual Fund	A	Dividend	J	T	"				
12 SB Fundamental Value Fund Class A - Mutual Fund	A	Dividend	J	T	"				
13 SB Premium Total Return Fund Class A - Mutual Fund	A	Dividend	J	T	"				
14 SB Municipal High Income Fund Class L - Mutual Fund	A	Dividend	J	T	"				
15 SB Convertible Fund Class A - Mutual Fund	A	Dividend	J	T	"				
16 Royce Value Trust Inc. Mutual Fund		None	J	T	"				
17 Philadelphia Water and Sewer Revenue Bond - 0 Coupon		None	J	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 Value 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: Gardner, James Knoll

Date of Report: 04/22/2002

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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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 Altoona City Authority Water Revenue Bond	A	Interest	J	T	"				
19 General Motors Acceptance Corp SmartNotes - Bond		None	J	T	"				
20 Bank of Oklahoma NA Certificate of Deposit	A	Interest	J	T	"				
21 Nokia Common Stock	A	Dividend			"				
22 Seagram Joseph & Sons Preferred Stock	A	Dividend			"				
23 Federal Home Loan Bank Construction Bond	A	Interest			"				
Jones Cable TV Fund Limited Partnership	A	Int & Div			"				
25 Aim Value Fund Class A - Mutual Fund		None			"				
26 SB Premium Total Return Fund Class B - Mutual Fund	A	Dividend			"				
27 SB Convertible Fund Class B - Mutual Fund	A	Dividend			"				
28 SB Mid Cap Core Fund Class B - Mutual Fund		None			"				
29 SB Money Funds Cash Portfolio Class A - Mutual Fund	A	Dividend			"				
30 Conseco Bank Certificate of Deposit	A	Interest			"				
31 MBNA American Bank Certificate of Deposit	A	Interest			"				
32 Irwin Union Bank & Trust Co. Certificate of Deposit	A	Interest			"				
33 Brokerage Account #2 (Custodial Account #1):									
34 CITIBANK NA Bank Deposit Program	A	Interest	J	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
Gardner, James Knoll	04/22/2002

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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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 SB Premium Total Return Fund Class A - Mutual Fund	A	Dividend	J	T	"				
36 Greater Atlantic Bank-VA Certificate of Deposit	A	Interest	K	T	"				
37 Bank of Oklahoma NA Certificate of Deposit	A	Interest	J	T	"				
38 AFD Exchange Reserves Class B - Mutual Fund	A	Dividend			"				
39 SB Large Cap Growth Fund Class A - Mutual Fund	A	Dividend			"				
40 SB Money Funds Cash Portfolio Class A - Mutual Fund	A	Int & Div			"				
Conseco Bank Certificate of Deposit	A	Interest			"				
42 Irwin Union Bank & Trust Co. Certificate of Deposit	A	Interest			"				
43 FIRSTAR Bank Certificate of Deposit	B	Interest			"				
44 Brokerage Account #3 (Custodial Account #2):									
45 CITIBANK NA Bank Deposit Program	B	Interest	K	T	"				
46 Progress Energy Inc. Common Stock	A	Dividend	J	T	"				
47 WorldCom Inc. WorldCom Group Common Stock	A	Dividend	J	T	"				
48 Federal Home Loan Bank Construction Bond	A	Interest	K	U	"				
49 Federal Natl Mortgage Assn Bond	A	Interest	K	T	"				
50 General Motors Acceptance Corp SmartNotes - Bond		None	J	T	"				
51 General Motors Acceptance Corp SmartNotes - Bond		None	J	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: Gardner, James Knoll

Date of Report: 04/22/2002

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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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 SB Aggressive Growth Fund Class B - Mutual Fund		None	J	T	"				
53 SB Small Cap Value Fund Class A - Mutual Fund	A	Dividend	J	T	"				
54 SB Fundamental Value Fund Class A - Mutual Fund	A	Dividend	J	T	"				
55 SB Premium Total Return Fund Class A - Mutual Fund	A	Dividend	J	T	"				
56 SB Convertible Fund Class A - Mutual Fund	A	Dividend	J	T	"				
57 SB Mid Cap Core Fund Class A - Mutual Fund		None	J	T	"				
Royce Value Trust Inc. Mutual Fund		None	J	T	"				
59 Delaware Group Dividend & Income Fund - Mutual Fund	B	Dividend			"				
60 CG Capital Markets - Large Cap Value Investments		None			"				
61 CG Capital Markets - International Equity Invt.		None			"				
62 CG Capital Markets - Large Cap Growth Investments		None			"				
63 CG Capital Markets - Small Cap Growth Investments		None			"				
64 CG Capital Markets - Small Cap Value Investments		None			"				
65 CG Capital Markets - Intermediate Fixed Inc. Invt.	A	Dividend			"				
66 CG Capital Markets - High Yield Investments	A	Dividend			"				
67 CG Capital Markets - Government Money Investments	A	Dividend			"				
68 CG Capital Markets - Emerging Markets Investments		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 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: Gardner, James Knoll

Date of Report: 04/22/2002

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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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 AFD Exchange Reserves Class B - Mutual Fund	A	Dividend			"				
70 SB Mid Cap Core Fund Class B - Mutual Fund		None			"				
71 SB Large Cap Growth Fund Class A - Mutual Fund		None			"				
72 MBNA America Bank Certificate of Deposit	A	Interest			"				
73									
74									
76									
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80									
81									
82									
83									
84									
85									

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 Value 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 Gardner, James Knoll	Date of Report 04/22/2002

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Attach additional pages as part of report.)

NONE

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Gardner, James Knoll	04/22/2002

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	Custodian	Brokerage Account #2: UIPA/UGMA
5	Custodian	Brokerage Account #3: UPIA/UGMA

PART 3. NON-INVESTMENT INCOME (cont'd.)

Line	Date	Source and Type	Gross Income
5	2000-01	self-employed piano teacher	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Gardner, James Knoll	04/22/2002

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 Knoll Gardner Date April 22, 2002

James Knoll Gardner

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

25. **Statement of Net Worth: Complete and attach the financial net worth statement in detail. Add schedules as called for.**

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		85	654	Notes payable to banks-secured			-0-
U.S. Government securities-add schedule		32	234	Notes payable to banks-unsecured			-0-
Listed securities-add schedule		197	973	Notes payable to relatives			-0-
Unlisted securities--add schedule		1	000	Notes payable to others			-0-
Accounts and notes receivable:			-0-	Accounts and bills due		4	750
Due from relatives and friends			200	Unpaid income tax			-0-
Due from others			-0-	Other unpaid income and interest			-0-
Doubtful			-0-	Real estate mortgages payable-add schedule		454	862
Real estate owned-add schedule		860	000	Chattel mortgages and other liens payable			-0-
Real estate mortgages receivable			-0-	Other debts-itemize:			-0-
Autos and other personal property		185	800				
Cash value-life insurance		31	651				
Other assets itemize:			-0-				
				Total liabilities		459	612
				Net Worth		934	900
Total Assets	1	394	512	Total liabilities and net worth	1	394	512

FINANCIAL STATEMENT

NET WORTH - continued

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-				

NOTE: All figures and information in the foregoing Financial Statement and the following schedules are stated as of December 31, 2001.

UNITED STATES SENATE QUESTIONNAIRE
James Knoll Gardner
Financial Statement
Net Worth

Schedules

U.S. Government Securities:

GOVERNMENT BONDS

Held as Account Custodian
(Custodial Account #2)
under the Uniform Gift to Minors' Act

$15,253.20	$15,000.00 Federal Home Loan Bank Cons Bd Book/Entry, Dated: June 4, 2001, 5.270% interest, Maturity: June 4, 2004
$15,253.20	$15,000.00 Federal National Mortgage Association, Dated: May 17, 2001, 5.625% interest, Maturity: May 17, 2006

U.S. Government EE Bonds

Owned by James Knoll Gardner

	$ 932.06 32 $50 bonds
	795.20 3 $500 bonds
$ 1,727.26	Total EE Bonds
$32,233.66	TOTAL GOVERNMENT BONDS

UNITED STATES SENATE QUESTIONNAIRE
James Knoll Gardner
Financial Statement
Net Worth

Schedules

LISTED SECURITIES

Held as Account Custodian
(Custodial Account #1)
under the Uniform Gift to Minors' Act

$ 8,846.69	613.076 shares Smith Barney Premium Total Return Fund Class A
$ 8,846.69	Total Custodial Account #1 Listed Securities

Held as Account Custodian
(Custodial Account #2)
under the Uniform Gift to Minors' Act

9,243.35	223 shares Progress Energy Inc Common
2,181.00	150 shares Worldcom Inc Worldcom Group Common
78.66	6 shares WorldCom Inc GA New MCI Group Common
9,695.00	700 shares Delaware Group Dividend & Income Fund Inc
6,749.50	79.565 shares Smith Barney Aggressive Growth Fund Class B
7,796.20	494.369 shares Smith Barney Small Cap Value Fund Class A
13,752.12	1,013.421 shares Smith Barney Fundamental Value Fund Class A

UNITED STATES SENATE QUESTIONNAIRE
James Knoll Gardner
Financial Statement
Net Worth

Schedules

LISTED SECURITIES - continued

$ 8,846.69	613.076 shares Smith Barney Premium Total Return Fund Class A
9,264.56	504.056 shares Smith Barney Convertible Fund Class A
6,210.72	333.372 shares Smith Barney Mid Cap Core Fund Class A
$73,817.80	Total Custodial Account #2 Listed Securities

Owned by James Knoll Gardner

$13,286.00	200 shares AMGEN Inc
1,228.20	60 shares Walt Disney Co
6,903.00	300 shares NOKIA Corp
8,820.00	150 shares TYCO International Ltd
12,564.43	455.563 shares Aim Basic Value Fund Class A
8,098.53	517.809 shares Smith Barney Small Cap Value Fund Class B
10,113.90	745.313 shares Smith Barney Fundamental Value Fund Class A
9,519.24	659.684 shares Smith Barney Premium Total Return Fund Class A

UNITED STATES SENATE QUESTIONNAIRE
James Knoll Gardner
Financial Statement
Net Worth

Schedules

LISTED SECURITIES - continued

	$10,402.97	664.302 shares Smith Barney Municipal High Income Fund
	9,928.36	661.891 shares Smith Barney Convertible Fund Class A
	9,532.40	$10,000 Philadelphia PA Water and Sewer Revenue Bond - Zero Cupon Bond, Dated: June 19, 1989, Maturity: October 1, 2003
	14,911.65	$15,000 Altoona PA City Authority Water Revenue Bond, Dated: September 15, 1977, 5% interest, Maturity: November 1, 2019
$115,308.68		Total James Knoll Gardner Listed Securities
$197,973.17		TOTAL LISTED SECURITIES

UNLISTED SECURITIES

James Knoll Gardner

$ 1,000	One share Lehigh County Agricultural Society

UNITED STATES SENATE QUESTIONNAIRE
James Knoll Gardner
Financial Statement
Net Worth

Schedules

REAL ESTATE OWNED

$435,000	James Knoll Gardner and Linda Kay Gardner Residence
425,000	James Knoll Gardner 1/6 share of Apartment Building
$860,000	TOTAL REAL ESTATE OWNED

UNITED STATES SENATE QUESTIONNAIRE
James Knoll Gardner
Financial Statement
Net Worth

Schedules

REAL ESTATE MORTGAGES PAYABLE

James Knoll Gardner and
Linda Kay Gardner

First Union National Bank
P. O. Box 96074
Charlotte, North Carolina 28296-0074

Prime Equity Line
Secured with First Mortgage
on personal residence
$300,000 credit line, 5.25% (fluctuating)
annual interest rate.

$130,117 Current balance due residential mortgage

James Knoll Gardner

World Savings and Loan Association
P. O. Box 659568
San Antonio, Texas 78265-9568

324,745 1/6 share of $2,500,000 first mortgage
secured on apartment rental property
$2,500,000 face amount, 5.63% interest,
due December 2017,
current balance $1,948,469.41

$454,862 TOTAL REAL ESTATE MORTGAGES PAYABLE

26. Selection Process: **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?**

Yes.

(a) **If so, did it recommend your nomination?**

Yes.

(b) **Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.**

There is a selection commission in my jurisdiction to recommend candidates for nomination to the federal courts. It is the Federal Judicial Nominating Commission of Pennsylvania appointed by United States Senators Arlen Specter and Rick Santorum. It recommended my nomination as a Judge on the United States District Court for the Eastern District of Pennsylvania in January 1991, February 1992, May 1996, June 1997, March 1999, January 2000 and March 2001.

My most recent experience in the judicial selection process is as follows. On February 27, 2001 I formally requested in writing that Senator Arlen Specter submit my name to President George W. Bush for nomination to fill a vacancy on the United States District Court for the Eastern District of Pennsylvania. On March 7, 2001 I formally submitted my name for the vacancy by forwarding a letter and a Personal Data Questionnaire for Applicants Currently on the Bench and my resume in three formats (short form, narrative form and comprehensive All-Purpose Biography) to Regional Chairman, Federal Judicial Nominating Commission, Philadelphia, Pennsylvania.

On March 14, 2001 I was interviewed in Philadelphia by a three-member subcommittee of the Nominating commission. That subcommittee recommended my name to the entire Federal Judicial Nominating Commission for the Eastern District of Pennsylvania for inclusion on a short list of candidates to be recommended to the Pennsylvania Senators. On the same day the Nominating Commission decided to include my name on the short list.

Thereafter my Congressman, Patrick J. Toomey; my State Senator, Charles W. Dent; my State Representative, Jane S. Baker; my County Executive, Jane R. Ervin; my County Commissioner, Grayson E. McNair, and several other prominent local citizens and community leaders, recommended me to the United States Senators for this position. I also received editorial support from The Morning Call newspaper in Allentown on March 27, 2001 and April 10, 2002.

The details of any communications between the Pennsylvania Senators and the White House are not known to me. However, I assume I received a favorable recommendation because I was invited to the West Wing of the White House for an interview which occurred on July 2, 2001. At that time I was interviewed by the Counsel to the President and an Associate Counsel to the President.

Thereafter I received a letter dated October 12, 2001 from Assistant Attorney General Viet D. Dinh advising me that I am among those who have been suggested to the Department of Justice for recommendation to the President for nomination to the Federal Judiciary. I received and completed a number of forms, including White House and Senate questionnaires, a packet of security documents containing the questionnaire for National Security Positions and related waiver forms, a medical questionnaire and a Financial Disclosure Report.

On November 20, 2001 I participated in an interview conducted in person by a Special Agent of the Allentown, Pennsylvania office of the Federal Bureau of Investigation as part of its background check on me.

On November 27, 2001 I participated in an interview conducted by telephone by an Attorney from the Office of Legal Policy, as part of a separate Justice Department background check on me.

On April 22, 2002 President Bush submitted my nomination to the United States Senate.

(c) 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 or seeking a commitment as to how you would rule on such case, issue, or question? If so, please explain fully.

No.

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY, UNITED STATES SENATE

1. Name: Full name (include any former names used).
Ronald Hurley Clark

2. Position: State the position for which you have been nominated.
United States District Judge, Eastern District of Texas

3. Address: List current office address and telephone number. If state of residence differs from your place of employment, please list the state where you currently reside.
WOLFE, CLARK, HENDERSON, TIDWELL, & McCOY, L.L.P.
123 N. Crockett, Suite 100
Sherman, TX 75090
(903) 868-1933

4. Birthplace: State date and place of birth.
DOB: January 5, 1953 Caripito, Venezuela

5. Marital Status: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please also indicate the number of dependent children.
Married to Joanna Evans Clark.(Maiden name: Joanna Evans.) Self employed as dance and drama instructor, d.b.a. "Take A Bow." 824 N. Broughton, Sherman, TX.
Two dependent children.

6. Education: List in reverse chronological order, listing most recent first, each college, law school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.
University of Texas School of Law, 1976-1979, J.D. 1979. Editor in Chief, American Journal of Criminal Law; President, Criminal Law Association; Member, Board of Advocates.

University of Connecticut, 1973-1974, M.A., 1974, Economics.

University of Connecticut, 1970-1973, B.A. with High Honors, Departmental Honors Fellow, with Honors in Economics, 1973. Phi Beta Kappa.

7. **Employment Record**: List in reverse chronological order, listing most recent first, all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

Unless otherwise specified, I was paid at each of the following positions.

1993-present: Partner in Wolfe, Clark, & Henderson, L.L.P., which, with the addition of new partners, is now known as Wolfe, Clark, Henderson, Tidwell, & McCoy L.L.P. 123 N. Crockett, Suite 100, Sherman, TX 75092.

1997-present: Committee Chair, Troop 15, Boy Scouts of America. (Unpaid)

1983-1993: Henderson, Bryant & Wolfe, Sherman, TX. 123 N. Crockett, Suite 100, Sherman, TX 75092. Associate, 1983-1984. Partner, 1985-1993. Firm dissolved in 1993 and became Wolfe, Clark, & Henderson, L.L.P.

1987-1988: President, Sherman Kiwanis Club, Sherman, Texas. (Unpaid)

1984-1985: Member, Board of Directors, Sherman JAYCEES. (Unpaid)

1980-1982: Served as officer in Army active reserve unit, 490th Civil Affairs Company, in Abilene, Texas, 79605.

1979-1982: Assistant City Attorney, City of Abilene, TX. 555 Walnut, P.O. Box 60, Abilene, TX 79604-0060.

1978 (summer): Student practice at Albuquerque District Defender's Office, Albuquerque, N.M.

1974-1976: Served as mortar platoon leader and as tank company executive officer in 1st Battalion, 66th Armor, 2nd Armored Division, at Fort Hood, Texas and in Germany, 1974-1976.

8. **Military Service**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge received.
Branch of Service: Army ***(Note: serial number is same as social security number.)***
Active Duty: 1974-1976, 2LT, ARMOR, served in 2nd Armored Division as platoon leader and as company executive officer in Texas and Germany.

Active Reserves: 1980-1983, 1st Lieutenant & Captain, 490th Civil Affairs Co., Abilene Texas.

IRR: 1983-1990, Captain.

Present Status: Captain, ARMOR, United States Army Retired Reserve.

9. Honors and Awards: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Academic

Phi Beta Kappa, 1973.
Undergraduate Honors Fellow, University of Connecticut, 1973.
Graduate Honors Fellowship, University of Connecticut, 1974.
Editor-in-Chief, American Journal of Criminal Law, 1978-1979.
President, Criminal Law Association, 1978-1979.
Member, Board of Advocates.

Professional

Certified in Civil Trial Law, Texas Board of Legal Specialization, 1985. (Recertified in 1990, 1995, & 2000)
Certified in Civil Appellate Law, Texas Board of Legal Specialization, 1990. (Recertified in 1995 & 2000)
"av" rating by Martindale-Hubble, 1990.
Chairman, Civil Justice Reform Act Advisory Committee, United States District Court for the Eastern District of Texas, 1994-1996.

Military

Distinguished Military Graduate, University of Connecticut, 1974.
First Honor Graduate, Armor Officer Basic Course, Ft. Knox, Kentucky 1975.
Ranger Tab and Parachutist Badge.

Civic

District Scoutmaster of the Year, 1996.
BSA District Award of Merit, 1994.
BSA Woodbadge, 1992.
Eagle Scout Award, Bronze Palm, 1967.
Distinguished President's Award, Kiwanis International, 1988.
JAYCEES National Project of the Year in Governmental Involvement, 1985.
Knights of Columbus, Abilene, Texas, Knight of the Year 1982.

Legislative

2002 Fighter For Free Enterprise Award, Texas Association of Business and Chambers of Commerce.
2001 Certificate of Appreciation, Texas Classroom Teachers Association, Whitesboro Chapter.

2001 NAACP, Sherman Chapter, Political Involvement Award.
2001 Texas Top Ten Award, Free Enterprise Foundation.
2001 Elected to House Republican Caucus Policy Committee.
2001 Elected as Vice-Chair, House Veterans Coalition.
2000 NAACP, Sherman Chapter, Political Involvement Award.
2000 Recognized as Honorary Member of Grayson County Builders Association.
2000 Elected to Board of Directors of the Texas Conservative Coalition.
1999 Recognized for service to senior citizens by the Texoma Area Agency on Aging.
1999 Named to Texas Civil Justice League's "Eleven Best Representatives and Senators."
1998 Friend of CASA award. (Court Appointed Special Advocates for children).
1998 Recognized by the Texas Municipal Clerks Association for service to city clerks in Texas.
1997 Legislator of the Year, Texas Purchasing Management Association.
1997 Legislator of the Year, Texas Motorcycle Rights Association and Texoma ABATE.

10. Bar Associations: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Local Rules Advisory Group, United States District Court for the Eastern District of Texas 1997-2002.
Federal Civil Justice Reform Act Advisory Committee for the Eastern District of Texas, 1991-1997 (Chairman, 1994 - 1996).
Fifth Federal Circuit Bar Association
Participant, Grayson County Bar Association Legal Clinic, under direction of Legal Services of North Texas, Inc. Private Bar Involvement Award, 1993.
Grayson County Bar Association (Secretary 1986-1987)
Texas Association of Defense Counsel
Texas City Attorneys Association
Defense Research Institute, Inc.
Fellow, Texas Bar Foundation

11. Bar and Court Admission: List each state and court in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Licensed by Texas Supreme Court, May 1979.
United States Supreme Court, 1982
Fifth Circuit Court of Appeals, 1980
Eleventh Circuit Court of Appeals, 1981

United States District Court, Northern District of Texas, 1980
United States District Court, Eastern District of Texas, 1983

12. Memberships: List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, charitable, or other organizations since graduation from college, other than those listed in response to Questions 10 or 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion - either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

Kiwanis International: Member, 1980-present; President, Sherman Club, 1987-1988; Chairman, Sponsored Youth Committee, Abilene Club, 1982.

Boy Scouts of America: Troop 15 Committee Chairman, 1997 - present; Scoutmaster, Troop 15, 1992-1997; Pack 15 Committee Chairman, 1989-1992; Eagle Board of Review, 1983-1985; District Membership Chairman, 1983-1984; Advisor, Sea Explorer Post 205, 1981-1982.

Member, American Legion Post 29 (Judge Advocate, 1999 - present).

Member: AMVETS Post 47, National Rifle Association, Texas State Rifle Assoc.

Knights of Columbus: Member, 1980-present; Recorder, Abilene Council, 1981-1982; Trustee, Sherman Council 1991-1993.

Member, Bonham, Denison, Honey Grove, Howe, Pottsboro, Sherman, and Van Alstyne Chambers of Commerce.

Sherman Jaycees: Member, 1984-1986; Board of Directors, 1984-1985.

Staff, American Journal of Criminal Law, 1977-1979. (Editor-in Chief, 1978-1979.)

Member, Criminal Law Association, 1976-1979. (President, 1978-1979)

Member, Board of Advocates, 1978-79.

Kiwanis International did not allow women members prior to 1986. However, after obtaining the approval of the Sherman Kiwanis Club, as a delegate to the 1985 International Convention, I voted in favor of admitting women members. The proposition was defeated and women were not admitted until the following year. While I was President of the Club, October 1987-October 1988, we inducted 11 women members, elected 2 women to the Board of Directors, and elected 1 woman as an officer.

13. **Published Writings**: List the titles, publishers, and dates of books, articles, reports, or other material you have written or edited, including material published on the Internet. Please supply four (4) copies of all published material to the Committee, unless the Committee has advised you that a copy has been obtained from another source. Also, please supply four (4) copies of all speeches delivered by you, in written or videotaped form over the past ten years, including the date and place where they were delivered, and readily available press reports about the speech.

Books

Texas Municipal Law and Procedure Manual, 4th Edition, University of North Texas, 2001; 3rd Edition, 1995; 2nd Edition, 1989 (updated annually). A copy of the 4th Edition has been forwarded. The 2002 update is being written and the other three copies will be provided when the updated version is published.

Contributing Editor (forms): Rayburn on Condemnation (Texas Law Press, 1990). [Note: This edition was revised and a copy is not available. Many of the forms were used in the revision.]

Seminar Papers

"Annexation, Extraterritorial Jurisdiction, Authority of General Law Cities and Validation," Texas Municipal Clerks Certification Program, 8/91.

"Appeals Under the New Rules," Texas Municipal League Workshop for Attorneys, 8/98.

"Attorney's Fees in Governmental Litigation," TML Workshop for Attorneys, 5/91.

"Bond Elections," Texas Municipal Clerks Annual Election Law Seminar, 1/89.

"Civil Justice Expense and Delay Reduction Plans," Federal Court Practice 1994, State Bar of Texas C.L.E. Program, 9/94, 10/94, 11/94.

"Community and Economic Development," Texas Municipal Clerks Certification Program, 8/93.

"Community and Economic Development," Texas Municipal Clerks Certification Program, 8/99.

"Contracting, Purchasing & Sale of Property," Texas Municipal Clerks Certification Program, 8/93.

"Court Awarded Attorney Fees," Texas City Attorneys Association Meeting, 1986.

"Dangerous Intersections," TML Third Annual Workshop for Attorneys, 8/93.

"Discovery Under the Civil Justice Expense and Delay Reduction Plan, of the Eastern District of Texas," North Texas Legal Association, 4/95.

"Environment, Utilities and Miscellaneous," Texas Municipal Clerks Certification Program, 8/97.

"Legislative Update," Texas City Attorneys Association Semi-Annual Conference, 6/98.

"Miscellaneous Bills and Wrap Up," Texas Municipal Clerks Certification Program, 8/99.

"Municipal Hiring and Firing Procedures," Texas Municipal League Intergovernmental Risk Pool Personnel Issues/Employee Practices Seminar, 2/95.

"No Duty to Individuals to Perform Governmental Functions," TML Workshop for Attorneys, 11/92.

"Open Government, Annexation, and Miscellaneous Bills," Texas Municipal Clerks Association, 8/01.

"Open Government, Elections, & Substandard Properties," Texas Municipal Clerks Certification Program, 8/97.

"Personnel, Purchasing, and Contracting," Texas Municipal Clerks Certification Program, 8/99.

"Pro-Active Drug and Substance Abuse Programs," Risk Management for Local Government 1993 Annual Conference, 4/93.

"Protection of Employees Under Texas Tort Claims Act § 101.106," Texas City Attorneys Association Semi-Annual Conference, 6/94; and at Texas Municipal League 4th Annual Workshop for Attorneys, 8/94.

"Roles and Responsibilities of Defense Counsel to Public Entities/Coordination Between the City Attorney and Outside Counsel," Co-Author – Suing and Defending Governmental Entities and Officials, State Bar of Texas C.L.E. Program, 2/90.

"Special Elections and Recount Petitions," Texas Municipal Law Clerks Annual Municipal Election Law Seminar, 2/96.

"Streamlining Federal Litigation – New Rules for the Eastern District of Texas," Texas City Attorneys Association Meeting, 11/93.

"76th Legislative Session Update," TML Intergovernmental Risk Pool Workshop for Attorneys, 8/99.

"1997 Legislative Update," Texas Municipal League Workshop for Attorneys, 8/97.

"1999 Legislative Update," Texas City Attorneys Association Semi-Annual Conference, 6/99.

NOTE: I prepared and delivered a paper entitled "Municipal Law Update" to the Texas Municipal Clerks Certification Program in August 1991. I cannot find a copy of that paper. I also prepared and delivered a paper entitled "Municipal Boundaries and Annexation" to the Texas Municipal Clerks Certification Program in August 1989. I cannot find a copy of that paper.

Other Publications

Case Note, *Stanford Daily v. Zurcher*, 6 American J. Criminal L. 307 (1978).

Book Note, 7 American J. Criminal L. 283 (1979) (reviewing Wayne R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment(1978).

14. **Congressional Testimony**: List any occasion when you have testified before a committee or subcommittee of the Congress, including the name of the committee or subcommittee, the date of the testimony and a brief description of the substance of the testimony. In addition, please supply four (4) copies of any written statement submitted as testimony and the transcript of the testimony, if in your possession.

None

15. **Health**: Describe the present state of your health and provide the date of your last physical examination.

Good. December 3, 2001.

16. **Citations**: If you are or have been a judge, provide: I **have not been a judge.**

(a) a short summary and citations for the ten (10) most significant opinions you have written;

(b) a short summary and citations for all rulings of yours that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court; and

(c) a short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions.

If any of the opinions or rulings listed were in state court or were not officially reported,

please provide copies of the opinions.

17. **Public Office, Political Activities and Affiliations**:

(a) List chronologically any public offices you have held, federal, state or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or nominations for appointed office for which were not confirmed by a state or federal legislative body.

May 1996: Lost special election for Texas State Representative, District 62.

November 1996: Won general election for Texas State Representative, District 62. Sworn into office January 1997. Re-elected in 1998 and 2000. Still serving.

(b) 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.

4th Congressional District Co-Chair for Bush-Quayle, 1992 (Cooke, Grayson & Fannin Counties).
County Coordinator for Senator Gramm, 1990; Gramm '96 Committee, 1995-1996.
County Chair, Hutchison for Senate, 1993 & 1994.
County Chair for Carole Keeton Rylander, 1992 & 1994.
County Steering Committees: George Bush for Governor, 1994 & 1998; Tom Haywood for Senate, 1994 & 1998; Hutchison for Senate, 2000.
Bush Strike Force Volunteer-Michigan, 10/29 - 11/3 2000.
4th Congressional District Delegate to National Convention, 1992.
Delegate to State Convention in 1992, 1994, 1996, 1998, & 2000. Senate District Caucus Chair 1998 & 2000.
State Convention Rules Committee member, 1994.
County Ballot Security Chair, 1994.
County Convention Resolutions Chair, 1992 & 1994.
County Phone Bank Chair, 1992.
Team Leader, Victory '90 Phone Bank.

All work on campaigns and phone banks was as a volunteer. It involved recruiting volunteers, phoning voters, putting out campaign signs, organizing and attending events in the county for the candidate, and speaking in favor of candidates.

18. **Legal Career**: Please answer each part separately.

(a) Describe chronologically your law practice and legal experience after graduation from law school including:

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

(2) whether you practiced alone, and if so, the addresses and dates;
I did not practice alone.

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

May 1979-Dec. 1982: Assistant City Attorney and Trial Attorney, City of Abilene City Attorney's Office, 555 Walnut, P.O. Box 60, Abilene, TX 79604-0060.

Dec. 1982-1993: Henderson, Bryant & Wolfe, Sherman, TX. Was associate from January 1983 to December 1984. Was partner from January 1985 until partners dissolved partnership in 1993 and two of the partners and I formed Wolfe, Clark, & Henderson, L.L.P., in the same offices at 123 N. Crockett, Suite 100, Sherman, TX 75090.

1993-present: Partner in Wolfe, Clark, & Henderson, L.L.P., which, with the addition of new partners, is now known as Wolfe, Clark, Henderson, Tidwell, & McCoy L.L.P. 123 N. Crockett, Suite 100, Sherman, TX 75090.

(b) (1) Describe the general character of your law practice and indicate by date if and when its character has changed over the years.

In 1978 and 1979, I represented indigent juveniles in a University of Texas clinical program which allowed student practice. Charges ranged from running away to homicide. In the summer of 1978, I qualified for student practice in the Albuquerque, New Mexico, Public Defenders Office, where I represented indigent felons at all phases of adjudication including assisting in a murder trial and as lead counsel in a three count felony trial.

Having taken the bar exam in February, 1979, I was employed upon graduation in May 1979 as an Assistant City Attorney for Abilene, Texas. I tried jury and non-jury misdemeanor cases in municipal court and tried civil suits in justice court, county court at law, and in the State and Federal district courts. I represented the City on appeal in the

Fifth Federal Circuit Court of Appeals, the Eastland Court of Appeals and in the Texas Supreme Court. Issues included the Voting Rights Act and single member districts, tax claims in bankruptcy court, excessive force, eminent domain, and a variety of municipal law issues. I was also responsible for contract review, oil and gas leasing, and delinquent tax collection.

In December of 1982, I joined Henderson Bryant & Wolfe in Sherman Texas. My practice was general, including some plaintiff's and subrogation work, but mainly concentrating on defense of civil cases, bankruptcy, banking, and acting as attorney for smaller cities.

I became a partner in the firm in January of 1985, and was certified in Civil Trial Law by the Texas Board of Legal Specialization in December of 1985. Although I participated in the Grayson County Legal Clinic and had some commercial and banking clients, my practice concentrated on insurance defense and representing cities, counties, and utility districts in trial and on appeal in State and Federal courts. Much of my work was in civil rights and employment cases in Federal courts.

In 1989 I wrote the Texas Municipal Law and Procedure Manual, 2nd edition, which was published by the Texas Municipal Clerks Program at the University of North Texas in Denton. (An earlier version of the book had become outdated after the death of the author, C. J. Taylor.) I still update the Manual annually, and have written two additional editions. The 3rd edition was published in 1995 and the 4th edition was just published in 2001.

Since 1989 I have been frequently asked to speak to various professional associations on topics involving municipal government, defense of lawsuits and the Federal Rules of Civil Procedure. See list in answer to Question 13.

In 1990 I received an "av" rating from Martindale-Hubble. In December of that year I was Board Certified by the Texas Board of Legal Specialization in Civil Appellate Law. As of May 2001 I was one of only 72 attorneys certified in both Civil Trial Law and in Civil Appellate Law by the Texas Board of Legal Specialization.

The firm dissolved, in July 1993, and was replaced by WOLFE CLARK & HENDERSON, L.L.P., in which I have been a partner since that time. My practice has continued to concentrate on the defense of local governmental entities and businesses. The cases have been split fairly evenly between federal and state court, and involved such issues as excessive force, denial of medical treatment, wrongful termination, unlawful taking, eminent domain, anti-trust, unlawful search and seizure, libel and slander, denial of due process, the constitutionality of various city ordinances, zoning and general personal injury cases.

I have also served as general counsel for Greater Texoma Utility Authority since about 1988 and for the Cities of Van Alstyne, Howe, Bonham, and Denison at various times since

1983. This has involved reviewing contracts and advising city administrative and elected officials on a wide range of issues including employment disputes and the drafting of ordinances.

Chief Judge Robert Parker appointed me to serve on the Civil Justice Reform Act Advisory Committee for the Eastern District in 1991. The district was a pilot district under the Act and we published one of the first sets of local rules under the Act. In 1997 the Committee became the Local rules Advisory Group for the Eastern District of Texas and I will continue to serve until my term expires in 2002. Service on the committee, including service as Chairman between 1994 and 1996, afforded a unique opportunity to study the rules and procedures which govern federal courts.

Having volunteered as mediator in a number of Denton County and Dallas County settlement week cases, I completed the required forty hours training to qualify as a mediator in 1994. Since then I have occasionally served as mediator in contested cases.

In 1995 I announced that I would run for State Representative, District 62, which covers Grayson County and half of Cooke County. I was elected in November 1996 and have served since that time. The requirements of campaigning, and the time commitments of a State Representative, make trial work difficult to schedule. Accordingly, I have focused more on appeals and have been serving as a mediator.

My work has included handling cases in state district courts in Collin, Cooke, Dallas, Denton, Fannin, Grayson, Haskell, Hopkins, Hood, Hunt, Kaufman, Lamar, Montague, Rockwall, Tarrant, Taylor, and Wise Counties, and in the United States District Courts in the Eastern and Northern Districts of Texas. I have also briefed and argued cases to the Dallas, Eastland, Fort Worth, and Texarkana Courts of Appeals, the Fifth Federal Circuit Court of Appeals, and the Supreme Court of Texas. I have written briefs in opposition to petitions for writ of certiorari to the United States Supreme Court in two cases, for which certiorari was denied.

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

See response to (1) above.

(c) (1) Describe whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe each such variance, providing dates.

I have appeared regularly in state and federal district courts and courts of appeals. Between 1982 and 1995 I spent about two thousand hours a year in the practice of law, over ninety percent of which involved litigation and appeals. The work was fairly evenly split between federal and state courts. While running for, and serving as, State Representative has been a "post-graduate education" in how laws are written and passed, I have had to substantially reduce the time I spend on my practice since 1996.

(2) Indicate the percentage of these appearances in

(A) federal courts: **In the last five years about 25%. Prior to that about 50%.**

(B) state courts of record: **About 74% in the last five years. Previously, 48%.**

(C) other courts: **Condemnation hearings about 1% in last five years. Previously, 2%.**

(3) Indicate the percentage of these appearances in:

(A) civil proceedings: **Since 1983 100% except for a couple of criminal appointments.**

(B) criminal proceedings:. **Prior to 1983 I prosecuted over 130 misdemeanor cases, 35 to a jury, and defended about 20 adult (felony) and juvenile cases.. Between 1983 and 1996 I was appointed on 2 or 3 indigent federal cases.**

(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.

In my career I have: tried, as sole or lead counsel, over seventy civil cases to judgement, with about two-thirds being to a jury; handled numerous federal and state appeals; presented more than twenty cases to Commissioners in Condemnation; and appeared on a number of contested matters in bankruptcy courts in the Northern and Eastern Districts.

(5) Indicate the percentage of these trials that were decided by a jury.

About 66%.

(d) Describe your practice, if any, before the United States Supreme Court. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the U.S. Supreme Court in connection with your practice.

I have written and filed, as sole counsel for Defendant(s), a brief in opposition to petition for writ of certiorari in two cases. In both cases cert was denied without briefs on the merits or argument. *Gladden v. Roach*, 864 F.2d 1196 (5th Cir. 1989) cert. denied 491 U.S. 907. 105 L.Ed.2d 700; 109 S.Ct. 3192; and *City of Sherman v. Henry*, 928 S.W.2d 464 (Tex. 1996), cert. denied 519 U.S. 1156, 137 L.Ed.2d 230 (1997).

(e) Describe legal services that you have provided to disadvantaged persons or on a *pro bono* basis, and list specific examples of such service and the amount of time devoted to each.

I have participated in the Grayson County Legal Clinic since it was formed in about 1988. The clinic operates under the auspices of North Texas Legal Services Inc. and meets monthly at a local Church. I would attend one to three times a year to help with intake, and represent the clients I interviewed. I have also been assigned Clinic clients from other sessions. Most of the cases involve family law although one was a complicated slander and libel case brought by a con-artist in Florida against a family living in Sherman, Texas. I have volunteered several times to act as mediator in settlement weeks in Dallas and Denton Counties. These were usually low dollar cases where one client couldn't afford the mediator fee. Time spent varied, but prior to 1996 ranged between 10 and 40 hours per year. Since my election in 1996 I have not participated in the Clinic as often, but wind up providing advice to low income constituents who call me as State Representative. Total time since 1996 has ranged between 10-40 hours per year. I have been recognized by the Grayson County Legal Clinic several times for service and received the Private Bar Involvement Award in 1993.

19. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, and for each provide the date of representation, the name of the court, 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. In addition, please provide the following:

(a) the citations, if the cases were reported, and the docket number and date if

unreported;

(b) a detailed summary of the substance of each case outlining briefly the factual and legal issues involved;

(c) the party or parties whom you represented; and

(d) describe in detail the nature of your participation in the litigation and the final disposition of the case.

For purposes of these answers, "sole counsel" means I was the only attorney for the party and handled the trial from voir dire through judgement. "Lead counsel" means that another attorney also appeared. In such cases the division of work is indicated.

First Case

a. **Style, number, court and date.**

Richard Gladden v. Randy W. Roach and the City of Denton, et al, Cause No. S-84-220-CA, United States District Court, Eastern District of Texas, Sherman Division. The Honorable Paul Brown, Judge Presiding. Jury trial - 1986. Reported on appeal at 864 F.2d 1196 (5th Cir. 1989) cert. denied 491 U.S. 907. 105 L.Ed.2d 700; 109 S.Ct. 3192.

b. **Brief summary of the case.**

I was lead counsel (City Attorney appeared but did not participate in trial) for 7 police officers, 2 municipal judges, the municipal court clerk, the bailiff, and the City, who were sued over 4 different incidents involving the arrest and detention of Plaintiff, a student at the University of North Texas. Plaintiff sought injunction and declaratory relief and several hundred thousand dollars in damages and attorneys' fees for false arrest, excessive force, and false imprisonment.. The case was tried to a jury in September 1986. Judgment that Plaintiff take only $1.00 was upheld on appeal. 864 F.2d 1196 (5th Cir. 1989) cert. denied 491 U.S. 907. 105 L.Ed.2d 700; 109 S.Ct. 3192. I was sole counsel at 5th Circuit and at the United States Supreme Court.

The case confirmed that an arrestee does not have an absolute right to remain silent as to questions about name and address.

c. **Name, address and telephone number of other counsel.**

Don Gladden
P. O. Box 50686

Ft. Worth, TX 76105
(817) 531-3667
(Plaintiff's Attorney)

Lou Bright
Asst. Attorney General
Now: General Counsel
Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, TX 78711-3127
(512) 206-3204
(Represented a University of
North Texas police officer)

Debra A. Drayovitch
City Attorney
6000 Western Place Two
I-30 at Bryant-Irwin Rd.
Fort Worth, TX 76107
(817) 332-2580
(Also appeared for the City)

Second Case

a. Style, number, court and date.

Benny E. Bell and wife, Glenda Bell v. Bobby L. Meeks, Individually and d/b/a Barco, Cause No. 19,963, 97th District Court of Montague County, Texas. The Honorable Clyde Whiteside, Judge Presiding. Jury trial - 1985. Appealed to the Fort Worth Court of Appeals, reported at 710 S.W.2d 789. Appealed to the Texas Supreme Court, reported at 725 S.W.2d 179. 1985-1987.

b. Brief summary of the case.

I was sole counsel for Mr. and Mrs. Bell, plaintiffs in a Deceptive Trade Practices Act and breach of warranty suit against the installer of a heater which started a fire, burning their house down. The heater had been installed about ten years before the fire. The case was tried to a jury. Judgment was entered on the verdict for Mr. and Mrs. Bell for $211,893.08.

I was sole counsel for the Bells on defendant's appeal to the Fort Worth Court of Appeals which reversed the judgment at 710 S.W.2d 789 (Tex. App.

– Fort Worth, 1986). I was sole counsel for the Bells on appeal to the Texas Supreme Court which granted writ, and after oral argument reversed the Court of Appeals, reinstating the judgment at 725 S.W.2d 179 (Tex. 1987).

The case was significant in allowing the Bells to recover their loss and in confirming the trial court's discretion to allow trial amendments.

c. Name, address and telephone number of other counsel.

Joseph W. Stewart
2021 E. Lamar Blvd.
Arlington, Texas 76006
(817) 261-7381
(Attorney for Defendant)
I believe present address may be
5520 Timber Green Dr.
Arlington, TX 76016
(817) 457-8978

Third Case

a. Style, number, court and date.

Wardell Drake, Individually and on Behalf of the Estate of Vernon Alex Drake, Deceased; Walter Drake; and Addie Williams v. John Long, Rick Sullivan, and the Town of Addison, Cause No. CA3-88-2877-C, United States District Court, Northern District of Texas, Dallas Division. The Honorable Sam Cummings, Judge Presiding. Jury trial - 1990.

b. Brief summary of the case.

I was lead counsel for three police officers and the Chief of Police in a suit brought by the family of a man who died in jail. Plaintiffs sued for actual and punitive damages and attorney's fees. (Mr. Henderson, a member of my firm, helped with pleadings, discovery and trial. At trial I conducted voir dire, closing and examination of about half of the witnesses.) Two of the officers and the Chief were dismissed prior to trial. The case against the jailer and the City was tried to a jury. The Court granted judgment for the City at the close of Plaintiff's case and the jury rendered a take nothing verdict at the close of all evidence. The case was significant because of the potential damages involved in any death case, and in rejecting claims that jailors have a greater duty to recognize medical problems than was required under current law. The case was difficult because there was a videotape

showing the prisoner as he died.

c. Name, address and telephone number of other counsel.

Edward B. Cloutman II
CLOUTMAN, ALBRIGHT & BOWER
3301 Elm Street
Dallas, TX 75226-1637
(214) 939-9222
(Attorney for Plaintiffs)

Robert L. McCallum
City Attorney
Town of Addison
4560 Belt Line Road, Suite 320
Dallas, TX 75244
(214) 233-2833
(Attorney for Town of Addison)

James Corley Henderson
WOLFE, CLARK, HENDERSON,
TIDWELL & McCOY, L.L.P.
123 N. Crockett St., Suite 100
Sherman, TX 75090
(903) 868-1933
(Co-Counsel)

Fourth Case

a. Style, number, court and date.

Mark Sicking v. Cooke County and Sheriff Mordecai, Cause No. S-87-154-CA, United States District Court, Eastern District of Texas, Sherman Division. The Honorable Paul Brown, Judge Presiding. Jury trial - 1988.

b. Brief summary of the case.

I was sole counsel for Cooke County, its Sheriff and a deputy in a case alleging that the deputy used excessive force because Plaintiff's leg was broken during an arrest. Plaintiff sued for actual and punitive damages and attorney's fees. Plaintiff had placed his hands on the deputy before his leg was broken so I filed a counter-claim for assault on behalf of the deputy. The County and the Sheriff were dismissed and the case against the deputy was tried to a jury. The jury returned a verdict against Plaintiff and awarded $500.00 to the deputy. The case was significant in protecting a deputy faced with a difficult situation, from unfounded charges of excessive force.

c. Name, address and telephone number of other counsel.

Curtis B. Stuckey
STUCKEY & GARRIGAN

P. O. Box 631902
Nacogdoches, TX 75963-1902
(936) 560-6020
(Attorney for Plaintiff)

Fifth Case

a. Style, number, court and date.

Oscar Renda, Ernest Renda, and Oscar Renda Contracting, Inc. v. Jack Horner, Buchart-Horn Consulting Engineers and Pace Resources, Inc., Cause No. 4:93cv21, United States District Court for the Eastern District of Texas, Sherman Division. The Honorable Paul Brown, Judge Presiding. Jury trial - 1994.

b. Brief summary of the case.

I was sole counsel for an engineer from Pennsylvania named Jack Horner who was accused of libeling and slandering two contractors and their contracting company. I also served as local counsel for the two other defendants, Buchart-Horn Consulting Engineers and Pace Resources, Inc. Plaintiffs sued for actual and punitive damages. The case was tried to a jury. Judgment was entered on the verdict for defendants. Additionally, because an early offer of judgment had been made under the new Eastern District rules passed under the Civil Justice Delay and Reduction Plan, defendants were able to recover their attorney's fees. This was probably the first, and perhaps the only, case in which a party recovered under this rule which has since been repealed.

c. Name, address and telephone number of other counsel.

Brian W. Erikson
6301 Gaston Avenue, Suite 600
Dallas, TX 75214
(214) 826-2600
(Attorney for Plaintiffs)

John Sylvanus
STETLER & GRIBBIN
138 East Market Street
York, PA 17405
(717) 854-9506
(Attorney for Defendants, Buchart-Horn Consulting Engineers and Pace Resources)

Sixth Case

a. Style, number, court and date.

Municipal Administrative Services, Inc. v. City of Denton, Texas, Cause No. 99-50263-367, in the 367th District Court, Denton County, Texas. The Honorable Lee Gabriel, Judge Presiding. Jury trial - 2000. On appeal reported at 59 S.W.2d 764 (Tex. App. – Ft. Worth 2001, no pet.).

b. Brief summary of the case.

I was lead counsel at trial and sole counsel on appeal for the City of Denton. Plaintiff sued the City of Denton for breach of a contingent fee contract for review of City franchise services. Plaintiff claimed it was owed up to $2,488,000. The City asserted that the contract was void because it violated the Texas Professional Services Procurement Act and counterclaimed for a return of $82,000 previously paid. The case was tried in part to a jury and in part to the court. The court entered judgment for M.A.S on the jury verdict, in the amount of $251,232.00, with prejudgement interest from 1996, plus costs. On appeal the Fort Worth Court of Appeals reversed the judgment and remanded the case to the trial court, holding that the City was entitled to amounts previously paid under the contract less an offset on plaintiff's quantum meruit claim. On remand Plaintiff dropped all claims against the City and the City dropped its counterclaim, with each side paying its own costs.

The case is significant in that Municipal Administrative Services had won judgments on similar contracts from several other cities and had forced settlements from many others. The opinion interprets the effect of the Professional Services Procurement Act and reaffirms that municipal contracts which are contrary to express public policy are void.

I was assisted at trial by a member of my firm, Clark McCoy, who assisted on the pleadings, on discovery, and in trial preparation and presented the City's expert witness on direct examination in the case. He also assisted on trial procedures such as the motion in limine and the jury charge.

c. **Name, address and telephone number of other counsel.**

Edward F. Fernandes
4801 Plaza on the Lake
Austin, Texas 78746
(512) 330-4090
(Attorney for Plaintiff at trial)

David J. Healey
Goldstein & Healey, L.L.P.
1177 West Loop South, 10th Floor
Houston, Texas 77027
(713) 877-1515
(Attorney for Plaintiff on appeal)

Clark H. McCoy, Jr.
Wolfe, Clark, Henderson, Tidwell & McCoy, L.L.P.
123 N. Crockett St., Suite 100
Sherman, Texas 75090
(903) 868-1933
(Co-Counsel for City of Denton)

Seventh Case

a. **Style, number, court and date.**

Texas Waste Management v. City of Denton, Cause No. 91-50778-367, in the 367th District Court, Denton County, Texas. The Honorable Lee Gabriel, Judge Presiding. Bench trial - 1992.

b. **Brief summary of the case.**

I was lead counsel for the City in a suit filed by Texas Waste Management claiming a violation of the Texas Constitution by the City when it prohibited waste collection by private entities within the City. Waste Management sued for damages, injunctive relief, declaratory relief, and attorneys' fees. Waste Management also claimed violation of due process and a taking without compensation alleging lost revenues in excess of $700,000 per year. Trial was to the court with judgment granted in favor of the City for costs relating to a temporary injunction and attorneys' fees of $153,250.00. Waste Management filed notice of appeal but then parties agreed to settle with Waste Management paying the City $160,000.00. I was assisted at trial by

another member of the firm, Deborah Burleson (now Deborah Browning), who helped with pleadings and pretrial preparation, made the opening statement, and handled some of the witnesses at trial. I conducted the voir dire and the closing and examined about half of the witnesses at trial.

c. Name, address and telephone number of other counsel.

Cecil W. Casterline
Casterline, Weed & Wood
2911 Turtle Creek Blvd., Ste. 800
Dallas, TX 75219
(214) 528-8181
(Co-Counsel for Plaintiff)

Mike Griffin
Griffin, Whitten, Jones & Reib
218 N. Elm St.
Denton, TX 76201
(940) 383-1618
(Co-Counsel for Plaintiff)

Deborah Browning
Locke Liddell & Sapp LLP
2200 Ross Ave., Suite 2200
Dallas, TX 75201-6776
(214) 740-8000
(Co-Counsel for Defendant)

Eighth Case

a. Style, number, court and date.

Paul Iwuchukwu v. City of Denton and Jerry Clark, Cause No. 94-20558-158, 158th District Court of Denton County, Texas. The Honorable Phillip O. Vick, Judge Presiding. Jury trial - 1996.

b. Brief summary of the case.

I was lead counsel for the City of Denton and the City Engineer, Jerry Clark (no relation). Assistant City Attorney, Jerry Drake, appeared for City but I handled opening, closing, and all witnesses at trial for both Defendants. Plaintiff sued for actual damages and attorney's fees. Mr. Iwuchukwu was an engineer who had worked for Mr. Clark and brought suit under the Texas Whistle Blower Act and the Texas Human Rights Act claiming he was discriminated against and improperly terminated because he had reported alleged violations of the Civil Rights Law to the EEOC and had filed a previous lawsuit in federal court. The case was tried to a jury which rendered a verdict for defendants. The court entered judgment on the verdict.

c. Name, address and telephone number of other counsel.

James E. Polk II
100 N. Central Expressway
Suite 1018, Lock Box 107
Dallas, TX 75201
(214) 723-0625
(Plaintiff's attorney)

Jerry Drake
Assistant City Attorney
City of Denton
215 E. McKinney St.
Denton, TX 76201
(940) 349-8333
(Appeared for the City)

Ninth Case

a. Style, number, court and date.

David Malcolm Juring v. Denton County and Sergeant Bill Holder, Cause No. 95-30479-211, 16th District Court, Denton County, Texas. The Honorable Lee Gabriel, Judge Presiding. Jury trial - 1997.

b. Brief summary of the case.

I was sole counsel for Denton County and Denton County Sheriff's Department Sergeant Bill Holder who were sued by David Juring for medical expenses and lost income. Mr. Juring had been driving his car when a third party who was trying to escape from Sgt. Bill Holder passed him and had an accident with an oncoming gravel truck. The rear axle of the trailer of the truck came loose and hit Mr. Juring's car, injuring his jaw, shoulder, elbow, leg and brain. The case was tried to a jury which rendered a verdict in favor of Sgt. Holder and the County and the court entered judgment on the verdict.

The case was significant in that plaintiff was not in any way at fault, but was rather an innocent bystander who was hurt by the actions of the third party trying to escape from the sergeant. Plaintiff's injuries were very severe.

c. Name, address and telephone number of other counsel.

Bruce E. Bagelman
WEINSTEIN & BAGELMAN, P.C.
2651 N. Harwood, Suite 210
Dallas, TX 75201-1506
(214) 526-0526
(Plaintiff's attorney)
I believe present address is

9417 Waterview Rd.
Dallas, TX 75218 No phone listed

Tenth Case

a. Style, number, court and date.

Southwest Sanitation, Inc. v. City of Bonham, Cause No. 30,331, 336th Judicial District Court, Fannin County, Texas. The Honorable Ray F. Grisham, Judge Presiding. Jury trial - 1993. On appeal reported at 871 S.W.2d 765 (Tex. App. – Texarkana 1994, writ denied).

b. Brief summary of the case.

I was lead counsel for the City of Bonham in a suit brought by plaintiff for breach of a waste handling contract. Plaintiff claimed that a contract signed by the mayor was valid while the City argued it had not been approved by the City Council. The case was somewhat unusual in that it had been handled by another attorney until after voir dire when the City insisted that I complete the trial of the case. I handled direct and cross-examination of witnesses and made the closing argument. Co-counsel had handled the discovery, prepared the pleadings, conducted voir dire, and made the opening. The court entered judgment for $84,215.07 on the verdict for plaintiffs. I was sole counsel on appeal to the Texarkana Court of Appeals which reversed and rendered. Reported at 871 S.W.2d 765 (Tex. App. – Texarkana 1994, writ denied).

The case was significant in upholding the doctrine that a governmental entity is only bound by the official acts of the governing body, and not by actions of individual members of the governing body.

c. Name, address and telephone number of other counsel.

David C. Turner, Jr.
Turner & Turner, L.L.P.
400 N. Center St.
Bonham, Texas 75418
(903) 583-8569
(Attorney for Plaintiff)

Nancy O. Williams
Gainesville City Attorney (Now)
200 S. Rusk St.
Gainesville, Texas 76240

(940) 668-4590
(Co-Counsel for Defendant)

A good deal of my practice is appellate. Many of these cases were disposed of by summary judgment and/or were handled at trial by others. The following are some of the cases in which I was lead appellate counsel, preparing the briefs in each, and, except where noted, presenting oral argument to the indicated appellate court.

First Appellate Case

a. Style, citation, court and date.

McDonald v. City of Corinth, 102 F.3d 152 (5th Cir. 1996), before Circuit Judges Reynaldo G. Garza, Jolly, and DeMoss.

b. Brief summary of the case.

I was sole counsel in this case in which a summary judgment was granted by Judge Paul Brown, United States District Judge for the Eastern District of Texas. McDonald had been fired from his job as city administrator and sued for breach of contract and for termination in violation of due process rights. I was lead counsel in the trial court and obtained the summary judgment. I briefed and argued the case at the court of appeals. The case is significant in confirming the at-will employment doctrine in Texas and delineating the limits of a public employee's due process rights.

c. Name, address and telephone number of other counsel.

Stephen J. Gugenheim
RUBIN & GUGENHEIM
Katy Building
701 Commerce Street, Suite 640
Dallas, TX 75202
(214) 521-5021
(Attorney for McDonald)

Robert L. Dillard III
NICHOLS, JACKSON, DILLARD,
HAGER & SMITH
500 N. Akard, Suite 1800
Dallas, TX 75201
(214) 965-9900
(Corinth City Attorney)

Second Appellate Case

a. Style, citation, court and date.

Bushman v. City of Corinth, 96 F.3d 1445 (5th Cir. 1996) (Without published opinion)

b. Brief summary of the case.

I was sole counsel for the City of Corinth which was sued by Bushman for denying him a special use permit for a planned mobile home sales operation. Bushman alleged that the City violated the equal protection and due process provisions of the United States Constitution and the due course clause of the Texas Constitution. Bushman sued for damages and attorneys' fees. Summary judgment for the City was granted by Judge Paul Brown, United States District Judge for the Eastern District of Texas. I was sole counsel for the City on appeal and prepared the brief. The Court of Appeals affirmed without argument and without opinion.

c. Name, address and telephone number of other counsel.

Michael A. Barragan
Gardere Wynne Sewell LLP
3000 Thanksgiving Tower
Dallas, Texas 75201-4761
(214) 999-3000
(Attorney for Bushman)

Third Appellate Case

a. Style, citation, court and date.

White v. Annis, 864 S.W.2d 127 (Tex. App. – Dallas 1993, writ denied), before Justices Lagarde, Burnett, and Whittington.

b. Brief summary of the case.

I was sole counsel on appeal for O. C. White, a garage supervisor for the City of Mesquite. Plaintiff had been injured by a locking ring that had separated from a City of Mesquite garbage truck wheel. The City's attorney had tried the case and a jury had found in favor of plaintiffs and against both the City and Mr. White. Judgment was entered against White individually for $92,029.65. The City settled the judgment against it and I represented Mr. White on appeal, briefing and arguing the case. The Court of Appeals

reversed, ruling that Texas Civil Practice & Remedies Code § 101.106 barred further action against Mr. White. I briefed the case to the Texas Supreme Court which denied writ without arguments. This was one of the first cases to decide this issue in Texas.

c. Name, address and telephone number of other counsel.

Raymond J. Elliott
14679 Midway Rd., Suite 201
Addison, TX 75001-3179
(972) 991-7100
(Attorney for Plaintiff, Annis)

Fourth Appellate Case

a. Style, citation, court and date.

Hogue v. Royse City, 939 F.2d 1249 (5th Cir. 1991), before Circuit Judges Wisdom, Garwood & Jolly.

b. Brief summary of the case.

I was lead counsel for Royse City in a case in which Mr. Hogue, the former police chief, sued for wrongful termination in both state court and federal court. The state court granted summary judgment on its claims of wrongful discharge and breach of its duty of good faith and fair dealing. The United States District Court for the Northern District of Texas, the Honorable A. Joe Fish, Judge Presiding, entered summary judgment on Hogue's claim of termination in violation of the Age Discrimination in Employment Act and wrongful discharge for refusal to set speed traps. On appeal the court upheld the summary judgment on the basis of *res judicata*. Another member of my firm, Deborah Burleson (now Browning) also worked on the case, assisting in preparation of the motion for summary judgment and the brief. I presented oral argument to the Court of Appeals.

c. Name, address and telephone number of other counsel.

Marcus G. Ronquillo
1999 Bryan St., Suite 3450
Dallas, TX 75201
(214) 954-0076
(Attorney for Hogue)

Deborah Browning
Locke Liddell & Sapp LLP
2200 Ross Ave., Suite 2200
Dallas, TX 75201-6776
(214) 740-8000
(Co-Counsel for Royse City)

Fifth Appellate Case

a. Style, citation, court, and date.

Allen v. City of Garland, 922 F.2d 838 (5th Cir. 1990). (Without published opinion)

b. Brief summary of the case.

I was lead counsel for the City of Garland in a case brought by a black Fire Lieutenant under age 40, claiming that racial discrimination was the reason that a white Fire Captain over age 40 was promoted to Fire Marshal. The City asserted the Captain was more experienced and qualified and that it would face age discrimination charges if the Lieutenant was promoted. Summary Judgment was granted for the City in the United States District Court, Northern District of Texas, Dallas Division, by the Honorable Joe Fish, Judge Presiding. The case was affirmed on appeal without oral argument and without opinion. A key issue was the conflict between protected classes.

c. Name, address and telephone number of other counsel.

Douglas R. Larson
3939 Highway 80, Suite 100
Mesquite, TX 75150
(214) 686-6441
(Attorney for Allen)

Sixth Appellate Case

1. Style, citation, court and date.

City of Sherman v. Henry, 928 S.W.2d 464 (Tex. 1996), cert. denied 519 U.S. 1156, 137 L.Ed.2d 230 (1997).

2. Brief summary of the case.

I was sole counsel for the City of Sherman in this case in which a police officer, Henry, sued the City because he was not promoted to sergeant. The chief of police had decided not to promote him even though he was at the top of the Civil Service list because he had been having an affair with a female employee of the police department who was also the wife of another police officer. The Chief asserted that this behavior interfered with the operation of the Department and showed lack of judgement. Plaintiff claimed his

adultery was constitutionally protected. Summary judgment for plaintiff was granted by the 336th Judicial District Court, Grayson County, Texas, in Cause No. 92-0720, and that judgment was upheld on appeal by the Dallas Court of Appeals. Opinion reported at 910 S.W.2d 542 (Tex. App. – Dallas 1995). After oral argument the Texas Supreme Court reversed, opinion reported at 928 S.W.2d 464 (Tex. 1996). The United States Supreme Court denied certiorari at 519 U.S. 1156, 137 L.Ed.2d 230 (1997). I briefed the case at all three appellate courts and argued at the Court of Appeals and the Texas Supreme Court.

3. **Name, address and telephone number of other counsel.**

Robert E. Richardson, Jr.
118 S. Crockett St.
Sherman, Texas 75090
(903) 893-7541
(Attorney for Henry)

20. Criminal History: State whether you have ever been convicted of a crime, within ten years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and disposition and describe the particulars of the offense.

Never/None

21. Party to Civil or Administrative Proceedings: State whether you, or any business of which you are or were an officer, have ever been a party or otherwise involved as a party in any civil or administrative proceeding, within ten years of your nomination, that is reflected in a record available to the public. If so, please describe in detail the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings in which you were a guardian *ad litem*, stakeholder, or material witness.

I have not been sued myself. However, the firm of HENDERSON BRYANT & WOLFE was sued in 1991 in a case styled "Lee Hudgins, et al v. Estate of Joe A. Keith, et al," Cause No. 91-173l, l5th District Court, Grayson County, Texas. This suit was a claim that Mr. Keith, who was deceased and had been "of counsel" to the firm, had mishandled the filing of a tax return. The firm was sued because its malpractice policy provided coverage to Mr. Keith. The case settled prior to trial on the basis of tax owed by the estate. The tax court later ruled that Mr. Keith had been correct and the return was proper.

In 1994 the firm of HENDERSON BRYANT & WOLFE was sued as a third party defendant in a case styled "Vial, Hamilton, Koch & Knox v. Howell, and Estate of Mary Kate Howell, et al v. Donald Flannary, Vial, Hamilton, Koch & Knox and Henderson Bryant & Wolfe," Cause No. 92-0906, 336th District Court, Grayson County, Texas. This was a counterclaim and cross claim arising out of a 1992 suit for collection of fees by the Vial, Hamilton firm against Howell. Donald Flannary a former partner in Henderson Bryant & Wolfe had been involved in litigation for Howell and had moved to Vial, Hamilton. The case was settled with HBW dropping any claims for fees and Howell dropping any claims for damages against HBW. I'm not sure what happened to the claims with the other parties.

22. Potential Conflict of Interest: 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.

If confirmed I will withdraw from my partnership. The buyout is based on work already performed at that time. I anticipate that I will be assigned to the District Court in Beaumont. I have no business or financial relationships with anybody in that part of Texas and neither I, nor my partners, have had any cases in that area in recent years. Accordingly, I do not foresee many potential conflicts. I am familiar with my personal and fiduciary interests and those of my wife and minor child. I will review cases to ensure that none of the circumstances described in 28 USC §455 exist and will act in accordance with the Code of Judicial Conduct.

23. Outside Commitments During Court Service: Do you have any plans, commitments, or arrangements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No/None

24. Sources of Income: List sources and amounts of all income received during the calendar year preceding the nomination, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500. 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.

Disclosure report attached.

25. Statement of Net Worth: Complete and attach the financial net worth statement in detail. Add schedules as called for.

Statement of Net Worth attached.

26. **Selection Process**: Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? **Yes.**

(d) If so, did it recommend your nomination? **Yes**

(e) Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.

I submitted an application to Senators Gramm and Hutchison. Based on the application, I was asked to an interview with their selection committee. The committee, consisting of attorneys from around the State, interviewed me for about 45 minutes. The committee recommended me as one of the finalists to Senators Gramm and Hutchison. I was next interviewed by Senator Gramm and then by Senator Hutchison. After my name was submitted by the Senators to the President I met with White House General Counsel and two staff members.

(f) 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 or seeking a commitment as to how you would rule on such case, issue, or question? If so, please explain fully.

No/None

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
Clark, Ronald H.	U.S. District Court, E.D. Tex	01/24/2002

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 01/23/2002 Initial Annual Final	01/01/2001 to 01/01/2002

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.
123 N. Crockett, Suite 100 Sherman, TX 75090	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	Wolfe, Clark, Henderson, Tidwell, & McCoy, L.L.P.
2	Litmited Partner	BBS Plaza Ltd.
3	Trustee	Trust #1

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

NONE (No reportable agreements.)

	DATE	PARTIES AND TERMS
1	01/01/97	State of Texas Retirement Plan, no control.
2	01/01/01	Law partnership-lump sum payment when I leave
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	Wolfe, Clark, Henderson, Tidwell, & McCoy L.L.P. Receipts as Partner.	32,240
2	2001	State of Texas, Salary and per diem as State Representative	24,974
3	2000	Wolfe, Clark, Henderson, & Tidwell, L.L.P. Receipts as Partner.	72,700
4	2000	State of Texas, Salary and per diem as State Representative	7,554

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Clark, Ronald H.	01/24/2002

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

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

	SOURCE (NONE: No such reportable reimbursements.)	DESCRIPTION
1	exempt	
2		
3		
4		
5		
6		
7		

V. GIFTS

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

	SOURCE (NONE: No such reportable gifts.)	DESCRIPTION	VALUE
1	exempt		
2			
3			

VI. LIABILITIES

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

	CREDITOR (NONE: No reportable liabilities.)	DESCRIPTION	VALUE CODE*
1	none		
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: Clark, Ronald H. | Date of Report: 01/24/2002

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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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	Janus Mutual Funds									
2	JAGXX	A	Dividend	J	T	exempt				
3	JANSX		None	K	T	exempt				
4	JAVLX	A	Dividend	J	T	exempt				
5	JAVTX		None	J	T	exempt				
6	Nuveen funds, NUV	A	Dividend	J	T	exempt				
7	USAA Mutual Funds									
8	USEXX	A	Dividend	K	T	exempt				
9	USSPX	A	Dividend	K	T	exempt				
10	Vanguard Mutual Funds									
11	VMMXX	A	Dividend	J	T	exempt				
12	VWNFX	B	Dividend	L	T	exempt				
13	VWUSX	A	Dividend	K	T	exempt				
14	Vanguard Mutual Funds IRA & Roth IRA	C	Dividend	N	T	exempt				
15	VGHCX									
16	VMMXX									
17	VWINX									

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: Clark, Ronald H.

Date of Report: 01/24/2002

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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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	VWIGX									
19	VWFNX									
20	VEXPX									
21	VFINX									
22	American Mutual Funds IRA, AMPX	B	Dividend	L	T	exempt				
23	Janus Mutual Funds Roth IRA, JAMRX	A	Dividend	J	T	exempt				
24	Vanguard Variable Annuity		None	K	T	exempt				
25	Common Stocks									
26	AMAT		None	J	T	exempt				
27	INTC	A	Dividend	J	T	exempt				
28	KO	A	Dividend	J	T	exempt				
29	PFE	A	Dividend	J	T	exempt				
30	TXN	A	Dividend	J	T	exempt				
31	XOM	A	Dividend	K	T	exempt				
32	Bank One Accounts	A	Interest	K	T	exempt				
33	US Savings Bond		None	J	T	exempt				
34	Trust 1, Trustee	A	Dividend	L	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: Clark, Ronald H.

Date of Report: 01/24/2002

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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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	AMGN									
36	SWMXX									
37	XOM									
38	Trust 2, Trustee	A	Dividend	L	T					
39	AMGN									
40	SWMXX									
41	UGTMA Account 1, XOM	B	Dividend	K	T	exempt				
42	XOM stock, child's acct.	A	Dividend	K	T	exempt				
43	AOL stock, child's acct.		None	J	T	exempt				
44	Rental Property, Austin, TX $168,342.	C	Rent	M	S	exempt				
45	Centennial Money Mkt	A	Dividend	J	T	exempt				
46	Evergreen Money Market	A	Dividend	J	T	exempt				
47	HBW Plaza Ltd.- Limited partner	D	Distribution	L	U	exempt				
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=Assessment T=Cash/Market
(Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
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VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Clark, Ronald H.	01/24/2002

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	Trustee	Trust #2
5	Committee Chairman	Troop 15, Sherman, TX Boy Scouts of America

PART 3. NON-INVESTMENT INCOME (cont'd.)

Line	Date	Source and Type	Gross Income
5	2001	Self employed dance instructor	
6	2000	Self Employed dance instructor	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Clark, Ronald H.	01/24/2002

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 Ronald H Clark Date Jan 24, 2002

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	24,000	Notes payable to banks-secured	None
U.S. Government securities-add schedule	5,000	Notes payable to banks-unsecured	None
Listed securities-add schedule	756,072	Notes payable to relatives	None
Unlisted securities--add schedule	None	Notes payable to others	None
Accounts and notes receivable:	None	Accounts and bills due	None
Due from relatives and friends	None	Unpaid income tax	None
Due from others	None	Other unpaid income and interest	None
Doubtful	None	Real estate mortgages payable-add schedule	None
Real estate owned-add schedule	274,342	Chattel mortgages and other liens payable	None
Real estate mortgages receivable	None	Other debts-itemize:	------
Autos and other personal property	100,000	Average credit card monthly balance	3,500
Cash value-life insurance	None	Balance on automobile	24,465
Other assets itemize:	---------		
Interest in HBW Plaza, Ltd.	66,000		
--			
--		Total liabilities	27,965
--		Net Worth	1,197,449
Total Assets	1,225,414	Total liabilities and net worth	1,225,414
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As guarantor of note for HBW Plaza Ltd.	40,517	Are any assets pledged? (Add schedule)	None
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 - Listed Securities.

SECURITY	ESTIMATED VALUE	VALUED AS OF
Janus Mutual Funds (Includes IRAs)	65,705	Dec. 31, 2001
Nuveen Municipal Fund	14,830	Dec. 31, 2001
USAA Mutual Funds	38,427	Dec. 31, 2001
Vanuard Mutual Funds (Includes IRAs)	278,127	Dec. 31, 2001
American Funds IRA	75,908	Dec. 31, 2001
Centennial Money Mkt.	27,259	Dec. 31, 2001
Evergreen Money Mkt.	1,298	Dec. 31, 2001
Schwab Money Mkt. (In trusts 1& 2)	12,338	Dec. 31, 2001
Common Stocks		
XOM (Includes UGTMA acct.)	73,324	Dec. 31, 2001
AMAT	4,010	Dec. 31, 2001
INTC	3,145	Dec. 31, 2001
KO	9,430	Dec. 31, 2001
PFE	11,955	Dec. 31, 2001
TXN	2,800	Dec. 31, 2001
AMGN (In trusts 1 & 2)	121,346	Dec. 31, 2001
XOM (In trust 1)	7,860	Dec. 31, 2001
AOL (child's)	3,310	Dec. 31, 2001
GOVERNMENT SECURITIES		
Savings bond	about $5,000	Dec. 31, 2001

Financial Statement, Property Interests

REAL PROPERTY	ESTIMATED VALUE
House: Sherman, Texas	100,000
Condominium: Austin, Texas	168,342 (per tax appraisal)
Time Share: Resorts International	6,000
Total	274,342

AUTOS AND PERSONAL PROPERTY	
Autos and Personal Property	100,000

OTHER	
Limited partnership interest in HBW Plaza, Ltd. which owns a building in Sherman, TX.	66,000

COMMITTEE ON THE JUDICIARY QUESTIONNAIRE

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Lawrence J. Block

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

Residence:
Alexandria, VA

Office:
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

3. Date and place of birth.

New York, New York
March 15, 1951

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

Single

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

Law School:

John Marshall Law School - Chicago, Illinois (1979-1981)
J.D. 1981
Staff Editor - *The John Marshall Law Review*

Undergraduate:

New York University - New York, New York (1969-1976)
B.A. 1976
Magna Cum Laude
History Major
Classics and Political Science Minors

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.

January 11, 1994 to present:	COMMITTEE ON THE JUDICIARY, U.S. SENATE Washington, D.C. 20510 Senior Counsel
January 21, 1993 to January 11, 1994	UNITED STATES DEPARTMENT OF ENERGY, OFFICE OF THE GENERAL COUNSEL Washington, D.C. 20585 Acting Assistant General Counsel for Legal Policy & Analysis
September, 1990 to January 20, 1993:	UNITED STATES DEPARTMENT OF ENERGY, OFFICE OF THE GENERAL COUNSEL Washington, D.C. 20585 Deputy Assistant General Counsel for Legal Policy
September 1990 to June, 1991:	GEORGE MASON UNIVERSITY SCHOOL OF LAW Arlington, Virginia 22201 Adjunct Professor of Law
February, 1987 to September, 1990:	UNITED STATES DEPARTMENT OF JUSTICE OFFICE OF POLICY DEVELOPMENT Washington, D.C. 20530 Senior Attorney-Advisor
October, 1986 to February, 1987:	UNITED STATES DEPARTMENT OF JUSTICE, CIVIL DIVISION COMMERCIAL LITIGATION BRANCH Washington, D.C. 20530 Litigation Attorney
September, 1983 to August, 1986:	SKADDEN, ARPS, SLATE, MEAGHER & FLOM New York, New York 10023 Associate Attorney - Litigation Department
September, 1981 to August, 1983:	HONORABLE ROGER J. MINER, U.S.D.J. United States District Court for the Northern District of New York Albany, New York Law Clerk
Summer, 1980	BERGEN COUNTY SHERIFF Hackensack, New Jersey Law Intern

1976-1979 TRADER HORN, INC.
Hasbrouck Heights, New Jersey
Laborer, Sales, Management

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.

Law School: Selected staff editor of *The John Marshall Law Review*

Undergraduate: Awarded New York University Founders Day Award -- awarded to top 10 students in each N.Y.U. College for outstanding academic achievement. Selected by faculty for membership in Park History Honor Society. Dean's List.

9. Bar Associations: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association
New York State 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.

I belong to no organization that lobbies. Other organizations:
The Holocaust Museum Foundation; The Federalist Society

11. Court Admissions: 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 that require special admission to practice.

States: Connecticut (1981 to present); New York (1984 to 1995).

Because of the expense, because I no longer litigate, and because I do not intend to practice law in New York, I have not renewed membership in that state's bar.

Federal: United States Supreme Court (1984 to present); past members of the bars of the United States Court of Appeals for the Federal Circuit; United States Court of Appeals for the Eleventh Circuit; United States District Court for the Southern District of New York; United States District Court for the Eastern District of New York; and United States Claims 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.

Authored Articles:

L. Block, L. Casey and D. Rivkin, Jr., "The Senate's Pie-in-the Sky Treaty Interpretation: Power and the Quest for Legislative Supremacy," 137 *University of Pennsylvania Law Review* 1481 (May, 1989).

L. Block and D. Rivkin, Jr., "The Battle to Control the Conduct of Foreign Intelligence and Covert Operations: The Ultra-Whig Counterrevolution Revisited," 12 *Harvard Journal of Law and Public Policy* 303 (Spring, 1989).

L. Block and D. Rivkin, Jr., "Auxiliary Precaution: The Bill of Rights Is Not The Constitution's Most Important Safeguard of Liberty," 51 *Policy Review* 68 (Winter, 1990).

L. Block and D. Rivkin, Jr., "The Constitution in Danger: An Exchange" [with T. Draper and Wm. Goldsmith], appearing in *The New York Review of Books* (May 17, 1990 and August 16, 1990, issues).

L. Block and D. Rivkin, Jr., "Gulliver's Troubles: Why the U.S. Cannot Conduct Coherent Foreign Policy," 2 *Colgate Political Review* 1 (Spring, 1991).

Prepared Articles:

R. Thornburgh, "The Soviet Union and the Rule of Law," *Foreign Affairs* (Spring, 1990).

"A New Look At Plurality Decisions," Report to the Attorney General, U.S. Department of Justice, Office of Legal Policy (March, 1988).

Helped Edit:

R. Bork, *The Tempting of America* (1990).

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

Good. Last physical exam October 17, 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.

None.

15. Citations: If you are or have been a judge, provide: (1) a short summary of and citations for the ten most significant opinions you have written; (2) a short summary of and citations for all rulings of yours that were reversed or where your judgment was affirmed with significant criticisms of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions. If any of the opinions or rulings listed were in state court or 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.

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;

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

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

After law school, I clerked for Judge Roger J. Miner, United States District Court for the Northern District of New York (Albany, N.Y.), from September, 1981 to August, 1983.

From September, 1983 to August, 1986, I was an associate attorney in the litigation department of Skadden, Arps, Slate, Meagher & Flom, New York, New York. My general litigation experience included the usual preparation of pleadings for all stages of litigation. I drafted discovery requests and responses, conducted depositions, and prepared and argued motions. I

assisted and co-chaired administrative hearings and a trial. Among other things, this required that I prepare witnesses, exhibits and arguments. I perfected appeals, prepared notices and briefs, and assisted at oral arguments at the United States Supreme Court and at the United States Court of Appeals for the Second and Eleventh Circuits.

The substantive areas of I principally engaged in included constitutional litigation (including Commerce Clause and Commercial Speech litigation) and banking litigation (including interstate banking issues, such as the legality of regional banking areas, "nonbank banks" and interstate ATM-automated teller machine-use), merger and acquisition, securities, labor and administrative law litigation. My work in these and other areas involved cases before federal administrative agencies, federal district and appellate courts, and state trial and appellate courts.

From October, 1986, to February, 1987, I was employed by the Commercial Litigation Branch in the Civil Division of the U.S. Department of Justice (Washington, DC). This Branch handles civil trial and appellate cases in claims both for and against the federal government. I worked on several cases in the U.S. Court of Federal Claims and the Court of Appeals for the Federal Circuit, including work on issues arising out of complex litigation involving multi-billion dollar claim against the Army Corps of Engineers in St. Louis, Missouri.

From February, 1987, to September, 1990, I was employed by the U.S. Department of Justice, Office Of Legal Policy, (changed to Office of Policy Development)(Washington, D.C.). I was employed as a Senior Attorney-Advisor. There I specialized in constitutional law, particularly in the areas of federalism, separation of powers, presidential power and foreign affairs issues. I also worked extensively on immigration and environmental issues, particularly with the White House on the first Bush Administration's Clean Air Act proposal. I worked with the U.S. Solicitor General on constitutional issues. I advised the Department of Justice and the Office of Management and Budget on constitutional and other policy implications of various bills and federal legislation. I reviewed judicial nominations and worked on the nomination of Robert Bork to the U.S. Supreme Court. In 1987, I was awarded the Attorney General's Special Achievement Award for an article entitled, "A New Look At Plurality Decisions" (published March, 1988)

From September, 1990, to June, 1991, I was employed as an Adjunct Professor of Law by George Mason University School Of Law (Arlington, Virginia). I taught the Legal Writing, Research, and Analysis course. This two-credit course introduces the law student to the workings of the American judiciary (federal and state) and common law system of *stare decisis*. Students are taught to analyze case law, research legal issues, and write and edit legal memoranda and briefs.

From September, 1990, to January 20, 1993, I was employed by the U.S. Department of Energy, Office of the General Counsel, as Deputy Assistant General Counsel for Legal Policy. I was responsible for developing policy initiatives and resolving legal issues arising from Departmental policy and legislative activities. I acted as the Office of General Counsel's liaison with the Indian tribes, its representative on the President's Ad Hoc Working Group on the siting of Energy Facilities, and DOE's representative in the program to implement the Executive Order on Takings. I was also responsible for certain initiatives involving reform and implementation of

environmental statutes, such as the 1990 Clean Air Act Amendments, Clean Water Act, Endangered Species Act, and the Resource Conservation and Recovery Act. I was also responsible for resolution and coordination of administrative law and constitutional issues arising out of Departmental programs, as well as developing Departmental positions on pending legislation. I assisted in the development of the President's National Energy Strategy, participating in measures to deregulate the natural gas industry, and the development of programs to foster the use of alternative fuels.

For about one year, from January 21, 1993, to January 11, 1994, I served as Acting Assistant General Counsel for Legal Policy at the U.S. Department of Energy. I was responsible for the administration of the Office for Legal Policy & Analysis within the Office of the General Counsel. My projects included: advising the Department on various legal issues relating to contacts with Indian Tribes; assisting with the legal evaluation and preparation of the Department's rulemaking effectuating voluntary greenhouse gas reduction guidelines pursuant to the Energy Policy Act of 1992; and recommending Departmental comments in response to EPA's proposed ethanol oxygenate use requirement for reformulated gasoline pursuant to the Clean Air Act. I also served as a member of the Department's Global Climate Task Force.

From January 11, 1994, to January 3, 1995, I was one of the Minority Counsels for the Committee On The Judiciary, United States Senate (Washington, DC). My responsibilities included working on various legislative projects including the Balanced Budget Constitutional Amendment and the Violent Crime Control and Law Enforcement Act of 1994. I organized hearings and position papers for Senator Hatch (then Ranking Republican for the full Committee) on various constitutional matters before the Subcommittee on the Constitution, including those involving the Second Amendment, the line item veto, federalism, and separation of powers issues. I worked on various presidential nominations, including that of Stephen Breyer for Associate Justice of the U.S. Supreme Court. I was also responsible for other legislative projects, including implementation of legislation enforcing the Takings Clause of the Fifth Amendment.

From January 4, 1995, to the present, I have been employed by the Judiciary Committee as Senior Counsel to Judiciary Committee Chairman Orrin G. Hatch. I am responsible for various legislative projects and policy-making initiatives involving constitutional, regulatory, and litigation reform issues. Specific endeavors included property rights legislation codifying compensation and ripeness standards, punitive damages and class action tort reform bills, the cost-benefit analysis regulatory reform act, tobacco policy, litigation and arbitration policy, and First Amendment, privacy, and attendant constitutional issues arising out of high technology legislation and governmental programs. I spear-headed work on the Year 2000 ("Y2K") bills. I also researched various issues during the impeachment trial of President William Jefferson Clinton. Besides directing and coordinating many Committee hearings, I aided Senator Hatch during several major floor debates. Of course, preparing for hearings involves researching the various legal issues, drafting memoranda, selecting appropriate witnesses, and preparing direct and cross-examination questions for the witnesses. I am also responsible for coordinating and negotiating legislation with various Senators and their staff, as well as with the then Minority.

b. 1. **What has been the general character of your law practice,**

dividing it in to periods with dates if its character has changed over the years?

Please see above.

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

Please see above.

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 tenure at Skadden, Arps, I argued various motions (including for summary judgment). I have sought to obtain a record of these, but was advised by the managing partner at Skadden, Arps, that these were unobtainable. Most of my practice was preparing appellate briefs and "prepping" partners for oral argument. I participated as second-chair for one jury trial. During my tenure in the Civil Division of the U.S. Department of Justice, I participated in various motions in the Court of Federal Claims and worked on two appeals to the Federal Circuit.

2. **What percentage of these appearances was in:**
   (a) **Federal courts;**
   (b) **State courts of record;**
   (c) **Other courts?**

Virtually all my cases (99%) were in federal court.

3. **What percentage of your litigation was:**
   (a) **Civil;**
   (b) **Criminal?**

All my cases were civil.

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.**

As stated above, I am unable to locate the records of the various motions that I have argued at the trial court level. I was a one of several counsels of record in the following appellate cases:

U.S. Supreme Court:

Northeast Bancorp, Inc. v. Board of Governors, 472 U.S. 159 (1985).

U.S. Trust Corp. v. Board of Governors, 474 U.S. 1098 (1986).

Brown-Forman Distillers Corp. v. New York State Liquor Authority, 476 U.S. 573 (1986).

Second Circuit Court of Appeals:

Independent Bankers Assoc. of New York, Inc. v. Marine Midland Bank, NA, 757 F.2d 453 (2d Cir. 1985).

Eleventh Circuit Court of Appeals:

Florida Dep't of Banking and Finance v. Board of Governors, 800 F.2d 1534 (11th Cir. 1986).

5. What percentage of these trials was:
(a) Jury;
(b) Non-jury?

All Non-Jury.

18. Litigation: Describe the ten most significant litigated matters that 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 served as co-counsel in the following appellate cases.

U.S. Supreme Court:

Northeast Bancorp, Inc. v. Board of Governors, 472 U.S. 159 (1985). Wrote significant part of Second Circuit brief and assisted with Supreme Court brief. Assisted with preparation of oral arguments. Case involved legality under Commerce Clause of New England interstate banking merger statutes. Represented intervener Hartford National Corp. The Court held in favor of Northeast Bancorp and the interveners.

U.S. Trust Corp. v. Board of Governors, 474 U.S. 1098 (1986)(mem.). Assisted with writing Supreme Court and Eleventh Circuit briefs in this case, which involved a constitutional challenge

to Florida's efforts to restrict interstate banking. Represented U.S. Trust Corp. The Supreme Court held in favor of U.S. Trust Corp.

Brown-Forman Distillers Corp. v. State of New York Liquor Authority, 476 U.S. 573 (1986). Assisted in preparing amicus brief in consultation with industry attorneys. This case involved a challenge to New York's restrictions on alcohol advertising and pricing. The Court held in favor of Brown-Forman.

Second Circuit Court of Appeals:

Independent Bankers Assoc. of New York State, Inc. v. Marine Midland Bank, NA, 757 F.2d 453 (2d Cir. 1985). Coauthored briefs and assisted with preparation with oral argument in case on the legality of interstate ATMs (automated teller machines). Represented Mastercard Intern., Inc., amicus curiae. Judges: Feinberg, Chief Judge, Newman and Pratt, Circuit Judges.

Eleventh Circuit Court of Appeals:

Florida Dep't of Banking and Finance v. Board of Governors, 800 F.2d 1534 (11th Cir. 1986). Assisted and participated in both brief and oral argument at Eleventh Circuit. This case involved a constitutional challenge to Florida's efforts to restrict interstate banking. Represented U.S. Trust Corporation, which lost in the Eleventh Circuit. Judges: Roney, Chief Judge, Tjoflat, Circuit Judge, and Brown, Senior Circuit Judge.

19. Legal Activities: In addition to those matters described in response to question 18, describe the most significant legal activities you have pursued. 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 appreciate this question because I have worked extensively in the public sector -- in both the executive and legislative branches -- over the last 15 years. I would consider the various projects I worked on that involved critical constitutional and statutory questions to be the most significant activities I have ever been associated with because of their significant effect on the functioning of our government and on individual liberty. Certainly, the research and work I did for the impeachment trial of President Clinton was a unique opportunity for any lawyer and constitutional scholar.

As Senior Counsel for the Senate Judiciary Committee, I was privileged to work on various constitutional matters, such as the constitutional amendment for a balanced budget and several bills designed to protect private property by assuring a federal court venue for claims predicated upon the Takings Clause of the Fifth Amendment, as well as to provide for agency review of regulations impacting private property. These bills also sought to clarify the jurisdiction of the Court of Federal Claims and the district courts over Takings claims.

I also was responsible for legislation and hearings involving reform of the civil justice system. These involved a thorough review and investigation of arbitration procedures, class action mechanisms, and the effect of remedies, such as punitive damages, upon ligation and the ability

to obtain relief. I also helped draft various liability bills and portions of bills, including the Hatch-Feinstein codification of the global tobacco settlement. I was also fortunate to be able to contribute to some of the most significant civil justice legislation that passed the Senate, including the Year 2000 ("Y2K") computer liability bills and the recently passed Patients' Bill of Rights. I have also done work in the high tech privacy and property rights area.

In addition to civil litigation and court reform, I have worked extensively on legislation involving administrative law. These included various bills involving reform of the Administrative Procedure Act and requiring agencies to preform cost-benefit analyses and risk assessments during the rulemaking process.

During my years at both the Department of Energy and in the Department of Justice, I was privileged to work on legislative and administrative matters that played a significant role in protecting the environment, particularly involving clean air and wetlands protection. At the Department of Justice, I also worked on constitutional separation of power issues involving the foreign affairs and treaty-making division of power between the presidency and Congress.

Below are a dozen names of academics and lawyers I have worked with over the last few years:

1. Daniel R. Mandelker, Professor of Law, Washington University in St. Louis. (314) 962-2685

2. Steven J. Eagle, Professor of Law, George Mason University School of Law. (703) 993-8054

3. John Beisner, O'Melveny & Myers. (202) 383-5370

4. Mark Disler, Black, Kelly & Scruggs. (202) 530-4806

5. Margaret Durbin, American Council of Life Insurance. (202) 624-2150

6. C. Boyden Gray, Wilmer, Cutler & Pickering. (202) 663-6000

7. Todd Graziano, The Heritage Foundation. (202) 608-6182

8. Michael Greve, The American Enterprise Institute. (202) 862-4874

9. Paul Larkin, EPA. (202) 653-6111

10. Victor Schwartz, Shook, Hardy & Bacon. (202) 662-4886

11. Jim Wooten, Institute of Legal Reform, U.S. Chamber of Commerce. (202) 463-5724

12. Theodore Olsen, now Solicitor General, U.S. Department of Justice. 514-4000

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 will have no deferred income or receipts from any source whatsoever.

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 cannot conceive of any potential conflicts of interests. I certainly will follow the Judicial Canons of Ethics if conflicts arise, including possible recusal from particular cases.

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 do not have any plans, commitments, or agreements to pursue any 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 '78, may be substituted here.)

I have attached the financial disclosure report.

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

Please see attached 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.

I have given policy advice to the Robert Dole and the Orrin G. Hatch and George W. Bush presidential campaigns in the 1998 and 2000 campaigns. I was a volunteer for the presidential campaigns of Jimmy Carter in 1976 and Ronald Reagan in 1980 and 1984.

08/06/01 MON 11:19 FAX 002

AO-10
Rev. 1/2000

FINANCIAL DISCLOSURE REPORT
FOR NOMINEES

Report Required by the Ethics in Government Act of 1978, (5 U.S.C. App., §§101-111)

Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
BLOCK, LAWRENCE J.	U.S. COURT OF Federal Claims	8/6/2001

4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	5. Report Type (check appropriate type)	6. Reporting Period
Judge – nominee	X Nomination, Date 8/2/01 Initial ___ Annual ___ Final	01/01/2000 to 08/06/2001

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.
501 SLATERS LANE #311 Alexandria, VA 22314	Reviewing Officer _____ Date _____

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

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			$
			$
			$
			$

08/08/01 MON 11:19 FAX 003

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report

V. REIMBURSEMENTS – transportation, lodging, food, entertainment.
(Includes those to spouse and dependent children. See pp. 25-27 of Instructions.)

SOURCE	DESCRIPTION
☐ NONE (No such reportable reimbursements.)	
EXEMPT	

. GIFTS. *(Includes those to spouse and dependent children. See pp. 28-31 of Instructions.)*

SOURCE	DESCRIPTION	VALUE
☐ NONE (No such reportable gifts.)		
EXEMPT		$
		$
		$
		$

I. LIABILITIES. *(Includes those of spouse and dependent children See pp. 32-33 of Instructions.)*

CREDITOR	DESCRIPTION	VALUE CODE*
☒ NONE (No reportable liabilities.)		

alue 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
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

08/08/01 MON 11:18 FAX 004

NANCIAL DISCLOSURE REPORT

Name of Person Reporting

Date of Report

VII. Page 1 INVESTMENTS and TRUSTS – income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

A Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
	(1) Amt. Code 1 (A–H)	(2) Type (e.g., div., rent, int.)	(3) Value Code 2 (J–P)	(4) Value Method Code 3 (Q–W)	(1) Type (e.g., buy, sell, merger, redemption)	(2) Date Month–Day	(3) Value Code 2 (J–P)	(4) Gain Code 1 (A–H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets,									
1 ATHM common stock	A	none	J	T	exempt				
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1 Income/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
(See Col. B1, D4): F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=More than $5,000,000

2 Value Codes J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000
(See Col. C1, D3): 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=More than $50,000,000

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

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~NANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report

VII. Page 2 INVESTMENTS and TRUSTS – income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 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				
	(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure	Amt. Code1 (A-H)	Type (e.g. div., rent or int.)	Value Code2 (J-P)	Value Method Code3 (Q-W)	Type (e.g. buy, sell, merger, redemption)	(2) Date Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☒ NONE (No reportable income, assets, or transactions)									
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1 Income/Gain Codes: (See 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=More than $5,000,000

2 Value Codes: (See 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=More than $50,000,000

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

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FINANCIAL DISCLOSURE REPORT

Name of Person Reporting | Date of Report

VII. Page 3 INVESTMENTS and TRUSTS – income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

A Description of Assets (including trust assets) *Place (X) after each asset exempt from prior disclosure*	B Income during reporting period (1) Amt. Code 1 (A-H)	B (2) Type (e.g., div., rent or int.)	C Gross value at end of reporting period (1) Value Code 2 (J-P)	C (2) Value Method Code 3 (Q-W)	D Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D (2) Date Month-Day	D (3) Value Code 2 (J-P)	D (4) Gain Code 1 (A-H)	E Identity of buyer/seller (If private transaction)
X NONE (No reportable income, assets, or transactions)									
36									
37									
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1. Income/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
(See Col. B1; D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=More than $5,000,000

2. Value Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000
(See Col. C1; D3) 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=More than $50,000,000

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

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting | Date of Report

VII. Page 4 INVESTMENTS and TRUSTS – income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

I. Description of Assets (including trust assets) *Place a "(X)" after each asset exempt from prior disclosure*	A. Income during reporting period (1) Amt. Code 1 (A-H)	(2) Type (e.g., div., rent or int.)	B. Gross value at end of reporting period (1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	C. Transactions during reporting period (1) Type (e.g., buy, sell, merger, redemption)	(2) Date (Month-Day)	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	If not within your disclosure (5) Identity of buyer/seller (if private transaction)
X NONE (No reportable income, assets, or transactions)									
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1. Amt/Code: 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=More than $5,000,000. (See Col. B1, D4)
2. Value Code: 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=More than $50,000,000. (See Col. C1, D3)
3. Value Method Codes: Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash Market; U=Book value; V=Other; W=Estimated. (See Col. C2)

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F ANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

X. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is ccurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met pplicable 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 mpliance with the provisions of 5 U.S.C. app., § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

gnature Laurence J Beck Date 8/6/2001

OTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE JBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. App., § 104.)

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the
United States Courts
Suite 2-301
One Columbus Circle, N.E.
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	3	000	00	Notes payable to banks—secured			
U.S. Government securities—add schedule				Notes payable to banks—unsecured			
Listed securities—add schedule		100	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	89	770	00
Real estate owned—add schedule	155	000	00	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts—itemize:			
Autos and other personal property	10	000	06	student loan	3	624	00
Cash value—life insurance				credit card	1	800	00
Other assets—itemize:				Home owners loan	15	244	96
					-	-	
				Total liabilities	80	478	96
				Net Worth	58	661	54
Total Assets	168	100	00	Total liabilities and net worth	167	100	00
CONTINGENT LIABILITIES				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							

SCHEDULE A

100 Shares ATHM	Current Value	$100.00

SCHEDULE B

REAL ESTATE OWNED

Condominium

501 Slaters Lane
Unit 311
Alexandria, VA 22314

2 BDR

est. market value $155,000.00

SCHEDULE C

Mortgage Information

Holder of Mortgage:

Citimortgage
Citicorp, Inc.
New York, New York

Principal Balance:
$ 89, 770.00

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.

During my practice of law at Skadden, Arps (New York), I engaged in several pro bono projects, including representing the American Women's Economic Development Association in a breach of contract case and a Georgia inmate in a death row appeal.

For the vast amount of my time during the past fifteen years in public service, I have not practiced private sector law or have been a litigator. Nonetheless, I strongly believe that we must all give something back to the community that has been a benefit to all of us. I certainly consider education to be an important part of service to the community. As such, I served as an adjunct professor of law at George Mason University Law School. I have also spent literally hundreds of hours each year as a volunteer teaching in religious-related matters. I have also helped and tutored many young law students. I also assisted a member of a local church in obtaining visitation rights to her children. I also give a significant part of my income to charity work.

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 have never belonged to such an organization.

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).

Senator Hatch recommended to the Counsel to the President that the President nominate me to serve on the Court of Federal Claims. Thereafter, I went through a series of extensive interviews with several Associate Counsels and with the Counsel to the President. Extensive background checks were completed. I was asked to provide a list of thirty or so names of attorneys, judges, prosecutors, federal and state officials, academics, and community leaders who could recommend me and vouch for my legal ability and character. Of course, the F.B.I. conducted a security check as well.

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 or seeking a commitment as to 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.

Judicial activism, that is policy-making by judges, is an unfortunate product of the 20th century. Hitherto, a consensus existed in our nation that judges play a restrained—albeit important—role in government. That role has been best summarized by Alexander Hamilton, writing as Publius, in *The Federalist Papers*, as one of "judgment" and not "will." Thus, according to this view, termed "formalism," judges merely interpret the law by construing statutes and the Constitution, and by applying the common law through juridical analogy and *stare decisis*.

Some argue that, in effect, this process of judging is really policy making. I believe this to be erroneous. Of course, judicial decisions have policy-making implications. But this does not mean that judges are free to leave the plain meaning of text or the rules of common law to impose their own policy preferences.

Consequently, judges must give deference to the political branches of government. This is particularly true when dealing with federal and state statutes. The Framers of our Constitution established a democratic republic. For a judge to substitute his or her view of policy for that of the legislature is to call into question the very nature of democracy. In fact, judicial review is

only legitimate when a judge gives effect to the plain meaning of the Constitution as the supreme law of the land over inconsistent and contradictory statutory language. In such a situation, the judge is merely enforcing "the rule of law"—the very foundation of constitutional government.

AFFIDAVIT

I, Lawrence J. Block, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

August 17, 2001 (DATE)

Lawrence J. Block (NAME)

(NOTARY)

NOTARY PUBLIC
DISTRICT OF COLUMBIA

My Commission Expires April 14, 2004

September 5, 2001

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Update of Committee Questionnaire and Financial Disclosure Information

Dear Mr. Chairman,

Since my nomination was recently resubmitted to the Senate, I have examined my paperwork to make certain the information is current. There are no changes to the questionnaire, but I have updated the financial disclosure report accordingly and attached a copy. Please let me know if there is anything else I can provide for you.

Thank you for your time and consideration.

Sincerely,

Larry Block

cc: Senator Orrin Hatch, Ranking Member

09/05/01 WED 10:44 FAX 009

AO-10
Rev. 1/2001

FINANCIAL DISCLOSURE REPORT
FOR NOMINEES

Report Required by the Ethics in Government Act of 1978, (5 U.S.C. App., §§101-111)

1. Person Reporting *(Last name, first, middle initial)*	2. Court or Organization	3. Date of Report
Block, Lawrence J.	U.S. Court of Federal Claims	9/5/2001

4. Title *(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)*	5. Report Type (check appropriate type)	6. Reporting Period
Judge - Nominee	X Nomination, Date 9/5/2001 ___Initial ___Annual ___Final	01/01/2000 to 9/5/2001

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.
	Reviewing Officer _____ Date _____

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

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			$
			$
5			$
			$

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FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

Date of Report 9/5/2001

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

(Includes those to spouse and dependent children. See pp. 25-27 of Instructions.)

	SOURCE	DESCRIPTION
☐	NONE (No such reportable reimbursements.)	
1		
2	EXEMPT	
3		
4		
5		
6		
7		

V. GIFTS. *(Includes those to spouse and dependent children. See pp. 28-31 of Instructions.)*

	SOURCE	DESCRIPTION	VALUE
☐	NONE (No such reportable gifts.)		
1			
2	EXEMPT		$
3			$
4			$
			$

VI. LIABILITIES. *(Includes those of spouse and dependent children See pp. 32-33 of Instructions.)*

	CREDITOR	DESCRIPTION	VALUE CODE*
☒	NONE (No reportable liabilities.)		
1			
2			
3			
4			
5			
6			

*Value 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
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: 9/5/2001

VII. Page 1 INVESTMENTS and TRUSTS – income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 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				
	(1)	(2)	(1)	(2)	(1)				(If not exempt from disclosure)
Place "(X)" after each asset exempt from prior disclosure	Amt. Code1 (A–H)	Type (e.g., div., rent, int.)	Value Code2 (J–P)	Value Method Code3 (Q–W)	Type (e.g., buy, sell, merger, redemption)	(2) Date: Month–Day	(3) Value Code2 (J–P)	(4) Gain Code1 (A–H)	(5) Identity of buyer/seller (If private transaction)
☐ NONE (No reportable income, assets,									
1 ATHM common stock	A	None	J	T	EXEMPT				
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1 Income/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
(See Col. B1, D4) F=$50,001–$100,000; G=$100,001–$1,000,000; H1=$1,000,001–$5,000,000; H2=More than $5,000,000

Value Codes: J=$15,000 or less; K=$15,001–$50,000; L=$50,001–$100,000; M=$100,001–$250,000
(See Col. C1, D3) 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=More than $50,000,000

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

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

Date of Report: 9/5/2001

VII. Page 2 INVESTMENTS and TRUSTS – income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

A Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B Income during reporting period (1) Amt. Code1 (A-H)	B (2) Type (e.g., rent, int.)	C Gross value at end of reporting period (1) Value Code2 (J-P)	C (2) Value Method Code (Q-W)	D Transactions during reporting period (1) Type (e.g., buy, sell, merger, redemption)	D (2) Date Month-Day	D (3) Value Code2 (J-P)	D (4) Gain Code1 (A-H)	D (5) Identity of buyer/seller (if private transaction)
X NONE (No reportable income, assets, or transactions)									
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If not exempt from disclosure

1 Income/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
(See Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=More than $5,000,000

Value Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000
(See Col. C1, D3) 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=More than $50,000,000

2 Value Method Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash Market
(See Col. C2) U=Book value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting:

Date of Report: 9/5/2001

VII. Page 3 INVESTMENTS and TRUSTS – income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

A: Description of Assets (including trust assets) *Place "(X)" after each asset exempt from prior disclosure*	B: Income during reporting period (1) Amt. Code1 (A–H)	(2) Type (e.g., div., rent or int.)	C: Gross value at end of reporting period (1) Value Code2 (J–P)	(2) Value Method Code3 (Q–W)	D: Transactions during reporting period (3) Type (e.g., buy, sell, merger, redemption)	(1) Date–Month Day	(2) Value Code2 (J–P)	(3) Gain Code1 (A–H)	(4) Identity of buyer/seller (if private transaction)
X NONE (No reportable income, assets, or transactions)									
36									
37									
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53									

1 Income/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 (See Col. B1, D4) F=$50,001-$100,000; G=$100,001-$1,000,000; H1=$1,000,001-$5,000,000; H2=More than $5,000,000

Value Codes: J=$15,000 or less; K=$15,001-$50,000; L=$50,001-$100,000; M=$100,001-$250,000 (See Col. C1, D3) 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=More than $50,000,000

3 Value Method Codes: Q=Appraisal; R=Cost (real estate only); S=Assessment (See Col. C2) T=Book value; V=Other; W=Estimate; Cash/Market

F NCIAL DISCLOSURE REPORT

Name of Person Reporting:

Date of Report: 9/5/2001

VII. Page 4 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

A. Description of Assets (including trust assets) *Please "X" after each asset exempt from prior disclosure*	B. Income during reporting period2 (1) Amt. Code1 (A-H)	B. (2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting period (1) Value Code2 (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, merger, redemption)	D. (2) Date Month Day	D. (3) Value Code2 (J-P)	D. (4) Gain Code1 (A-H)	D. (5) Identity of buyer/seller (If private transaction)
						If not exempt from disclosure			
X NONE (No reportable income, assets, or transactions)									
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2 Income/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 (See Col. B1, D4): F=$50,001-$100,000; G=$100,001-$1,000,000; H1=$1,000,001-$5,000,000; H2=More than $5,000,000

Value Codes: J=$15,000 or less; K=$15,001-$50,000; L=$50,001-$100,000; M=$100,001-$250,000 (See Col. C1, D3): 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=More than $50,000,000

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

09/05/01 WED 10:47 FAX 015

I NCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
		9/5/2001

III. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

X. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is ccurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met pplicable 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 ompliance with the provisions of 5 U.S.C. app., § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature Lawrence J Bock Date 9/5/2001

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., § 104.)

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Mail signed original and 3 additional copies to:

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

[Whereupon, at 3:13 p.m., the committee was adjourned.]
[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Responses from Reena Raggi to
Follow-up Questions by Senator Sessions

1. Recently, the Department of Justice stated in a brief to the Supreme Court that it is the federal government's position that the Second Amendment confers an individual right to keep and bear arms as opposed to a collective right that only applies to state militias.

A. Do you believe that the Second Amendment is as legitimate and important a part of the Bill of Rights as the other amendments contained therein?

The legitimacy of the Second Amendment is beyond question. The Constitution and all amendments thereto are the supreme law of the land, binding on all federal courts as they resolve cases before them. From a judicial perspective, the importance of any individual amendment depends not on a relative comparison with other amendments but, rather, on the degree to which the specific amendment is relevant to the issues in dispute in a given case.

B. Do you believe that the text, intent, and history of the Constitution should be used to interpret the Second Amendment?

The text of any section of the Constitution is always critical to its interpretation. Intent and history can serve as useful tools in interpreting constitutional text, as long as one recognizes that the Framers' views on the Constitution were not always unanimous and, indeed, sometimes shifted over the course of their lives. Thus, while intent and history may sometimes elucidate text, it is the text and not the history that is the law. Moreover, in interpreting constitutional text, federal judges are obliged to follow controlling Supreme Court and Circuit precedent.

C. Do you believe that the status of English and American Law at the time the Bill of Rights was ratified should be used as a factor in interpreting the meaning of the Second Amendment?

Contemporaneous English and American law can provide historical context for a court interpreting the Bill of Rights. Such laws, however, may have been enacted by legislative bodies that played no part in drafting or ratifying the first ten amendments. Thus, courts must examine these materials carefully when using them to interpret constitutional text.

2. Nearly 30 cities have filed lawsuits against the firearms industry based on the premise that the industry is responsible for the actions of third-party criminals who misuse legal, non-defective guns and ammunition. In general, however, a person owes no duty to

protect a plaintiff from the criminal acts of third parties, absent a special relationship (e.g., the plaintiff is wholly dependent on the defendant) or special circumstances (e.g., the plaintiff is an employee of the defendant who is injured on the job). See Restatement (Second) of Torts § 315 & cmt. (1965)). Do you believe that judges may legitimately use policy statements by special interest groups or politicians to change general tort law to impose or shield parties from civil liability?

No. Special interest policy statements and political pronouncements are not a basis for changing established law. I do note that the factual issue that prompts this question was presented to the United States Court of Appeals for the Second Circuit in Hamilton v. Beretta U.S.A., Corp, 264 F.3d 21 (2d Cir. 2001), a case in which numerous plaintiffs, injured during criminal shootings, sued various firearm manufacturers for negligent marketing and distribution of their products. Rather than attempt to resolve the "important and complex questions of state law for which no dispositive New York authority could be found," id. at 27, the federal court certified the question of tort duty to the New York Court of Appeals, which in turn ruled that the connection between the gun manufacturers, the criminal wrongdoers, and the injured plaintiffs was too "remote" to give rise to a duty of care under New York tort law. Id. at 28.

Questions from Chairman Patrick Leahy for Lawrence J. Block, Nominee to the U.S. Court of Federal Claims

1. Q. While working at the Reagan and then Bush Department of Justice, you wrote many articles about the balance of power between Congress and the President in foreign policy. In those articles, you made the following statement in one form or another, and I quote, "the main danger confronting our democracy is that of an Imperial Congress." See, e.g., Lawrence J. Block & David B. Rivkin, Jr., *The Battle to Control the Conduct of Foreign Intelligence and Covert Operations: The Ultra-Whig Counterrevolution Revisited*, 12 HARV. J.L. & PUB. POL'Y 303 at 328 (1989). You also called Arthur Schlesinger's widely accepted notion of an "Imperial Presidency," that modern presidents have wielded excessive power, a "fable" and a "myth." See, e.g., id. at 327. Do you still believe that the "the main danger confronting our democracy is that of an Imperial Congress?" How can we be assured that you will give acts of Congress the presumption of constitutionality they are due as a matter of law?

   A. This article I coauthored with Mr. Rivkin in 1989 represented my political views at that time. I believed that the constitutional equilibrium of power between the branches had tilted in favor of the Congress. My views thirteen years later have moderated, influenced by my experience working as a staffer in the Senate Judiciary Committee. Nevertheless, these are political views, and I strongly believe that it is impermissible for a judge to impose such views in any case before him. The role of a judge is to apply the law. When construing a statue, a judge should ascertain the intent of the legislature through the plain meaning of the language of the statute. Acts of Congress have a presumption of constitutionality. *See, e.g., O' Gorman and Young v. Hartford Fire Insurance Co.*, 282 U.S. 251, 257-8 (1930). This presumption derives from separation of powers and the respect courts must give to the constitutionally co-equal political branch. Finally, when construing case law, a judge should apply controlling precedent pursuant to *stare decisis*.

2. Q. In your articles on foreign policy you rely on dissenting or concurring opinions and, in one instance a reversed opinion, of ideologically conservative judges like Justice Scalia, former Judge Bork, and Judge Kozinski. See, e.g., Lawrence J. Block et al., *The Senate's Pie-in-the-Sky Treaty Interpretation: Power and the Quest for Legislative Supremacy*, 137 UNIVERSITY OF PENNSYLVANIA LAW REVIEW 1481 at 1487, 1500, 1502, 1508 (1989). When, if ever, do you think it is appropriate for judges to rely on dissenting or reversed opinions to inform their analysis of precedent? If you are confirmed, you may be faced with a situation where you have to apply a Supreme Court holding with which you do not personally agree and, for example, there is a dissent by Justice Scalia with whom you may agree more. Would you be reluctant to follow precedent or holdings criticized by dissenting judges like Justice Scalia whom you have cited favorably in the past?

   A. Lower court judges may not rely on dissents or reversed opinions as controlling precedent. I would have absolutely no problem applying majority opinions with which I personally disagree. I strongly believe that it is improper for a judge to apply the

reasoning or rationale of a dissent or reversed opinion.

3. Q. While you were in the Department of Justice you were thanked by former Judge Robert Bork for "putting in arduous hours" editing and assisting with his manuscript of The Tempting of America (1990), which describes his views on judicial review and his nomination to the Supreme Court in 1987, on which you worked. As you note in your Senate Questionnaire, that same year you were awarded the Attorney General's Special Achievement Award for an article your prepared for Attorney General Meese which evaluated Supreme Court decisions since 1955. In this report, among other things, you favorably cite Bork's ideas in his article *Neutral Principles and Some First Amendment Problems,* 47 INDIANA LAW REVIEW 1 (1971). In the report, you seem to agree with Bork's view that federal judges perpetrate a "'constitutional coup d'etat'" when they issue decisions in which they, in your words, "substitut[e] perceived values for those found in the text of the Constitution." See, e.g., Report to the Attorney General: A New Look at Plurality Decisions at 30, n.101 (1988); see id. at 26, n.86. Please specify which Supreme Court precedents since 1955 meet this description.

A. The 1988 Department of Justice publication, Report to the Attorney General: A New Look at Plurality Decisions, represented the views of the Department of Justice. I received an award for researching the data and drafting the main body of the Report. But the Report was a collaborative effort, the work product of several individuals. I personally disagreed with (and presently disagree with) many of the assertions contained in the Report. The gist of the Report -- and I agree with this -- is that the primary cause of plurality decisions is not that the Supreme Court uses substantive due process in its jurisprudence (or engages in what is commonly termed judicial activism). Instead, because of *certiorari*, the primary cause of multiple opinions is that the cases involve difficult issues of law and fact on which the justices simply disagree. Consequently, this conclusion in essence contradicts Judge Bork's assertion that the Supreme Court has worked a "constitutional coup d'etat." I know of no Supreme Court case since 1955 that rises to the level of a "constitutional coup d'etat."

4. Q. In the report you prepared in 1987 for which you received the Attorney General's Special Achievement Award, you stated that "Justices should abandon 'substantive reasoning'" and you called on the Supreme Court to "abandon substantive reasoning in favor of textual or other interpretivist methods." See, e.g., Report to the Attorney General: A New Look at Plurality Decisions at 61 (1988). Please describe which Supreme Court decisions since 1955 demonstrate substantive reasoning in contrast with interpretivist methods. Please define what is meant by the phrase "substantive reasoning" and what is meant by "interpretivist methods" in your report. Do you believe there are any constitutional rights that are not mentioned explicitly in the Constitution? Do you believe there is a constitutional right to privacy? If so, what are the constitutional bases for that right?

A. As previously mentioned, the 1988 Department of Justice publication, Report to the Attorney General: A New Look at Plurality Decisions, represented the views of the Department of Justice. I received an award for researching the data and drafting the main body of the Report. But the Report was a collaborative effort. And I disagreed with (and presently disagree with) many of the assertions contained in the Report. As I recall, the Report defines interpretive method as a jurisprudence arising out of construing the text of the Constitution. It is sometimes referred to as textualism or original meaning jurisprudence. Its opposite is noninterpretivism or substantive due process. Interpretivism versus noninterpretivism was a very heated debate in the 1980s. The Report, representing the view of the Department of Justice, lists various examples of cases criticized as using a noninterpretivist method of jurisprudence.

The Supreme Court's jurisprudence holds that there are rights not enumerated in the text of the Constitution. The Court also recognizes a right to privacy in the Constitution. Such a right is both specific, derived from the Fourth Amendment's protection against unreasonable searches and seizures, and general, primarily derived from historic understanding of the "liberty prong" of the Due Process Clauses of both the Fifth and Fourteenth Amendments. If confirmed, I will unequivocally enforce these decisions if called upon to do so.

5. Q. In your Heritage Foundation article on the Bill of Rights, you expressed "distress[]" that many Americans think the Bill of Rights and the Fourteenth Amendment are the "*principal* protection of individual rights." Lawrence J. Block & David B. Rivkin, Jr., *Auxiliary Precaution: The Bill of Rights Is Not the Constitution's Most Important Safeguard of Liberty*, 51 POL'Y REV. 68 (1990). In that article, you rely on statements by an anonymous "18th-century pamphleteer propagandizing the new federal Constitution" as authority for virtually unlimited power of states to regulate the liberty of American citizens. Id. at 71. In your analysis of the Bill of Rights, you seem to place a great deal of reliance on select statements of the framers of the Constitution as well as on an anonymous pamphleteer, rather on Supreme Court decisions. What weight do you think that such statements should be given in judicial decision making?

A. This 1990 article is an academic piece representing views on history and on philosophy. It does not represent my views on jurisprudence or on the role of courts and the duty of judges. I believe that the role of judges in the constitutional system is a narrow one: to resolve specific cases and controversies that arise in litigation by faithfully applying legal precedent according to the dictates of *stare decisis*. As such, the statements of anonymous pamphleteers play absolutely no role in judicial decision-making. And while I have great respect and admiration for the views of the Framers of the Constitution, I do not believe their statements to be binding or controlling in deciding legal issues. What is controlling are past judicial precedents or relevant statutory law.

6. Q. In your article "Auxiliary Precaution" you embrace ideas espoused by Justice Clarence

Thomas and others of what you call the "universal system of natural law and rights" and the "Lockean concept of natural rights." See, e.g., id. What are the rights to which you are referring?

A. With respect, I did not intend in this article to embrace either Justice Thomas or the philosopher John Locke's view of natural law or natural rights. What I wrote was that most of the Founders of our Republic believed in natural law and natural rights, *e.g.*, that our rights are derived not as a gift from government but from nature or God. This is certainly the view enunciated in the Declaration of Independence. My understanding is that natural rights may be summarized by the phrase (popularized by Locke and the English Whigs), "life, liberty, and property." Thomas Jefferson, in the Declaration of Independence, altered this to, "life, liberty, and the pursuit of happiness." I must emphasize that natural law and natural rights are philosophical and political concepts. I strongly believe it inappropriate for a judge to enforce these or any other philosophical beliefs when deciding cases and issues.

7. Q. In your articles, you have argued that the federal courts are "weakening" the Constitution and its system of protecting liberty by "imposing their own subjective moral values in the process of creating new 'rights' not found in the Constitution." See id. at 73. You also state that judicial decisions have "abridged the right of the people to decide basic moral and policy questions." Id. Please identify which "new rights" have been created by the Supreme Court and whether, in your opinion, they are illegitimate.

A. As I previously stated, this article is an academic piece representing views on history and on philosophy and does not represent my views on jurisprudence or on the role of courts and the duty of judges. I believe that the role of judges in the constitutional system is a narrow one: to resolve specific cases and controversies that arise in litigation by faithfully applying precedent according to the dictates of *stare decisis*. If confirmed, I will faithfully follow precedent, even those cases with which I may disagree. Personal preferences must play no role when a judge decides a case.

There are many examples of the Supreme Court's finding rights not found in the text of the Constitution. Arguably, the two most important examples are *Dred Scott v. Sandford (1856)*, which held that the Constitution protects human slaves as property and which overturned the Missouri Compromise, and *Lochner v. New York (1905)*, which struck down New York's regulation of the dairy industry on a rationale of "freedom of contract." Decisions of the Supreme Court are legitimate and may be altered only by future decisions of the Supreme Court, through the constitutional amendment process, or by Congress when appropriate.

8. Q. In your Senate Questionnaire, you state that "Judicial activism, that is policy-making by judges, is an unfortunate product of the 20th century." Prior to this century, according to your view, judges played a "restrained" role in government. Do you believe that any of

the following cases from the 19th century involved judicial activism or policy-making by judges: Bradwell v. Illinois, 83 U.S. (16 Wall.) 130, 141 (1873) (rejecting a claim by a woman who wanted to practice law and imposing natural law restrictions on the "spheres and destinies" of women because they are too timid and because the "divine ordinance" commits them exclusively to the domestic sphere); Plessy v. Ferguson, 163 U.S. 537 (1896) (adopting and engrafting the idea of "separate but equal" onto the plain language of the Fourteenth Amendment); and Dred Scott v. Sandford, 60 U.S. (19 How.) 393, 450 (1856) (overturning the Missouri Compromise on the ground that, among other things, the law deprived a person of his property rights without due process by prohibiting the transportation or holding of human beings as slaves in certain territories)?

A. Throughout American history, various courts have engaged in judicial activism. The cases cited above represent a small percentage of the total cases decided. I believe that all the cases cited in this question are examples of judicial activism.

9. Q. 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 of Americans, as beyond Congress's power under Section 5 of the Fourteenth Amendment, for example, Flores v. City of Boerne, 117 S. Ct. 2157 (1997), Kimel v Florida Board of Regents, 120 S. Ct. 631 (2000), and Board of Trustees v. Garrett, 19 S. Ct. 2240 (1999). The Supreme Court has also recently struck down statutes as being outside the authority granted to Congress by the Commerce Clause, such as in the case of U.S. v. Lopez, 115 S. Ct. 1624 (1995) or U.S. v. Morrison, 120 S. Ct. 1740 (2000). The Supreme Court has also struck down other federal statutes as being a violation of the 10th Amendment or the 11th Amendment under the Court's expansive view of states' rights. These cases have been described as creating new power for state governments, as federal authority is being diminished. What is your view of these developments? Do they constitute "judicial activism?" What is your understanding of the scope of congressional power under Article I of the Constitution, in particular, under the Commerce Clause, and under Section 5 of the Fourteenth Amendment?

A. Judicial activism can be summarized as a disregard by courts for the limitations placed on the judiciary by the Constitution. In particular, the Constitution confers on the political branches a policy-making role and leaves to federal courts the very narrow role of adjudicating cases and controversies pursuant to the dictates of judicial decision-making. What differentiates judicial decision-making from political policy-making is that courts must decide issues on the basis of past precedent and interpretation of statutes and the Constitution, guided by their text, specific rules of construction, and history. Thus, courts are not free, as legislatures are, to resolve problems on the basis of rational choice or moral preferences.

Nevertheless, this does not mean that the process of judicial interpretation necessarily produces uniformity. Different jurists may disagree as to results while using similar

methods of decision-making. Such differences of opinion are not necessarily the result of judicial activism. The splits occurring in the Rehnquist Court decisions construing the Tenth and Eleventh Amendments, as well as the Commerce Clause and Section 5 of the Fourteenth Amendment, might be characterized as examples of interpretive disagreements and not the result of judicial activism.

Concerning your question about the scope of congressional power under Article I of the Constitution, my understanding is that the Supreme Court has interpreted such grant of authority broadly. The construction of such federal power was first enunciated by Chief Justice Marshall in *McCulloch v. Maryland,* 17 U.S. 316 (1819). While federal power was considered by the Court clearly to be limited, the Court also held that Congress enjoys implied powers "necessary and proper"(under Article I's Necessary and Proper Clause) to effectuate its Article I enumerated powers. As John Marshall stated in *McCulloch* : "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are Constitutional." This "means-ends" formulation, in addition to disagreement over textual meaning and history, necessarily leads to interpretive disagreements.

Arguably the most important recent case construing the scope of federal power is *United States v. Lopez*, 514 U.S. 549 (1995). In *Lopez*, the Court examined the limits and breadth of federal power under the Commerce Clause. The Court held that there were three circumstances in which Congress could regulate under its Article I Commerce Clause power: (1) Congress may regulate the channels of interstate commerce; (2) Congress may regulate to protect the instrumentalities of interstate commerce, or persons or things in interstate commerce; and (3) Congress may regulate all activities, even intrastate activities, that have a substantial relation to interstate commerce, in other words, those activities that substantially affect interstate commerce.

In addition, the Supreme Court also has found that the Tenth Amendment, and the principle of federalism derived from the structure of the Constitution, are a further limitation on commerce power. Thus, in both *New York v. United States*, 505 U.S. 144 (1992), and *Printz v. United States*, 521 U.S. 98 (1997), federal statutory provisions were overturned because a state and local government were required either to take legislative action or to administer a federal regulatory program.

Concerning Congress' authority under Section 5 of the Fourteenth Amendment, in *City of Boerne v. Flores*, 521 U.S. 507 (1997), the Supreme Court, relying on its prior decision in *Oregon v. Mitchell*, 400 U.S. 112 (1970), held that Section 5 power is "remedial" and not substantive. In *City of Boerne v. Flores*, the Court held that Congress exceeded its powers under Section 5 of the Fourteenth Amendment when it enacted the Religious Freedom Restoration Act ("RFRA"). RFRA was enacted to overturn *Employment Division v. Smith,* 494 U.S. 872 (1990), which had jettisoned the use of the compelling interest test

when reviewing governmental regulation of religious practices, as long as the regulation was general in nature and did not single-out religious practices for regulation. The Court in *City of Boerne v. Flores*, ruled that Congress could not expand the meaning of the Free Exercise Clause of the First Amendment.

Nonetheless, the Court recognized that the line between remedial and substantive legislation was not always clear. Thus, the Court will give great deference to Congress as long as there is "congruence and proportionality" between the injury to be remedied and the means adopted to that end. The Supreme Court has gone full circle by applying the Marshall "means-ends" test of *McCulloch v. Maryland* to Section 5 of the Fourteenth Amendment.

Follow-up Questions for Larry Block
Senator Richard J. Durbin
Senate Judiciary Committee

1) Q. In 1990, you co-wrote an article with David Rivkin in the Heritage Foundation Policy Review, entitled, "Auxiliary Precaution: The Bill of Rights is Not the Constitution's Most Important Safeguard of Liberty." This article argues as follows:

> Ironically, the courts — the branch of government popularly identified with the protection of rights — have . . . played a role in weakening the Constitution's system for protecting liberty. By all too frequently acting as Platonic guardians — enforcing not the language of the statutes or the Constitution to decide cases and controversies brought before them, but rather imposing their own subjective moral values in the process of creating new "rights" not found in the Constitution — the courts have abridged the right of the people to decide basic moral and policy questions. By acting as 'super legislatures,' courts have too often imposed the will of a tiny elite on the vast majority and, in the process, skewed the balance wheel of constitutional machinery.
>
> a) Please cite some specific examples where the courts have acted "as Platonic guardians" and created "new 'rights' not found in the Constitution."
>
> b) One case mentioned in your article is Griswold v. Connecticut (1965), which recognized a constitutional right to privacy and struck down a state law that forbade married couples from using contraceptives. In your view, is that decision an example of the courts imposing "the will of a tiny elite on the vast majority" and skewing "the balance wheel of constitutional machinery"?

A. Throughout American history, courts, albeit in a minority of cases, have imposed the personal views of judges in an attempt to resolve thorny social and political issues. The most infamous undoubtedly is *Dred Scott v. Sandford (1856)*, which by erroneously holding that the Constitution protects human slaves as property overturned the Missouri Compromise, and which many scholars believed led the nation to the Civil War. Another example is *Lochner v. New York (1905)*, which struck down New York's regulation of the dairy industry. This case is historically important because its rationale creating a new right of "freedom of contract" not found in the Constitution led to those cases which struck down New Deal legislation.

Griswold v. Connecticut (1965) invalidated Connecticut's ban on contraceptive use under a theory of a general right of privacy. *Griswold* is consistent with the Court's protection of historically understood precepts of liberty. *See Griswold v. Connecticut* (Harlan and White, J.J., concurring)(unenumerated rights are derived from historic traditions that are "implicit in the concept of ordered liberty").

Consequently, it is clear from Supreme Court precedent that rights exist that are not specifically mentioned by the Constitution. Supreme Court jurisprudence holds that the right to privacy is both specific, derived from the Fourth Amendment's protection against unreasonable searches and seizures, and general, primarily derived from historic understanding of the "liberty prong" of the Due Process Clauses of both the Fifth and Fourteenth Amendments. If confirmed, I will unequivocally enforce these decisions should such issues arise in cases before me.

I want to emphasize that the article mentioned in your question is an academic piece representing the views I then held on history and philosophy. It does not represent my views on jurisprudence or on the role of courts and the duty of judges. I believe that the role of judges in the constitutional system is a narrow one: to resolve specific cases and controversies that arise in litigation by faithfully applying precedent according to the dictates of *stare decisis*. If confirmed, I will faithfully follow precedent, even those cases with which I disagree as policy matters. I firmly believe that personal preferences must play no role when a judge decides a case.

2) Q. Your 1990 article singles out for criticism Justice Goldberg's concurrence in Griswold, which interpreted the Ninth Amendment to afford substantive protection of the constitutional right of privacy. Another publication you worked on, "A New Look at Plurality Decisions," makes a passing reference to "the so-called general right of privacy enunciated in Griswold."

a) Is it fair to conclude that you do not believe there is a right of privacy protected by the Constitution? Please explain.

b) Do you think that Griswold was wrongly decided? Why or why not?

A. Throughout American jurisprudence, Supreme Court precedent makes clear that there are rights that exist that are not enumerated in the text of the Constitution. Supreme Court jurisprudence holds that the right to privacy is both specific, derived from the Fourth Amendment's protection against unreasonable searches and seizures, and general, primarily derived from historic understanding of the "liberty prong" of the Due Process Clauses of both the Fifth and Fourteenth Amendments. *Griswold v. Connecticut* (1965), which invalidated Connecticut's ban on contraceptive use under a theory of a general right of privacy, is consistent with the Court's protection of historically understood precepts of liberty. If confirmed, I will unequivocally enforce this decision.

3) Q. During your nominations hearing, Senator Hatch asked if you disapproved of judicial activism from the left and the right. You indicated that you did, and criticized two Supreme Cases from the 1930s which (in your words) "overturned the New Deal." You cited these cases as examples of improper judicial activism from the right.

a) Can you cite some examples of judicial activism from the right that are more recent (i.e., in the last 30 years)?

b) Your 1990 article with David Rivkin argued that the New Deal unraveled "the Framers' elaborate constitutional system for the protection of liberty" by creating "an administrative leviathan." How do you reconcile your testimony before the Committee with your past writings on the New Deal? If New Deal legislation exceeded Congress's power under the Constitution, in your view, why was it wrong for the Supreme Court to strike it down?

A. The Supreme Court's decision in *Employment Division v. Smith* (1990) overturned existing Supreme Court precedent which had required the application of the "compelling interest test" when reviewing government action that restricted religious practices. In essence, the *Smith* case held that a lesser standard could be used by courts when reviewing statutes that were of general applicability and that regulated conduct and not beliefs. The *Smith* decision was in part the rationale by which the Supreme Court in *City of Boerne v. Flores* (1997) overturned the Freedom of Religion Restoration Act ("RFRA"). RFRA was passed by Congress to restore the compelling interest test. Because the Supreme Court had in the past clearly recognized that religion was not simply a set of beliefs, and because the Supreme Court had, prior to *Smith*, applied the compelling interest test to laws regulating religious practices or conduct, *Employment Division v. Smith* could very well be considered an example of judicial activism.

As to the article, I want to reiterate that the article was an academic piece representing my views at that time on history and on philosophy. It does not represent my views on jurisprudence or on the role of courts and the duty of judges. I believe that the role of judges in the constitutional system is narrowly limited to resolving specific cases and controversies that arise in litigation by faithfully applying precedent according to the dictates of *stare decisis*. If confirmed, I will faithfully follow precedent, even those cases with which I disagree as policy matters.

With all due respect, I do not believe that the article contradicts my testimony. I do believe that much if not most of the New Deal was constitutional. I did not write in the article that it was unconstitutional, but, instead, that it set in motion ("ushered") a growth of a large federal bureaucracy not contemplated by the Framers. Simply because the Framers may not have contemplated an occurrence does not automatically make such an occurrence unconstitutional.

4) Q. I recently received your letter to the Committee, amending your questionnaire with respect to your work on "property rights legislation *codifying* compensation and ripeness standards." As you indicated during the hearing, your letter states that you did not "intend to imply that the property rights legislation on which [you] worked reflected then-current Supreme Court precedent." In fact, you testified that the legislation did not reflect Supreme Court precedent then or now.

This conclusion appears to be in conflict with what other supporters of the legislation have stated. For instance, Senator Hatch and other cosponsors defended the legislation by saying: "[O]ur critics' real problem is not with the overall bill, but with the U.S. Supreme Court . . . All we did in our bill was to codify the 'law of the land.' The bill codifies and clarifies recent Supreme Court standards as to what constitutes a 'taking' of private property." A July 1996 "Dear Colleague" letter from Senator Hatch

states that S. 1954 simply "codifies and clarifies recent Supreme Court standards as to what constitutes a 'taking' of private property . . . ."

a) Did you write the July 1996 "Dear Colleague" letter?

b) Is it fair to say that you now disagree with Senator Hatch with respect to whether the takings legislation codified Supreme Court standards?

A. I did draft the "Dear Colleague" letter. Nevertheless, a "Dear Colleague" letter represents the view of the Member and not the staffer. This letter went through a thorough editing process and more than one version before it was sent to Members of the Senate.

With all due respect, the assertions in this question appear to be based on a misunderstanding of my questionnaire, my hearing testimony, and certain of Senator Hatch's statements.

I stated in my questionnaire that I worked on property rights legislation that "codified" standards. I clarified at the hearing, and in the amendment to the questionnaire, that by use of the term "codify" I intended to state that the legislation simply contained standards. I did not intend to convey in the questionnaire either that these standards reflected or were consistent with Supreme Court precedent or that they were contrary to Supreme Court precedent.

I also testified at the hearing that the primary approach and purpose of the compensation bills were contrary to then existing Supreme Court precedent. I testified that, in general, with the major exception being *Lucas*, the Supreme Court has eschewed bright line tests in favor of a case-by-case *ad hoc* balancing analysis employing certain factors first enunciated in the 1978 *Penn Central* decision. The two Senate bills established various bright line tests, the most novel being for partial takings (that is, reductions in value for less than the total value of the property). Thus, as I testified, the bills as a whole sought to work a major change in the law.

Senator Hatch's statements which you quote refer to select portions of the bills that were intended to be based upon certain then existing Supreme Court definitions of what constituted a taking, including the Court's decisions in *Nollan v. California Coastal Commission* (1987), *Lucas* v. *South Carolina Coastal Council* (1992), and *Dolan v. City of Tigard* (1994). Senator Hatch and other supporters argued that in reality the opponents of the bill disagreed with the holdings of these cases, as well as with the overall bill. I never contradicted, disavowed, or agreed with any of these contentions, either in the questionnaire, the amendment to the questionnaire, or at the hearing.

Let me respectfully reiterate that I fully understand that a Senate staffer plays a different role than a judge. I want to reassure the Committee that, if confirmed, I will faithfully follow precedent. I firmly believe that politics should play no role in judicial decision-making.

5) Q. According to a front-page article in the New York Times, you conducted a staff briefing on the takings legislation in early 1995. This is the account of the briefing in the Times:

> Seated at the head table beside the staff director [sic], Larry Block, and answering many of the questions about the complex legislation were three lawyers from Hunton & Williams, a Richmond, Va., law firm that has an extensive Washington practice representing dozens of electric utilities before environmental regulators and in court.

The article continued: "[S]eldom in the past have Congressional staff members so openly and publicly embraced legislative outsiders with extensive interests in the outcome."

a) Did you participate in a staff briefing with lawyers representing electric utilities?

b) Did you collaborate with these lawyers in drafting the legislation?

c) One of the lawyers, the co-chair of the ABA's working group on regulatory reform, was removed from that post on the basis of his participation in the briefing. The ABA President said that there was a "clear conflict of interest." Do you think active collaboration with industry representatives posed a conflict of interest for you?

A. The 1995 legislation to which you are referring was S. 343, the Comprehensive Regulatory Reform Act. That legislation was introduced by then Majority Leader Dole before it was referred to the Judiciary Committee, and was, thereafter, referred to a subcommittee chaired by Senator Grassley. By the time it was considered by the full committee it had gone through various drafts. I was not involved with the initial and primary drafting. I became involved only when the bill was considered by the full Committee, at which time I was assigned to handle the matter.

Because of its complexity, I was asked to and did conduct a staff briefing. Staff briefings with outside experts are routinely held on the Hill. The briefing was bipartisan and open to all interested staffers. My recollection is that the lawyers were suggested to me to participate in the briefing because they had testified on regulatory reform issues in both the House and Senate, were experts in the field, and had advised the subcommittee.

I have no knowledge whether these attorneys drafted part or all of the initial draft of the bill. But, I do remember that the subcommittee significantly altered the original bill. As I mentioned, I was not involved with these drafts and only became involved months after the bill was introduced.

Thereafter, I was engaged in negotiations with representatives of the Clinton Administration (including the Administrator of OIRA, the office in charge of regulatory review) and minority and majority staffers. Chairman Hatch asked that I attempt to seek a compromise, which we were unable to accomplish after lengthy two-week negotiations. But various and significant changes to the bill were made. The bill was voted out of the Committee, but did not receive the necessary 60 votes to overcome cloture. I believe it did attract 58 votes, however. A very similar bill based on the Senate language did pass the House.

I raise all this to demonstrate that the bill was fully vetted. All sections of the bill were subject to negotiation and fully considered by the Committee and by the Senate. All provisions of the bill were publicly debated. To answer your final question, there was no conflict of interest in these circumstances. I believe that at all times I acted in a fair and ethical manner.

The bipartisan Senate Select Committee on Ethics fully reviewed the ethical implications of the staff briefing after a complaint was filed. The Committee unanimously dismissed the complaint.

The Committee ruled that:

> [N]o Senate rule prohibits a Senator from seeking advice on legislative issues from individuals or organizations outside the Senate. Nor does any Senate rule prohibit any individual or organization outside of the Senate from voluntarily providing to a Senator or his or her staff research, memoranda, legislative language, or draft report language for the Senator's or staff's consideration. The nature of the legislative process contemplates and even encourages the free flow and exchange of ideas and information between interested individuals or organizations and Senators and their staffs. Such exchanges are common and acceptable Senate practices....
>
> From the information accompanying your complaint, the Committee has concluded that the activities complained of are consistent with the commonly understood and acceptable Senate practices associated with the legislative process, and do not constitute a violation of the Senate Code of Conduct.

Questions for Lawrence Block from Sen. Russ Feingold

1. Q. Your testimony referred to "the Senate takings legislation which I had the honor of working on . . . ." (TR 42) Putting aside questions of constitutional law and precedent, do you believe today that the approach to takings compensation and ripeness promoted in these bills represented wise public policy?

-Why or why not? Please be specific.

A. When I stated at the hearing that I had the honor of working on takings legislation, I meant that I felt privileged to represent Senator Hatch as his staffer in working on these projects. I did not intend to convey my own personal views regarding whether the bills represented good or bad public policy. While neither of these bills were ever enacted into law, if confirmed, I may be asked to rule on legal issues which these bills sought to address. Therefore, I do not believe it would be appropriate for me to comment on my personal views regarding whether the takings legislation constituted good or bad public policy.

2. Q. What you describe in your testimony as the "partial takings" and the "ripeness" takings bills were the subject of wide-ranging criticism. In retrospect, do you agree with the merits of any of that criticism?

-If so, please specifically identify and describe in detail those criticisms with which you agree with and why. Please also specifically identify and describe in detail those with which you do not agree and why.

A. The debate over both the compensation and ripeness bills was very heated. This debate engendered many legal appraisals from Members, government officials, scholars, lawyers, and litigants, both pro and con. Because if confirmed I may be asked to rule on legal issues which these bills sought to address, I am wary of commenting on the merits of the criticisms of the legislation.

3. Q. Senator Durbin asked you: "Do you agree that takings legislation that would have entitled property owners to compensation by merely showing that an agency action diminished the value of an affected portion of property by a certain percentage, without consideration of investment-backed expectations and other factors—do you agree that would be violative, then, of court precedent? (TR 42)"

You testified: "That [takings legislation] was a good-faith attempt to change the law. . . . Those bills tried to put in concrete terms what a so-called partial taking was. And there were two Senate bills. One defined it by 33 percent and the other by 50 percent, so there was a concrete, bright line test of what a partial taking was. That does not exist in the law then and it does not exist in the law now."

-In fact, isn't it true that rather than trying "to put in concrete terms what a so-called partial taking was," the bills used standards that the Supreme Court had specifically held were not a partial taking?

A. The bright line partial takings standards established by the compensation bills were contrary to existing Supreme Court precedent. In general, with the major exception being *Lucas* v. *South Carolina Coastal Council* (1992), the Supreme Court has eschewed bright line tests in favor of a case-by-case *ad hoc* balancing analysis employing certain factors first enunciated in the 1978 *Penn Central* decision. To my knowledge, the Supreme Court has never considered a case where it was claimed that a diminution in value of either 33 or 50 percent constituted a partial taking.

4. Q. As the minority views in this Committee's report (S. Rep. No. 104-239) on S. 605, the Congressional Research Service, and testimony and letters to this Committee from the Justice Department, State Attorneys General, law professors and others all pointed out at the time, there were a host of ways in which the takings standards in the takings bills that you worked on were contrary to court precedent.

-Please specify the respects in which you agree that the standards in the bills were not the law, and separately identify every respect in which you agree that the standards were contrary to or violated court precedent (or had been rejected as a test for a taking by court holdings).

-Which of these discrepancies and conflicts did you recognize at the time these bills were introduced? If you did not recognize these discrepancies at the time these bills were introduced, when did you reach this decision?

A. As I understood it, the bills in general were designed to impose standards on federal agencies as to when to pay compensation when private property was directly devalued by federal regulation. Select provisions of one title to the bill were intended to be based upon certain then existing Supreme Court definitions of what constituted a taking, including the Court's decisions in *Nollan v. California Coastal Commission* (1987), *Lucas* v. *South Carolina Coastal Council* (1992), and *Dolan v. City of Tigard* (1994). Two other portions of the title were intended to be novel. These included bright line standards defining partial takings and a bright line standard as to what constituted an affected portion of the property. These two latter provisions did not reflect existing law, but were designed to change the law by, in essence, imposing more stringent standards on federal agencies than current law mandated.

Other titles of the bills also worked changes in current law. One provision of the bills required federal agencies to perform a takings impact assessment before regulations became final. Yet another provision, established administrative mechanisms dealing with wetlands under the Clean Water Act.

5. Q. Senator Durbin asked you in particular about the Supreme Court's decision in *Concrete Pipe & Products v. Construction Laborers Pension Trust*, 508 U.S. 602 (1993),

and if I read the transcript correctly, you agreed with him that the ruling's holding stated that "mere diminution in the value of property, however serious, is insufficient to demonstrate a taking.(TR at 41)"

-Am I correct in this reading of your testimony?

A. You are correct. The Supreme Court, since the seminal case of *Pennsylvania Coal Company v. Mahon* (1922) has held that a *mere* diminution of value, no matter how serious, was not considered a taking, but that a regulatory taking occurs only when the regulation "goes too far." How far is too far has been the subject of succeeding Supreme Court decisions dealing with regulatory takings.

6. Q. The *Concrete Pipe* case also made two other critical holdings. First, it reaffirmed that takings analysis must focus on the overall property, not just the affected portion:

> [Years ago in Penn Central Transportation Co. v. New York City. . . , we held that a claimant's parcel of property could not first be divided into what was taken and what was left for the purpose of demonstrating the taking of the former to be complete and hence compensable.

Concrete Pipe, 508 U.S. at 644. Second, the *Concrete Pipe* Court also reiterated the importance of a fact-specific analysis that focuses on three factors: the nature of the governmental action, the severity of the economic impact, and the degree of interference with reasonable investment-backed expectations. As part of the third factor, the Court focused in rejecting the takings claim on a reiteration of the doctrine that: "those who do business in the regulated field cannot object if the legislative scheme is buttressed by subsequent amendments to achieve the legislative end." *See Concrete Pipe*, 508 U.S. at 602, 642-45.

-Do you agree that these second two aspects of *Concrete Pipe* are also holdings and that they still constitute binding precedent that applies to land use cases? If not, please explain.

A. The Supreme Court in its recent decision of *Tahoe-Sierra Preservation Council* v. *Tahoe Regional Planning Agency* (2002) reaffirmed both the case-by-case *ad hoc* three-factor balancing analysis and the "parcel-of-the-whole" test, both first enunciated in the 1978 *Penn Central* decision, and also later reaffirmed, as you suggested, in the *Concrete Pipe* case.

LAWRENCE J. BLOCK

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October 1, 2002

Honorable Russell D. Feingold
Committee on the Judiciary
United States Senate
506 Hart Senate Office Building
Washington, DC 20510

Dear Senator Feingold:

Yesterday I received the following question from you:

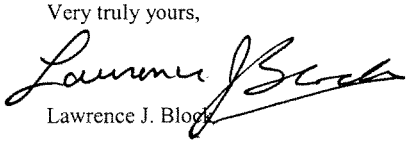
> Do you agree that the compensation bills in the 104th and 105th Congress would have resulted in compensation for property owners in a large number of cases where the United States Constitution, as interpreted by the Supreme Court, would not require compensation?

As I testified at the hearing and have written in response to submitted questions, the compensation bills established bright line partial taking standards that were designed to compensate property owners for specific diminutions in property values. One bill provided for compensation for a 33 percent or more reduction in property value, while the other bill provided for compensation for a 50 percent or more reduction in property value. These bright line partial taking standards were inconsistent with the *ad hoc* balancing test enunciated in the 1978 *Penn Central* decision.

Because the Supreme Court, to my knowledge, has never held that the numerical partial taking standards contained in the compensation bills constituted a partial taking, it is very possible that enactment of the compensation bills would result in more compensation awards by the federal government. Nevertheless, it is also possible that because the compensation bills contained bright line standards, enactment of the compensation bills could alter the behavior of regulatory agencies, resulting in fewer restrictions on private property. Under this scenario, there could be less compensation awards than if the bills were not enacted.

Thank you for the opportunity to address your question.

Very truly yours,



Lawrence J. Block

cc: The Honorable Patrick J. Leahy
The Honorable Orrin G. Hatch

LAWRENCE J. BLOCK

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September 20, 2002

The Honorable Russell D. Feingold
Committee on the Judiciary
United States Senate
506 Hart Senate Office Building
Washington, DC 20510

Dear Senator Feingold:

As a result of the dialogue among Senator Hatch, Senator Kennedy, Senator Schumer, and you during the Committee's executive business meeting yesterday, you requested that I supplement the answers I provided to two written questions that you submitted following my confirmation hearing. This letter responds to that request.

One of the questions asked:

> Your testimony referred to "the Senate takings legislation which I had the honor of working on . . . ." (TR 42) Putting aside questions of constitutional law and precedent, do you believe today that the approach to takings compensation and ripeness promoted in these bills represented wise public policy? Why or why not? Please be specific.

The broad policy goal of both the compensation and ripeness bills was to give effect to the Takings Clause of the Fifth Amendment. The purpose of the Takings Clause is "to bar Government from forcing some people to bear public burdens, which in all fairness and justice, should be borne by the public as a whole." *Armstrong v. United States*, 364 U.S. 40, 49 (1960). Consequently, even when government regulates for the public good, it cannot single out an individual or a discreet group to pay the cost of public regulation. In such cases, the individual or the discrete group must be afforded just compensation by the government.

This broad policy behind the Constitution's mandate of just compensation is something that, as a general matter, I support. However, I also recognize that takings cases in general, and regulatory takings cases in particular, involve very fact-specific inquiries. This explains the reason for the Supreme Court's continued adherence to the three-part balancing test for evaluating claims of regulatory takings enunciated in the 1978 *Penn Central* decision.

The compensation bills supported by Senator Hatch, as I understood them, sought to provide remedies to property holders affected by federal regulation. They also sought to aid federal agencies in determining prospectively when their regulations would adversely affect property holders. The bills sought to accomplish these goals through the establishment of a series of bright-line standards. Certain standards were intended to be based in part on then-existing Supreme Court cases, such as *Lucas*, *Nollan*, and *Dolan*. Other standards represented departures from Supreme Court precedent. These included the establishment of compensation for specific diminutions of value in property and the adoption of an "affected portion" of property approach to define what must be compensated upon proving a taking.

Thus, the compensation bills intended to aid property owners and federal agencies alike by establishing clear and prospectively applicable standards for determining when takings occurred. Congress's objective of clarity in legislation is generally a laudable one. However, as I stated earlier, takings cases in general, and regulatory takings cases in particular, are very fact-specific. This is why, as I testified at the hearing and in response to Members' written questions, the Supreme Court has generally adhered to the *Penn Central* fact-intensive balancing test to determine whether a regulatory taking has occurred instead of adopting the bright-line approach of the compensation bills.

The ripeness bills were designed to facilitate access to federal courts for takings claims arising from state and local regulation affecting private property. Ensuring access to the courts is, in general, wise public policy. The flip side, however, is that, as a matter of public policy, forcing localities to defend local zoning ordinances in federal court could arguably lead to added pressures on local budgets or the reallocation of finite resources that could be used for more immediate needs.

The other question asked:

> What you describe in your testimony as the "partial takings" and the "ripeness" takings bills were the subject of wide-ranging criticism. In retrospect, do you agree with the merits of any of that criticism? If so, please specifically identify and describe in detail those criticisms with which you agree with and why. Please also specifically identify and describe in detail those with which you do not agree and why.

I have summarized below, in italics, the primary criticisms leveled at the bills, followed by my best assessment of those criticisms, crafted with the intent of being responsive while simultaneously being mindful of the fact that similar questions may come before me if I am fortunate enough to be confirmed.

- *The compensation bills did not simply codify existing Supreme Court standards.*

This criticism is based largely on statements made by Senator Hatch and other supporters of the legislation about select portions of the bills that were intended to be based upon certain Supreme Court definitions of what constituted a taking, including the Court's decisions in *Nollan v. California Coastal Commission* (1987), *Lucas* v. *South Carolina Coastal Council* (1992), and *Dolan v. City of Tigard* (1994). The bills' supporters argued that, in reality, its opponents disagreed with the holdings of these cases as well as with the overall bill.

As I mentioned in my answers to written questions submitted by Committee Members, with the major exception of *Lucas*, the Supreme Court has eschewed bright line tests in favor of a case-by-case *ad hoc* balancing analysis employing certain factors first enunciated in the 1978 *Penn Central* decision. The compensation bills established various bright line tests, the most novel being for partial takings (that is, reductions in value for less than the total value of the property). Thus, as I testified at the hearing, the bills as a whole sought to work a major change in the law.

- *The bright line partial taking provision of the compensation bills violated Supreme Court standards.*

The bright line partial taking standard in the compensation bills was inconsistent with the *ad hoc* balancing test enunciated in the 1978 *Penn Central* decision. As I testified at the hearing and in my answers to written questions, the Supreme Court, to my knowledge, has never held that the numerical partial taking standards contained in the compensation bills constituted a partial taking.

- *The bright line "affected portion" provision of the compensation bills violated Supreme Court standards.*

The bright line "affected portion" standard in the compensation bill was inconsistent with the "parcel-as-a-whole" approach first employed in the 1978 *Penn Central* decision.

- *The compensation bills would have prevented federal agencies from protecting public safety and the environment.*

The compensation bills would have allowed federal agencies to make better prospective determinations about the impact of their regulations on private property owners. Although I recognize that this may have arguably had a chilling effect on agencies' regulatory tendencies, the bills were not intended to serve as a blanket prohibition on important environmental and safety regulations. In the context of some fact-specific cases, the bills may have required agencies to compensate property owners; in other cases, they may not have required compensation.

- *The ripeness bills would have established a ripeness standard contrary to Supreme Court precedent.*

The Supreme Court in *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172 (1985), literally required exhaustion of any state compensation mechanism before a federal court could entertain a takings claim arising from state or local regulation of private property. There is heated debate over whether this requirement is still valid law. The ripeness bills adopted the view that this requirement is no longer valid law. The validity and scope of *Williamson County* is very likely to be examined in the future by the courts.

Senator Feingold, I am pleased to have had the opportunity to further address these questions.

Very truly yours,

Lawrence J. Block

cc: The Honorable Patrick Leahy
The Honorable Orrin G. Hatch
The Honorable Edward Kennedy
The Honorable Charles Schumer

RON CLARK'S RESPONSES TO FOLLOW-UP QUESTIONS FROM CHAIRMAN LEAHY

1. Mr. Clark, since 1997, you have been a Representative from District 62 in the Texas State Legislature. Your record as a state legislator indicates that you have supported legislation to limit civil rights, consumer rights and women's reproductive rights (*e.g.*, HB 2281, HB 496, HB 1244, HB 509, and HB 62). You have also been a strong supporter of efforts to limit tort liability for injuries caused by companies and efforts to limit the civil liability of state government. In 2000, you were elected to the Board of Directors of the Texas Conservative Coalition. You have also been actively involved in partisan politics on behalf of Republicans. In addition to serving as an elected official, you have played an active role in the campaigns of several Republican candidates and have been a frequent contributor to Republican campaigns. While you have been holding and advocating these views as an elected politician, federal judges must be impartial. What can you say to assure this Committee and prospective parties that you will be a fair judge, an impartial adjudicator, who will not use the federal bench to achieve your legal, political, partisan, or philosophical goals?

RESPONSE:

While my voting record represents the views of a strong majority of the constituents of District 62, I have worked very hard to balance competing interests and to listen to the viewpoints of representatives with different constituencies. The letters to the Judiciary Committee from my colleagues, State Representatives Terri Hodge (D-Dallas), Glenn Lewis (D-Fort Worth), and Joe Deshotel (D-Beaumont) are indicative of my ability to see various sides of an issue and work across party lines towards a fair compromise. I would note that Mr. Lewis and Mr. Deshotel are both attorneys and are aware of the necessity for a judge to be impartial.

I understand very well that while a state representative has a duty to represent constituents, a judge must apply the law as written, and as interpreted by appellate courts, without fear, favor, or partisanship. The dichotomy between the two positions is similar to the difference between the various roles I have successfully fulfilled during my legal career. I have defended indigent juveniles and adults working for public defender programs and have also served as a criminal prosecutor. I have been lead counsel at trial and on appeal in cases for defendants, and in cases for plaintiffs. As a mediator I have been required to step back from the adversarial role of plaintiff or defense counsel and to help parties reach acceptable resolutions of cases. All of these experiences have required me to analyze all sides of a case, which would help me apply the law fairly regardless of the parties involved.

2. Mr. Clark, as a Representative in the Texas Legislature, you voted against a two-year state execution moratorium that had been proposed due to the number of people on death row exonerated. Over the last few years, many prominent Americans have begun raising concerns about the death penalty. Some are current or former supporters of capital punishment. For example, in a speech last summer, Justice O'Connor said there were

"serious questions" about whether the death penalty is fairly administered in the United States and added: "[T]he system may be allowing innocent defendants to be executed."

a. Do you think the death penalty is fairly administered?

b. What role, if any, do you believe a federal district court judge plays, or should play, in balancing a criminal defendant's right to a full and fair trial, particularly in capital cases, against the government's interest in prosecuting a person accused of a crime in an expeditious manner?

c. What assurances can you give the Senate that you will approach habeas corpus petitions with an open mind and without bias?

RESPONSE:

Should I be confirmed as a judge, my role will be different than that of a legislator. Recognizing the concerns which have been raised about the death penalty, if one of the relatively infrequent federal death penalty cases should be presented in my court, I would apply federal law as written, and as interpreted by the appellate courts, to ensure that the defendant has proper representation and a full and fair opportunity to present a defense. In reviewing cases under Texas law it will be important to ensure that the procedures used meet the standards required by the Constitution as set out by the United States Supreme Court.

I believe that a judge has an important role in ensuring that a criminal defendant receives a fair trial. In a felony case, and especially in a death penalty case, this means ensuring that the defendant is properly represented by experienced counsel and is allowed to fully present his or her defense. Accordingly, in our last legislative session I supported Senate Bill 7, which requires early appointment of counsel and sets requirements for the qualifications of attorneys appointed in certain cases.

Having defended criminal defendants, and having prosecuted, I am very well aware of the relative imbalance of power and resources that can arise in a criminal case. If I become a judge, it will be my duty to ensure that the playing field for a criminal defendant is level. In reviewing habeas corpus petitions I would want to be sure that a petitioner had an adequate opportunity to raise legitimate defenses and to properly present his or her case to the court and the jury.

3. Mr. Clark, you coauthored HB 496, a bill which would have expanded Texas' existing ban on same-sex marriage to block any protection granted through a civil union performed in another state from being recognized in Texas. Given your support of this legislation, what constitutional analysis would you apply, including the holding in Romer v. Evans, 517 U.S. 620 (1996), to a legal challenge to the legislation that you coauthored and to claims of discrimination based on sexual orientation? Please explain the role of the federal judiciary in protecting individual rights guaranteed by the Constitution or federal statutes.

RESPONSE:

In 1996 the United States Congress enacted 28 U.S.C. § 1738C, which states that no state is required to give effect to the public acts, records, or judicial proceedings of another state respecting same-sex marriages, sometimes known as civil unions. HB 496 was intended as an expression of Texas state law to affirm the intent of the United States Congress. However, the bill died in committee. Accordingly, it is difficult to analyze exactly what form the bill might have taken, had it been enacted, and to analyze what challenge might be brought in light of 28 U.S.C. § 1738C.

Should I be confirmed as a federal judge, I would analyze each case brought before me under the standard of review mandated by the Supreme Court for the fact situation presented and apply Supreme Court precedent, including *Romer v. Evans* if applicable. My personal viewpoint, any preferences of former constituents, and any rationale or argument I used in debating or voting upon any bill would be completely irrelevant to legal analysis. The federal courts act as a balancing factor in our system, and frequently as the shield of last resort of those asserting rights protected by the Constitution. At the district court level, this requires a judge to allow a litigant to fully and fairly present the facts of the case and then to analyze those facts and the litigant's claims in light of the constitutional standards set out by the United States Supreme Court under the appropriate standard of review mandated by the Supreme Court.

4. Mr. Clark, you state in your Senate Questionnaire that, for the past 19 years, all of your appearances have involved civil matters and that you have not appeared in federal court in any criminal cases. Could you please describe what steps you will take, if confirmed, to prepare yourself for the types of cases handled by federal district courts, particularly to get up to speed and handle the complex criminal matters that will be before you?

RESPONSE:

While I had some experience in prosecuting and defending criminal cases under state law in Texas and New Mexico, my only experience in federal criminal cases has been a few court appointments to represent indigent defendants. I have been reviewing Supreme Court and Fifth Circuit decisions in the area of criminal law to familiarize myself with the issues which have been arising in that area. I am familiar with some of the search and seizure and probable cause issues which may arise in a criminal case, because similar issues have been important in civil cases in which I have defended peace officers. I have begun studying the materials provided by the Federal Judicial Center such as the Bench Book For U.S. District Court Judges and the Manual On Recurring Problems In Criminal Trials. United States District Judge Paul Brown has offered to allow me to sit with him through a criminal trial in his court. If confirmed I plan on seeking the advice of the United States District Judges and Magistrate Judges in Beaumont, which is the court to which I would be assigned.

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JAMES R. HENDERSON (1908-1991)
WILLIAM R. BRYANT (1919-1979)

JOSEPH W. WOLFE
RON CLARK
JAMES CORLEY HENDERSON
JAMES C. TIDWELL
CLARK H. McCOY, JR.

August 29, 2002

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Follow-Up Questions to Ronald Clark

Dear Mr. Chairman:

Enclosed are my responses to the follow-up questions sent to me by Senator Durbin.

Please let me know if I can provide any additional information.

Very truly yours,

Ron Clark

RC/pcs
Enclosure
cc: The Honorable Orrin G. Hatch
The Honorable Richard J. Durbin

RON CLARK'S RESPONSES TO FOLLOW-UP QUESTIONS FROM SENATOR DURBIN

1) You have spent the last several years as a representative in the Texas State Legislature. Prior to being elected to that post, you practiced full-time as a lawyer — arguing cases as both prosecutor and defense attorney, and arguing those cases before trial and appellate judges. While you have a lot of experience litigating cases before judges and advocating before the legislature, you do not have any judicial experience.

As you are probably aware, a friend and colleague of yours on the Texas bar has written the Judiciary Committee to oppose your nomination. She writes in part: "Ron Clark is a formidable and ruthless opponent. What is admirable as an advocate and political statesman is serious cause for more than mere concern in a judicial candidate."

a) How do you respond to the objections expressed by your colleague?

b) In your mind, how do you distinguish the duties and responsibilities of a legal advocate or an elected legislator with those of an appointed federal judge?

c) What assurances can you give the Committee that you have a temperament and ideology suited to serving as an even-handed judge?

RESPONSE:

As a trial lawyer one of my responsibilities has been to zealously assert the position of each of my clients. (See Preamble to the Texas Disciplinary Rules of Professional Conduct.) This has been true regardless of whether my client was an indigent criminal defendant, a corporation or governmental entity, or a private citizen seeking relief under the Deceptive Trade Practices Act. However, I find it unlikely that any attorney with much trial experience would characterize zealous representation as "formidable and ruthless," and am unaware of any person who has actually done so.

I understand very well that while an attorney has a duty to represent clients, and a state representative has a duty to represent constituents, a judge must apply the law as written, and as interpreted by appellate courts, without fear, favor, or partisanship. The difference between the positions of an advocate or politician on one hand, and a judge on the other, is similar to the difference between the various roles I have successfully fulfilled during my legal career. I have defended indigent juveniles and adults working for public defender programs and have also served as a criminal prosecutor. I have been lead counsel at trial and on appeal in cases for defendants, and in cases for plaintiffs. As a mediator I have been required to step back from the adversarial role of plaintiff or defense counsel and help parties reach an acceptable resolution of their case. All of these experiences have required me to analyze all sides of a case, which will help me apply the law fairly regardless of the parties involved.

Perhaps the best assurance I can give would be based not upon my statement, but rather upon the evaluations of me by Mr. Lloyd Lochridge for the American Bar Association Standing Committee on the Federal Judiciary, by judges before whom I have appeared, and by my colleagues in the House of Representatives who have written to the Judiciary Committee in support of my nomination.

2) According to Texans for Public Justice, a nonprofit organization that tracks campaign contributions, you received $122,722 in 1996 from the lobbying group Texans for Lawsuit Reform — which accounted for 45% of your entire campaign fund. Reportedly, you received more funds than any member of the Texas Legislature from business-related groups with an interest in limiting plaintiffs' right to recover under Texas' tort laws.

a) Are these findings accurate, to the best of your knowledge? If not, can you comment on what ties, if any, you have to these groups?

b) What assurances can you give this Committee that you will not let your ties or connections to these groups interfere with your ability to decide federal tort claims, questions regarding class action suits, and matters of diversity jurisdiction?

RESPONSE:

In 1996 I ran in two elections, a special election in May and then the general election in November. In the course of those two elections Texans for Lawsuit Reform made in kind contributions of advertising and consulting services valued at $122,706.45 and a donation of a check in the amount of $225.00. I believe Texans for Public Justice reported that was one of the largest amounts contributed by TLR to any state representative that year. I did not receive more funds than any representative or senator from business-related groups.

I did not have any special ties to TLR, and was not asked for any special commitments or favors from that organization. Attached is an article which appeared in the HERALD DEMOCRAT discussing votes I took against a company which made donations to Texans for Lawsuit Reform.

I have tried very hard to make sure that all of my votes represent the majority views of my district. My record reflects my willingness to take positions contrary to those held by groups that have supported me. For example, among the bills I supported, which were not necessarily favored by all of the pro-business and conservative groups that have supported me, are: the teachers' health insurance bill; the Children's Health Insurance Program (CHIP); increased compensation for persons wrongly convicted; a bill requiring improved wheelchair access to government built housing; and various low-income housing proposals. Nevertheless, I believed that these proposals would benefit the citizens of my district.

If I am appointed as a federal judge, the political viewpoints of various interest groups become irrelevant. Congress, or in some cases the State Legislature, will have enacted the statute under review. Appellate courts will, in almost all cases, have written on the subject in question. My job will be to apply the body of law to the facts of each case presented.

3) During this past legislative session, you coauthored House Bill 496, addressing the state's legal recognition of same-sex couples. Texas law already prohibits same-sex marriages. What this bill would have done is prevent the state from having to recognize same-sex marriages or civil unions from other states. The author of a similar Senate bill, Texas state Senator Chris Harris, was quoted in the Dallas Morning News as saying that the measure was necessary because "extending medical coverage and other state benefits to a new group of people could cause serious [budget] problems for the state." The House bill was ultimately left pending in committee.

a) Could you explain your reasons for cosponsoring the bill?

b) What assurances can you give the Committee that, if you are confirmed, gay and lesbian litigants would receive fair and equal treatment in your courtroom?

RESPONSE:

In 1996 the United States Congress enacted 28 U.S.C. § 1738C, which states that no state is required to give effect to the public acts, records, or judicial proceedings of another state respecting same-sex marriages, sometimes known as civil unions. Texas law does not recognize same-sex marriages. While other states are free to adopt laws concerning marriages or civil unions in their state, my constituents do not support the overruling of Texas law by another state. Additionally, the Texas Family Code is the product of years of hard work attempting to balance the rights of fathers, mothers, and children in divorce cases and other situations. Similar work has gone into the Texas Probate Code. Some of the most difficult cases arise in divorce cases and probate proceedings involving one or more parties from another state. Until a majority of the citizens of this state are convinced that recognition should be given to same-sex marriages, there seems little reason to complicate already difficult family law and probate proceedings by recognizing, and giving effect to, new forms of legal relationships recently established by another state. Nothing in HB 496 would authorize any discrimination against any person. However, a person would not be allowed to assert claims under the Family Code, Probate Code, or other Texas statutes based upon a "civil union" recognized by another state.

Neither constituent viewpoints, nor a person's sexual orientation are relevant to a person's status in a court. Should I be appointed as a federal judge my goal would be to allow the attorneys to present his or her best possible case, within the bounds of the rules of procedure, and to ensure a fair trial for every litigant.

4) In a speech before the Mormon Church veterans in July 1998, you asked, "Where were we when they took God out of our schools and out of our society? Without faith in God, without basic moral beliefs to guide us, how can we govern ourselves, let alone our State and Nation?"

a) To whom does the pronoun "they" refer? Whom do you hold responsible for taking "God out of our schools and out of our society"?

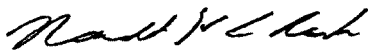
b) Do you disagree with the Supreme Court's landmark holdings in Engel v. Vitale (1962) and School District of Abington Township v. Schempp (1963), which prohibited state-sanctioned prayer in public classrooms? Please explain your reasoning.

c) What assurances can you give the Committee that, if confirmed, you would fairly apply the Establishment Clause and follow Supreme Court precedent, irrespective of your personal beliefs and religious convictions?

RESPONSE:

One of the points of the speech was that the "they" is in fact "we." It does little good to complain that "they" (elected leaders) are immoral when "we" have the right to vote. Children learn about morality and ethics from the teachings, and more importantly the example, of their parents, and adults with whom they come in contact, and not from "they."

Engel v. Vitale and *School District of Abington Township v. Schempp* set out what is now long established law that I would apply should I be appointed. More to the point, the doctrines announced in these cases have been refined so that statutes challenged by the Establishment Clause must satisfy the test set out in *Lemon v. Kurtzman*, 403 U.S. 602 (1971). Application of the *Lemon* test has been made more clear in recent decisions such as *Mitchell v. Helms*, 530 U.S. 793 (2000), and *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000). No personal belief or religious conviction I have would interfere with my ability to apply the law set out in these and other relevant cases.



RESPONSES OF JUDGE JAMES KNOLL GARDNER
TO WRITTEN QUESTIONS PROPOUNDED BY
CHAIRMAN PATRICK J. LEAHY
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
August 30, 2002

1. **Judge Gardner, news articles from your first few years as a Judge on the Court of Common Pleas of Lehigh County indicate that you were criticized for taking a long time to issue decisions. As I am sure you are aware, such delays can jeopardize the status of cases, with witnesses becoming unavailable and victims becoming weary with a lengthy court process. We understand that since a 1997 state rule went into effect that requires disclosure of cases that have been outstanding for more than 90 days you have kept your docket clear. Please describe for the Committee the steps that you have taken to promptly address the cases that come before you and to issue decisions in a timely fashion. What assurances can you give the Committee that, if confirmed, you will work to keep your docket clear so that justice is fairly and timely served?**

Answer to Chairman Leahy Question #1:

There was a brief period in the mid-1990s when I had approximately 12 criminal and juvenile cases and one Orphans' Court case requiring comprehensive written opinions which opinions took too long to write.

When I discovered the extent of this backlog, I took steps to remedy the situation through sustained hard work and many overtime hours by my law clerk, secretary and myself over a period of several months in late 1996. In the five-and-one-half years since that time, I have not had one late decision or opinion.

I accept personal responsibility for these delays. Some of the factors contributing to my backlog at that time included the following:

(1) Our relatively small local court had just undergone a major reorganization. As a result, we changed from a system where each judge was a generalist handling all kinds of cases, to a division system where we each specialized.

(2) I was in charge of designing and implementing the new three-judge Criminal and Juvenile Division and was the Administrative Judge in charge of supervising the new division. We had a number of growing pains in making the conversion, and it took a great deal of time and effort.

(3) In addition to my administrative duties I was personally responsible for handling approximately 1,500 criminal and juvenile cases each year, which was one-third of the total cases handled by my division.

(4) Given these case loads, the number of available court reporters, public defenders and assistant district attorneys was limited, which in turn caused some delays in the preparation of the transcripts and briefs necessary to decide these matters.

(5) I had other judicial responsibilities in the Orphans' Court Division at the time.

(6) The criminal and juvenile judges were almost always in court at that time because of the division's master calendar case assignment system in which each judge was assigned a motion, argument, hearing or trial from a

pool of cases as soon as the judge completed his or her last case.

(7) At that time the Criminal Division did not have the computer capability necessary to establish an individual calendar case scheduling system, similar to the Federal courts, in which a single judge handles all aspects of a case from beginning to end and therefore has more flexibility to schedule cases to build in time for research, contemplation, decision making and opinion writing.

Some of the steps which I took to promptly address the cases that came before me and to issue decisions in a timely fashion are as follows:

(1) With the aid of computers and other devices, I have instituted better case-tracking methods, and have the assistance of a secretary and law clerk and two court administrative staff schedulers (one for civil cases and one for family court cases) for scheduling and tracking cases and decisions.

(2) I now employ the individual calendar case scheduling system for all of my civil and custody cases.

(3) Under my auspices as President Judge, the criminal division computer system was upgraded and the division instituted an individual calendar case scheduling system.

(4) Under my auspices as President Judge, the court hired additional court reporters, provided them with computerized equipment and assigned each judge one court reporter to be primarily responsible for that judge's

work, together with a court-reporting pool for backup.

(5) When necessary to get the work done promptly, I work evenings and weekends.

As President of the Pennsylvania Conference of State Trial Judges, I worked with the Chief Justice of Pennsylvania to devise the present statewide speedy case disposition and reporting rule, adopted effective 1997.

In addition, where appropriate, in 90 to 95 percent of my cases I announce my decision and the reasons for my ruling from the bench immediately upon completion of a trial without jury, hearing, motion or argument. After I research and analyze a matter, I believe I am fairly decisive.

Based on my unblemished record for timely case disposition in the past six years, the fact that I addressed and solved the problem of delayed case disposition when it occurred, and that the circumstances leading to the backlog in the first instance are unlikely to recur on the Federal bench, I can assure the Committee that if confirmed I will continue to work to keep my docket current as I did for more than a decade at the beginning of my judicial career, and as I have done for the past six years. Even during the period when I was experiencing a slight backlog I was current in over 99 percent of my cases, and

believe I have been current in all of my cases before and since that time.

Finally, in over twenty years as a trial judge, I believe I have developed the ability to balance the competing demands of quality justice and swift justice.

2. Judge Gardner, in your Senate questionnaire, you stated that you served as chairman of Judge Backenstoe's successful campaign to be Judge of the Court of Common Pleas of Lehigh County in 1971. You also indicated that, subsequent to his election, you appeared before him on at least four occasions. Each of these four cases before Judge Backenstoe resulted in a favorable decision for your client. In your view, did this present a conflict of interest under state law or ethical regulations or guidelines? Did you or the Judge advise opposing counsel of the key role you played in the Judge's successful election? What analysis would you apply if presented with a motion to recuse yourself from cases involving attorneys who worked on your election campaigns, in your current position or if you are confirmed to the federal bench?

Answer to Chairman Leahy Question #2:

The four cases referred to in my Senate Questionnaire in which Judge John E. Backenstoe participated as a judge and I participated as an attorney are Air Products and Chemicals, Inc. v. Johnson (pages 88-89) of the questionnaire); Paul v. Hess Brothers, Inc. (pages 97-98); Commonwealth v. Capers (pages 99-100); and Fasching v. Weiner (pages 100-101). In my view no conflict of interest existed for either Judge Backenstoe or for

me under the law or ethical regulations or guidelines in effect at that time, or at present.

In this jurisdiction, counsel have no input or control over judicial assignments. In none of the cases did I select, or have any control over the selection of, Judge Backenstoe as a judge in the case. Nor to my knowledge did Judge Backenstoe in any fashion seek these case assignments.

In each of the foregoing cases, Judge Backenstoe did advise opposing counsel that I previously served as his campaign chairman, although some of them were already aware of that fact. None of the opposing counsel, nor their clients, made a motion to disqualify Judge Backenstoe or a request that he recuse himself. In each of the four cases the record reflects that Judge Backenstoe acted appropriately in applying the facts to the law, and did not consider any extraneous or off-the-record considerations. In his entire 20-year career as a judge and his subsequent 10-year career as a Senior Judge, I believe Judge Backenstoe has always been scrupulously fair to all parties and attorneys appearing before him.

In the Air Products case Judge Backenstoe made a number of significant rulings adverse to the interests of my clients. In the other three cases it is my belief that his

involvement did not control the outcome. For example, he was not the trial judge in either Paul or Capers, but instead was one member on a three-judge panel that reviewed the trial judge's ruling and decided a motion for new trial respectively. In neither case did he write the Opinion for the unanimous panel. The trial before Judge Backenstoe in Fasching occurred as an appeal of the decision of a panel of three attorney arbitrators which found in my client's favor.

If presented with a motion to recuse myself from cases involving attorneys connected with my election campaigns, in my current position or if confirmed to the federal bench, I intend to continue to follow the applicable Code of Judicial Conduct and recuse myself when required by the applicable ethical codes and guidelines.

Except for my sister who is an attorney (and who, therefore, by law and ethical rules may never appear before me as a judge) and who made a modest financial contribution to my campaign, I never accepted a financial contribution from an attorney in any of my three judicial elections. A few attorneys played very limited roles in my three uncontested elections. However, no attorneys ever served on my official campaign committees.

It has always been my practice as a judge, and will continue to be my practice, whether or not a motion to disqualify me or a request for recusal has been made, to disclose to counsel and the litigants any connection I may have with an attorney, a party, a witness, or a juror, involved in the case, no matter how slight.

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 of Americans, as beyond Congress's power under Section 5 of the Fourteenth Amendment, for example, City of Boerne v. Flores, 117 S. Ct. 2157 (1997), Kimel v. Florida Board of Regents, 120 S. Ct. 631 (2000), and Board of Trustees v. Garrett, 121 S. Ct. 955 (2001). The Supreme Court has also recently struck down statutes as being outside the authority granted to Congress by the Commerce Clause, such as in the case of U.S. v. Lopez, 115 S. Ct. 1624 (1995) or U.S. v. Morrison, 120 S. Ct. 1740 (2000). The Court has struck down other federal statues as being a violation of the 10th Amendment or the 11th Amendment under the Court's expansive view of state's rights. These cases have been described as creating new power for state governments, as federal authority is being diminished. What is your view of these developments? Do they constitute "judicial activism"? What is your understanding of the scope of congressional power under Article I of the Constitution, in particular, the Commerce Clause, and under Section 5 of the Fourteenth Amendment?

Answer to Chairman Leahy Question #3:

Acts of Congress have a presumption of validity and a presumption of constitutionality. U.S. v. Morrison, 529 U.S. 598, 607, 120 S.Ct. 1740, 1748, 146 L.Ed.2d 658, 669

(2000). It is for Congress in the first instance to determine "whether and what legislation is needed to secure the guarantees of the Fourteenth Amendment", and its conclusions are entitled to much deference. Katzenback v. Morgan, 384 U.S. 641, 651, 86 S.Ct. 1717, 1723-1724, 16 L.Ed.2d 828 (1966).

Article I, Section 1 of the Constitution vests all legislative powers in Congress. Those powers are enumerated in Section 8, including the Commerce Clause. Under the Commerce Clause, Congress has the power "To regulate commerce with foreign Nations, and among the several States, and with the Indian Tribes". In addition, Section 5 of the Fourteenth Amendment, Congress is given the "power to enforce, by appropriate legislation, the provisions of this article."

The Tenth Amendment provides that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

It has been said that this constitutionally mandated division of authority

> was adopted by the Framers to ensure protection of our fundamental liberties.... Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power

> between the States and the Federal Government will reduce the risk of tyranny and abuse from either front.

Gregory v. Ashcraft, 501 U.S. 452, 458, 111 S.Ct. 2395, 2400, 115 L.Ed.2d 410 (1991).

The genius of the Constitution is that its provisions for separation of powers, checks and balances, and federalism are designed to prevent any branch of government, or the states and federal government, from dominating the other by amassing too much relative power. As a result, there always has been, and always will be, a natural and healthy tension between the branches of government and between the federal and state governments.

In the five cases cited in Question 3, it is my understanding that the majority Justices vigorously argue that the federal statutes being reviewed are beyond the power of Congress under Section 5 of the Fourteenth Amendment, or under the Commerce Clause, or both. And the minority Justices just as vigorously argue that the statutes are well within the constitutional power of Congress. If I am fortunate enough to be confirmed as a federal district court judge, I will be bound by majority decisions of the Supreme Court and the Third Circuit Court of Appeals.

Regarding whether the named cases and the majority opinions in those cases constitute judicial activism, it seems that both the majority and minority Justices examined the text of the Constitution, the legislative history, the extent of legislative findings, and Supreme Court precedents, but reached different conclusions. Reasonable minds differed on these questions of interpretation.

To the extent that the majority of the Court in each of these five cases is attempting to interpret the Constitution and to apply relevant legal precedents to reach the proper decision in each case, and is not merely inventing reasons outside the law to achieve a predetermined result, that process does not constitute judicial activism, although one may agree or disagree with the outcomes.

Whether or not I believe the decisions of the current majority in these five cases constitute proper interpretation of the Constitution and binding judicial precedent, or improper judicial activism, will not impact my work on the district court should I be confirmed. As a Federal (or state) trial judge, I am bound to follow and apply the decisions of a majority of the United States Supreme Court, whether or not I agree with them,

and whether or not the proper methodology was followed to arrive at those decisions.

In that respect my understanding of the scope of the congressional power under Article I of the Constitution and under Section 5 of the Fourteenth Amendment is determined by precedents of the United States Supreme Court and by the Circuit Courts of Appeals. Judges are required to follow and apply all of the applicable law, not just the law with which the judge agrees.

Respectfully submitted,

James Knoll Gardner

RESPONSE OF JUDGE JAMES KNOLL GARDNER
TO WRITTEN QUESTION PROPOUNDED BY
SENATOR RICHARD J. DURBIN
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
August 30, 2002

1. News articles from your first few years as a Judge on the Court of Common Pleas of Lehigh County suggest that you had a reputation for taking a long time to issue decisions in cases pending before you. To cite some examples, you took almost seven years to conclude that an attorney had performed marginally in his dual role as executor and counsel for a deceased man's estate; you waited almost three years before deciding to expunge the criminal record of a woman in her early 20s who wanted to become a public servant; and you took almost five years to deny a motion for a new trial in a cocaine case.

   As I am sure you are aware, delays such as these can jeopardize the status of cases, with witnesses becoming unavailable and victims becoming weary of a lengthy court process. I understand that a new state rule went into effect in 1997 that requires public disclosure of cases that have been outstanding for more than 90 days; and that you have generally kept your docket clear since that rule took effect.

   a) What accounts for the delays in disposing of pending matters during the early part of your judicial career?

   b) Please describe the steps that you have taken to consider promptly the cases that come before you and to issue decisions in a timely fashion.

   c) Federal judges serve for life, with little formal oversight other than the appeals process itself. What assurances can you give the Committee that, if confirmed, you will work to keep your docket clear so that justice is fairly and timely served?

Answer to Senator Durbin Question #1:

There was a brief period in the mid-1990s when I had approximately 12 criminal and juvenile cases and one Orphans' Court case requiring comprehensive written opinions which opinions took too long to write.

When I discovered the extent of this backlog, I took steps to remedy the situation through sustained hard work and many overtime hours by my law clerk, secretary and myself over a period of several months in late 1996. In the five-and-one-half years since that time, I have not had one late decision or opinion.

The circumstances concerning the case of the attorney/executor are as follows: During a hotly contested incompetency and guardianship case concerning a wealthy elderly widow, questions arose concerning distributions previously made from her late husband's estate, which had been closed for some time. When the husband's estate was reopened, the widow's court-appointed guardian objected to a number of details, including a concern that the estate attorney might have double billed for certain services in his dual capacity as attorney and executor.

The estate hearings raised more serious concerns that a caretaker befriended by the widow might have been defrauding her out of large sums of money and valuable property by taking improper advantage of her weakened intellect. It is my recollection that given the relatively small amount of counsel fees involved, the seriousness and extent of the alleged fraud by the caretaker, the widow's advanced age and the fact that she had executed a will naming the caretaker her sole beneficiary, counsel for all parties informally agreed to put the estate matters on hold pending resolution of the more serious and pressing fraud matters.

The litigation concerning the widow was protracted, extremely complex, and vigorously contested. It took many years to resolve because of numerous hearings, arguments, orders, opinions, exceptions and appeals. At the conclusion of the fraud case, separate decisions in the incompetency matter and the estate matter (including a surcharge of the attorney for questionable practices in the handling of the estate which came to light during the course of the fraud hearings) were filed in the same month.

Although it took too long to decide the other two cases which you mention, the defendant in the drug case received

credit against his longer seven-year sentence for all jail time served while awaiting his decision.

I accept personal responsibility for these delays. Some of the factors contributing to my backlog at that time included the following:

(1) Our relatively small local court had just undergone a major reorganization. As a result, we changed from a system where each judge was a generalist handling all kinds of cases, to a division system where we each specialized.

(2) I was in charge of designing and implementing the new three-judge Criminal and Juvenile Division and was the Administrative Judge in charge of supervising the new division. We had a number of growing pains in making the conversion, and it took a great deal of time and effort.

(3) In addition to my administrative duties I was personally responsible for handling approximately 1,500 criminal and juvenile cases each year, which was one-third of the total cases handled by my division.

(4) Given these case loads, the number of available court reporters, public defenders and assistant district attorneys was limited, which in turn caused some delays in the preparation of the transcripts and briefs necessary to decide these matters.

(5) I had other judicial responsibilities in the Orphans' Court Division at the time.

(6) The criminal and juvenile judges were almost always in court at that time because of the division's master calendar case assignment system in which each judge was assigned a motion, argument, hearing or trial from a pool of cases as soon as the judge completed his or her last case.

(7) At that time the Criminal Division did not have the computer capability necessary to establish an individual calendar case scheduling system, similar to the Federal courts, in which a single judge handles all aspects of a case from beginning to end and therefore has more flexibility to schedule cases to build in time for research, contemplation, decision making and opinion writing.

Some of the steps which I took to promptly address the cases that came before me and to issue decisions in a timely fashion are as follows:

(1) With the aid of computers and other devices, I have instituted better case-tracking methods, and have the assistance of a secretary and law clerk and two court administrative staff schedulers (one for civil cases and one for family court cases) for scheduling and tracking cases and decisions.

(2) I now employ the individual calendar case scheduling system for all of my civil and custody cases.

(3) Under my auspices as President Judge, the criminal division computer system was upgraded and the division instituted an individual calendar case scheduling system.

(4) Under my auspices as President Judge, the court hired additional court reporters, provided them with computerized equipment and assigned each judge one court reporter to be primarily responsible for that judge's work, together with a court-reporting pool for backup.

(5) When necessary to get the work done promptly, I work evenings and weekends.

As President of the Pennsylvania Conference of State Trial Judges, I worked with the Chief Justice of Pennsylvania to devise the present statewide speedy case disposition and reporting rule, adopted effective 1997.

In addition, where appropriate, in 90 to 95 percent of my cases I announce my decision and the reasons for my ruling from the bench immediately upon completion of a trial without jury, hearing, motion or argument. After I research and analyze a matter, I believe I am fairly decisive.

Based on my unblemished record for timely case disposition in the past six years, the fact that I addressed and solved the problem of delayed case disposition when it occurred, and that the circumstances leading to the backlog in the first instance are unlikely to recur on the Federal bench, I can assure the Committee that if confirmed I will continue to work to keep my docket current as I did for more than a decade at the beginning of my judicial career, and as I have done for the past

six years. Even during the period when I was experiencing a slight backlog I was current in over 99 percent of my cases, and believe I have been current in all of my cases before and since that time.

Finally, in over twenty years as a trial judge, I believe I have developed the ability to balance the competing demands of quality justice and swift justice.

Respectfully submitted,

James Knoll Gardner

SUBMISSIONS FOR THE RECORD

Nominations Hearing
Senate Judiciary Committee
Talking Points for Senator Richard J. Durbin
August 1, 2002

I would like to call this hearing to order. Please be seated. This is a hearing of the Senate Judiciary Committee, to consider four of the President's nominees for the federal judiciary. Let me welcome the nominees and their families and friends, many of whom traveled significant distances to be here.

Today marks the 23rd judicial nominations hearing since the Senate reorganization took effect less than 13 month ago. The Senate under Democratic leadership has now confirmed 64 federal judges, including 13 to the U.S. Courts of Appeals. Fourteen more nominees have been reported out of Committee and will likely be confirmed in the days and weeks ahead.

How does this record compare with other Congresses? From 1979 through 2000, the Senate confirmed 64 judges in a year only five times. We have confirmed thirteen appellate judges in under thirteen months. That rate of confirmation is faster than the pace for appellate judges during the Administrations of Presidents Reagan, George H.W. Bush, and Clinton.

Simply put, this Committee under Chairman Leahy's leadership has swiftly moved to restore fairness and stability to the judicial nominations process. Since last July, when Chairman Leahy received his gavel, overall judicial vacancies have dropped and vacancies on the appellate courts have dropped.

There are some on the other side of the aisle who would like us to move even faster, to confirm all of the pending nominations before the end of the session. I would remind my colleagues that vacancies on the Courts of Appeals more than doubled from January 1995 to July 2001 — the six-and-a-half years that the Republicans last controlled the Senate. The problem of judicial vacancies has been almost seven years in the making; we cannot completely resolve it in the remaining seven weeks of the session.

But let me assure my colleagues that in the next Congress, Chairman Leahy and Majority Leader Daschle will continue the progress they have made in the last thirteen months.

During today's hearing, the Committee will consider three nominees for lifetime appointments to the federal courts: Judge Reena Raggi (Rah-jee), for the U.S. Court of Appeals for the Second Circuit; Judge James Gardner, for the U.S. District Court for the Eastern District of Pennsylvania; and Mr. Ronald Clark, for the U.S. District Court for the Eastern District of Texas.

We will also consider the first of President Bush's nominees for the Court of Federal Claims, Mr. Larry Block — a longtime aide to my distinguished colleague, Senator Orrin Hatch. The Court of Federal Claims was created by Act of Congress pursuant to Article I of the Constitution. Its members serve for 15-year terms, not life tenure. Nonetheless, this Court is extremely important. It has jurisdiction over most money damage claims against the United States government, including claims under the U.S. Constitution. The Senate has a constitutional responsibility to consider nominees to this Court with care.

Statement of Senator Grassley on Nomination of Lawrence Block to be Judge for the U.S. Court of Federal Claims, August 1, 2002

I just wanted to make a few brief comments about Larry Block, who has been nominated to be a judge for the United States Court of Federal Claims. Larry has worked for Senator Hatch here on the Senate Judiciary Committee as a senior counsel for several years. In dealing with my office, Larry has always been an upstanding person. Everyone on the Committee enjoys working with him. Larry is a good lawyer with a fine legal mind, and he is a fair and evenhanded person. His considerable experience in the federal government at the Department of Justice, in private practice, and here on the Judiciary Committee will serve him well on the bench. Larry Block will be a fine addition to the Court of Federal Claims.

Chuck Grassley

NEWS RELEASE

ORRIN HATCH

United States Senator for Utah

August 1, 2002 Contact: Margarita Tapia, 202/224-5225

Statement of Senator Orrin G. Hatch
Ranking Republican Member
Before the United States Senate Committee on the Judiciary
On the Nominations of:

Reena Raggi for the Court of Appeals for the Second Circuit; Ronald Clark for the District Court for the Eastern District of Texas; James Gardner for the District Court for the Eastern District of Pennsylvania; and Lawrence Block for the Court of Federal Claims

It is my sincere pleasure to welcome to the Committee this afternoon four outstanding nominees for the federal bench. I am impressed with the qualifications of each of these nominees, and the President should be commended for the incredible quality of the nominees he has submitted. I will place my statements for the nominees in the record but I would like to focus my remarks on our nominee for the Court of Federal Claims, Larry Block.

Larry hardly needs an introduction to this Committee, since he has served as our Counsel since 1994. Those of us who have worked with him know that he is an incredibly talented lawyer whose broad legal experience spans private practice, all three branches of the federal government, and academia.

Larry earned a B.A. degree from New York University magna cum laude before earning his law degree from The John Marshall Law School in 1981. He began his legal career as a clerk for the Honorable Roger J. Miner, who at the time was a U.S. District Court Judge for the Northern District of New York and who now sits on the Second Circuit Court of Appeals (where, incidentally, Judge Raggi will join him as a colleague upon her confirmation). After his clerkship, Larry worked as an associate in the high-powered New York office of Skadden, Arps, Slate, Meagher and Flom, where his practice included constitutional claims pertaining to Commerce Clause and commercial speech issues, as well as litigation involving financial services, mergers and acquisitions, securities, labor law, and administrative law.

After several years in private practice, Larry returned to public service, and served with distinction in the Reagan, George H.W. Bush, and Clinton Administrations. From 1986 to 1990, he worked in the U.S. Department of Justice, first in the Commercial Litigation Branch, then as Senior Attorney-Advisor in the Office of Legal Policy and Policy Development. From 1990-94, Larry served as Acting General Counsel for Legal Policy and Deputy Assistant General Counsel for Legal Policy at the U.S. Department of Energy, where he spearheaded a number of complex legal projects.

As Counsel to the Judiciary Committee, Larry has worked on a number of significant issues, including property rights legislation, punitive damages and court reform bills, regulatory reform, arbitration policy, and First Amendment and attendant constitutional issues.

It has been a privilege for many of us to have had the opportunity to work with Larry for the past eight years, and I have benefitted immensely from his advice and counsel. He has demonstrated his legal acumen by handling the most complex legislative matters adeptly and professionally. It is, accordingly, with bittersweet emotion that I endorsed his nomination for the Court of Federal Claims. President Bush could not have made a finer choice, and I commend him for it – even though it means that I will be losing a valued staffer.

Now, some of the Washington special interest groups have made some unfair allegations about Larry that require a response. At the heart of this tempest in a teapot is the fact that Larry worked on property rights legislation for me several years ago. The outside groups contend that Larry's work shows not only that he shares my view of what the law should be on property rights, but also that, as a federal judge, he would not or could not set aside this view for legislation to change the laws – a responsibility of the legislative branch – and follow the law as it is.

In all honesty, this allegation is simply false. These groups are trying to punish Larry for merely doing his job – which, in this case, required him to advocate my position on a hotly debated issue. Emotions ran high on both sides of the property rights debate, and the groups consider me to have been on the wrong side of the fence. That's fine – they are entitled to their opinion. But what they are not entitled to do is hold Larry accountable for my views – or any other Members' views – based on the most strained interpretation of innocent language in his questionnaire.

The reality is that, on occasion, we Senators ask our staffers to work hard on controversial measures, particularly on this Committee. But we have never held that against a staffer – and there are quite a few former Judiciary Committee staffers on the federal bench today, both Republicans and Democrats, some of whom worked very hard on some highly partisan issues while they were here. And they have proven to be some of the finest judges or justices – as in the case of Stephen Breyer – because they understand better than anyone the true role of a judge: To interpret the law and not to make the law. The point is that we have always considered nominees for their own abilities, aptitude, and temperament, rather than judging them for their bosses' legislative positions.

The allegations against Larry are, in my view, as ludicrous as holding a lawyer responsible for the positions of a client he represents in a legal proceeding. The attorney is, of course, responsible for conducting a legal defense, but can no way be responsible for his client's underlying position or conduct. A Senate staffer's role is no different: He must represent the views of the Member for whom he works, regardless of his own personal views. If anything, Larry's demonstrated ability to advocate on my behalf indicates to me that he will be exactly the type of judge we want to see confirmed: One who is able to follow the law regardless of his personal views.

The three other excellent nominees on today's agenda are, no doubt, equally committed to following the law.

Judge Reena Raggi, our nominee to the Court of Appeals for the Second Circuit, has served for 15 years as a federal district judge in the Eastern District of New York. Judge Raggi has capably presided over some of the most interesting and high-profile cases in New York, including the recent civil rights prosecution of a former New York City police officer for the sexual battery of Abner Louima, the trial of Thomas "Tommy Karate" Pitera, which was the first federal death penalty case in New York in three decades, and a series of cases stemming from the alien smuggling scandal of the "Golden Venture," a freighter that ran aground in Rockaway, New York.

Judge Raggi's skill in handling such matters should surprise no one who is acquainted with her education and accomplishments. She attended Wellesley College, where she was a member of Phi Beta Kappa and earned a B.A. in History in 1973. In 1976, she graduated *cum laude* from Harvard Law School. Upon graduation from law school, Judge Raggi served as law clerk to the Honorable Thomas E. Fairchild, then-Chief Judge of the United States Court of Appeals for the Seventh Circuit. She then entered private practice for approximately two years. In 1979, she was appointed an Assistant United States Attorney for the Eastern District of New York, and she quickly advanced in that office to become, first, Chief of the Narcotics Section, then Chief of Special Prosecutions, and then interim U.S. Attorney. Following two more years in private practice, she was nominated by President Reagan to her current position.

Both of the District Court nominees on today's agenda also have outstanding credentials.

Ronald Clark, who has been nominated for the Eastern District of Texas, graduated from the University of Texas School of Law and then went to work for the City Attorney's Office in Abilene, Texas, as an assistant city attorney, where he tried cases in local, state, and federal courts. He handled voting-rights cases, tax claims, domain matters, and municipal issues. Later, Mr. Clark joined a private firm in Sherman, Texas, focusing on civil cases, bankruptcy, banking, and representation of small cities. Since 1993, Mr. Clark's private practice has concentrated on the defense of local governmental entities and businesses in cases of excessive force, wrongful termination, eminent domain, search and seizure, libel and slander, denial of due process, and

constitutional challenges to city ordinances. He has tried to judgment over 70 civil cases, two-thirds of which went to a jury. He was appointed to the Eastern District's Civil Justice Reform Advisory Committee in 1991, chaired the committee from 1994-96, and finishes his term this year. Mr. Clark won election to the Texas House of Representatives in 1996 and has served there since that time.

Last -- but certainly not least -- is Judge James Knoll Gardner, our nominee for the Eastern District of Pennsylvania, who has served on the Lehigh County Court of Common Pleas since 1981, presiding over more than 265 jury trials and writing approximately 1000 opinions and rulings. A native of Allentown, Pennsylvania, Judge Gardner is a graduate of Yale University and Harvard Law School. He has served on active duty with the U.S. Navy JAG Corps, providing legal assistance to approximately 5000 servicemen and women and their dependants. He has also worked in private practice, concentrating on civil trial court litigation and appellate practice, including personal injury cases, medical malpractice, estate matters, corporation law, domestic relations issues, real estate law, and public utility commission cases. Judge Gardner also has served as Solicitor to the Lehigh County Treasurer and as an Assistant District Attorney of Lehigh County. As an attorney he tried nearly 600 cases to verdict, almost all as sole counsel.

I am confident that all four of these fine nominees have the skills, aptitude, experience, and temperament for service on the federal courts to which they have been nominated. I look forward to hearing from them today and to working with my colleagues to bring their nominations to timely votes for confirmation.

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OPENING STATEMENT OF SENATOR PATRICK LEAHY,
CHAIRMAN, SENATE JUDICIARY COMMITTEE
HEARING FOR REENA RAGGI TO BE A UNITED STATES CIRCUIT JUDGE ON THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
RONALD CLARK TO BE A UNITED STATES DISTRICT COURT JUDGE FOR THE EASTERN DISTRICT OF TEXAS
JAMES GARDNER TO BE A UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA
LAWRENCE J. BLOCK TO BE A JUDGE ON THE UNITED STATES COURT OF FEDERAL CLAIMS
August 1, 2002

I begin by thanking Senator Durbin for chairing today's hearing and all Senators who have agreed to chair nominations hearings since the change in majority last summer. Today we hold our 23rd hearing for judicial nominees and consider the 82nd, 83rd and 84th nominees to be Federal Court of Appeals and District Court judges since the change in Senate majority last summer.

Judge Raggi is the 18th Court of Appeals nominee for whom we have held a hearing in fewer than 13 months. The fact is that we have held more hearings for more circuit court nominees than in any of the six and one-half years in which Republicans last controlled the Committee. The truth is that in less than 13 months we have held hearings on twice as many Court of Appeals nominees as the Republican majority used to when they were in the majority.

Under Democratic leadership, this Committee has also voted on more judicial nominees, 79, than in any of the six and one-half years of Republican control that preceded the change in majority. We have already voted on twice as many circuit court nominees, 15, as the Republican majority averaged in the years they were in control. In fact, this last year we voted on more nominees than were voted on in 1999 and 2000 combined and on more circuit court nominees than Republicans voted on in 1996 and 1997 combined.

We have achieved what we said we would by treating President Bush's nominees more fairly and more expeditiously than President Clinton's nominees were treated. By many measures the Committee has achieved almost twice as much this last year as Republicans averaged during their years in control.

In the six and one-half year period of Republican control before the change in majority last summer, vacancies on the Courts of Appeals more than doubled from 16 to 33 and overall vacancies rose from 63 to 110. We have reversed those trends.

Today, the Committee proceeds with a hearing on the nomination of Reena Raggi to the United Court of Appeals for the Second Circuit, Ronald Clark to the Eastern District of Texas, and James Gardner to the Eastern District of Pennsylvania. I welcome the nominees, their families and their friends, and all those interested in these important matters.

Judge Raggi has been nominated to fill a seat vacated by the retirement of Judge Amalya Kearse. I congratulate not only the White House but also Senators Schumer and Clinton on this nomination. This is a widely-respected nominee, a consensus nominee, the type of nominee who can move forward quickly for consideration. I know Judge Raggi and look forward to her sitting on the Second Circuit, which hears cases from Vermont, Connecticut and New York.

In addition we have before us the seventh federal court nominee from Texas and the 12th federal court nominee from Pennsylvania on which we have held hearings over the last year. This is in sharp contrast to the treatment of nominees from those States by the Republican majority, as I have detailed before.

With this hearing we have now completed hearings for every federal district court nominee sent to the Senate by President Bush who has an ABA peer review and the support of home-state Senators. All 67 of these federal trial court nominees will have had hearings and 65 have already been reported by the Committee to the Senate within the first year of Democratic control. I have repeatedly spoken about the need for the President to work with the Senate and to make nominations to these important courts, but those suggestions have been for naught. There remain 38 judicial vacancies without a nominee. Thirteen District Court nominations are without ABA ratings because the President unilaterally changed the 50-year tradition of Republican and Democratic Presidents to involve the ABA early in the process. In addition, 24 judicial nominations are without home-state Senator support because the White House did not sufficiently consult with those Senators.

At this point it is fair to estimate that between about 15 to 20 additional District Court nominees would have had hearings this past year if the White House had not unilaterally chosen to delay the ABA's peer reviews. That includes three at this hearing, three at last week's hearing, and those who could have been considered just before the July 4 recess and in July and August last year. That is unnecessary. For those of us interested in trying to help the federal courts, it is a shame that we have been prevented from doing that which we were willing and able to do. So, as good as our record has been in moving judicial nominees promptly and as stark the contrast with the recent days in which so many of President Clinton's nominees were obstructed by a Republican Senate majority, we now see circumstances in which the White House's lack of attention to these important matters continues to obstruct the confirmation process.

We also have before us today a nominee to the United States Court of Federal Claims. This is not a so-called "article III" court but is an important court nonetheless with 15-year terms for its members. This is a court for which there had been, until this White House, a tradition of bipartisan involvement in selecting nominees.

The Clinton Administration's record of accommodations to the Republican Senate majority include the re-appointment of Judge Christine Miller, and the nomination of another former aide to Senator Hatch, Edward Damich to the Court. President Clinton also permitted Chief Judge Loren Smith to remain Chief Judge for the duration of his term.

Indeed, I recall that although Lawrence Baskir was first nominated by President Clinton to the Court of Federal Claims in January 1997, his nomination was not included in a hearing through two full sessions of Congress until Chairman Hatch and the White House had assembled a slate of six nominees for vacancies to the Court of Federal Claims that included an aide to Senator Hatch. That former aide now serves as the Chief Judge of the Court of Federal Claims, having been so designated by President Bush in spite of the courtesy shown to Chief Judge Smith by President Clinton.

The current White House has determined to proceed unilaterally with nominations to what had previously been a court for which nominations were treated in a bipartisan way. There has been no consultation with the Democratic leadership of this Committee regarding recommendation or nominations to the Court. Instead, the White House proceeded as it does in most things.

The same is true with respect to the way this White House has approached the Parole Commission, the Federal Election Commission and many other bipartisan boards and commissions. It is a shame and has lead to disruption of the process of filling these vacancies.

In spite of these considerations we take the exceptional action of proceeding today with the nomination of Larry Block to the Federal Court of Claims at the request of the Ranking Republican, Senator Hatch. We will expect fairness and consideration in return, including true bipartisan consultation with respect to Federal Court of Claims nominations.

The White House could start by reconsidering its decision to withdraw the nomination of Judge Sarah Wilson to a full 15-year term. Judge Wilson is a fine person, and a well-respected and talented lawyer. She graduated from Columbia Law School, clerked for a federal judge, was a fellow with the Administrative Office of the Courts, served in the Department of Justice and a prior White House, and has now served with distinction for a year and a half on the Court of Federal Claims. Republicans have tried several maneuvers to oust Judge Wilson, including attempting to cut off her salary. She has received the shoddiest of treatment. If the White House wants to do the right thing and restore some sense of fairness to the process of nominations for the Court of Federal Claims, it could start by renominating Judge Wilson. Alternatively, I remain ready to

work with the White House with respect to assembling the type of bipartisan panel that Senator Hatch helped assemble in 1997 and 1998 to fill the vacancies on the Court of Federal Claims.

Today, we make an exception to consider Larry Block. I look forward to hearing his answers to a number of questions about his policy work at the Department of Justice, his views on Supreme Court precedents and on the issue of regulatory takings, which goes to the heart of the very important, though often overlooked, jurisdiction of the Court to which he is nominated. Mr. Block has spent much of his legal career advancing a very specific and ideological political agenda. While I certainly wish Mr. Block and every member of the Judiciary Committee staff from both sides of the aisle well, this is a serious nomination which deserves serious scrutiny.

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Statement
Sen. Rick Santorum
Senate Judiciary Committee
August 1, 2002

Mr. Chairman and Members of the Committee,

Thank you for the opportunity to speak before the Committee today on behalf of the nomination of James Knoll Gardner as a United States District Court judge for the Eastern District of Pennsylvania. I would like to thank the Chairman and other members of the Committee for scheduling today's hearing. I would also like to thank President Bush for his nomination of eleven federal district court judgeships from Pennsylvania. I am pleased that the Senate has already confirmed six Pennsylvania district court judges this year including three for the United States District Court, Eastern District of Pennsylvania and look forward to the full Senate's consideration of today's nominee from the Eastern District of Pennsylvania. In addition to his distinguished qualifications, Judge Gardner's nomination is particularly welcome since he will be seated at the Federal Courthouse in Allentown, PA which has lacked a federal judge for some time.

Judge Gardner is a magna cum laude graduate of Yale University. He received his J.D. from Harvard Law School in 1965. He is currently a judge of the Court of Common Pleas of Lehigh County, Pennsylvania, where he has served since 1981. Previously he served as a partner in the law firm of Gardner, Gardner, & Racines for more than 10 years. Judge Gardner also served as First Assistant District Attorney and Assistant District Attorney of Lehigh County from 1972-1981. Judge Gardner received the Pennsylvania Bar Association Special Achievement Award in recognition of his service as Chair of the PBA Council on Judicial Independence Education Subcommittee and the Lehigh County Liberty Bell Award for outstanding service and contributions in the justice field in 2000.

Judge Gardner has served in the United States Naval Reserve as a Lieutenant Junior Grade and Lieutenant in the Judge Advocate General's Corps. He has also performed the responsibilities of a Naval Reserve Military Judge and as an Appellate Military Judge on the United States Navy-Marine Corps Court of Military Review in Washington, D.C. This is an intermediate appeal court which hears and decides automatic appeals from every serious Navy and Marine Corps Courts-Martial conviction worldwide. This is the highest judicial appointment available to a military officer. Prior to Judge Gardner's appointment by the Judge Advocate General of the Navy, no Navy Reservist had ever served on this active duty military appeal court. In 1991, he received the Meritorious Service Medal from the President of the United States for his service as a military judge. He retired from the Naval Reserve with the rank of Captain in 1993.

Again, I would like to commend the Committee for moving forward on a hearing today for Judge Gardner and to congratulate him and his wife Linda and their two children. I would like to express my support for his nomination. I look forward to his approval by the Committee and by the full Senate in the near future.

Statement by Congressman Patrick J. Toomey Submitted to the Senate Committee on the Judiciary On Behalf of Judge James Knoll Gardner Thursday, August 1, 2002

Mr. Chairman, thank you for allowing me to address the Senate Committee on the Judiciary in support of Judge James Knoll Gardner's nomination. As the Representative of Pennsylvania's 15th Congressional District, it is my pleasure to endorse Judge Gardner's appointment to the United States District Court.

Judge Gardner is extremely qualified. He earned his bachelor's degree at Yale University and his law degree from Harvard Law School. During the Vietnam War, Judge Gardner served as an attorney with the Navy's Judge Advocate General's Corp. The former Lehigh County president judge has been active on the county bench for more than 20 years and also worked as an assistant district attorney. Lastly, Judge Gardner has received the American Bar Association's highest mark – being rated "well-qualified."

As you are aware, Judge Gardner would serve the bench from Pennsylvania's Eastern District and preside in the Edward N. Cahn Courthouse in Allentown, which has been vacant since Judge Cahn retired from the bench in 1998. With Judge Cahn's retirement, the Lehigh Valley has been left with just one full-time federal judge in Easton, PA. Much has been made in the media of the inconvenience it causes for folks to travel to-and-from Philadelphia, and the burden it places on timely judicial recourse. While accurate, these complaints do not consider another and just as important factor.

It's important that the Eastern District Court be a well-balanced court. Federal courts should be reflective of all constituents within their borders. Nothing can substitute for the personal knowledge and experience of living and working in a region. Judges who understand a region's customs and history better understand their jurors, plaintiffs, and defendants.

As a resident of Upper Milford Township, Judge Gardner would provide the Court the balance that it needs and the representation the Lehigh Valley deserves.

As the Representative of the people of the 15th District of Pennsylvania, I would hope that this committee would expeditiously forward Judge Gardner's nomination to the full Senate for approval.

Thank you for this opportunity to address your committee.

Pat Toomey

NOMINATION OF MICHAEL W. MCCONNELL, NOMINEE TO BE CIRCUIT JUDGE FOR THE TENTH CIRCUIT; KENT A. JORDAN, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF DELAWARE; ALIA MOSES LUDLUM, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TEXAS; WILLIAM J. MARTINI, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY; THOMAS W. PHILLIPS, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF TENNESSEE; AND JEFFREY S. WHITE, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA

WEDNESDAY, SEPTEMBER 18, 2002

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 J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Kennedy, Biden, Feingold, Schumer, Durbin, Cantwell, Edwards, Hatch, Specter, Sessions, Brownback, and McConnell.

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

Chairman LEAHY. Today, we hold our 24th hearing for judicial nominees since I took over as chairman in the summer of 2001, and we will consider six more judicial nominees. That brings to 90 the number of judicial nominees for whom the committee has held hearings in the last 14 months. Professor McConnell is the 19th Court of Appeals nominee we have held in the Judiciary hearings.

This is also the fourth hearing on a judicial nominee sponsored by my friend Senator Hatch, it is the third hearing for a nominee to the Court of Appeals for the Tenth Circuit, and the second hearing for a Utah nominee. It is also the first hearing for Professor McConnell and each of the others here today who have been nomi-

nated by the President for lifetime appointments to the Federal bench.

In fact, it appears that we have held more hearings for more judicial nominees and more hearings for circuit court nominees than in any 14-month period of the 6 and a half years preceding my being chairman. I mention this, seeing members of the Republican leadership here, because I think somebody had given them erroneous numbers on that, but I will repeat it. We have held more hearings for more judicial nominees and more hearings for circuit court nominees than in any 14-month period of the 6 and a half years previously that my friends on the other side of the aisle controlled the committee. We voted on more judicial nominees—82—and on more circuit court nominees—17—than in any 14-month period.

We have already confirmed 77 of the judicial nominees of President Bush. We have confirmed more of President Bush's nominees in 14 months than were confirmed in the last 30 months that my friends controlled the Senate, and we have done it in half the time. We have also confirmed more of President Bush's judicial nominees since July 2001 than were confirmed the first full 2 years of his father's term. And we have treated, of course, his nominees more fairly and more expeditiously than President Clinton's nominees were treated. So it is an interesting thing. I don't know why I bring it up, but I——

[Laughter.]

Chairman LEAHY. I did notice in the 6-and-a-half-year period of control by the other party before the change in majority last summer, vacancies on the Courts of Appeals more than doubled from 16 to 33; overall vacancies rose from 65 to 110, with more than 40 vacancies since then. But we have reversed that.

Today, we will have a hearing on the nomination of Professor McConnell to the United States Court of Appeals for the Tenth Circuit; Alia Ludlum to the Western District of Texas; Kent Jordan to the District of Delaware; William Martini to the District of New Jersey; Thomas Phillips to the Eastern District of Tennessee; and Jeffrey White to the Northern District of California. I welcome all the nominees. They are going to get a chance to introduce their families.

Professor McConnell will be the first witness. He is a popular and provocative law professor at the University of Utah Law School. As a scholar, an advocate, and an activist, he has advanced controversial positions, and I have read many of his writings, and I know that he has stated his positions very clearly, which I appreciate.

We will ask, of course, whether these writings will inform his judicial decisionmaking, whether as a judge he will uphold the constitutional right to privacy, whether he would seek to weaken the wall separating church and state.

On that last regard, I hope that the Democratic members on this committee are not subjected to unfair criticism based on our religious affiliations—as has been done by several during the last 14 months, including some, unfortunately, in the Republican leadership. I think that it was probably done in the heat of a moment. I have never questioned anybody's religion—in fact, I don't know

the religion of 99 percent of the candidates that have come before here, nor do I think that that is important, nor is mine important, nor is it important to the members of this committee on either side of the aisle. I mention that to—while editorial writers and others have a right to say anything they want, and I would defend their right to say anything, no matter how foolish, religious tests have never been under either my leadership, Senator Hatch's leadership, or any other Senator's leadership of this committee.

So I am delighted to have everybody here. We will proceed today, as I said, with the hearing on Professor McConnell and others. Next Thursday I believe we have Mr. Estrada and a number of others who are coming before us.

[The prepared statement of Senator Leahy appears as a submission for the record.]

Chairman LEAHY. But to begin with, I would yield to my good friend Senator Bennett from Utah who is here to speak for Professor McConnell, and as he is the Senator from the State with the circuit judge, I would go first to him, and then we will go to Senators in order of seniority.

Senator Bennett? Well, Senator Hatch has arrived. We will go to Senator Hatch first, Senator Bennett, if you don't mind. We want to go in order of seniority and go by circuit judges, and also what I was saying earlier, we are going to try to go through the introductions as quick as we can because I would hope that we could finish all these nominees today.

Senator HATCH. Well, why don't I reserve mine until after they all make theirs.

Chairman LEAHY. Are you sure?

Senator HATCH. Did you make your opening statement?

Chairman LEAHY. I did because we wanted to get started, but if you want to, feel free.

Senator HATCH. Why don't I make mine until after everybody has made theirs.

Chairman LEAHY. Senator Bennett?

PRESENTATION OF MICHAEL W. MCCONNELL, NOMINEE TO BE CIRCUIT JUDGE FOR THE TENTH CIRCUIT BY HON. ROBERT BENNETT, A U.S. SENATOR FROM THE STATE OF UTAH

Senator BENNETT. Thank you, Mr. Chairman. I appreciate your courtesy and the opportunity to be here today and testify on behalf of the nomination of Michael McConnell, a nominee to be judge of the United States Court of Appeals for the Tenth Circuit.

Professor McConnell's legal career is outlined. Just hitting the highlights of it for the sake of the record, he graduated from the University of Chicago Law School in 1979, clerked for Chief Judge J. Skelly Wright of the D.C. Circuit, and then Justice William Brennan of the U.S. Supreme Court, worked as assistant general counsel for OMB from 1981 to 1983, Assistant to the Solicitor General 1983 to 1985, then went to the University of Chicago Law School where he taught until 1996, after which the University of Utah was successful in getting him to come to Utah in 1997, and he has been there until the present.

I will not go through all of the list of endorsements that he has received from academics and practicing attorneys from every por-

tion of the political spectrum. I wish to focus on the main reason why I think Professor McConnell is as outstanding a nominee as this committee will ever receive for the circuit court. And I hope I am known as one that is not given to hyperbole around here. I choose those words very carefully. If we cannot confirm this man, we cannot justifiably confirm anybody. He has the unanimous "well qualified" endorsement of the ABA, and as I say, he is endorsed and supported by people all across the spectrum in the legal field.

Now, if I may quote from a statement by Cass R. Sunstein that appeared in the Wall Street Journal, it says, "While a strong defender of the rights of religious believers, Mr. McConnell testified against a constitutional amendment that would allow official prayer in school."

I find that very comforting because it mirrors my own feeling. I feel very strongly that the government should protect the rights of religious believers. I feel very strongly that there has been an attempt in modern America to denigrate religion and to ridicule those who are religious believers. But I personally am opposed to a constitutional amendment for prayer in school because I think it is not necessary for those who are strong religious believers to have that additional governmental support. And by taking that position, Professor McConnell has divorced himself from some segments of the religious community who are under attack by groups like People for the American Way.

It is unfortunate and improper, in my view, for groups like People for the American Way to characterize Professor McConnell as a member of the hard religious right. His past stands have made it clear that he is not there, and his past positions have made it clear that attempts to put him there border on character assassination.

I mention the character assassination because it comes out of Professor McConnell's mouth in a different context. When the impeachment of President Clinton was put forward by the House of Representatives and we in the Senate were required, therefore, to deal with it under the Constitution, Professor McConnell spoke up in opposition to that impeachment and then made this very interesting statement: "This last tit-for-tat has blown up in the face of Republicans. Maybe we're going to take a step back and focus not so much on character assassination."

I wish that those who are opposed to his nomination would pay attention to that sentence and realize that they are moving forward on the basis of character assassination rather than the man's temperament and capacity and quality to be on the bench.

I know he has written things that are controversial. I cannot imagine anyone who would be a law professor commenting on as many subjects as he has taken on who would not have written controversial things. But the question is not what has he said in his writings. The question is what will he do on the bench. And there is no question but that he has demonstrated in his writings and his positions that he has taken as advocate, sometimes for unpopular litigants, that this is a man of judicial temperament who will move intelligently and properly to a clear definition of the law. This is a man who has been described by people as diverse as Laurence Tribe on the left to Orrin Hatch, if I may, on the right, who

have both praised the man's judicial temperament and his ability to set aside——

Chairman LEAHY. You just told me something about Orrin I didn't know.

[Laughter.]

Senator BENNETT. I am going with the popular flow on that one, Mr. Chairman.

It demonstrates that this is a man who is not an ideologue. That doesn't mean he doesn't have strong opinions. If he did not have strong opinions, I think he would not be qualified to serve anywhere. All of us have strong opinions. The question is: Does he have the judicial temperament that will cause him to move to interpret the law regardless of his opinion? I cannot think of any nominee that has been brought before this committee who has demonstrated that capacity more than Professor McConnell.

And so I hope, Mr. Chairman, that the members of this committee will resist the almost frantic character assassination that has been mounted against Professor McConnell by those who refuse to look at the balance of his record and decided that they are going to focus on one article or another and then use that, taken out of context, to try to destroy the character and ability of this good man.

I cannot endorse him more highly. I do not think, as I said, of anyone more qualified. I do not know of any nominee that comes before this committee with a broader range of support or a better record to serve as a member of the Tenth Circuit.

Chairman LEAHY. I would also note for the record that this is very similar to what you and I have discussed about him. You have told me many of these same things about the professor in private as you stated here, and you have been completely consistent, both you and Senator Hatch, in your praise of him during that time.

Senator Hatch is going to withhold for the moment. Is that——

Senator HATCH. I will withhold, Mr. Chairman, until Mr. McConnell is in his seat. I notice that we have Congressman Matheson here.

Chairman LEAHY. What I thought I would do—and obviously you can step in at any time you want, but we would go to Senator Gramm, Senator Hutchison, Senator Thompson if he comes, Senator Frist, Senator Carper, and Senator Corzine in that order. And, yes, if—Senator Bennett, I know you have a whole lot of other different places you are supposed to be. I am not trying to tell you to leave, but if you would like to, please feel free.

Senator BENNETT. Thank you. I appreciate your courtesy, Mr. Chairman, and I appreciate, since you have brought it up, the very measured and open way in which we have been able to have a dialogue on this nomination in our personal conversations. You have been more than gracious and fair in the conversations that we have had, and I think it is appropriate to get that fact on the record.

Chairman LEAHY. Well, thank you very much.

We will go to Senator Gramm.

PRESENTATION OF ALIA MOSES LUDLUM, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TEXAS BY HON. PHIL GRAMM, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator GRAMM. Thank you, Mr. Chairman. I am very happy to be here in support of the President's nominee for the District Court in the Western District of Texas, Alia Ludlum. Alia Ludlum is an honor graduate of Texas Women's University with a degree in accounting. She is a graduate of the University of Texas Law School. She started her career of public service as an assistant county attorney in Travis County, which is Austin, our capital city.

She was appointed Assistant U.S. Attorney in the Del Rio Region. That is a region that is along the border of our State. It deals with a large number of international issues related to our border. It is an area where we have intense prosecution of drug crime. In that environment, she rose to be chief of the Del Rio Division. She was chosen by the Federal judges in the Western District of Texas to become a U.S. Magistrate, and in that capacity she has had an exemplary period of service.

Judge Ludlum currently serves as secretary of the Judicial Council of the Hispanic National Bar Association. She has been elected by her fellow attorneys in Val Verde County as president of the County Bar Association. She has been very active in civic affairs, especially related to the American Cancer Society, and she is an outstanding citizen.

In fact, I was noting, looking at her resume, her first name in ancient Greek literally means "of the highest order." I don't know whether her parents realized that or not when they named her, but I believe she is of the highest order. I think she will do an outstanding job. This is a new judgeship that was created in Del Rio because of the huge volume of jurisdiction related to drug crime and border issues. As a Federal prosecutor and as chief of the Del Rio Division, she is intimately knowledgeable of these issues and I believe is very well qualified for this job, and I commend her to this committee.

I thank you, Mr. Chairman.

Chairman LEAHY. Thank you, Senator Gramm. Eventually I am going to remember to turn this microphone on.

Senator Hutchison?

PRESENTATION OF ALIA MOSES LUDLUM, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TEXAS BY HON. KAY BAILEY HUTCHISON, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator HUTCHISON. Well, thank you, Mr. Chairman. I really appreciate your holding this hearing for Judge Ludlum. Phil has given you her background, and you can see that she is eminently qualified for this bench. She also is a native of the border region of our State, and I would just ask that you look at the situation of the courts in Texas and expedite her nomination.

It is a newly created U.S. district court post, one of three vacancies in Texas designated as judicial emergencies by the non-partisan Judicial Conference of the United States. Last year, 4,156 criminal cases were disposed of in the western region of Texas; 665

of those were in Del Rio. Only El Paso recorded more Federal criminal cases in the entire district. So it is a new bench that will go in Del Rio, and it is a fast-growing area on our border, so one that we really need to have a permanent judge and apparatus for in that area.

She brings such an outstanding record of academic qualifications, as Senator Gramm noted. Her legal experience and her prosecutorial experience will make her an outstanding Federal judge, and she has received a "well qualified" rating from the ABA.

I couldn't say enough nice things about her. I know that she can take the bench immediately because she is already there. We certainly need to have her judicial strength on the Texas border to keep the flow of these cases going and to dispose of them in a reasonable manner.

She is a terrific person, a contributor to the community, and I recommend her to you highly. Thank you.

Chairman LEAHY. I thank you, Senator Hutchison, and you have spoken to me a number of times about the situations along the border. In fact, one of the things we have done, as you know, we have added judges in the DOJ authorization bill, which has been stalled over in the other body. And I added some of those at your request.

Senator HUTCHISON. Yes, it was your position, along with Senator Hatch, that created these new judgeships that we are now trying to fill, and we still need more, but we hope that you will continue to help us. But we do appreciate having this opportunity and thank you for the expedited hearing.

Chairman LEAHY. We have even had one of the Federal judges from my own State go down to help out in Texas on some of these border cases. He has told me the same thing you told me earlier of the need for the judges, and we will keep trying to help. Thank you.

Senator HUTCHISON. Thank you very much.

Chairman LEAHY. Senator Frist?

PRESENTATION OF THOMAS W. PHILLIPS, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF TENNESSEE BY HON. WILLIAM FRIST, A U.S. SENATOR FROM THE STATE OF TENNESSEE

Senator FRIST. Thank you, Mr. Chairman.

Mr. Chairman, it is an honor for me to join the committee today in support of Thomas Wade Phillips' nomination as United States District Judge for the Eastern District of Tennessee.

Tom's parents owned the general store in Oneida, Tennessee, where they taught their five children the values of honesty and hard work. Tom put those values to work in his college education at Berea, in law school at Vanderbilt, and in his career as a captain in the U.S. Army Corps.

With distinguished military service behind him in the Judge Advocate General's Corps, he returned home to Tennessee to begin his private legal practice, eventually returning to Oneida, where he had the opportunity to work with one of our distinguished colleagues, Senator Howard Baker. Once again, Tom's honesty and hard work were the hallmarks of his legal practice, and in 1991,

he was recognized for his efforts and appointed a U.S. Magistrate Judge for the Eastern District of Tennessee.

As a Magistrate Judge, Tom has continuously demonstrated his love of the law, and he is known for his calm demeanor. He is meticulous, fair, thorough, and he is held in the highest esteem by both the bar and the bench. Each day Tom lives the values imparted to him by his parents, and he and his wife, Dorothy, have in turn shared those values with their two wonderful children.

Tom personifies the best of America, a law-abiding citizen who cares deeply about his home, his family and country, and who truly wants to serve his fellow man.

Mr. Chairman, I am proud to recommend Judge Tom Phillips to you for the U.S. District Court in Eastern Tennessee and urge you and your colleagues on the Judiciary Committee to consider his nomination as quickly as possible.

Thank you, Mr. Chairman.

Chairman LEAHY. I thank you very much, Senator Frist, and I do appreciate that, and your words, of course, will be very helpful to the nominee. I thank you for being here.

I also know you have to be half a dozen other places, and please feel free to leave.

I am also going to put a statement from Senator Feinstein in the record. She had hoped to be here to introduce Mr. White, and I think about the 20 or so friends and family members here. But because of the Senate Intelligence hearing at the same time, she may not be back, so I am going to put her full statement in the record.

[The prepared statement of Senator Feinstein appears as a submission for the record.]

Chairman LEAHY. Senator Carper? Also, we have a place for Congressman Matheson up here. I don't want him to feel left out. We seem to have more people than usual in here, but I think a lot of family members are there.

Senator Carper?

PRESENTATION OF KENT A. JORDAN, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF DELAWARE BY HON. THOMAS CARPER, A U.S. SENATOR FROM THE STATE OF DELAWARE

Senator CARPER. Mr. Chairman, thanks very much, and Senator Hatch and other members of the committee. This might be a day for Utah to get a two-fer because not only do you have a nominee for Utah and a couple Senators here from Utah, we have a nominee for a U.S. district judgeship in Delaware, for the District of Delaware, who is a graduate of Brigham Young University. His name is Kent Jordan. He is here today with his wife, Michelle, and I think most of their six children. They are sort of split up in the room here behind me, but we welcome Kent and Michelle and their family.

I have had the pleasure of knowing him for several years. Delaware is a little place, and you know just about everybody if you hang around long enough. He has a wonderful reputation. He has a reputation for being bright, he has a reputation for being a person of great integrity, and he has a reputation for being somebody who works real hard.

He was born a long, long time ago in West Point, New York, and ended up going to undergraduate school, as I said earlier, at Brigham Young, graduate school, Georgetown Law, and was admitted to the Delaware Bar in 1984. During that period of time, he made a smart decision and hooked up with a famous Delaware judge, now retired, U.S. District Court Judge James Latchum, and served as a clerk for Judge Latchum, who says this fellow is a keeper and he sends along his strong endorsement for Kent Jordan.

Kent has served with a couple major Delaware law firms, the firm of Potter Anderson, where he was an associate, and later on as a partner in the firm of Morris James Hitchens and Williams. He has been an Assistant U.S. Attorney in the State of Delaware and teaches, has taught as an adjunct professor of law at the Widener School of Law in our State, and for the last 4 years has been the general counsel and vice president of a company called The Corporation Service Company, which is involved in servicing companies, some of the hundreds of thousands of companies which are incorporated in the State of Delaware.

His nomination, actually, his name was put forward not by Senator Biden and by myself, but initially by Congressman Mike Castle, who is the lone Republican member of our congressional delegation. Having said that, I am happy to sit here today as a Democrat to say this is a good nomination. He has made our State proud, and I think he would make all of us proud if he were confirmed.

Thank you so much.

Chairman LEAHY. Thank you very much, and Senator Biden has also expressed his support of him. Both of you Senators have returned positive blue slips on him, and Congressman Castle and I spent some time together when recently we had a joint meeting in New York City and he had stated those positions. So I appreciate your being here, and I appreciate your support of the nominee.

Senator CARPER. Thanks, Mr. Chairman.

Chairman LEAHY. Senator Corzine?

PRESENTATION OF WILLIAM J. MARTINI, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY BY HON. JON CORZINE, A U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator CORZINE. Thank you, Mr. Chairman and Senator Hatch and other members of the committee. It is my pleasure to be here today to introduce William J. Martini, nominee for the U.S. District Court in the District of New Jersey. I appreciate the committee's timely consideration of this nomination.

Senator Torricelli unfortunately can't be here today, but he joins me in offering his support for Mr. Martini's nomination, and I ask unanimous consent that a statement from Senator Torricelli be submitted to the record.

[The prepared statement of Senator Torricelli appears as a submission for the record.]

Senator CORZINE. Mr. Chairman, Mr. Martini is a lifelong resident of New Jersey with a distinguished career in the law and public service, and I believe we will be fortunate to have his skills, background, and perspectives on the Federal bench. Mr. Martini

brings a variety of experiences that will inform his service on the bench. He has a strong legal background and is well respected in the legal community, by both the bar and the bench. He served as both a Federal and State criminal prosecutor, litigating numerous criminal trials, has operated a solo practice for almost 18 years, focusing on criminal defense and civil disputes, and recently has been a partner in one of New Jersey's leading law firms.

In addition to his legal background, Bill Martini has also served New Jersey in numerous public capacities. He has a reputation of enormous integrity and commitment to public service. He served as a Passaic County Freeholder, a Councilman in his local Community in Clifton, Commissioner of the Port Authority of New York and New Jersey, and as a distinguished Member of Congress representing the 8th District of New Jersey in the House of Representatives in the 104th Congress.

I am confident his political background will help bring a broader perspective of service to the Federal bench in New Jersey. He has always represented the best interests of the people. As far as I am concerned, I think he will make an outstanding judge.

I note that I am particularly pleased that Mr. Martini is part of an extremely distinguished group of nominees for the U.S. District Court in New Jersey. New Jersey currently has an unprecedented five openings out of 17 positions on the court. Senator Torricelli and I have worked diligently with the White House to fill these seats. They have been very cooperative in that effort to arrive at a group of five nominees who are each distinguished in their own right. Together, they represent the best of New Jersey's legal community as well as a truly diverse set of experiences and backgrounds that I think reflect our State and our population.

Mr. Chairman, I hope that I will have the opportunity to present these other four nominees to you in the near future. I know Senator Torricelli is in the same mode, and I am confident you will be impressed with all of them. But, again, let me just say that I think Mr. Martini is an outstanding nominee. I am very, very pleased to support his elevation to the court. He has a distinguished record of service to our Nation.

Chairman LEAHY. Thank you very much, and, of course, your support of him—both you and Senator Torricelli have returned blue slips on him, and that will be very helpful to him. I am glad to hear that the White House is working with you, as it should with the Senators, and I hope that perhaps your experience in New Jersey, they will try that also in other States, and it would help very much in moving judges forward. I thank you very much. I know in some other States they have, too. I don't want to suggest that it is the only one, but I am hoping the precedent will grow.

Senator CORZINE. Thank you.

Chairman LEAHY. Senator Thompson, it seems you are here almost every day with another nominee. You have to turn your microphone on. Senator Thompson is not used to television cameras and microphones and all that.

[Laughter.]

PRESENTATION OF THOMAS W. PHILLIPS, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF TENNESSEE BY HON. FRED THOMPSON, A U.S. SENATOR FROM THE STATE OF TENNESSEE

Senator THOMPSON. If you will help me work my way through it, we will make it together.

Well, I do want to express my gratitude, Mr. Chairman. This is the third judicial nominee from Tennessee who will be approved in this Congress. We were able to fill a vacancy on the Sixth Circuit and one in the Western District as well, and I want to express my appreciation for that.

I am here today to introduce to the Judiciary Committee Judge Tom Phillips, who is the President's nominee to fill the vacancy in the Eastern District of Tennessee. Mr. Chairman, I think this is the best part of the job that we have, being able to play a part in bringing people like Tom Phillips forward and assisting their becoming a member of the judiciary.

Judge Phillips was born and raised in Scott County, which happens to be Howard Baker's home county. It is a small county, a small, rural county, and Judge Phillips went off to distinguish himself academically and in a lot of other ways before he went back home to practice law. He was Phi Beta Kappa at Berea College in Kentucky. He went on to attend Vanderbilt Law School on a full scholarship where he was editor of the Law Review and received the dean's award for best senior dissertation.

He then joined the Army's Judge Advocate General Corps, which awarded him its Outstanding Appellate Advocacy Award and the Army Commendation Medal in 1973. While in the Army he attended George Washington University where he got his master's. Then he returned home and became the county attorney for Scott County and was re-elected there several times in his hometown of Oneida, Tennessee. And in 1991, the judges in the Eastern District appointed him to serve as Magistrate in Knoxville, where he holds that position.

During the time he has served as Magistrate, he has earned the respect of all who have appeared before him in terms of his demeanor, in terms of his courtesy and his intellect. During the screening process, Senator Frist and I reviewed the records of all of the candidates, talked to many of them, and we heard many, many favorable comments about Judge Phillips. I think the record before the committee demonstrates his outstanding qualifications in many ways, but I cite just the example that, in over 11 years on the bench, Judge Phillips has been reversed just two times, and only on one occasion has a district judge rejected his recommendation.

He has excelled not only professionally but in his community as well. He has promoted legal education by serving as a member of the Inns of Court and teaching at the University of Tennessee Law School. He has been very active in his church and the bar associations and pro bono legal services, and has served on the boards of Scott County Hospital and Opportunities for the Handicapped. Just an outstanding man, an outstanding judge, and an outstanding citizen. And as I said, it is a privilege to be able to assist people like this become a member of the judiciary.

I would be remiss if I didn't note the importance of moving quickly on the nomination. As the chairman knows and appreciates and has responded to, traditionally two district judges sit in Knoxville, Tennessee, which is Tennessee's third largest city, and late last year and early this year, Judge Jordan and Judge Jarvis, respectively, both assumed senior status, leaving the district court in Knoxville with no active judges. I want to express my appreciation to both of these gentlemen for the service that they have rendered many years on the Federal bench, and I am confident there is no better qualified person to fill the large hole left by these fine judges than Judge Phillips, and I am pleased to endorse his nomination to the committee and respectfully request your favorable consideration of this nomination.

Thank you very much, Mr. Chairman.

Chairman LEAHY. Thank you, Senator Thompson, and you know the great personal regard and respect I have for you, and as I have told you before, I treasured the time you served on this committee and regretted when you left the committee. And I am one of those who regrets seeing you leave the Senate. I think you bring a balance and a sense of probity and a sense of the Constitution to the Senate that is needed and valued, and not seen anywhere near enough. I felt the same way when Senator Baker left the Senate. I think the two of you have reflected the absolute best in the United States Senate. I think that just as Senator Baker has been missed and respected by members on both sides of the aisle, you, my friend, will fit in exactly the same category.

Senator THOMPSON. Well, thank you very much, Mr. Chairman. Obviously, absence makes the heart grow fonder.

[Laughter.]

Senator THOMPSON. And I trust that that will continue to be the case. But I respect you and what this committee does. It is an extremely important committee. Those of us who have practiced law for years know the importance of the work that this committee does with regard to the constitutional issues that you face, and particularly in getting the right kinds of people on the bench. And as I say, I think it is probably the most important work that is done around here, and it is good to be able to be a part of that, and as far as this committee goes, to know that you are at the heart of the other branch of Government, and the other branch of Government depends on the work of this committee. So extremely important work, and I appreciate your hospitality, and I especially appreciate your kind words today and your assistance on this nomination.

Chairman LEAHY. Thank you very much.

Congressman Matheson, we are honored to have you come across the Hill. It is not an easy thing to do these days with all the construction. We appreciate your being here. Go ahead, sir.

PRESENTATION OF MICHAEL W. MCCONNELL, NOMINEE TO BE CIRCUIT JUDGE FOR THE TENTH CIRCUIT BY HON. JIM MATHESON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH

Representative MATHESON. Well, I certainly appreciate the opportunity to appear before the committee. I recognize you have got

a long day ahead of you, but I do want to make some brief remarks, if I could.

I am Jim Matheson, Member of the House of Representatives from the 2nd Congressional District in the State of Utah, and I am pleased to be here today to introduce Michael W. McConnell. President Bush appointed him 16 months ago to serve as a judge on the United States Court of Appeals for the Tenth Circuit.

Now, Mr. McConnell lives and works in my congressional district, and he is the Presidential Professor of Law at the University of Utah. The dean of his law school, who also happens to be my brother, confirms what many leaders in the legal profession have said about this nominee, and that is that Professor McConnell is one of the Nation's most accomplished legal scholars and appellate lawyers.

Professor McConnell received his legal education at the University of Chicago. He then served as a law clerk to Judge Skelly Wright on the U.S. Court of Appeals for the D.C. Circuit, as a law clerk to Justice William Brennan on the U.S. Supreme Court. Professor McConnell has worked as an assistant to Solicitor General Rex Lee of the Justice Department and then was assistant general counsel in the Office of Management and Budget.

Professor McConnell next served for 12 years on the law faculty at the University of Chicago where he held the William B. Graham Chair. He joined the University of Utah faculty in 1997. He is a prolific author of books and articles, and Professor McConnell has also argued before the U.S. Supreme Court 11 times. He was elected a fellow of the American Academy of Arts and Sciences in 1996.

I am impressed with the support that Professor McConnell has received across a broad political spectrum, including praise from those who disagree with his views on some issues. I do not share his positions on all matters, but I am pleased that a constituent from my congressional district who has achieved so much and has earned such wide respect has an opportunity to serve our country as a Federal appellate judge.

So I am, along with Senator Bennett, very pleased that I can introduce Professor McConnell to the committee, and I look forward as you continue with your advise and consent on his nomination.

Thank you for your time.

Chairman LEAHY. Thank you.

Senator Hatch, do you want to make a statement?

PRESENTATION OF MICHAEL W. MCCONNELL, NOMINEE TO BE CIRCUIT JUDGE FOR THE TENTH CIRCUIT BY HON. ORRIN HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Senator HATCH. Well, thank you, Mr. Chairman. Before we begin with Professor McConnell, I want to thank you personally for scheduling this hearing, and given that Professor McConnell is nominated to fill a Utah vacancy on the Tenth Circuit Court of Appeals, I appreciate your holding this hearing and I want you to know that.

Of course, I get in trouble every time I am nice to you in public. I get a flood of letters——

Chairman LEAHY. I know the feeling.

[Laughter.]

Senator HATCH. I get a flood of letters telling me I should not make friends with powerful Democrats. Well, it is tough to teach an old dog new tricks.

Mr. Chairman, I am proud to be here today to introduce and to reiterate my strongest support for Professor McConnell, who enjoys support from lots of powerful people, Republican and Democrat, conservative and liberal, and men and women—notably, including well-known law professors Laurence Tribe, Cass Sunstein, Akhil Amar, and Walter Dellinger, who are certainly no strangers to this committee or its members.

Professor McConnell, in my opinion, cannot be pegged as an ideologue in any sense of the word. He is an honest man. He calls it as he sees it, and he is beholden to no one and to no group. He has taken scholarly positions and has brilliantly argued on issues that at times have been opposed by conservatives and at times opposed by liberals. As the committee knows well, Professor McConnell has publicly opposed impeachment of President Clinton. He has testified against a school prayer amendment, as my colleague has said. He has represented, without charge, some left-of-center groups such as People for the American Way and Americans United for the Separation of Church and State, and he has been described by Supreme Court Justice Antonin Scalia as "the most prominent scholarly critic" of Scalia's approach to the Free Exercise Clause. He is also a brave man. He has criticized my constitutional amendment on the flag.

He has taken these positions and has earned the broadest respect of his peers, liberal and conservative, not to make friends, not to agree with any agenda, but to be honest intellectually. Few people will disagree that he is truly one of the most humble legal geniuses of our time.

Mr. Chairman and members of the committee, it is my high honor and privilege to introduce to you Professor Michael McConnell, a Utahn and a scholar of the highest talent, the most profound integrity, and, of course, he has a supremely judicial temperament.

Now, I won't go through his career because my colleagues have made that quite clear. But he was a tenured professor at the University of Chicago, decided to teach at the University of Utah. He served as a law clerk to two of the leading liberal jurists of the 20th century, Supreme Court Justice William J. Brennan, Jr., and D.C. Court of Appeals Judge J. Skelly Wright. I would like to acknowledge the presence here today of Judge Wright's widow, Helen, and her husband, John Pickering. It is an honor to have both of you here.

After completing these clerkships, Professor McConnell became assistant general counsel of OMB and then served as assistant to the Solicitor General of the United States. He had the prestigious chair at the University of Chicago. I might add that he is an able and very experienced appellate lawyer. He has argued 11 cases before the United States Supreme Court and won nine of them. One of his presentations to the Supreme Court was named by the Los Angeles Daily Journal the "best oral argument" of the year. His clients include a wide range of entities, from Fortune 500 companies such as NBC and Ameritech, to organizations such as the United

States Catholic Conference, to municipal authorities including the New York Metropolitan Transit Authority, as well as many individuals.

Now, this combination of intelligence, skill, and experience was very likely the reason that the American Bar Association gave him unanimously the highest rating possible, "well qualified."

I could go on about Professor McConnell's outstanding record of achievement and his unsurpassed reputation, but so can many friends of this committee like Professors Sunstein, Tribe, Dellinger, or Kmiec.

Mr. Chairman, about the only opposition to Professor McConnell's nomination has come from the inside-the–Beltway advocacy groups. I must say, what I find striking is the stark difference between the evaluation provided to this committee by his academic peers who know him best and that done by these Washington special interest groups.

In my view, Professor McConnell's excellence in scholarship, honesty in his intellect, his defense of liberty, contribution to legal thought and precise understanding of the role of a judge show why he is one of the best nominees this committee has evaluated in a long, long time.

In reviewing Professor McConnell's full record, one area of scholarship stood out for me very much: his contributions in protecting our freedom of religion. This is one that is important to me, and I know from working on the Religious Freedom Restoration Act and the Religious Liberty Protection Act, it is important to all members of the committee, and we all cherish these issues dearly. As you know, Professor McConnell is widely regarded as modern America's most persuasive advocate for the idea that our Government should ensure every citizen's right to worship—or not worship—in his or her preferred manner. Through his scholarship and advocacy in court, he has stood up for the rights of all religious people, including members of some politically out-of-favor faiths to worship free of Government restriction or intrusion.

Many Americans believe that the freedom to exercise their own religion is the most profound and important idea on which this country and our Government were founded. Many Americans feel so secure in this freedom that they have not personally felt the forces that were eroding it or the tremendous success Professor McConnell's efforts have achieved in repairing that damage.

Before Professor McConnell began his prodigious scholarship in the area of the First Amendment's religion clauses, the idea was taking root that the Government must disfavor religion in its policies. That is, judges and scholars believed that all groups must be treated equally except religions, which must be excluded entirely from any Government program or policy.

Professor McConnell's scholarship served as a dramatic wake-up call. He researched the Founders' writings and presented with illuminating clarity that the point of free exercise is for Government to remain neutral as between religions and neutral as between religions and non-religions, and it must accommodate religious activity where feasible. He demonstrated there was no basis in the founding for the view that our Government must be anti-religion. The persuasiveness of his writing reawakened American legal scholars

and judges to the Founders' view that the First Amendment's purpose is to protect religion from Government, not the other way around. His work has helped reinvigorate the healthy and dynamic pluralism of religion that has allowed all faiths to flourish in this most religiously tolerant Nation in human history.

McConnell's views defy political pigeonholing. On questions of free exercise of religion, he has generally sided with the so-called liberal wing of the Court, arguing for vigorous protection for the rights of religious minorities. In fact, as I said earlier, in one opinion Supreme Court Justice Antonin Scalia described McConnell as "the most prominent scholarly critic" of his own more limited view of the free exercise rights.

On questions of establishment of religion, McConnell's view that religious perspectives should be given equal but no favored treatment in the public sphere has led him to testify against a school prayer amendment, while supporting the rights of religious citizens and groups to receive access to public resources on an equal basis.

Mr. Chairman, just as the pluralism of religious diversity has profoundly enriches the spiritual life of our country, so has the strong tradition of academic freedom and exchange of ideas allowed an astonishing creative explosion of ideas and achievement in America that has benefited the people of the United States and around the world. Our First Amendment and our intellectual property laws strive to protect, stimulate, and widely disseminate such thought and exchange.

Few people in modern America have contributed more to their area of expertise, and thus proven the value of academic freedom, than Professor McConnell. He has written over 50 articles in professional journals and books. He has delivered hundreds of lectures and penned many op-ed pieces. He has contributed an immeasurable amount to the discourse of legal ideas. As Professor Laurence Tribe has written to this committee, "McConnell is among the Nation's most distinguished constitutional scholars and a fine teacher." Professor Tribe further explained that he and McConnell "share a commitment to principled legal interpretation and to a broadly civil libertarian constitutional framework." Mr. Chairman, I ask that Professor Tribe's letter be included in the record at this point.

Chairman LEAHY. We will include that in the record. Also, there have been a number of other——

Senator HATCH. I would ask that all of the——

Chairman LEAHY. Professor Sunstein's and others, I want to get them all in here. We will put them all in the record, including, to be very fair, those that went out of their way to attack me and other members of the committee, on your behalf, though, so it is all for the good. We will put them all in.

Senator HATCH. Was that on my behalf or Professor McConnell's behalf?

Chairman LEAHY. It was done on behalf of Professor McConnell, but we will put them all in the record so we can be totally fair about this.

Senator HATCH. All right.

The significance of Professor McConnell's contributions to the legal profession in part explains why 304 professors—ranging from

conservative to liberal—have signed a single letter urging this committee to confirm Professor McConnell's nomination. Now, when was the last time that 304 professors, law professors at that, agreed on anything? This is the first. I ask consent, as you have already given, that these letters also be included in the record.

Now, Professor McConnell's peers consider him one of the Nation's foremost constitutional scholars and appellate advocates and as a person with a reputation for fair-minded openness—or I should put that another way, open-minded fairness. In addition to the professors I mentioned earlier, Professors Charles Fried, Akhil Amar, Larry Lessig, Sanford Levinson, Douglas Laycock, and Dean John Sexton have been among those who have praised McConnell's integrity, ability, and fair-minded approach to legal issues. Mr. Chairman, I ask consent that those letters also be included.

Chairman LEAHY. Of course.

Senator HATCH. Over the years, many on both sides of the aisle have discussed the impact of this committee's evaluation process on those who have added the most to the public discourse of legal ideas.

I think we should praise and encourage the prolific exchange of honest and principled scholarly writing, assuming such scholars know the proper role of a judge, to interpret the law as written and to follow precedent—and I should say to leave the innovative scholarship at home once confirmed to the bench.

Let me just ask that the balance of my remarks be placed in the record at this point.

Chairman LEAHY. Without objection, so ordered.

[The prepared statement of Senator Hatch appears as a submission for the record.]

Chairman LEAHY. Just so we can plan, the opening statements have been a little bit—they were all very helpful, but they have been a little bit longer than I had thought. And I know there are a lot of district judge nominees who are here with their families—Senator Biden?

Senator BIDEN. If I could just——

Chairman LEAHY. After Senator Biden has had a chance to mention the nominee from Delaware, I am going to suggest that the district court nominees and their families, of course, are guests of this committee and are welcome to stay through any part of it. But we will not get to that part of the hearing at least until 2:30. My plan—and I have discussed this with Senator Hatch—is to go on the questions for Professor McConnell. If at 2:30 there are still questions, we will set aside that part of the hearing, go to the district court nominees, complete those, and then go back to Professor McConnell. Hopefully we can do this all today or at a future time. I am going to try to make sure we can do it all today.

Senator Biden?

PRESENTATION OF KENT A. JORDAN, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF DELAWARE BY HON. JOSEPH R. BIDEN, JR., A U.S. SENATOR FROM THE STATE OF DELAWARE

Senator BIDEN. Mr. Chairman, Senator Hatch, Senator McConnell, I apologize, and Senator Durbin. I can't blame this one on Amtrak. I just flat missed the train by 3 minutes, and I apologize.

I am not going to ask you to reconfigure us. I would ordinarily introduce the nominee that Senator Carper has already come to introduce, a Delaware nominee. But I would like to do it from here and try not to—and I apologize to Professor McConnell for this interruption.

Mr. Chairman, my colleagues, Kent Jordan, a fellow Delawarean, has been, to state the obvious, nominated by President Bush to fill a vacancy on the U.S. District Court for the District of Delaware. Kent has been an attorney for 18 years, and in that time he has notched up some very big achievements. He started his legal career as a law clerk for one of the most respected judges to serve on the Delaware bench in the last half of the 1900s—Judge James Latchum, who served on the very bench which Kent has now been nominated to move to.

Kent went on to serve as Assistant United States Attorney in Delaware for 5 years. In that time, he worked on two very big and highly publicized cases. The first of those cases was the prosecution of five men in an international extortion case that literally spanned three continents. The men were convicted of stealing trade secrets about Lycra products from the DuPont Company, extorting millions of dollars in a complicated international scheme that took them from the United States to Europe to South America.

In another very big case, Kent prosecuted a major civil enforcement action against an oil company. One of its oil tankers spilled tens of thousands of gallons of oil into the Delaware River, killing fish and wildlife, and Kent held the company responsible for the damage it caused, which, as you all know, are very complicated cases. And he got very high marks for both those cases.

He moved on to become a partner in one of Delaware's top law firms, Morris James Hitchens and Williams, working there for 5 years, and then came the call to go in-house and serve as general counsel for a 102-year-old corporation services company. The Corporation Services Company, as it is known nationally, CSC, and internationally, is one of the leading incorporation service companies in Delaware, which I am sure all of you, particularly Senator Durbin like to know that we are still able to incorporate in Delaware. I know that is one of the things that he feels strongly about.

Senator DURBIN. You still charge tolls on the interstate.

Senator BIDEN. We still charge tolls on the interstate, and we still have good weather and nice people. And when I said Kent does everything big, that includes his family. Kent and his wife, Michelle—I am going to ask them to stand in a minute—who is here as well, have six children, five boys and a girl, ranging from age 7 to 20 years old. Four of them are with us today, I am told. They were in my office earlier where I was supposed to meet them, and, again, I apologize to them. So I would like each of them to

stand, if you don't mind, Mr. Chairman and my colleagues, and if they don't mind, so we can admire you.

Tyler is age 16. Tyler, would you stand up? Tyler looks like he is ready for prime time and the movies, a handsome young man who is a junior at A.I. DuPont High School.

Clint, who is age 12—where are you, Clint? Over here. Clint, could you stand up? He left already? All right. I don't blame him. I don't blame him.

[Laughter.]

Chairman LEAHY. That is okay. He is going to be in the record.

Senator BIDEN. He is in seventh grade at H.B. DuPont School.

K.C.—who is probably gone, too—is age 10, a fifth grader at Brandywine, and Jesse is age 7, a second grader at Brandywine Springs Elementary School.

And, Michelle, where are you? Are you still here or did you also take—she is probably with the kids. She is with the kids. Very smart mother.

Missing today are Kent and Michelle's two older children: Bethany, age 20, and Nathan, age 18. And I know it will warm the heart of our colleague from Utah, but they are busily attending Kent's alma mater, Brigham Young University, BYU.

In addition, accompanying Kent today is his very good friend, who also happens to be the president of the Delaware State Bar Association, Patricia Hannigan. Patricia, are you here? Thank you very much for being here. Pat, it is wonderful to have you here today, and let me also say that we appreciate your service to the State Bar Association and your service to the country through your work in the United States Attorney's Office.

Mr. Chairman, I am absolutely confident that Kent possesses the sterling academic and professional qualifications that are needed for this job, as well as the required judgment and temperament. The only thing that has ever confused me is he has attended a university that is predominantly LDS and he went to law school where there are Jesuits. So I am not quite sure how that is going to work out. But he is known for his quiet demeanor, his good judgment, and his temperament.

Chairman LEAHY. It sounds to me like that should appeal to Senator Hatch and myself.

Senator BIDEN. It does, as well as my son, and so I thank you for allowing me to go out of order this way, but I am very happy to support the nomination of President Bush's nominee to our district court, Kent Jordan, and I think he will do great honor to my district, and he has already done great honor to my State and to his family, and I welcome him and again apologize for going out of order.

Thank you very much, gentlemen.

Senator HATCH. Mr. Chairman, I have known Mr. Jordan for a long time, know his parents, know his family. His brother is one of our best lawyers in Utah, as a matter of fact, and we are very proud to have you here.

I want to personally thank the two Senators from Delaware for their excellent comments about you. I think it says it all, and I endorse what both of them have said.

Senator BIDEN. Thank you very much.

Chairman LEAHY. It sounds to me like Mr. Jordan will have a somewhat easy time.

[Laughter.]

Chairman LEAHY. Professor McConnell, you have a number, before I swear you in, could you point out members of your family here because one of the things I have often felt with nominees, we will have a transcript of this record—I should also emphasize to each nominee, when you testify, if afterwards you think of something you meant to have added to a question, obviously, we keep the transcript open so you can do that. We are trying to get the best knowledge possible and not trying to play "gocha." So, if you feel you put a citation wrong or something like that and want to correct it, of course, the record will be open to do that.

But I am sure someday, when you are looking in the McConnell archives, you will want to be able to show the members of the family who were there. So please introduce whomever you would like.

Mr. MCCONNELL. Thank you, Mr. Chairman, for that opportunity. My family is sort of scattered around the room. Maybe they can get together if the room clears. But right behind me is my very dear wife Mary; my niece, Katie Schiewetz, here from Washington State and presently at Lehigh University; my daughter Emily, who is a senior at West High School in Salt Lake City; and then way back there——

Chairman LEAHY. I see a hand waving.

[Laughter.]

Mr. MCCONNELL.—my sister, Kim Schiewetz, also from Washington, with my niece, Karley; and my daughter Harriet, who is now a freshman in college in Southern California; and standing next to her, a special member of our family for this year only, Maria Patricia Enriquez, who is a foreign exchange student from Ibarra in Ecuador, and is living with us for the year. This is her first time in Washington, D.C., and her first taste of American democracy at work.

[Laughter.]

Mr. MCCONNELL. And last, but not least, my son Sam, who is 12, and is just entering seventh grade at West High School in Salt Lake.

And if I might recognize just one other person, if that may——

Chairman LEAHY. Recognize as many as you would like.

Mr. MCCONNELL. Senator Hatch already introduced Helen Wright, and I am very proud to have her here in honor of my first boss, Judge Skelly Wright.

But in addition to that, the Reverend John Wimberly is here with me. He was my pastor. John, could you stand up. Many of you may know him as the pastor here at Western Presbyterian Church in the District. He was my pastor for many years when we lived here in the District. And those members of the committee, which may be almost all of you, who were part of the Religious Freedom Restoration Act movement, will be interested to know that the very first application of the Religious Freedom Restoration Act nationwide was to protect a Western Presbyterian Church's homeless feeding program from an adverse ruling from the D.C. Zoning Board. So I am very pleased that he could be with us here this morning.

Chairman LEAHY. Thank you. Again, I would note that for the District Court nominees we will not begin before 2:30 on your hearing. So anybody that wants to do a little bit of last-minute sightseeing, you are not going to offend this committee by doing that. You are welcome to stay, of course, but if you wanted to take a break, please feel perfectly free to do that.

Professor McConnell, would you please stand.

Do you swear that the testimony you will give this committee will be the truth, the whole truth, and nothing but the truth so help you God?

Mr. MCCONNELL. I do.

STATEMENT OF MICHAEL W. MCCONNELL, OF UTAH, NOMINEE TO BE CIRCUIT JUDGE FOR THE TENTH CIRCUIT

Chairman LEAHY. Professor, if you would like to make an opening statement, please feel free.

Mr. MCCONNELL. Mr. Chairman, I think I am going to waive that. I would, of course, dearly love for us all to be out of here by 2:30, so I will try to be brief.

Chairman LEAHY. That is——

Mr. MCCONNELL. Hard for a professor.

[Laughter.]

Chairman LEAHY. Senator Hatch and I would love to be out of here, but I have a feeling, depending upon how many come, that may not happen, but I also don't want to cut off your opportunity.

Let me ask you this, because you have written on this a great deal, do you believe there is a Federal constitutional right to privacy?

Mr. MCCONNELL. Senator, the Supreme Court has said so. I have been, in an academic capacity, a critic of the line of reasoning that led to that. That is now, I think, settled constitutional law, and I have no hesitation in enforcing it as such.

Chairman LEAHY. You have written that the right of privacy is nowhere mentioned in the Constitution, I think, to quote you, and you have been consistent on that. So, if there is a constitutional right to privacy now, what is the source of that right?

Mr. MCCONNELL. Well, I think the best account that the Supreme Court has given of that was in *Planned Parenthood* v. *Casey*, in which the controlling three–Justice joint opinion rooted that right in substantive due process under the Fourteenth Amendment, reasoning, I think, somewhat similarly to some previous decisions that there can be fundamental rights under the Fourteenth Amendment that are established not because of actual textual mention within the Bill of Rights or elsewhere in the Constitution, but rather through the traditions and practices of the country.

Chairman LEAHY. I am not sure I fully understand. I mean, is this going into the penumbra type of debate or is—well, perhaps I should ask you this way. You said there is a Federal constitutional right of privacy. Specifically, where is it? I mean, you have I think in *Griswold*, and you're probably as knowledgeable person as anybody in the country, that Justice Douglas said it came from specific guarantees in the Bill of Rights; Justice Black, who I have always admired—not always agreed with, but always admired—says that no matter how much one would disagree with Connecti-

cut's law forbidding the use of contraception, there is no right to privacy in the Constitution.

Mr. MCCONNELL. Well, Senator, I have been a critic of some of these cases, but I am happy to tell you where the Supreme Court's line of argument has led. They have gone through several stages.

In *Griswold*, in Justice Douglas's majority opinion, he did use the idea that there were penumbras and emanations from the specific provisions of the Bill of Rights, especially the First, Third, Fourth and Fifth Amendments. I think most legal scholars do not think that was a particularly persuasive attempt at an explanation.

The second Justice Harlan, in his concurring opinion, offered a somewhat different account that I think has stood the test of time more successfully.

In *Roe* v. *Wade*, the Court canvassed several different possible textual bases and said it didn't really much matter which one was the basis.

It was only really in *Planned Parenthood* v. *Casey* that the Court finally came down to a single methodology and identified the privacy cases as being rooted in substantive due process under the Fourteenth Amendment.

Chairman LEAHY. And you feel that right of privacy is there?

Mr. MCCONNELL. It is certainly well settled, Senator.

Chairman LEAHY. But not there.

Mr. MCCONNELL. Well——

Chairman LEAHY. I just want to make sure. I'm not trying to split hairs with you. I want to make sure I fully understand your answer. You have no question that there is a Federal right of privacy, yes or no?

Mr. MCCONNELL. I have no hesitation that there are many rights of privacy, yes.

Chairman LEAHY. Is there anything in the Constitution that would prevent, for example, Congress from regulating private decisions about family planning made within the confines of a marriage?

Mr. MCCONNELL. Certainly, there have been a whole series of Supreme Court decisions on those rights, which, by the way, I have defended and not criticized. Whether I defend them or criticize them, of course, in my academic capacity is somewhat beside the point, since they are the law of the land, whether I would agree with them or not. I happen to agree with them.

Chairman LEAHY. Well, let me ask you about that and whether you agree or disagree. You wrote an article. You praised Federal District Court Judge—you published an article a few years ago, "Breaking the Law, Bending the Law." You praised Federal District Judge John Sprizzo, who acquitted two men of charges that they violated an injunction he had issued under the Freedom of Access to Clinic Entrances law.

You conceded, as a matter of law, Judge Sprizzo is probably wrong, but then you went on to say you can't help admiring his act. You defended it saying the prosecution was not asking for impartial justice, repression, instead of political dissent. Talk to me a little bit about that. What do you do, a Federal judge who says I'm going to ignore the law. I'm going to follow what my conscience

tells me to do. Is that right? I mean, you thought it was with Judge Sprizzo. How do you feel about that?

Mr. MCCONNELL. Well, Mr. Chairman, I'm really glad you asked me about that because——

Chairman LEAHY. Well, I did because of your earlier answer when you said you have to follow the law.

Mr. MCCONNELL. Because I do not see—that article was not in praise of the judge. I made a very back-handed comment when I said that you have to admire him. The words that followed that is you have to admire him because this decision, this lawless decision, is going to mark his career for the rest of his life. I said that he was going to be "excoriated". I said that he would be a "pariah". I don't, you know, when I say I admired that, that was really almost, you know, maybe not quite a joke, certainly not very funny, but in the nature of a back-handed compliment.

The substance of that article was entirely critical of the judge and his decision. I said, and I have the words with me, I said, "It cannot be true that individuals may violate court orders with impunity whenever they sincerely believe those orders are morally wrong, and it would be utterly unacceptable to allow such violations only but whenever the judge happened to agree with the violator."

So the substance of that article, Mr. Chairman, was to criticize that judge for failing to follow the law. It was not to praise him.

Chairman LEAHY. I ask you this because obviously you have written, and written very well, and probably one of the most articulate writers on your positions that I have certainly been able to find, and in advocating roles—let's start with the easy, and then go to more of the specific—as a Court of Appeals judge, what is your view of stare decisis?

Mr. MCCONNELL. Senator, I have been a very strong advocate, indeed, more of my writing has been devoted to the question of judicial constraint probably than any other single subject. I have been a very strong advocate of the view that judges should not decide cases upon the basis of their own personal, moral or political or philosophical predilections, but should ground their decisions in the text, especially if it's a statute, but also the constitutional text, its history and the past precedents, both of the Court and of legislative bodies in interpreting that matter.

I feel very strongly, Mr. Chairman, that there have been times when the Federal judiciary has overstepped its legitimate grounds as a co-equal branch of Government, and I am committed to an understanding of the judicial role which is constrained, which respects the rule of law, which respects precedent, but most of all which respects the legislative judgments of Congress and the State legislatures.

Chairman LEAHY. Let's discuss that a little bit. In *Griswold*, and follow up on what you said about State legislatures, in *Griswold*, you spoke of that as being one of the popular successes of the Court. You said that the Connecticut law was one that was unpopular, unenforced, outdated. I think those were the words you used.

Are you saying that *Griswold* is defensible because it was following a popular will or because it was overturning legislation that was outdated?

Mr. MCCONNELL. Mr. Chairman, it's actually somewhere in between those. And again in this, I follow, principally, the concurring opinion of the second Justice Harlan, whom I believe provided the most persuasive account in that case. We have a Bill of Rights with certain enumerated rights; then we have a Fourteenth Amendment with a due process clause and a privileges and immunities clause which refer to a broader set of what we call unenumerated rights. The difficulty is how to identify what those are.

And what Justice Harlan explained, and I think quite persuasively, is that that cannot be a matter of mere democratic popular will because that it would not be constitutional law. On the other hand, it also cannot be based solely upon the personal moral views of the judiciary because that would be turning them into kind of what Justice Brennan called platonic guardians. Instead, what Justice Harlan said is that we need to interpret the unenumerated rights in light of the longstanding traditions and understandings of the American people.

In the case of *Griswold* itself, Connecticut still had this law on the books. It was rarely enforced, but, indeed, in *Griswold* itself it was enforced. But when you look at the question of the right of married couples to use contraceptives on a nationwide basis, by that time virtually every State in the Union had already come to this conclusion, and it had become part of this understanding of the rights that American people have and enjoy.

So that when the second Justice Harlan enforced that right as a constitutional matter, he wasn't doing it because he thought that contraceptives were an important right; he was doing it because he made a judgment that that was something that the American people had come to.

Chairman LEAHY. But then do you feel that, take the Circuit Court, for example, and let us—and I'll try and make it easy—let's assume you're getting a case of first impression, that you don't have a Supreme Court decision on it, you don't have precedent within your own circuit on it, do you feel that then, in the appropriate circumstances, it's all right for the judge to look at what is the popular view, whether a particular law is outdated? The miscegenation laws, for example, that's a case that's been settled, but say something like that, can you look at the popular will? Can you look at whether the thing is outdated? Now speaking as a Circuit judge, and not as a Supreme Court justice.

Mr. MCCONNELL. I think that the methodology that Justice Harlan laid out is applicable, not just to the Supreme Court, but to judicial review in general, and so I would say, yes, certainly, Mr. Chairman.

Chairman LEAHY. So you would embrace Justice Harlan's views as an appropriate guideline for a Court of Appeals judge?

Mr. MCCONNELL. Yes.

Chairman LEAHY. Thank you.

Senator Hatch?

Senator HATCH. I think I'll withhold for now. Thank you, though, Mr. Chairman.

Chairman LEAHY. Senator Durbin?

Senator DURBIN. Thank you, Mr. Chairman.

And, Professor McConnell, thank you for joining us today.

Some have questioned the role of this committee in the selection of the President's nominees for the Federal judiciary and whether or not we are, under the Advise and Consent Clause, really in a position to ask questions about the philosophy, and beliefs, and values, and constitutional opinions of the nominees.

You have written that—I don't want to misquote you, but I will try to make a reference here—that when we are in this job, doing this job here that you believe we have a responsibility to see if the nominee's opinions, "fall within the legitimate range of opinion about the Constitution." Your words. I trust that you still believe that today, even as you face the committee.

Mr. MCCONNELL. Oh, certainly. I don't have any problem with that at all.

Senator DURBIN. Good. Because I want to ask you some specific questions about your beliefs and whether or not they fall within the legitimate range of the Constitution, so as not to allow those to come to the Federal bench who might abuse that Constitution. I think that is our constitutional responsibility.

Let's go to the issue of religion, which is one that I feel very intensely about. In the State of Illinois, in Central Illinois, there is something called the World Church of the Creator. The man who started this is named Matthew Hale.

Matthew Hale has a website, which I hope no one will visit, but if they do, they'll find this website spewing hatred, and prejudice, and bigotry about people particularly of color, those who aren't white Americans. In fact, his writings and teachings inspired, if that's the word, a man several years ago to go on a murderous rampage in Chicago, where he used to live, killing the former basketball coach of Northwestern University, an African–American man, shooting at Orthodox Jews, as they came home from synagogue on a Friday evening, and then driving over to Indiana and killing an Asian–American student on the campus of a university.

Matthew Hale believes that he has a religion and that that is part of his religious belief. He doesn't claim that he inspired this man or even put him up to it, but it's part of his religious belief. What are we to make of that in terms of our society? What kind of standards should we apply in treating Mr. Hale's so-called religion of the World Church of the Creator? Let's start with the basics.

First, should he, in any way, be exempt—or his followers—exempt from criminal law?

Mr. MCCONNELL. Senator, first of all, I'm not at all familiar with this particular example. This does not strike me as a difficult question, and I don't want to be——

Senator DURBIN. Good.

Mr. MCCONNELL.—I don't want to be evasive, but on the other hand——

Senator DURBIN. As a professor, I used——

Mr. MCCONNELL. On the other hand, at least, in some sort of speculative way, this could be a hypothetical case that comes before the Court, and so I hate——

Senator DURBIN. Let's try this just like the law professors used to do to me.

[Laughter.]

Senator DURBIN. It's a hypothetical case, so engage me in this hypothetical. Should the World Church of the Creator or similar groups be held to the standards of criminal law, in terms of their religious belief and conduct?

Mr. MCCONNELL. Senator, the law of the land today applies to everyone, religious people, as well as anyone else. There are, of course, free speech considerations involved here, and I don't know, I have no real sense of which particular criminal—you referred to a number of people who went on murderous rampages as a result of hearing this person's speeches. Of course, they're going to be criminally prosecuted.

Senator DURBIN. Why is this a hard question? Should the believers of this religion, if it is one—I don't think it is, but he characterizes it as such—why should we even raise a question as to whether they should be held to the standard of obeying criminal law?

Mr. MCCONNELL. I guess, Senator, I would return to my original reaction, which is it isn't a hard question. I'm sort of trying to puzzle through and be cautious.

Senator DURBIN. And your answer?

Mr. MCCONNELL. It doesn't strike me as a hard question. Everyone is subject to the criminal laws.

Senator DURBIN. Now let's go to the case of *Reynolds* v. *the United States*. Here we have a religion which practices polygamy, and a decision by the Court which says that that is against the criminal law of the State in which they are residing, and your writing in publication said that that case was wrongly decided.

You asserted that the man involved, charged with polygamy, a crime in that State, "asked only that the Government leave him and his wives alone." In fact, he was asking for a religious-based exemption from criminal law, was he not?

Mr. MCCONNELL. Yes, he was.

Senator DURBIN. And so the criminal law, at least from your point of view, in that case, should or should not have been applied to this man because of his religious belief in favor of polygamy?

Mr. MCCONNELL. Senator, it cannot be the case that every—any provision that any legislature would put into the criminal law is necessarily going to be constitutional under the First Amendment. The United States Supreme Court has struck down any number of applications of criminal law as applied in particular First Amendment circumstances. So, in order to answer a question about criminal law, in general, you simply have to descend to specific cases.

I have talked about *Reynolds* in a number of different contexts. It is, obviously, in Utah, an old chestnut and something that every class is interested in because of the heritage of the State, and I have thought about it in different ways over time. The position that I recall having stated has not been that *Reynolds* was incorrect in its day, although I think a lot of scholars do have questions about it, but rather whether the prosecution of someone for having multiple—can we call them partners for just a moment?—when that person has those multiple partners with blessings of clergy, under a circumstance where it would be not illegal for such a person sim-

ply to have a bunch of serial relationships outside of marriage, looks like he's being prosecuted not for the multiple relationships, but rather for having gotten those relationships blessed in church, and that seems to me to be a problem.

Senator DURBIN. Well, let me take it a step further.

Mr. MCCONNELL. That the very same conduct becomes criminal because it is tied up in a religious practice.

Senator DURBIN. I don't accept your conclusion, but I want to take you a step further. We now have instances where these polygamist relationships involve girls 13 and 14 years old—clearly, another violation of a criminal law.

Now let me ask you does that State or any State go too far in enforcing a criminal law against someone who believes, as a matter of personal religious belief, that they are entitled to have these so-called partners of any age?

Mr. MCCONNELL. Senator, I would love to answer that because my answer is exactly what you would like to hear. I, again, hesitate to answer questions that very possibly may come up to me before, as a judge, but I assure you that the reason I'm hesitant has nothing to do with the merits. I don't think that——

Senator DURBIN. And your answer is?

Mr. MCCONNELL. I'm confident that you and I are not in disagreement on this.

Senator DURBIN. And your answer is?

Mr. MCCONNELL. My answer is I wish you would put the form of a—the question in a way that I could conscientiously give you an answer because there is no disagreement with us on this, but I can't—what you've asked me is a hypothetical case——

Senator DURBIN. Yes, a hypothetical——

Mr. MCCONNELL.—that might extremely likely come up in the Court on which I'm going to sit. And I'm sorry, even when it's an answer that you'll like to hear, that's not something—I'm afraid that's just something I can't do.

Senator DURBIN. Then I don't know how far this hearing is going to go if that's your general response, but let me take you to the next level.

Let's forget about enforcing criminal laws against those who would violate them in the name of religion, and let's go to the question of State-granted privileges or State-granted regulation. You seem to argue in the Bob Jones case before the Court, with Bob Jones University, that their policies of racial discrimination should not disqualify them, that church, that religion, those adherents, from certain favorable tax considerations.

So now, beyond the realm of criminal law, let me ask you this: Do you believe that we have a right to ask of Bob Jones University or the World Church of the Creator that if they are asking for privileges based on religion, such as exemption from paying taxes for commercial activities, do you believe it is wrong for us to say you cannot discriminate based on race, gender, sexual orientation?

Mr. MCCONNELL. At that level, I would say yes to that.

Senator DURBIN. You believe it is proper for us to enforce standards so that those guilty of racial discrimination do not receive tax benefits?

Mr. MCCONNELL. I think that when Congress passes restrictions on the receipt of benefits that, you know, of course, there is going to be some constitutional analysis involved, but I have no problem with the general proposition that antidiscrimination laws can be among those.

Senator DURBIN. And what about the Fair Labor Standards Act when it comes to those religions which argue that they should not be bound when it comes to minimum wage, record-keeping, discrimination in employment? Do you believe that it's proper for those religions to be held to those standards?

Mr. MCCONNELL. Senator, as you may know, I wrote the brief in the United States Supreme Court defending the right of the Secretary of Labor to enforce those regulations. I have offered academic reflection upon whether that's the correct result. In that particular case, it was the workers themselves who filed suit who did not—who had taken the equivalent of a vow of poverty. Had they been, say, Roman Catholic monks in a monastery, also performing commercial tasks, making jam, you know, doing the various things that monks traditionally do, they would have, there would have been no requirement that they violate their oath of poverty.

I think that it is somewhat questionable for the Government to say that if you're a Roman Catholic monk, we'll respect your vow of poverty, but if you belong to one of these rather new, you know, strange religions that we haven't heard of before, and you have the equivalent practice, that you should not. That's my problem with the very position that I took in the Supreme Court.

Senator DURBIN. My time has expired.

Mr. Chairman, I would like to stay and ask some more questions because some of the responses have not been consistent with your writings earlier, and I would like to clarify those.

Thank you, Mr. Chairman.

Chairman LEAHY. Of course, Senators on either side will be permitted to ask whatever questions they wish.

The Senator from Pennsylvania?

Senator SPECTER. Professor McConnell, the concern boils down to whether your own views, as expressed in your professorial writings, would be reflected in your judicial decisions, contrasted with the law, as articulated by the Supreme Court of the United States.

On the issue of *Roe* v. *Wade*, you have been very, very explicit in disagreeing with the case. It doesn't mean you won't follow it, but your language is very, very strong—the right of privacy is nowhere mentioned in the Constitution. Various judges, according to the Court, had found at least the roots of that right in the First Amendment, and the penumbra of the Bill of Rights, and the Ninth Amendment or in the concept of liberty guaranteed by the first section of the Fourteenth Amendment.

This vague statement is tantamount to confessing the Court did not care much where in the Constitution this supposed right might be found. All that mattered was that it be broad enough to encompass abortion, and you quote the former dean of the Stanford Law School, John Hart Ely, a supporter of abortion rights, who has written that *Roe* is "not constitutional law and gives almost no sense of an obligation to try to be."

We all know that the Constitution has evolved, constitutional interpretation has evolved, as Justice Cardozo put it, to reflect the morals and standards of the people in an evolving context.

Brown v. *Mississippi* in the late 1930s was a sharp abrogation of federalism, where the Supreme Court of the United States stepped in to say that due process prohibited coercive tactics in extracting a confession, and the whole series of cases on *Mapp* v. *Ohio* on search and seizure, and *Miranda* on confessions, and right to counsel case. So that all of these have expanded the view of constitutional interpretation.

In the context of where constitutional interpretation has evolved, isn't that really the accepted standard for what the Court has interpreted the Constitution to be?

Mr. MCCONNELL. Senator, obviously, my academic criticisms of the legal reasoning in *Roe* v. *Wade* are very well known. I hope that they have, and believe that they have, helped generations of students grapple with these. In my line of work, we actually still debate old cases, and we try to work through what the arguments were even when they are settled, but underlying all of this is a much more important principle, and that is the principle of the rule of law and the constrained role of the judge.

I can tell you, as with as much conviction as I have for anything, that I will serve, of course with the agreement of this committee, I will serve as a judge committed to the rule of law, not just because I have to, but because I believe that is the right role.

Senator I doubt that—I know that with respect to any given issue, I've written on a lot of controversial things, there's probably no Senator on this committee who would not disagree with me strongly on one thing or another as an original matter, but there's something that I really would like—I think I can assure every member of this committee you will be pleased with the way I conduct the judicial office, that I pledge to respect, enforce fairly, with absolutely the least humanly possible influence from my own personal views, I will enforce the law. I will do it fairly, I will do it even-handedly.

I'd like to think, Senator, that this is the reason why so many people, with whom I've worked closely and with whom I often have disagreed on particular issues, but who know my work as an academic and as an appellate lawyer, have come before this committee through letters to endorse that.

Senator I think of myself as a fair-minded person, but I especially know myself to be a person committed to rule by law and not by the personal views of the judges, whether those views are moral or philosophical or religious or whatever they happen to be. This is a country committed to judging by the law, and I am absolutely committed to that.

Senator SPECTER. Well, that's a strong statement, and I appreciate it. You'll follow the rule of law, as opposed to your personal views. What you have said about the Supreme Court's decision in *Roe* v. *Wade* is that the justices did not follow the rule of law, they followed their own personal views. Isn't that the long and short of your analysis of *Roe* v. *Wade*?

Mr. MCCONNELL. Yes, Senator. Nonetheless, not only was *Roe* v. *Wade* decided by the Supreme authority, but a lot has happened in

the 26/27, however many years it's been since *Roe* v. *Wade*. That decision has now, it has been considered, it has been reconsidered and reaffirmed now by justices appointed by Presidents Nixon, Ford, Reagan, Bush, Clinton, after very serious reargument. At the time when *Roe* v. *Wade* came down, it was striking down the statutes of at least 45, if not all 50 of the States of the Union. Today it is much more reflective of the consensus of the American people on the subject.

I believe that the doctrinal analysis offered in *Planned Parenthood* v. *Casey* has connected the right much more persuasively to traditional legal materials, and then the weight of stare decisis simply indicates that this is an issue that is settled. It is as thoroughly settled as any issue in current constitutional law.

Senator SPECTER. Well, long after it was thoroughly settled, you continued to write about it in a critical way.

Mr. MCCONNELL. Senator——

Senator SPECTER. That's a professorial prerogative and not indicative of what you do as a judge?

Mr. MCCONNELL. Senator, in my line of work, we're still arguing *Marbury* v. *Madison*.

[Laughter.]

Senator SPECTER. Well, how about *Marbury* v. *Madison*?

[Laughter.]

Mr. MCCONNELL. I have written that I think it was rightly decided, and in fact I am currently writing quite a lengthy article on some of the historical aspects of the case.

Senator SPECTER. Be careful. We may have a couple of Senators who disagree with you on that.

[Laughter.]

Mr. MCCONNELL. Senator, may I expand on that for just a——

Senator SPECTER. Sure.

Mr. MCCONNELL. I don't want to take up too much time, but there really is a difference between what we as academics do and what lawyers do and what judges do. As academics, what we try to do is write—the words that are praise for an academic are such things as "provocative" or "innovative" or "a new way of thinking" about something.

We debate and we redebate things that are already settled because that isn't the issue for us; it's the underlying logic of the matter. And we think that in this play of debate between people who disagree that we're all going to come to a better understanding.

I have participated in that, but that means that I have a whole bunch of writings out there that were provocative, and innovative, and taking a different view. Well, within—my academic colleagues understand that that's what we do. If you try to make those look as though they are legal analysis, as if they were what a lawyer thinks the law is, of course they don't reflect the law. They're not meant to. They're not a description of the law.

There are some things that I have written that are legal analysis in the sense of what do the statutes, and precedents, and so forth, mean. In those I think you will find—I hope you will find—that I am extremely scrupulous in the statement of precedent, the following of precedent, the carrying through of precedent.

Of course, in my academic writings I have criticized unanimous Supreme Court decisions, but we all do that in my line of work.

Senator SPECTER. Professor McConnell, the red light went on in the middle of your last answer. The chairman says I should go on.

I am glad to know your position on *Marbury* v. *Madison* because when then–Judge Scalia was up for confirmation, he wouldn't tell us his position on *Marbury* v. *Madison*. That's a true story. You don't get many out of Washington, but that's a true story.

Mr. MCCONNELL. Well, he may not have taken a position on it as I have.

Senator SPECTER. On the issue of First Amendment freedom of religion, are your personal views at variance with the decisions of the Supreme Court of the United States?

Mr. MCCONNELL. Alas, Senator, they are. When the United States Supreme Court decided *Employment Division* v. *Smith* in 1990, I wrote an article very strongly criticizing that decision. I still believe that it was incorrectly decided. I think many members of Congress agreed with that because that was the premise for the passage—I believe it passed the Senate 98 to nothing—of the Religious Freedom Restoration Act. The Court has now struck that down. I am not pleased with that. I criticized that decision as well. But, nonetheless, as a judge, I will be required to apply the law as the Supreme Court has stated it.

Senator SPECTER. Well, that's the critical question, that you are prepared to give the Senate your assurance that notwithstanding your personal views, which have been expressed in a number of contexts on the First Amendment, that you are prepared to accept those decisions and follow them without letting your personal views intrude in any way on your judicial function?

Mr. MCCONNELL. Without equivocation, Senator, absolutely.

Senator SPECTER. Thank you, Professor McConnell.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you, Senator Specter.

Senator Feingold?

Senator FEINGOLD. Thank you, Mr. Chairman.

First, Professor, congratulations, and I take to heart your comments about the role of a professor versus the role of a judge, and so my first question relates to the fact that you would become a very high-ranking judge in our system. Some argue that this committee should give less- searching examination of the records of nominees to the Circuit Courts because they are bound by Supreme Court precedent, and I surely agree that the standard of review, if you will, should be stricter for the Supreme Court.

But given that the Supreme Court reviews only a very small percentage of the decisions of the Court of Appeals, do you agree that Court of Appeals judges have a significant impact on the development of the law, even within the bounds of Supreme Court precedent?

Mr. MCCONNELL. Yes, Senator.

Senator FEINGOLD. You've written articles that analyze and criticize lower court's opinions, correct?

Mr. MCCONNELL. Yes.

Senator FEINGOLD. And so obviously we're not just confirming automatons here, we're talking about judges with a lot of power and the final word in many, many cases; is that correct?

Mr. MCCONNELL. That's correct.

Senator FEINGOLD. I'd like to ask a more specific question. As we've seen, you are a very prolific writer. You've written on a wide variety of topics in both legal journals and the popular press. When you take on a new issue, how do you educate yourself on it before writing? Do you read a lot of source documents, and do you speak to other experts in the field?

Mr. MCCONNELL. Senator, it really depends. Some of the things that I work on are in-depth, scholarly pieces, in which case it is not infrequent that I work on them for several years before I send them out for publication, and it is my practice, whenever possible, and it usually is possible, to circulate them widely among other academic colleagues and get their comments and suggestions. I particularly seek out people whom I think will disagree with the argument because their comments are the best, always the most helpful.

There are other things that I would do that would be in a more casual vein, where I would be less-inclined to go through that process.

Senator FEINGOLD. The reason I ask is I want to ask you about an article you wrote for the Wall Street Journal in December 1997 called, "A Constitutional Campaign Finance Plan." Had you written about campaign finance law previously, and what did you do to educate yourself on that article?

Mr. MCCONNELL. Senator, I think that all that I have written, I've written two op-edish pieces on that general subject, the bulk of which were tossing out what I thought were interesting possible ideas for dealing with the campaign finance reform problem. I would not call these—these were not the product of enormous study. They were more in the nature of ideas.

Senator FEINGOLD. You're right. You made a number of proposals in your article which you say are "a big improvement over McCain–Feingold, which cannot possibly pass Congress, and would likely, and rightly, be struck down by the Supreme Court if it did pass."

Well, let me first say that I hope you are as poor a prognosticator in the court case as you were on the bill's prospects for enactment, but I'm mostly just kidding you there.

Let me read you something else you said about the bill, and this is really what I'm getting at. That was just an aside.

You said, "McCain–Feingold, for example, would make it a crime to run an advertisement stating your views on the candidate within 60 days of the election. Under no coherent reading of the Constitution could it be permissible to prohibit citizens and voluntary associations from attempting to persuade their fellow citizens how to vote. This is the very core of the First Amendment."

I agree completely with the end of that statement, but as for the first sentence, where you say that McCain–Feingold would make it a crime to run an advertisement stating your views on the candidate within 60 days of the election, that was completely untrue in the 1997 version of our bill and in the bill that passed.

So my first question is, and I'm serious about this, is did you actually read the bill before you wrote this article?

Mr. MCCONNELL. Senator, I'm certainly aware that that was not in the bill that passed, and I have noticed that, and since that's the only constitutional issue that seemed to me settled by precedent, I think that the new bill is certainly better than what I had understood the act to be.

I, frankly, don't remember what I looked at. I may very well have relied upon press reports about the contents of the bill.

Senator FEINGOLD. I appreciate your——

Mr. MCCONNELL. And if I misconstrued it, Senator, I'm sorry, and that's all I can say.

Senator FEINGOLD. I appreciate that answer because I've got to tell you that the myth is out there that is central to the opposition to the McCain–Feingold law, which is this completely falsehood that the bill bans any ads at all. It does have an impact on the financing of ads within 60 days.

I do have to say, and I have enormous respect for you and all of the people that have supported you, somebody with your credibility and academic standing to continue this notion that somehow this law bans ads is a problem.

Mr. MCCONNELL. Well, I certainly was aware that it was not part of the bill as enacted.

Senator FEINGOLD. Well, there are those that are still saying that. In fact, that's the basis of a lot of the talk about the Supreme Court case, suggests that the so-called Snowe–Jeffords provisions ban ads. It is false, and I appreciate the fact that you were candid enough to concede that that would be a false interpretation.

Another thing you said in your article was that the central provision of the bill that you said would likely be struck down by the Supreme Court is a ban on so-called soft money. And you actually recognize in your article that the *Buckley* decision allows Congress to design laws to combat corruption, and the example of corruption that you give in your article is the contribution of hundreds of thousands of dollars of soft money by Roger Tamraz to the Democratic Party in 1996. You say in the article, "Americans have a right to do what we can to sway public opinion, but not to buy privileged access to our leaders by giving money to their campaigns."

That sure appears to me to be the rationale for belief that the soft-money ban in the bill is constitutional. Do you currently believe that a soft-money ban is constitutional?

Mr. MCCONNELL. Senator, I confess I was not, I'm a little surprised. Could you read that? Because I didn't think that was ever my view.

Senator FEINGOLD. Your view is one that I would agree with on this portion.

Mr. MCCONNELL. Oh, well——

[Laughter.]

Mr. MCCONNELL. I'm greatly relieved.

Senator FEINGOLD. I'm happy about this part.

Mr. MCCONNELL. I'm greatly relieved because I thought that was the case.

Senator FEINGOLD. You indicated that the kind of contribution that Mr. Tamraz gave would be the kind of thing that the Supreme

Court would contemplate as being permissible to be banned as a soft-money contribution. I'm simply asking you if that leads you to the conclusion that, in fact, the ban on soft money in the McCain–Feingold bill is constitutional.

Mr. MCCONNELL. Well, without regard to how I might act on a case coming before me, that's what I—I'm on record on that as my academic opinion.

In that case, I was not talking about fanciful sort of academic theorizing about what the Free Access Clause might look like; I was looking at what *Buckley* v. *Valeo* holds. So that's actually what I would call a legal analysis conclusion, rather than one of our sort of law-professor speculations.

Senator FEINGOLD. Fair enough. In a fairly recent article written in 2000 for a Federalist Society symposium, you were highly critical of the Supreme Court's redistricting cases and of the principle of one person/one vote. Your view, as I understand it, is that the Equal Protection Clause should not have been applied to redistricting decisions because it was not intended by its drafters to cover anything having to do with voting or political rights, and you see one person/one vote as having had deleterious effects on politics.

You write, "In sum, the effect of one person/one vote doctrine has been to favor entrenched partisan, political, unaccountable representation and to exacerbate racial polarization."

You suggest that the Court should have instead relied on the Republican form of Government Clause to invalidate the terrible malapportionment that was the norm in legislative districts in the early 1960s.

I want to first ask you about your theory that a "Republican Form of Government" approach would permit some forms of racial gerrymandering and that this might actually be a good thing. Could you explain that to us?

Mr. MCCONNELL. Senator, I offered several criticisms of the Supreme Court's adoption of equal protection. I offered some historical, and other objections as well, but one of those is that when the right, the voting right, is conceptualized as an individual right to absolutely equal treatment, then it brings to bear a whole set of implications.

One of those implications is what I call in that article the precise mathematical equality problem. In *Karcher* v. *Daggett* the Court was led to strike down a State districting plan where the variations between districts were actually less than the statistical error in the census.

What I have suggested is that, under the Republican Form of Government Clause, and this I'm really drawing upon the ideas expressed by Justice Stewart in those original reapportionment cases, that they would allow some flexibility, not for the massive kind of intentional malapportionment that we used to see, but rather of certain, in a sense, random deviations from mathematical equality that would allow States to continue to follow traditional city, county and other lines which would make political gerrymandering much more difficult.

But, also, I think that the use of equal protection invited the idea that, of course, equal protection is about race, and therefore when

racial considerations come into play in districting, that that violates the Equal Protection Clause.

Under the Republican Form of Government Clause logic, it is legitimate for a majority in the legislature to elevate a submerged minority. What's illegitimate, under the Republican Form of Government Clause, is for a majority to entrench itself in power, but it is not illegitimate to give a heightened voice to a submerged voice within the State. Oftentimes, that will be geographic, as in *Lucas* v. *General Assembly*, a Colorado case, but it could just as well be based upon economic or racial or other considerations.

I think that had the Court gone down this route, that we might have been spared this rather, I think, unfortunate, doctrinally incoherent *Shaw* v. *Reno* line of cases that has interfered with the ability of States to be able to, again, increase the voice of submerged minorities within the State.

Senator FEINGOLD. I thank you for your answers, Professor.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

Now, Professor, this will be a real test of any judicial abilities you may have, having acknowledged the value of parts of McCain–Feingold. We'll now let you answer questions from your namesake, Senator McConnell, who flat-out disagrees with McCain–Feingold.

Mr. MCCONNELL. Can I claim whiplash?

[Laughter.]

Chairman LEAHY. Senator McConnell is a valued and senior member of this committee and delighted to have him here.

Go ahead.

In case you're wondering, Professor McConnell, these are actually new microphones just put in since the recess, and it's because we found the others are probably a little bit more sensitive than we thought, and some of us were finding that our extra–Judicial comments were becoming front-page news.

Mr. MCCONNELL. I think I heard a few of those.

Chairman LEAHY. Yes. Senator Hatch and I were going to take the show on the road, but will you please start the clock over again for Senator McConnell, please.

Senator MCCONNELL. Mr. Chairman, I'm not sure, is it working?

Thank you very much. As the lead plaintiff in the lawsuit seeking to strike down McCain–Feingold, let me suggest that we are, indeed, arguing that the bill criminalizes speech, and we are indeed arguing that the soft-money ban is unconstitutional under the First, Fifth and Tenth Amendments, and I expect if you were hearing the case you would now have to recuse yourself, having already taken a position that Senator Feingold prefers, which leads me to the whole business of following precedent.

We've heard a lot about following precedent on this committee when it's precedence we like. There have been a lot of questions of every nominee about *Roe* v. *Wade*. I can't recall anybody asking a nominee whether precedent was also important in following *Buckley* v. *Valeo*. If following precedent is important for District and Circuit judges, let me ask you, Professor McConnell, we shouldn't just sort of treat it as a cafeteria line, should we, where we sort of pick out the precedence we want to follow and ignore those we don't want to follow?

Mr. MCCONNELL. I think we have to take the sheep with the goats.

Senator MCCONNELL. Well, but *Buckley* v. *Valeo* is——

Mr. MCCONNELL. The sheep with the goats. I hope that's not impertinent when referring to Supreme Court decisions—the acts of genius with the others.

Senator MCCONNELL. *Buckley* v. *Valeo* is no less a Supreme Court decision than *Roe* v. *Wade*, is it?

Mr. MCCONNELL. Absolutely.

Senator MCCONNELL. With regard to *Roe* v. *Wade*, and the whole issue of professorial critique of decisions, let me just read to you some comments made by someone whose name I will not mention at the beginning in taking a look at *Roe* v. *Wade*. This person said, "*Roe* v. *Wade* sparked public opposition and academic criticism, in part, I believe, because the Court ventured too far in the change it ordered and presented an incomplete jurisdiction for its action. I earlier," this person says, "I earlier observed that in my judgment *Roe* ventured too far in the change it ordered. I commented at the outset that I believe the Court presented an incomplete justification for its action. *Roe*, I believe, would have been more acceptable as a judicial decision if it had not gone beyond a ruling on the extreme statute before the Court. Heavy-handed judicial interpretation was difficult to justify and appears to have provoked, not resolved, conflict."

This was in a law journal article in 1985, and the author of it was Ruth Bader Ginsburg. So it seems to me we can stipulate that professors make a living critiquing decisions, and in many instances being somewhat provocative. But the fundamental point here, I assume, Professor McConnell, is that once the Supreme Court speaks, as a Circuit judge, you have little latitude, do you, in interpreting, you know, in upholding a decision that's clearly within the precedent.

Mr. MCCONNELL. That is right, Senator.

Senator MCCONNELL. I might say that I would like to claim kinship with Professor McConnell. In fact he is from my hometown, went to Waggener High School. His mother still lives there. Regretfully we are not related, but I wish we were. And in spite of our apparent difference here on McCain–Feingold, that issue will be resolved by judges other than yourself, and unlike some of my colleagues on the other side, I'm not a one-issue voter here, and I'm inclined obviously to support you because your credentials are outstanding in every respect. I think this is one of the great—the President has made a number of truly outstanding nominations and yours is certainly near the top of the list.

Mr. MCCONNELL. Thank you very much.

Senator MCCONNELL. So I certainly intend to support your nomination and look forward to its coming to the floor on the Senate where it can be confirmed.

Mr. MCCONNELL. Thank you. And, Senator, I doubt that there is any member of any committee where would not have rather serious differences, but it is my real hope that if I am confirmed that every member of this Committee is going to be able to look at my career and say that this was a good thing today, because I have the ambi-

tion not to have any particular agenda, but simply to be a model, a model rule-of-law judge. That is what I want to be.

Chairman LEAHY. But I think that people do set those differences aside. I have so far voted on 84 or 85 judges, each one of whom have had some points I disagreed on before this Committee. So I think we always look at these questions as totality. I must disagree with my friend, Mitch. I have never heard, in my 28 years in this Committee, any Senator, Republican or Democrat. say they are going to make up their mind on a judicial nominee on one issue.

Senator Schumer.

STATEMENT OF HON. CHARLES E. SCHUMER, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator SCHUMER. Thank you, Mr. Chairman. Thank you for holding these hearings. And I have to say I think this is a very interesting outstanding hearing. It is the kind of hearing that we should be having. I think there was a time in the history of this country that we did not hold confirmation hearings for judicial nominees. It is not that Senators did not vote against nominees. That has happened for a long time. But there was not the kind of give and take that we are engaging in today.

And frankly, I would say this to you, Professor McConnell, I know this is long and exhausting for you and all of that, but I think we are doing the country a real service by going through these kinds of dialogues. It would be easy for us to sit up here and read what nominees have said and written and decide whether to consent based on that alone, but I think there is real value in the give and take. I think it has been true, Mr. Chairman, of just about every confirmation hearing that I have been to this year, but I am not sure there is more value in a confirmation hearing in this Congress than on this one today. This one is really excellent, and so I want to thank you for that, and engaging us I dialog and making us think, because this has been an intellectual high-minded, far-ranging hearing, aside from occasional little darts thrown. Only one side thinks about one issue, but other than that, it has been a terrific hearing.

I would also want to note, as others have, Professor McConnell, you can tell a lot by the company you keep, and you have a lot of people on your side: Orrin Hatch; I read a very well-argued piece by Cass Sunstein, a man I have tremendous respect for and who has been basically very much in accord with my view that ideological views should matter as we vote on judges. So you come well recommended. And you have a long track record as well, unlike other nominees, who we do not have any idea how they think, you have written a lot about a lot of subjects. By your admission a few minutes ago, you have tried to be provocative. Very well, you have succeeded very, very well in that regard.

And you think out of the box. I think after reading some of your writings and hearing about you on newly-decided issues, I think there is very little doubt in my mind that no one could prejudge how you are going to come out on some of them. These are on newly-decided issues because you do have that kind of thinking. And I think people like that should be on our courts.

But I am worried about one thing here. Yes, we want people in a sense who have new and creative ways of thinking, but we do not want people who ignore the law when they think it is wrong. That is not what our judicial system is all about. That is activism. For a long time people sort of on your side of the political spectrum were angry at activists because they thought they were making new law from the left. Now I think the trend is the other way. Lots of people think new law is being made from the right. I would argue the motivations of people, and the former wanted to go forward, and these folks want to go backward, but that's a characterization that we will leave to another time.

But it is troubling if somebody does just basically believe that they can ignore the law. And I am really troubled—Senator Leahy touched on this, but I would like to go further—by your article on Judge Sprizzo's case, called "Breaking the Law, Bending the Law." It was written in the June/July edition, 1997 of "First Things," I guess. Is that the name of the publication?

Mr. MCCONNELL. Yes.

Senator SCHUMER. And I just reread the article, and basically you praised Judge Sprizzo for the concept of judicial nullification, judges substituting their personal beliefs for the law as defined by Congress or a higher court. Now that is a pretty far out idea. I will let you answer this, but there is another article——

Mr. MCCONNELL. I thought I criticized judicial nullification. I said that there is jury nullification in our system, but that there is no such thing, and should not be such a thing as judge or judicial nullification.

Senator SCHUMER. In this "Breaking the Law, Bending the Law"——

Mr. MCCONNELL. In that very article I'm touching on.

Senator SCHUMER. Yes. You basically say that you show complete sympathy with Judge Sprizzo. Let me read you the opening paragraph then.

"Federal Judge John E. Sprizzo will never again be promoted or advanced, for he has committed an unpardonable act of courage in defense of conscience." I mean, that is pretty—that is the whole tone of the article, that what he did was a great thing.

Mr. MCCONNELL. Please read on. Well, Senator, I——

Senator SCHUMER. You go on to say that he should not have done what Congress wanted, but rather fined the two people who were blocking the clinic $50 I think it was.

Mr. MCCONNELL. What I said is that what he did was not lawful. I said "it cannot be true that individuals may violate court orders with impunity whenever they sincerely believe those orders are morally wrong," and I said it would be "utterly unacceptable to allow such violations only but whenever the judge happened to agree with the violator."

Now, my comment about the $50 was in reference to the prosecutor, of what was actually being asked in this case. This was a peaceful protest in which two priests were saying the rosary in a driveway with, according to the facts of the case, minimal obstruction of the clinic, and the prosecutor wanted to put them in prison for 6 months. I was saying—I was criticizing both the judge, who let them off all together, and also the prosecutor for seeking a sen-

tence so disproportionate to what would ordinarily be given a peaceful protestor——

Senator SCHUMER. That is not how—I read the article as basically encouraging the Sprizzos of the world and saying they did great things. But let me go on here. In the article the redistricting cases, which we touched on before, you say, "When faced with questionable precedents, it is usually better to rethink the precedents than to contrive a way to evade them." That is a far cry, I think, from what you have said today to a number of the witnesses here, where you are basically you will obey, you know, you will follow the precedents. Today you have claimed that if confirmed, when it comes to questionable precedents, despite your earlier position, you will follow the precedent.

And I do not think this is just an academic exercise because here you are arguing what judges ought to do. You were not just reaching, as you said, for a far out, innovative way, but you are saying, let us rethink the precedents. So how do you square that with what you have told the people here today?

Mr. MCCONNELL. Senator, there are two types of—two meanings of precedent. There is the precedent that's set by a higher court to a lower court, and that is absolutely binding, and the lower court may not twist and turn. They may not twist and turn. They may not do anything about it. What I was talking about was the Supreme Court thinking about its own precedents, and there is often a problem in—and I'm by far not the only person to notice this—that when the Supreme Court doesn't really believe in a precedent that it has decided in the past, that it then decides, it distinguishes the case on some often rather spurious ground, and they——

Senator SCHUMER. And after 200 years, right?

Mr. MCCONNELL. And—and they often develop a quite inconsistent body of doctrine, and I'm not talking here about a lower judge, a lower court judge, or as the Constitution calls them, inferior court judges, doing that with respect to Supreme Court precedent. What I'm talking about is a court which has the authority to review its own precedent. Sometimes it's better simply to go back and rethink than to have a bunch of distinctions which lead to an incoherent body of law.

Senator SCHUMER. So you are saying as a Court of Appeals Judge your writings on, quote, "evading precedents" would still remain your advice to Supreme Court Justices, but not to yourself and your fellow Justices on the Court of Appeals?

Mr. MCCONNELL. Well, actually what I'm saying is rather than evade precedents——

Senator SCHUMER. Rather rethink. Sorry, to rethink precedents.

Mr. MCCONNELL. That if a court isn't going to follow the precedent honestly, that it's better to rethink than it is to offer disingenuous distinctions. Now, courts do both and they'll continue to do both. It's the—but it doesn't apply to the hierarchy. It applies to any court including the Tenth Circuit, but it will be the Tenth Circuit with respect to the Tenth Circuit's own precedents, or the Supreme Court with respect to its own precedents. But lower court judges take their orders from the higher court.

Senator SCHUMER. So the article here is simply applying to Supreme Court decisions?

Mr. MCCONNELL. Well, every—yes, Senator. Every case I talk about is Supreme Court in that article.

Senator SCHUMER. Okay. Let me ask you this question. You mentioned earlier that you did not want to answer some specific hypotheticals because the case might come before you. How do you reconcile that with say places where you have taken a clear position in your writings, take FACE? I take it you believe FACE is unconstitutional; is that correct?

Mr. MCCONNELL. Senator, may I address the FACE issue?

Senator SCHUMER. Yes, please.

Mr. MCCONNELL. In a somewhat longer answer. I gave—when I testified—not before this Committee, although there were many Senators on both—on the FACE bill, I was not engaging in an academic exercise. I was engaging in legal analysis. And I identified a series of constitutional defects in the bill as it then existed. I cited in the testimony actual precedent. And members of this Committee must have agreed with my testimony because there were no fewer than 6 significant changes in the bill, and I'd be happy to go through each one of them that was adopted in response to my testimony. The Committee cured the constitutional defects that I identified.

Senator SCHUMER. So you believe FACE is constitutional now as written?

Mr. MCCONNELL. I do. I haven't written that before, but—because my testimony took place having to do with a——

Senator SCHUMER. You said you have written that before or you have not?

Mr. MCCONNELL. No. I said I have not, because my testimony took place regarding an earlier version of the bill, and I like to think that my service to the Committee was useful in that case, even though I don't pretend that the underlying enterprise is one in which I have a lot of sympathy, but in terms of legal analysis, I think I gave it to you straight, and I think that the Committee understood that, and must have agreed with my criticisms.

Senator SCHUMER. So you basically would not rule in a case already decided, the case Sprizzo, you would not say, "Do not impose the sentence the prosecutor asked; overrule and do a $50 fine?" I may remind you, I wrote the FACE law. And people did peaceful protests and were fined or not fined at all, and most of the clinics were shut down by that. They were peaceful. They stood in front of the clinics because they believed they were more right than the law and they were—they would pay their fine and go back and stand in front of the clinic again, and they would pay their fine and go back and stand in front of the clinic again, and they would pay their fine and then go back and stand. They were taking the law into their own hands in a peaceful way but a very serious way that led us to write the law. So I am asking you—that is why the FACE law mandated not $50 fines. Now, these—the two in the case you were there for explicitly violated a court order. It was not an accidental stepping over a line, et cetera. There had been this history at this clinic. The judge had made an order. And they violated the law directly because they thought their view was superior to the law of the land. You still—tell me what you would do there. Would you enforce a more serious sentence that at a lower court was im-

posed, or would you overturn it? That case. So I do not want you to have to——

Mr. MCCONNELL. Senator, as you add more information, certainly I would take that into consideration in determining the actual sanction. I did not suggest in that article that no sanction should be implied. I didn't say that the act was unconstitutional. I did not say that the judge should let them off. And what you have said to me about the—you know, the context of penalties, I do believe that in the case of protest, political protest, that we want—that a judicial system ought to be as lenient as possible, but a gradation of sanctions is obviously appropriate if it's necessary in order to protect other people's rights.

Senator SCHUMER. Let me read you what you wrote here. It said, "Lynch and Moscinski"—if I am pronouncing the name right—"should have been punished for the acts they committed. They should not have been spared because their cause was just. But they should also not be punished more severely because their cause is unpopular. They should have been charged with trespassing on private property"—that is not the charge that they were charged with—"and given the same punishment that is meted out to others who commit the offense in that jurisdiction with comparable damage. I guess a $50 fine would be about right."

I would argue to you that if that happened, we would go back to the days again where 80 percent of the clinics were closed by a very, very small minority of people who took the law into their own hands.

And so I would ask you again, I mean do you think in a situation where Congress has ordered a greater fine, where a lower court—or a greater punishment, where a lower court has ordered a greater punishment, where there has been a willful violation of a court order, not an accidental stepping over the line, that the $50 fine would be about right. I mean you wrote about a specific case. The facts were all available.

Mr. MCCONNELL. Senator, if the—if Congress imposes a particular penalty, that's the penalty that should be imposed by the judge. My understanding is that this is a violation of a court order, and therefore the particular penalty was in the discretion of the judge. I actually—I consider myself informed by what you've said here this morning.

I do think that a gradation of punishments is appropriate, and it may very well be that in the context of continual violations—I don't know that these gentlemen had done it ever before. I don't know what the circumstance was.

Senator SCHUMER. May have been part of a group that had done it, even if they did it for the first time.

Mr. MCCONNELL. In any event, Senator, as to the discretionary setting of punishments, I hear you and I cannot disagree with what you're saying.

Senator SCHUMER. I appreciate that.

Thank you, Mr. Chairman.

Chairman LEAHY. What I would propose doing is having Senator Brownback and Senator Edwards, and then recess until 2:15.

Senator Durbin, does that answer your question?

Senator DURBIN. That is fine.

Chairman LEAHY. Senator Brownback and then Senator Edwards, and then we will recess until 2:15.

Senator BROWNBACK. Thank you, Mr. Chairman. Thank you for holding the hearing. I appreciate you bringing the nominee forward.

Welcome, Professor McConnell. Good to have you here in the Committee.

Mr. MCCONNELL. Thank you, Senator.

Senator BROWNBACK. And it has been a good discussion.

I want to focus you if I could in some questions in the area of law that you are probably best known for your scholarship in, the area of free exercise of religion, and talk some and ask you some questions in that area.

I would note that you have generally sided with the liberal wing of the Supreme Court on this issue, arguing for vigorous protection for the rights of religious minorities, believe in your scholarly writing. One opinion Justice Scalia described McConnell as—this is a quote: "The most prominent scholarly critic." You were put forward.

And so I want to really delve into this area and hear some of your thoughts in this field. As I understand, you have argued that in the establishment of religion, you have argued that religious perspective should be given equal but not favored treatment in the public sphere. Is that correct and would you flesh that out a little bit more about what you mean about should be given equal but then not favored treatment in the public sphere?

Mr. MCCONNELL. Yes, Senator, that is correct, and it is my—it's my view that one of the most fundamental principles of this country was the idea that we would be able to join together people of very widely differing beliefs, many different religious beliefs, but also some with no religion and some with secular beliefs that might be equally held, and that in our system we do not privilege any particular set of beliefs over others, but we also don't show hostility to any set of beliefs over others, that we protect fundamental civil liberties of all, and—and under the Establishment Clause we have a regime which as nearly as possible is neutral among all the various competing world views that we see. This Congress, I think, has acted on that principle very squarely even in legislation, when the courts, quite frankly, were going the other way. I think of the Equal Access Act in 1984 in which Congress insisted that public schools provide equal treatment to all extracurricular student clubs without regard to their political, ideological, or religious content of the speech at those clubs.

I litigated pro bono on behalf of the first group of students to try to enforce the Equal Access Act out in the State of Washington. The Ninth Circuit held the Act unconstitutional. The Supreme Court, in a parallel case affirmed the constitutionality of the Act. I then went back and again it was held—it was argued that the Act violated the Washington Constitution. We again prevailed, and ultimately that club met. And I——

Senator BROWNBACK. What was the factual setting for that club?

Mr. MCCONNELL. This was a public high school in Renton, Washington, and a group of students wanted to have a bible study in the afternoon after school time using empty classrooms. In that high school other organizations were also permitted to meet on that kind

of voluntary basis. But the school district said, "No, you can't meet. If you were meeting to do something else, that would be fine, but we can't have religion—we can't have religious meetings inside the school."

And even after Congress passed the Equal Access Act, the school district continued to take that position, and as I say, the Ninth Circuit held that the school district was right and ultimately the Supreme Court vindicated the rights of the students.

Now, this is not just something for the benefit of religious people. As I say, this is not a—I do not believe in a privileged status for any particular form of belief. In my own home state at East High School in Salt Lake City, an organization called the Gay–Straight Alliance, a group of gay and lesbian and supportive students also tried to form an extracurricular club, and just as in my case in Washington, the school said, "No, you can't do that." And the Equal Access Act was invoked on behalf of the students. I supported that. I believe the Act does apply across the board to people of any set of beliefs. I—much of my work has been on behalf of religious groups, because I think that they tend to, at least in the recent past, maybe somewhat even still, but in the recent past, tended to be the most likely to be excluded, but it's a principle that applies to everyone.

Senator BROWNBACK. I take it, that is, you have a wide base of support amongst legal scholars and lawyers across the country that span the complete ideological spectrum, and I take it, really it is your viewpoints that are so consistent regardless of whether you agree or disagree with the foundation facts in the case, but it is the consistency of your legal arguments that has gathered that kind of legal support that you have amongst scholars across the country.

Mr. MCCONNELL. I try to be consistent. I try to be fair minded. I try to listen to people who disagree and take what they say into account. I—I'm not set in my views. I changed my mind from time to time. I just try to carry ideas to their logical and consistent conclusion rather than starting with any particular place to go.

Senator BROWNBACK. In this line of questioning then, could you give us some of your thoughts on the views on the separation of church and state and what that means for Government funding of secular services such as education, medical car, drug addiction, food and shelter for the poor and the homeless from any service provider wiling to do so, whether they are secular or religious?

Mr. MCCONNELL. Well, Senator, I don't want to get into what might be a hypothetical case that come before the court—might come before the court. If I could just summarize what I have already said and——

Senator BROWNBACK. Please, please.

Mr. MCCONNELL.—and leave it at that. What I have argued is that the Establishment Clause principle in the First Amendment was designed to make sure that the Government does not privilege one religion over another, or indeed religion in general over competing world views, and does not coerce anyone into—coerce and I go farther than that in my writing as to say, to coerce or induce or encourage anyone, contrary to their own natural conscience and predilections to engage in any kind of religious acts. It's a—it's a protection for conscience and a requirement of equal treatment.

But over the years an idea crept in that what that meant was that anything that is connected with Government in some way had to be purely secular, that the separation of church and state was envisioned not as a guarantee against a union, but rather as a kind of—I've used the word hostility—against religious organizations, and it is—what I have said is that when two organizations are equally qualified, equally meet the Government's criteria for providing a social service, and where they do not coerce or induce any unwilling people to participate in a religious service, that they ought to be treated equally.

Senator BROWNBACK. Very good. I appreciate your willingness to come in front of the Committee and put yourself through this lengthy exercise, and I am glad to see the breadth of support that you have, and the unanimous well-qualified from the ABA as well. Look forward to supporting you as you move on forward.

Mr. MCCONNELL. Thank you for your time, Senator.

Senator BROWNBACK. Thank you, Mr. Chairman.

Chairman LEAHY. Thank you, Senator Brownback.

And Senator Edwards, and then after Senator Edwards we will recess.

Senator EDWARDS. Thank you, Mr. McConnell. I have been listening to your testimony off and on. Of course, we have all looked at your record before you arrived here today.

It is obvious that you are well trained in the law and you are a very bright law professor. You have written a number of things which you have been questioned about already this morning, also expressing your strong personal view in opposition to a woman's right to choose. You and I disagree about that. We disagree about it strongly.

But my question is—because I have voted for a number of other nominees who disagreed with me about that issue—but my question is your willingness to follow the law, follow Supreme Court precedent, enforce the Constitution, follow the laws that are passed by the Congress.

Some others have asked you about an article you wrote about a decision, among other things, a decision under the FACE Act. And they have asked you questions about some of the language you used in that article, but I had a specific question about some language that you used. You said that after saying that you believe—if I remember correctly—that the judge's decision finding the people involved not guilty you thought was illegal or something to that effect. You said you could not help but admire what the judge had done, and then you said under the circumstances the judge should have exercised the prerogative of leniency. Tell me what you meant by that.

Mr. MCCONNELL. When setting punishments, especially for violation of court orders, judges have a pretty wide range of possible sanctions, and it is my view, not just for abortion protesters, but for all conscientious, peaceful political protesters, that we should not use the heavy hand of the law.

Now, Senator Schumer made some powerful points to me about the particular context in which a gradation of sanctions may be—may be necessary, but that I don't think is where we should begin. I think political protest in this country has a great history to it—

protesting on the wrong side of issues as well as the right side of issues. But one of the things that has made this country what it is, is a heritage of relative toleration, not always, but relative to most other places on the globe, a toleration for peaceful political protest even in violation of the law. I don't think it ought to be made legal. I think that there ought to be sanctions. I think that Martin Luther King, Junior's arguments on this are persuasive, but I also don't think that we should treat people who are acting out of conscientious desire to communicate their views to their fellow citizens, we shouldn't treat them as hardened criminals. I do think that six months in prison for a first act of peaceful protest is pretty harsh for any—no matter what the protest is about. So that's what I mean.

Senator EDWARDS. But do you think you are influenced in your thinking about that by your personal views about what these people were protesting?

Mr. MCCONNELL. Senator, I don't think I am.

Senator EDWARDS. Well, are you suggesting in any way that a judge should have the prerogative to go outside the confines of what if, for example, were a violation of a congressional act, that the judge should have discretion to go outside the bounds of what Congress has prescribed?

Mr. MCCONNELL. Not at all, Senator, and I mean there's a whole problem, of course, here with the sentencing guidelines, and there's much less discretion in the Federal system with the setting of sentences. I know that many judges find that irksome—not just irksome, but they seriously object to that, and some judges are, you know, engaging in attempts to get around the guidelines. I'm not—well, whatever I think about the guidelines one way or the other, I absolutely do not approve of Federal judges failing to carry out the—the legislative will of Congress.

Senator EDWARDS. One of the things that you talked about or made reference to this morning is the importance of someone in your position as a law professor, and of course this would also apply to a judge, looking at the application of the law and the reasoning in court decisions in a fair-minded, objective, honest and credible way. I want to ask you about an article you wrote, which I know you talked about some already, in 1998 entitled "*Roe* v. *Wade* at 25: Still Illegitimate." You called the reasoning of *Roe*, I am quoting now, "an embarrassment." And then in a 1999 article you said—and this is what I want to focus on—that *Roe* was one of several cases in which, and I am quoting you now, "text, history, constitutional tradition, democratic enactments or precedent played no serious role." That is using your language.

Now, I would first of all tell you that I respectfully disagree with your analysis, but I want to ask you about it. In *Roe*, which you said precedent and constitutional history played no serious role, *Roe*, as you know, was grounded in—it was found that a woman's right to have an abortion was grounded in her right to privacy, and based, at least in part, on the *Griswold* decision, where the Court had held that Connecticut could not keep a couple in the privacy of their own home from using contraceptives. *Griswold*, as I am sure you know as a law professor, was also grounded in any number of precedents including the Poe decision which was written by

Justice Harlan, who I think you have spoken in a very positive way about in the past, very conservative judge. And *Roe* also pointed to a decision, a dissenting decision by, an opinion by Justice Brandeis in 1920, where he said that the right to—where he spoke of the right to privacy as the right most valued by civilized men, and that was the right to be left alone.

Since *Roe* talked about these things, and since *Griswold* was a precedent and since *Griswold* itself relied on a whole history of constitutional analysis, would you tell us, in trying to think about this fairly and objectively, why you said that precedent and constitutional tradition played no serious role in the analysis, when in fact all of those things were in the opinion?

Mr. MCCONNELL. Senator, again, I appreciate that you and I disagree with this, and you know, we could probably talk for quite some time and maybe we'd come closer together or maybe not. I've had experience of talking about this issue with generations of students and colleagues, many of whom disagree. I think it's probably accurate to say that among, even among pro-choice scholars, people who support a constitutional right to abortion, most of them also find the *Roe* opinion to have been analytically quite unsatisfactory, many of them for reasons very similar to what I've said. There's practically a cottage industry among law professors of supplying alternative rationales that might make a little bit more sense of *Roe* v. *Wade*, particularly based upon equal protection. Akhil Amar has made a 13th Amendment argument, and there are a whole range of theories of people trying to supply the weakness.

I personally believe that the joint opinion in *Planned Parenthood* v. *Casey* did a significantly better job at connecting the right to the constitutional text, to actual practice, and then of course precedent, because *Roe* v. *Wade* was already on the books, and so stare decisis played an enormously key role in *Planned Parenthood* v. *Casey*.

Now, I'm happy to explore with you the academic reasons why those—why I and so many other people have found the *Roe* opinion unsatisfactory if you think that would be productive.

Senator EDWARDS. Well, I guess my—let me just be direct about it. My concern is that, is not that you disagree with some of the analysis and the opinion. As a law professor, that is part of what you do, is you critique these things, and you are certainly entitled to do that. I guess my concern is the fact that you went so far as to say that those things, including precedent, played no serious role in the decision when it is obvious that the decision relied upon a right to privacy which was grounded in *Griswold*, grounded in previous precedent. It seemed like a fairly extreme statement to me. That was my reaction. That is why I am asking about it.

Mr. MCCONNELL. Well, Senator, if you look at the various precedents cited in *Roe*, they're all rather far afield from a right to terminate a pregnancy, including *Griswold* itself, because *Griswold* did not involve any claim that there was another being on the other side, which the state is entitled to expend protection to, and that's really the key question in *Roe* for everybody I think, is, is there something on the other side of the equation. Now, that's why the citation of precedents in that case are—it doesn't work very well, because it was genuinely a case of first impression. Yes, the Court cites some precedents, but the precedents are so distant and

so easily distinguishable that it's—I think it's really not intellectually easy to say that *Roe* follows from those precedents. It's not inconsistent with those precedents, but to say that itactually is compelled by those precedents is something I don't think most prochoice scholars would be willing to tell you. I mean maybe some, but I don't think that's even the prevailing view among who support the bottom line.

Senator EDWARDS. Let me ask you one last question because my time is up. What would you say to someone who had a case, assuming you were sitting on the court, who had a case coming before you as a judge sitting on the court, involving what they believe to be their constitutional right under *Roe*, knowing that you had written all these opinions critical of the analysis in *Roe*, knowing that you have strong personal views about a woman's right to choose which you have expressed vigorously; what would you say to a woman who had a case coming before your court, to reassure her that you would in fact enforce the constitutional protection in *Roe*?

Mr. MCCONNELL. Senator, I could say—and I believe this absolutely sincerely—that McConnell—we're talking about a third person, right, advising someone who might come before this character—that McConnell is a judge who plays it straight. That's what I'm committed to. May I just give an example from my own work? People have been citing my controversial articles, but no one has cited my article in which I criticize the Supreme Court——

Senator EDWARDS. Can I stop you? I will let you explain. I am not going to cut you off. I will let you finish. But specifically a woman who had a case in front of you involving——

Mr. MCCONNELL. I'm making a specific—I'm addressing it specifically, because no one's mentioned where I criticize, say it is wrong. This is an unequivocal argument on my part that the Supreme Court was wrong when it held that public hospitals can constitutionally forbid doctors to perform abortions within their facilities. I argued that on the heuristic, *Roe* is of course settled law, noting in a footnote that I don't agree with it, but nonetheless that's the basis for the argument. And once you hold that that is the right, when you put that together with constitutional law from some other areas having to do with equal access to public facilities and when a public facility is entitled to selectively open itself, I come to the conclusion that a public hospital may not forbid doctors to perform abortions within it.

Senator I just offer that to you as an example. I wrote that back in 1991 in the Harvard Law Review, and it's an example of when I am engaged in trying to figure out where the law leads. It leads where it leads. It doesn't necessarily lead where I would like it to go.

Senator EDWARDS. Thank you, Professor.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you. I was going to recess at this point, but Senator Hatch said he had one question he wanted to ask.

Senator HATCH. Thank you, Mr. Chairman.

Let me just ask you one question. Professor McConnell, is it not true that many respected liberal judges and professors have criticized the Supreme Court's ruling or reasoning, I should say, in *Roe* v. *Wade*, including those who are committed to it as a policy matter

and who are committed to abortion rights? I cite, for example, Justice Ruth Bader Ginsburg. She called *Roe*, "heavy-handed judicial intervention," that, "was difficult to justify." The Senate confirmed Justice Ginsburg to the Supreme Court 96 to 3. 6 of the 10 Democrats currently on the Committee voted for her.

Another example is former Stanford Dean John Hart Ely, who strongly——

Mr. MCCONNELL. The Senator is absolutely——

Senator HATCH. Let me just finish, who strongly favors abortion rights, but who has written that *Roe* "is not constitutional law and gives almost no sense of an obligation to try to be." Archibald Cox was highly critical, although he was favorable to abortion rights.

So is it not true that there is a difference between criticizing it and upholding the law as a judge?

Mr. MCCONNELL. Absolutely, and among legal scholars, you know, criticism of *Roe* v. *Wade* is not an unusual thing. And again, even among people who support it, a lot of people have the following problem. They may strongly believe that this is, in the interest of society and expands freedom and privacy, but where you have very contentious social issues, moral issues upon which people of goodwill disagree, and the Nation has not had—come to a consensus, to say that a court comes in and decides that taking it out of the hands of Congress or the legislatures, and decides for one side or the other, is very troubling to a lot of people who are committed to democratic—to a basically democratic system of Government, governed by where we have constitutional norms, but where the judges are not appointed to impose their own views. Where there isn't tolerably clear constitutional text precedent, history, et cetera, on the other side, mostly legislatures and Congress get to make these determinations.

Senator HATCH. Thank you.

Chairman LEAHY. Thank you, Senator Hatch.

Thank you, Professor, and we will stand in recess until 2:15.

[Recess at 12:47 p.m.]

AFTERNOON SESSION [2:20 p.m.]

Chairman LEAHY. I hope you got a chance to get a bite to eat. There are areas of such epicurean delight in the Senate. If any of you get invited to the Senator's dining room, you should know that the food is so-so, but it's a nice spot. I didn't get a chance to get to any of them.

We will go to Senator Durbin who has follow-up questions. We will go to Senator Durbin. The idea is to go to about 3:00 with Senator McConnell. If there are further questions, we will break to go to the District Court judges.

Senator Durbin?

Senator DURBIN. Thank you, Chairman Leahy, and thank you, Professor McConnell.

I came back because some of the answers that I heard this morning worry me, trouble me, and I want to give you every chance to express your point of view clearly to this committee and certainly to do your best to resolve any misunderstanding that I may have.

I think anyone who comes to this room brings a life experience and many different roles, and you certainly are such a person. As a law school professor, I would assume that you try to teach your

class both sides of the issue, so they can understand how the law has been derived. As a legal advocate, which you have been, you argue your client's case, and I've done that myself. Though I may not have agreed with my client at every turn of the road, I had a professional obligation to argue, as convincingly as possible, their point of view.

You also come as a nominee. In that respect, I think we are trying to, at least I'm trying to, get an insight into what your core beliefs are and whether they are, as you said, whether they fall within the legitimate range of opinion about the Constitution.

The area that I turn to for I think the most unvarnished version of your actual belief, and values, and philosophy are your writings because, in that case, you're not a professor, you're not a legal advocate, you're expressing what I believe to be in your mind and heart about an issue, and that's why some of the answers you've given me this morning trouble me, because they are inconsistent with what you've written about some of these cases.

I want to return to the whole question about religion, which is an issue that I care about very, very deeply. My mother was an immigrant to this country. Her mother brought with her a small prayer book from her native land that was banned by the Government. She stuck it in the bottom of her suitcase and brought it out, facing the possibility of prosecution in that land, but wanting to have a chance to bring it to America. She didn't want the Government telling her how to practice her religion, and I've felt very intensely about that ever since my mother told me that story as a very young boy, and I treasure that prayer book like nothing else in this world.

Let me go to this issue, though, of religion, and whether or not religious belief trumps or overrules criminal law.

The issue of polygamy which came up in the *Reynolds* case, I thought you said earlier today that you believe that simply adhering to a religious belief does not exempt you from obeying the laws of the land, particularly its criminal laws. And yet in one of your writings and what it would mean to have a First Amendment, you talk about this *Reynolds* v. United States case, in which a Mormon unsuccessfully asserted the right to marry multiple wives in accordance with the dictates of his religion. The Supreme Court unanimously rejected the claim.

Then you go on to say most interestingly, "Since many of us believe the *Reynolds* case was wrongly decided, even if *Reynolds* had won, a victory would not suggest the State is required to change the contours of its marriage laws." You conclude by saying of the defendant, the criminal defendant, "He only asked that the Government leave him and his wives alone."

Square this with me. Tell me how the criminal laws will apply, even if they are not consistent with a person's religious beliefs and you can conclude that the decision in *Reynolds* was wrongly decided.

Mr. MCCONNELL. Senator, for well over 100 years, the Supreme Court has grappled with this question. *Reynolds* was the first case in the Supreme Court raising the question. There have been a number—the Smith case was quite recent. Many of those involve criminal laws. The rule has never been that religious views trump the criminal law, but the rule also has never been that there are

no criminal laws which are unconstitutional under the First Amendment.

Some criminal laws are unconstitutional under the First Amendment. For example, had your mother been prosecuted for the crime of carrying that prayer book, she would have had, under our system of freedom of religion, she would have had a trump. She would have been able to say, "No, it's unconstitutional for the Government to do that to me."

Senator DURBIN. So was this law unconstitutional, the law banning polygamy?

Mr. MCCONNELL. It's an extremely common view among legal academics that the law in *Reynolds* was, in fact, unconstitutional. I've actually gone back and forth on that. I think that there's some justifications for it, but I don't have any problem saying, ultimately, that it was unconstitutional.

Senator DURBIN. Well, let me ask you further, as I asked you this morning, take it to the next step——

Mr. MCCONNELL. I think many civil libertarians believe that.

Senator DURBIN. Beyond the issue of polygamy, the abuses we are seeing are involving marrying girls who are 13—or marrying and taking partners—who are 13 and 14 years old, clearly, another violation of existing criminal laws. Are those laws, involving this sexual contact with minors, are they, too, unconstitutional?

Mr. MCCONNELL. It in no way follows, Senator. It's an entirely different case whether, as in the *Reynolds* case, his relationship with other adults, mutually consenting, was going to be punished versus what amounts to child abuse, which is an extremely serious offense under the criminal laws, which certainly constitutes a core aspect of the criminal laws. The two things are, I think, simply not comparable.

Senator DURBIN. Then let's move to another issue—racial discrimination; in this case, the Bob Jones University case involving the tax benefits that they were seeking and whether or not Bob Jones was entitled to have those because of their policies against interracial dating of their students.

The Court came down very strongly on the side of not providing the tax break to the university because of its racial discrimination. You came down very strongly on the other side of that issue. Can you reason that for me as to why a university could discriminate based on race and still receive preferred treatment based on its religious belief?

Mr. MCCONNELL. Senator, as you know from reading these materials, I have not actually written on the *Bob Jones* case, per se. What I have done is I have written about general questions of free exercise jurisprudence and how those principles ought to apply. I certainly believe that *Bob Jones* University had what we call a prima facie free exercise claim.

Senator DURBIN. But you referred to that decision as notorious, the heavy hand of Government, and then in a publication entitled, "Religion Clauses of the First Amendment," you wrote, "Churches should be allowed to follow their own lights in matters of doctrine and organization, lest their vital role as counters to Government power be sacrificed. This means the church teachings must, on occasion, be tolerated, even when they are abhorrent, like the racial

doctrines of a *Bob Jones* University. Liberty is not limited to things that matter little."

Mr. MCCONNELL. Yes, and I absolutely believe that. Let me tell you what I think the contours are here of agreement and disagreement.

The Supreme Court did not hold that the Government can prevent *Bob Jones*, or any similar institution, from following it, that they do have a free exercise right against actual Government compulsion. That, I think, is fairly clear, I think, basically, undisputed. On the other side, it is also very clear that any institution receiving Federal financial assistance is barred from discriminating, and the reason for that is that Congress has passed a statute; namely, Title VI of the Civil Rights Act of 1964, that says that, and that statute constitutes a compelling governmental interest. I think it's also clear, essentially undisputed, that any institution receiving Federal financial assistance is barred from all forms of racial discrimination.

The reason the *Bob Jones* case is very difficult is that it is about tax exemptions, and they occupy a very strange intermediate position. Let me give you a practical example. Orthodox Jewish synagogues segregate their congregations according to sex. They are tax-exempt organizations. If we simply take the broad view that any organization that is receiving a tax exemption is like, it's as if they were receiving actual Federal financial assistance, Orthodox Jewish synagogues would be deprived of their tax-exempt status.

Senator DURBIN. I'd like to take that line of thinking and now shift it over to the question of privacy because what I hear you saying is that when it comes to issue of conscience and religion, that Government has to take care not to intrude into those beliefs. We have drawn some lines here where you believe that a polygamy law or a crime of polygamy could be unconstitutional, based on beliefs of certain religions in favor of polygamy, you wouldn't go so far as to include child abuse in those, and we've talked about tax status.

Now let's shift it over from the religious context to the individual context, and I find you troubled by the concept of the right of privacy of individuals in this country, rights of personal conscience, rather than religious conscience, and the best you could concede for Chairman Leahy was that it is settled constitutional law that there is a right to privacy. Your writings suggest that it may be settled in the Court, but it's not settled in your mind.

And the question arises, from my point of view, when it comes to basic and fundamental questions involving a woman's right to choose, a couple's right to buy contraceptives, and personal and private conduct between married adults, for example, you seem to be troubled by this whole notion of privacy; in other words, that the Government has more power when it comes into this arena of personal conscience than it would in areas of religious conscience. How do you make that distinction?

Mr. MCCONNELL. Senator, the reason why the abortion question is so difficult, and unlike the contraceptive question, where I have written in defense of the Supreme Court's decisions, the reason why the abortion question is so difficult for many of us, and I'm not talking about just the extremes here, I'm talking about many conscientious Americans, is that when we say "privacy," we usually

are talking about things that affect only ourselves. There is, at least in the minds of many people, a possibility that an abortion is affecting someone else. That's what makes it——

Senator DURBIN. The premise of *Roe* v. *Wade* is just what you have dismissed.

Mr. MCCONNELL. I have not—excuse me, Senator, I don't mean to be dismissive because I respect your question. I entirely understand the importance of the privacy issue. I'm just saying that for many people that is a very troubling question——

Senator DURBIN. I agree with that.

Mr. MCCONNELL.—and is not quite the same thing as privacy, which is a question that affects no one else, where the Government is just intruding because it doesn't like what you do. So it's a different——

Senator DURBIN. So in cases involving *Roe* v. *Wade*——

Mr. MCCONNELL.—a different case.

Senator DURBIN. I'm sorry. Go ahead.

Mr. MCCONNELL. But I want to return, I'm certainly far from alone in questioning this, but it is the settled law of the land, and one of my most profound commitments is to the rule of law. I am telling you, I assume I'm still under oath, Mr. Chairman, I'm telling you under oath that, with this committee's approval I become a lower court judge, that I will conscientiously enforce the law, including laws and precedents that I don't agree with.

Senator this is something that judges do all of the time. There are many judges who have been confirmed, who have just as strong a belief with respect to capital punishment and think that the Supreme Court was wrong to approve capital punishment, who think that capital punishment is a form of judicial murder, and who are sitting on the Federal courts and are able to fairly and conscientiously enforce the law. I am going to be that kind of judge, Senator.

Senator DURBIN. Professor McConnell, thank you.

Thank you, Mr. Chairman. I would just conclude by saying that the difficulty we face, sitting here, is to try to assume the obvious, and that is that you will abandon beliefs that you have written about through a professional lifetime and that you will then march in lock-step with the so-called rule of law as you see it.

You have to understand that is a troubling thing to try to rationalize, on this side of the committee hearing, as to what will actually be in your heart, and what will motivate you, when close calls come as to whether or not the fact that you have just dismissed the premise of *Roe* v. *Wade*, the privacy of the individual, what impact will that have when the first case shows up that really is a close call under the law. And I think that is the nature of our inquiry here.

Mr. MCCONNELL. I understand that. I'm, in many senses, glad I'm not in your shoes making difficult decisions of that sort, but there is, in my record, I think, evidence that I do, I am willing to accept premises and carry them to their conclusion, even though I don't accept them, and even in this very area.

A lot of my writings have been cited, but I'd like to mention my 1991 Harvard Law Review article, in which I say that the Supreme

Court was wrong when it held that public hospitals may deny the use of their facilities for the performance of abortions.

What I did, and in that article I drop a footnote saying, noting that I have criticized *Roe* as an original matter, but nonetheless, that entire article, and it's quite lengthy, is based upon the acceptance of that and working out a number of subsidiary legal questions having to do with this kind of an issue, and I criticized the Court based upon a combination of the *Roe* precedent and some other areas of constitutional law having to do with equal access to public facilities.

I think that you should be able to look at that and take considerable comfort from that, Senator.

Senator DURBIN. Thank you, Professor.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

Senator Cantwell?

Senator CANTWELL. Good afternoon, Professor McConnell. I appreciate you being here.

Mr. MCCONNELL. Thank you.

Senator CANTWELL. I appreciate some of the good judgment some of your family has shown in living in Washington State and for them being here today.

Chairman LEAHY. If I could interrupt, we'll start the time over again. The nominee seems to have gotten somebody in virtually every State represented around here——

[Laughter.]

Mr. MCCONNELL. There are a lot of McConnells.

Chairman LEAHY.—except for Vermont.

Go ahead, Senator Cantwell.

Senator CANTWELL. Maybe they'll move there soon, Mr. Chairman.

[Laughter.]

Mr. MCCONNELL. But, Senator, my daughters do love Ben and Jerry's.

Chairman LEAHY. I'll give you that point.

[Laughter.]

Senator CANTWELL. I'd like to continue, if I could, along the same line of questioning as it relates to your belief in the Constitution and the right to privacy because I think it's very important for the committee, and maybe important more so because of the fact that you don't have a court record that we can look at and review.

I guess, in looking at this issue, I mean, sometimes it gets down to the basic issue of a woman's right to choose, but when I think of us being in the Information Age, in so many issues, I think that we are just at the tip of the iceberg as it relates to protecting the right to privacy, whether that is protecting individuals from unwanted Government invasions, having your most personal information basically stolen on-line, there's a whole variety of issues that I think it is very important for us to understand where a nominee is, as it relates to their belief in that right to privacy as it exists in the Constitution. Because, fundamentally, if you don't believe that it exists there, as these issues roll out, I think it will be very hard on some of these decisions.

Now both Chairman Leahy, and others, have asked a lot of questions about this, and I guess I keep hearing very well-worded responses, the Supreme Court has said so, I have no hesitations that there are many rights, things that all back up what I think you're saying has been issues that have been decided by the Court. And I guess when I look back on the testimony that I've read before from one nominee, obviously, to the Supreme Court, Justice Thomas, where he said, "I will uphold the law and support what's been in precedent," and then he dissented in *Casey*.

So you can see where this issue, for me, it's a lot easier to understand where a nominee is if they believe that the right exists within the Constitution because that is the framework that they will use, not a case where then they say, Well, this case is different on this particular issue.

So, I guess, if you could just clarify that issue for me, as to whether it is that you are going to follow what has been decided in law or whether you really do believe that that right exists, not based on the Court decisions, but in your interpretation, whether you believe it exists in the Constitution.

Mr. MCCONNELL. I think now you are speaking of privacy more generally——

Senator CANTWELL. Yes.

Mr. MCCONNELL.—not just reproductive freedom, but privacy more generally.

Insofar as we're talking about Government surveillance, there is I think a pretty solid Fourth Amendment basis for privacy doctrine, and I am a quite vigorous civil libertarian on these issues, on these and other issues, and have no difficulty with that whatever.

Now, insofar as we're talking about privacy in the commercial sphere, as in where we have, you know, commercial snooping over the Internet and that sort of thing, those are, of course, not constitutional issues, those are issues for Congress and the State legislatures to pass protective privacy acts and the sort, and I applaud those as a citizen. Obviously, as a judge it's not up to me to decide precisely the contours of congressional action, but as a citizen, I'm entirely for that.

In fact, I think that you will find, if you look at my record—if I can ask you to put the abortion question aside for a moment, and I realize for many people that's like saying don't pay any attention to the 2,000-pound elephant in the room, but if I can ask you to put that aside for a moment, I am in very substantial agreement with most civil liberties groups on issues of speech, and informational privacy, and snooping, and the like.

Even in the first Bush administration, I represented three former Democratic Attorneys General, challenging an extremely high-profile decision, presidential order of the first President Bush, regarding the return of Haitian refugees to lands where they might be facing persecution. This was an issue which was so important to the administration that the Solicitor General was himself arguing the cases in the lower courts, and I was approached by Democratic Attorneys General to take the opposite position in an amicus brief. I do not hesitate to challenge the administration or the Government when it comes to basic civil liberties.

Now I realize that the abortion question is very important. I think it is settled. It is settled. I don't think that's—that's not just my opinion. It is settled law. I am committed to enforcing and obeying that, but I think you will find that in the wider question of civil liberties, including various rights of privacy, that I will be as strong a defender of individual rights as you'll find on the bench.

Senator CANTWELL. Well, I may submit a question in writing to you about the issue of a privacy right, but I'll save that for something that we can correspond on and go back to this as it relates to the specific issue of a woman's right to choose.

In answering a question about *Griswold*, Chairman Leahy asked you about the decision on penumbra of rights. Some people look at the Constitution and say the penumbra of rights exist there and is the basis, and you responded again that you thought the issue had been settled, not so much that you believed in that position that there is a penumbra of rights.

So do you believe that there is a——

Mr. MCCONNELL. I believe that every—I think that every constitutional right carries with it a—penumbra is not a terrible word. Justice Douglas is often mocked for the word, but it's not a terrible word. Every constitutional provision goes a little bit beyond the bare words. We have freedom of speech, but that also includes writing, and communicating through sign language, and it includes a whole—and assembly and a lot of things as well as that.

I have said that, in the *Griswold* case itself where that language was used, and Justice Douglas argued from penumbras, that I, like I think probably the weight of scholarly opinion, find the second Justice Harlan's opinion more persuasive, and I do find it persuasive. This is not a case where I'm saying only that I will follow it because it's settled law. It's a case that I agree with on the merits, but I do agree with it on the basis stated by the second Justice Harlan much more so than Justice Douglas's majority opinion, and I'm not alone in that.

Senator CANTWELL. In your discussion with Senator Edwards on this, as it related to *Griswold*, you said you did not find *Griswold*, and other decisions on the right to be left alone, compelling precedent for *Roe* because the case did not require balancing of right to privacy with something on the other side of the equation. Are you talking about the right of the fetus; is that what you're——

Mr. MCCONNELL. Yes.

Senator CANTWELL. So beyond your academic role. As an activist, you believe that there should be a right.

Mr. MCCONNELL. I've never been an activist, but what I'm——

Senator CANTWELL. I'm saying articulating in an academic role a point of view.

Mr. MCCONNELL. The question in the case involved whether the State of Texas had an interest in protecting what everyone may want to call the fetus. There are many entities, creatures, living and not, that the State can extend protection to, where you have to balance interests. We do that with art, we do it with animals, we do it with a lot of things.

The question is whether, and the question in *Roe* that made it such a hard question, and why people are still debating it in law schools, and around the dinner table, and probably will continue to

debate it for quite some time, even though it's settled as a matter of law, is does the State have any interest in protecting the potentiality of life in the womb. I don't think that's an easy and obvious question.

Senator CANTWELL. In a statement of pro-life principles, I think it was a 1996 document you signed, and I want to understand if I'm interpreting what you just said correctly, "A constitutional amendment is needed, both reversing the doctrines of *Roe* and Casey and establishing the right to life protected by the Fifth and Fourteenth Amendments extended to the unborn child." Is that what you——

Mr. MCCONNELL. Senator, now that the abortion question is completely settled, the only avenue for any change is through constitutional amendment. This is going to take, what, two-thirds votes of both Houses of Congress, three-quarters of the States. Senator, it is not going to happen.

Senator CANTWELL. But do you believe that the fetus should be entitled to protection under the Equal Protection Clause of the Constitution?

Mr. MCCONNELL. I do believe that the State should extend some degree or protection, but I think I've made clear in my writings, and I could identify exactly where, that that does not necessarily entail even criminal protection.

The Supreme Court of the Republic of Germany held that life must be protected from 15 days after conception, but it also held that that protection need not take the form of criminal prohibitions. It just means that the State needs to have some kind of a program to try to reduce and try to extend some degree of legal recognition and protection. That's really what I have in mind, but I'd like to emphasize again that what constitutional amendments I might favor or not really has nothing to do with how I would be able to administer the actual law of the land.

I am perfectly aware of the fact that constitutional amendments are not there, and my job, as a lower court judge, is to follow and enforce the law. I'm utterly committed to doing that, even for laws where I don't agree with the premise and would like to see them changed.

Senator I think that——

Senator CANTWELL. Mr. Chairman, is my time expired?

Chairman LEAHY. We have been trying to make it easy for everybody. So you take extra time, and I will give Senator Sessions extra time.

Senator CANTWELL. I didn't want to cut off Professor McConnell. I did have another question, but I will submit that in writing as well.

Thank you.

Mr. MCCONNELL. Thank you.

Chairman LEAHY. Thank you.

Senator Sessions?

Senator SESSIONS. Mr. Chairman, i just arrived and would like a moment to prepare. So if someone else would like to go ahead, that is fine.

Chairman LEAHY. I will go to Senator Kennedy, then.

Senator SESSIONS. That would be fine.

Chairman LEAHY. Senator Kennedy?

Senator KENNEDY. I will be ready in a moment.

Chairman LEAHY. Senator Cantwell, if you had another question, please go ahead.

Senator CANTWELL. I didn't want you to truncate your answer, inasmuch as I saw our time was expiring and I didn't know whether I was going to be able to get another question in. So I thank the chairman and the committee.

Mr. MCCONNELL. I have been told to be brief. I am just not very good at that.

[Laughter.]

Senator CANTWELL. I notice your family laughed the loudest.

I know you are a member of the Federalist Society, an organization that believes in limiting the power of the Federal Government in deference to legislative acts by the States.

There is an issue that has gotten a lot of attention in the Northwest, particularly an initiative that has been passed in Oregon dealing with permitting physicians to prescribe lethal quantities of drugs in the aid of assisted suicide in very limited circumstances. You may have followed that last fall the Justice Department announced it wold prosecute those physicians who abided by that voter-passed initiative.

So, generally speaking, how much deference do you believe is owned to a popular, approved State law, and are there issues where a Federal constitutional interest is implicated that justifies Federal intervention?

Mr. MCCONNELL. Well, Senator, as you may know, I authored an amicus curiae brief in the Supreme Court case about assisted suicide. That brief states—and it is my view, not just the view of my clients, who happened to be the Chair of the Judiciary Committee of the House and the Senate, but it is my view that this is an issue which should not be nationalized and should be left to experimentation at the State level.

Whether or not I might agree with the particular statute in Oregon, and as a citizen, I don't, I believe that the State of Oregon should be allowed to follow its own policy on that.

Senator CANTWELL. So you believe the Attorney General is taking the wrong legal steps here?

Mr. MCCONNELL. Well, Senator, I am not prepared to say that the Attorney General is violating the law. I simply haven't studied it. I am saying that I think that the principles of federalism——

Senator CANTWELL. You haven't studied what his actions are or——

Mr. MCCONNELL. I haven't studied the legal authority that he has cited for that. But I will say that as a matter of federalism that this seems to me to be an area which is properly left to the States.

Senator CANTWELL. Well, we might provide you with some of the basis for his actions and get further comment on that.

I don't know, Mr. Chairman, if my colleagues are ready.

Chairman LEAHY. I thank Senator Cantwell.

Senator Kennedy?

Senator KENNEDY. Thank you very much, Mr. Chairman, and thank you, Professor McConnell. I will look forward to reading the record. I apologize for being absent this morning. A number of

States had primaries. Massachusetts had one yesterday and we had the gathering process earlier today and I was unable to get back in time for the opening of the hearing, but I will look forward to reading through your responses, particularly the response to Senator Durbin on the *Bob Jones* situation, which I intended to ask you about but I understand that that has been covered.

I wanted, first of all, again to thank you for your help to me when we were trying to ensure that Christian Scientists and other groups would not be discriminated against in our health care system—you were very helpful in terms of drafting legislation that clarified some positions which are in law now. It has made a difference in terms of people's lives, as well as your work with the Religious Freedom Restoration Act.

Mr. MCCONNELL. Yes, and I also worked with your staff on the Native American Free Exercise of Religion Act.

Senator KENNEDY. Which is important.

I don't want to go over the top on this.

[Laughter.]

Chairman LEAHY. Remember, you have to keep votes on this side of the aisle, too.

[Laughter.]

Mr. MCCONNELL. I will stop there.

Senator KENNEDY. So, now, we will get to it a bit. In any event, welcome.

Mr. MCCONNELL. Thank you.

Senator KENNEDY. I want to talk a bit about the FACE Act and then I want to talk a little bit about ENDA and discrimination against gays and lesbians in our society. I know you have addressed some of these issues earlier, but I want to just come back to this.

I know Senator Schumer was the leader in the House, as I was in the Senate, and I am very much aware of the challenges that we were facing prior to the passage of that Act and what it has done in terms of permitting women to exercise their constitutional rights in the more recent times. So I want to explore a little bit your thinking about it.

As you are aware, in 1994 we did pass the Federal Access to Clinics Act to address the explosion of clinical violence around the Nation. The Act makes it a Federal offense to engage in violent and obstructive conduct intended to interfere with people seeking or providing reproductive health services. However, the Act expressly states that it does not prohibit any expressive conduct, including peaceful picketing or other peaceful demonstration protected from legal prohibition by the First Amendment.

You are argued, Professor, in your written testimony to Congress in 1993 that the FACE Act violated the First Amendment, and you made this argument again in a law review article published in the spring of 1994, after the bill had passed both the House and Senate and was headed for a conference committee.

Earlier today, in response to a question by Senator Schumer, you testified that you now believe the FACE Act is constitutional because the committee cured the constitutional defects that were identified.

In fact, as I understand it, the two main constitutional defects that you identified in the FACE Act in your 1993 testimony and your 1994 law review article have not been corrected. I believe that you first argued that the FACE Act imposes a content-based restriction on speech. In other words, you claimed that the FACE Act violates the First Amendment because it deals with reproductive health facilities, but not nuclear power plants or research clinics involved in animal experimentation or other types of situations.

Secondly, you argued that the statute is unconstitutional because it uses constitutionally over-broad terms, such as "intimidates" and "interferes with," even though these terms are used in many Federal statutes, such as the Federal Housing Act, the National Labor Relations Act, and the Federal prohibition on voter intimidation.

So these so-called defects have not been corrected and the FACE Act still addresses only reproductive health facilities. It still contains the term "intimidates" and "interferes with."

Also, I am sure you know the Federal courts of appeals have addressed the First Amendment challenges to the FACE Act and soundly rejected them. These arguments have been rejected by the First, Second, Fourth, Fifth, Seventh, Eighth, Eleventh, and D.C. Circuits. No court has gone the other way.

So let me ask you again, do you stand by what you wrote in 1993 and 1994 regarding the constitutionality of the FACE Act, or have you changed your position?

Mr. MCCONNELL. Senator, I hope I am not mis-remembering, and if I am, please accept my apologies in advance. But my memory—and I do think this is right—is that, in fact, the Senate did address those defects, that the bill was amended to add new and narrower definitions of the terms "physical obstruction," "intimidate," and "interfere with," and that the Act also was amended to deal with the content discrimination problem by adding an amendment offered by Senator Hatch which included within the prohibitions of the bill not just abortion protests, but also protests that were disturbing worship services at churches and synagogues, thus eliminating the argument that this was a bill which addressed only the protest activities of one particular—directed at one particular subject.

Senator KENNEDY. Well, that is not my understanding, although I will go back and look again at the language of it. And I will get back to you if there are these changes and ask you more precisely about how you believe, if there have been words—it is not my understanding, but if there have been, how those words have changed your view about it. I will submit a question.

Mr. MCCONNELL. Thank you, and I hope my memory is correct.

Senator KENNEDY. If you no longer believe the FACE Act is constitutional, then why did you sign in May 1996 a Statement of Pro–Life Principles and Concerns which stated that the Supreme Court's abortion jurisprudence has been used to justify the abridgement of First Amendment free speech rights, as when sidewalk counselors are threatened with legal penalties for proposing protection and care to women in crisis at the crucial moment of decision outside an abortion clinic? This is clearly a reference to the FACE Act.

Mr. MCCONNELL. Well, Senator, there has been legislation in any number of States regarding this subject. Much of that legislation has been challenged, and in many cases challenged by lawyers affiliated with the ACLU. I believe there is a letter in the record from Jim Weinstein, who has been the lawyer for the ACLU in a number of those cases.

And I cannot list chapter and verse as to what has been the disposition of all of those, but there have been a number of efforts in this area and some of them, I think, have been unconstitutional under the First Amendment.

Senator KENNEDY. You continued on: "The penalties are so harsh, the terms so vague and the coverage so sweeping, the statute frightens off lawful as well as unlawful protest. That presumably was its unstated purpose."

Mr. MCCONNELL. And, Senator, you offered an amendment which cut the penalties in half, and that amendment was then accepted by the committee. I assume that at some level you must have—I can't put words into your mouth, but you must have at some level agreed with the criticism that the penalties were too harsh.

Senator KENNEDY. In a 1998 article, you expressed skepticism about the need for laws that protect people from discrimination in the workplace on the basis of their sexual orientation, stating that most of the large and elite institutions of America have already been converted to gay rights. You further argued that it would be wrong for the Government to treat discrimination against gays and lesbians as bigoted and immoral.

In your view, sexual orientation should not be included as part of the general civil rights laws which cover forms of discrimination widely recognized in our society as reprehensible: "If sexual orientation is placed in the same category with racist or sexist action, it inevitably communicates the message that moral disapproval of homosexuality is of the same ilk."

As you may know, very similar arguments were made in opposition to the anti-discrimination provisions in Title VII of the 1964 Civil Rights Act. For example, one Senator criticized the bill as an attempt to deny to millions of employers and employees any freedom to speak or act on the basis of their religious convictions or their deep-rooted preferences for associating or not associating with certain classifications of people. Another Senator described as a thought control bill, since it undertakes to control the thoughts of the American people in respect to racial matters.

Do you believe that your arguments regarding discrimination against gays and lesbians today are conceptually different from the arguments that were made on the Civil Rights Act?

Mr. MCCONNELL. Senator, I have argued, not as a matter of legal analysis, but essentially as a citizen that the best way to proceed on issues of sexual orientation as a Nation is to try to come up with ways in which the legitimate rights, including rights against employment discrimination of gays and lesbians, can be protected, but at the same time to do it in a way which will not force people who have conscientious moral views on the other side to be stigmatized as bigots.

And so, for example, I wrote an op ed piece in my local Salt Lake newspaper encouraging the enactment in Salt Lake of an ordinance

that would protect gays and lesbians against employment discrimination. There is probably more going on in my part of the country on this line that in most.

And what I did is I suggested language which would be—under which these interests would be protected, but would not—but doesn't treat people who have a conscientious and often religiously-based moral objection the other way, as if they are pariahs.

And, Senator, I suspect it is efforts of this sort to try to bridge the gap with respect to these very difficult sexual orientation questions—I suspect that that may be the reason why the Log Cabin Republicans have come out so strongly in favor of my confirmation. They have looked at my record on sexual orientation issues and have believed that I am a nominee that they would like to see confirmed to the court.

Senator KENNEDY. Well, what about disability legislation? There were many people who for years didn't feel that we ought to eliminate many of the barriers in terms of the disability community. Do you have any problem with any of that?

Mr. MCCONNELL. Senator, I haven't written specifically on that, but I have family members who have taken advantage of some of that legislation and I assure you that I have no animus against it whatever.

Senator KENNEDY. It does seem to me that we obviously have some differences, and that is that the forms of discrimination that are out there certainly with regard to race have an entirely different genesis than discrimination with regard to gender. But it is rooted in a type of bigotry and hatred; it has been. We have had to try and pass legislation to try and deal with it. It was also true with regard to the disabled, and we had a lot of difficulty in getting it passed.

It does seem to me that when you see the kinds of crimes that have taken place against gay men and lesbian women and the kinds of viciousness and the crimes of hatred, there is a form of bigotry and hatred in this area, as well.

Mr. MCCONNELL. Undoubtedly, Senator, and I——

Senator KENNEDY. And it does seem at least to me that part of the process in terms of—and there are people that take strong exception to this part of the process of trying to have America be America, freeing us from the forms of discrimination in whatever form and shape they come in.

The difficulty I have is accepting that, well, we can't do that, to the extent that we can in legislation. And no one is saying that legislation is going to solve all of the problems, but to an extent it does help to move a process forward, and it does take leadership, obviously, in other areas.

But not to understand that we are going to have to take steps to knock down walls of discrimination against gays and lesbians because some have views which are antagonistic to this, I find troublesome. I don't want to put words in your mouth, but that is the conclusion I come to.

Mr. MCCONNELL. Well, Senator, there is undoubtedly bigotry and violence, and I have written about that and not only condemned it, but talked about legal doctrines relevant to it.

There are also, however, conscientious moral views of many people. This is not an issue upon which the American people are divided—I mean are united—and it has seemed to me, and it certainly seems to me in the context of my own community in Salt Lake City that the best way to protect against the bigotry and discrimination is by crafting legislation that is less in your face, if you will, legislation that is——

Senator KENNEDY. I know that the time is going along. Let me ask, what is the religious teaching that says that if a person is otherwise qualified they should be discriminated against holding a job that they are perfectly able to perform because they are gay or lesbian; if they are otherwise qualified and the best qualified to hold it, that they should not be permitted to be considered for that job?

Mr. MCCONNELL. Senator, this is precisely the point I have made. We need to separate out moral views about particular conduct from questions like employment discrimination, which need not take a stand on the underlying moral question but can be based instead on the broader, I think, almost universally accepted American principle that in the workplace and in public settings, and so forth, we are entitled to equal treatment, essentially whether we are immoral nor not; that the moral question should be put into a separate, more private category and that we should address instead the actual concrete question of discrimination.

Senator I don't know that we disagree on this.

Senator KENNEDY. Well, my time is up, but I have difficulty in following that last answer. But I will try and look at it again and see if I can't figure it out.

Thank you.

Chairman LEAHY. We will keep the record open for Senators to ask follow-up questions, and also for the nominee, of course, to add anything that they wish to add to the record.

Senator Sessions?

Senator SESSIONS. Thank you, Mr. Chairman.

I am sorry I was not able to be here this morning. I've enjoyed the time that I have been here. I appreciate your thoughtful comments on a number of different issues. I have reviewed your record and on some issues I don't agree with you, but your views are all very thoughtful and require respect of anybody who respects analytical thought and a commitment to a principled rule of law.

You know, on the Attorney General's opinion on assisted suicide, you wisely, I think, held back from that because the principle he was asserting was that under the Federal Drug Act passed by this Congress, you cannot use drugs to kill people with, and that was whether or not it could be licensed, but that's neither here nor there. It was not a direct act to overturn assisted suicide. If you did assisted suicide, I suppose, in some other way than violating the Federal drug laws, you could do it. But at any rate, I understand your respect for States' authority in that area.

I remember, on one occasion, Judge Griffin Bell, a former Attorney General and former Fifth Circuit jurist, was at a conference in Alabama and was asked something about President Reagan's litmus test for judges, and I think in a somewhat humorous fashion, but representative of his feelings, maybe exaggerated for effect, he

said nobody should be on the Federal bench that does not believe in prayer at football games.

[Laughter.]

Senator SESSIONS. It's a good thing I don't agree with him totally on that or else it would be difficult for me to vote for you. But you have an interesting and principled view of separation of church and State, which I think is worthy of respect.

I know Senator Hatch believes in you. You've got an incredibly broad-based support group from people with various different political and legal views. I think that speaks well for you, and you are a man of integrity and ability, and I respect that.

There has been some discussion about the Interstate Commerce Clause, and many members of this body have asserted that the Supreme Court, by finding a Commerce Clause in the Constitution, is somehow an activist court. But you know the *Lopez* case that dealt with making it a Federal offense to have a firearm on a school ground, to possess it, was struck down by the Supreme Court. Subsequent to that, this Congress passed a law that said essentially the same thing and added the words that "the firearm has moved in or otherwise affects interstate commerce." I don't know if you are familiar with that particular bit——

Mr. MCCONNELL. I am, Senator.

Senator SESSIONS.—but I guess my question is do you think that would save the statute?

Mr. MCCONNELL. Senator, in my classes on Constitutional Law I, after reading *Lopez*, I always then present this new statute to them, and we have a lively discussion.

It does seem bizarre, when you first think about it, but there is a logic to it, Senator, and that is this—and I'm not saying which way it would come out. I can't predict the Supreme Court very well, but I can tell you there is a logic to it—and that is that the actual contours of Commerce Clause doctrine, in our modern interconnected economy, are extremely difficult to figure out, and it is Congress, in the first instance, that is making the laws. The mechanism of requiring that kind of a we call them "jurisdictional pegs". This in a sense puts the onus on Congress to think about the Commerce Clause question first, so that Congress itself is able to make some of the empirical and policy judgments that then go into the ultimate constitutional decision, so that it isn't that Congress is the last word, but it, in a sense, forces Congress to address the question in a way that the Court is then able to decide it in a way with the benefit of congressional thinking. Maybe even to the point that judicial review becomes more of a distant backstop, and it's really Congress thinking about issues of federalism that's the foreground and should be the primary forum for debating these questions.

Senator SESSIONS. I think that's fundamentally correct. The Congress does need to do that, and under previous settled law, and which for a number of years I prosecuted these Federal gun cases as an assistant United States attorney, and we always knew, and in every one of the offenses set forth in the Code involving firearms alleged that the weapon had moved or was part of interstate commerce, and that was an element of the offense, and you had to prove it.

So Congress left that out of this statute, and that I think caused the difficulty. I don't think the Supreme Court was acting contrary to the historical way we have defined Federal law. In fact, automobile theft in Federal law is not theft of an automobile, it is interstate transportation of a stolen motor vehicle. And the vehicle you had to prove that it was moving or is and was a part of interstate commerce or you couldn't have a conviction. If you just stole a car in Birmingham, and the local police caught them in Birmingham, it wasn't a Federal offense.

So, I think historically we have had some interstate connection required on most of our criminal law. We failed to allege it in that statute. I believe this new version will probably be upheld, although it will be interesting to hear how the Court writes on it when it goes up, but I certainly don't consider that to be an extreme act by the Court.

Mr. Chairman, I'm finished and appreciate your moving this fine nominee. I believe he deserves our consideration and our vote.

Chairman LEAHY. Thank you very much, Senator Sessions.

Senator Hatch, you had something else you wanted to ask before we——

Senator HATCH. Let me just take a second or two Professor McConnell. A few years ago——

Chairman LEAHY. The Senator from Utah can take all of the time he wants.

Senator HATCH. A few years ago when Bill Clinton was President and I was chairman of this committee, you communicated with my office on a number of occasions, for and on behalf of a number of Clinton judicial nominees.

Mr. MCCONNELL. Yes, I did.

Senator HATCH. I thought about your support for those nominees the other day when I was reading a report published by one of the usual suspects that asserted essentially that your goal is to change the law to conform with your particular political viewpoint, particularly on the issue of abortion, and of course that has played a paramount role in this whole hearing, that issue.

Upon reflection, I realize that there is a question I never asked you about your support for these Clinton nominees, and it's a question that I would like to ask, so let's take them one by one.

Before you contacted my office to urge the confirmation of William Fletcher, currently a Ninth Circuit judge who was confirmed when I was chairman, did you ask him his personal views on abortion and, if not, why not?

Mr. MCCONNELL. No, Senator, I didn't ask him. I actually don't know Willy Fletcher personally. I didn't ask him because I know a great deal about him. He's a very distinguished professor, mostly in the international field. I've read some of his work. It's mostly out of my specialty. He's extremely highly regarded as a fair-minded and thoughtful person, and that was enough for me, Senator.

Senator HATCH. How about Margaret McKowen, another Clinton nominee now serving on the Ninth Circuit, did you ever ask her, her views on abortion?

Mr. MCCONNELL. I did not ask her.

Senator HATCH. I'll even ask you about a nominee who was, unfortunately, not confirmed, Ilana Kagan, who has written in sup-

port of you. Did you ask her for her personal views on abortion before you contacted my office for her confirmation?

Mr. MCCONNELL. No, I didn't.

Senator HATCH. What about Rebecca Pallmeyer, the District Court judge in the Northern District of Illinois, did you ask her about her views on abortion before contacting my office about her confirmation?

Mr. MCCONNELL. I did not.

Senator HATCH. Finally, let me ask you about a Seventh Circuit judge who was confirmed under my chairmanship, who also had your support, Diane Wood. I wonder whether you had any knowledge of her views on abortion at the time that you recommended her to me and to this committee?

Mr. MCCONNELL. She and I were colleagues together at the University of Chicago, and inside her office at the University of Chicago was a poster saying, "I'm Pro–Choice, and I Vote." So I did, in fact, know about her views on abortion.

Senator HATCH. But you still recommended her.

Mr. MCCONNELL. I did.

Senator HATCH. Well, I think it's clear that the usual suspects are wrong about you. Far from being bent on making the courts conform to your own personal predilections or political views, I think it's pretty clear that you are a fair-minded scholar who has recommended others to the bench on the basis of their merit and without regard to their personal viewpoints, and I personally think this committee ought to treat you, and others, the same way; that one single issue should not determine whether somebody who is well qualified like you, unanimously well qualified or qualified, should be able to serve this country.

I think we are getting down to where one issue is taking too much precedence, and it's important, and you have made that clear, both ways. There are two very sincere sides, but it didn't enter into your recommendations. You made these recommendations because you felt the people were qualified to be Federal judges, right?

Mr. MCCONNELL. That's right, and I did not assume it was a piece of information that would determine or should determine——

Senator HATCH. Or should disqualify.

Mr. MCCONNELL.—your vote either, Senator.

Senator HATCH. I just wanted to make that point. Thank you.

Thank you, Mr. Chairman. I also want to thank the chairman. This has been a good hearing. It's been well conducted, and I personally appreciate him having you in for this hearing, and it means a lot to me personally because I know how great you are, and I just feel that you'll add a dimension to the Federal Circuit Court of Appeals that will be very, very important for this country and important for everybody, regardless of any ideological beliefs.

Mr. MCCONNELL. Thank you, Senator, and thank you, Mr. Chairman, for scheduling the hearing.

Chairman LEAHY. I do have a couple of others. Talking about asking people questions, I have never met with you or asked you questions about your personal beliefs or anything, have I?

Mr. MCCONNELL. You have certainly not.

Chairman LEAHY. In fact, the only discussions we have had have been right here in this open room.

Mr. MCCONNELL. That's right.

Chairman LEAHY. I assume that prior to appointing you, the people at the White House or the Department of Justice sat down and talked with you, as any administration would.

Mr. MCCONNELL. They talked to me, but they did not ask any questions about this.

Chairman LEAHY. I'm not suggesting that, but I mean, to that extent, somebody at least talked with you, the administration. This is not a trick question. Every administration does that with every nominee.

Mr. MCCONNELL. They did, yes. I had a 45—actually, it was less than that—scheduled 45-minute interview, and the main questions were what we nominees jokingly call the sex, drugs and rock-and-roll questions.

[Laughter.]

Chairman LEAHY. Well, you had something further. They probably had this great big heavy hand of Orrin Hatch hanging over the door, and knowing that that was——

Senator HATCH. Be nice. Be nice.

Chairman LEAHY.—that they better not ask too many questions or then he comes down.

You know him as this calm, quiet, easygoing person, but those of who know what a tiger he can be, and the White House is not the least bit interested what I think about. They have made that painfully clear over the years, but they do pay attention to Orrin.

[Laughter.]

Senator HATCH. I think they pay attention to you, too.

Chairman LEAHY. Can I just ask you two philosophical questions? You spent 17 years in academia as a passionate advocate for change in the law or for an alternate constitutional interpretation, everywhere from First Amendment privacy rights to Fourteenth Amendment, and you have an absolute right to do that.

You have become one of the most well-respected and provocative law professors in America—bright, committed, you speak out. We don't get too much of the "white bread and mayonnaise" from you. It's a very, very strong, passionate statement for everything from *Roe* v. *Wade* to even *Brown* v. *Board of Education*. You mentioned this morning you have even debated *Marbury* v. *Madison*.

So let's assume you get on the bench. Now you can't just sit down and take a case before you and say, look, I'm just going to write out a passionate view about why my circuit is wrong or the Supreme Court is wrong or something like that. You give up that bully pulpit. I mean, you can walk out of here today, and in a couple of weeks from now, when the Supreme Court comes back in, they issue an opinion, and it can be nine-zip, and you can just go out and write, and a lot of very prestigious publications would publish something written by you saying, boy, are they wrong, and you are going to give that up. Why? I mean, I'm just curious.

Mr. MCCONNELL. Senator, I've thought long and hard about——

Chairman LEAHY. I'm sure you have.

Mr. MCCONNELL.—about this question. I think it comes down to this. When I talk to my kids about how, you know, what should we

do when we grow up—what should I do when I grow up—and what I tell them is that they ought to look for three things. They ought to look for something they think they'll be good at, they ought to look for something they will enjoy, and they should look for something where they think they can provide a public service.

Senator MR. Chairman, I think I'm going to enjoy being a judge. I certainly hope that I'm going to be a good one, and I hope 10 years from now you and I meet, and you'll tell me, you know, "McConnell, I'm glad we did that," hard as the decision may be now.

There is really nothing more important for a country, I think, than a fair, even-handed, consistent, objective system of justice. That's, you know, it beats everything else. When you look around the globe, that's what we have, and some other countries have it, but that's what we have, and that's one of the things that's absolutely essential to our country, and I guess that's what it comes down to, Mr. Chairman.

Chairman LEAHY. During 28 years here in the Senate, I've had an opportunity to vote on every member of the U.S. Supreme Court—the second vote on Chief Justice Rehnquist. I wasn't here when he was first appointed a justice, but I have voted on hundreds, upon hundreds of hundreds of nominees from President Ford, President Carter, President Reagan, former President Bush, President Clinton, and current President Bush.

I have voted on conservative Republicans, liberal Democrats, people that totally disagree with me, hundreds of people I've voted for that made it very clear they totally disagree with me on a lot of issues from choice on through. I think I've probably only voted against a couple dozen, over 28 years, judicial nominees. I led, along with Senator Hatch, an effort to defeat a judge nominated by a Democratic President because I thought he was not qualified. Actually, we had a similar disqualification come up when one was nominated by a Republican President and it got through, but we did defeat this other one.

So ultimately I come down, once you go beyond the questions of qualifications—obviously, you have the legal brilliance and everything else—I go to one basic issue, and I ask this of everybody. I asked this of a conservative Republican I recommended from Vermont to President Clinton to appoint to the Second Circuit Court of Appeals, and he did, I asked one question.

If I came in that court, could I look at that judge and think whatever my case was, whether I was plaintiff or defendant, whether I was Republican or Democrat, liberal or conservative, whatever my religion might be, whatever my color might be, whatever my case might be, could I look at that judge and say, "I'm going to be heard on the merits"? I mean, I might be a criminal defendant or I might be the prosecutor. No matter what it is, will that judge hear me on the merits or will that judge make a determination based on my economic status, my sex, my color, my political party before I get in there?

And when I have convinced myself of that question, I voted for that person, no matter what their background. I mean, we've had people that have been chairman of Republican Parties and all of this, so it's not a political issue at all with me. I've done that. When

I haven't been able to satisfy myself of that question, notwithstanding the other qualifications, I voted against the nominee. I've done that with both Republicans and Democrats.

So let me ask you the question obviously we're leading up to, Professor. Can you, searching your own soul, can you say that somebody comes in, whether it's Orrin Hatch or me, whether it's a rich person or poor person, whether they're coming in with a disagreeable case or the glory case, that you are going to look at that case one-by-one-by-one with no preconceptions?

Mr. MCCONNELL. Absolutely, Senator.

Chairman LEAHY. Are there any other questions?

Professor, thank you very much. I appreciate the time you have taken. We will keep the record open for the appropriate time, and as I said before, feel free to, when you see the transcript, if there's things you want to add to it or something you want to just sui sponte send to us, feel free.

Mr. MCCONNELL. Thank you.

[The biographical information of Mr. McConnell follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Michael William McConnell

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

Residence:
Salt Lake City, UT

Office:
University of Utah College of Law
332 South 1400 East
Rm. 101
Salt Lake City, UT 84112

3. **Date and place of birth**

May 18, 1955
Louisville, KY

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 Mary Cargill Norton McConnell (Norton)
Presently works at home
Formerly:
Public Issues Director, FMC Corporation (1988-94)
Director, Office of Communications, U.S. Dept of Defense (1982-84)
Legislative Assistant, Rep. Jack Kemp (1979-82)

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

University of Chicago, The Law School
Attended 1976-79
J.D. (1979) (honors; Order of the Coif)

Michigan State University
Attended 1973-76
B.A. (1976) (high honors)

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.**

University of Utah College of Law
Presidential Professor (1997-present),

Visiting Professor of Law (1994-95)
Harvard Law School
Visiting Professor (Winter Term 1999)
University of Chicago, The Law School
William B. Graham Professor of Law (1992-96)
Professor of Law (1989-92)
Assistant Professor of Law (1985-89)
Mayer, Brown & Platt,
Special Consultant (1989-present)
Summer Associate (1977)
United States Department of Justice
Assistant to the Solicitor General (1983-85)
Office of Management and Budget
Assistant General Counsel (1981-83)
U.S. Supreme Court
Law Clerk to Justice William J. Brennan, Jr. (1980-81)
U.S. Court of Appeals for the D.C. Circuit
Law Clerk to then Chief Judge J. Skelly Wright (1979-80)
Williams & Connolly
Summer Associate (1978)

I served without compensation on the Board of Directors of the following institutions:
Austin Christian Law Center (now merged into the Chicago Legal Aid Clinic), 1992-96
The University of Chicago Laboratory Schools,1991-95

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.**

Fellow, American Academy of Arts and Sciences (1996)
Presidential Professorship, University of Utah (1997)
William B. Graham Chair in Law, University of Chicago (1992)
Phi Beta Kappa (1976)
Phi Kappa Phi (1975)
Floyd R. Mechem Scholar, University of Chicago Law School (1976-79)
Alumni Distinguished Scholar, Michigan State University (1973-76)
National Merit Scholar (1973)
William B. Ball Award for Life and Religious Liberty Defense, Christian Legal Society (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.**

District of Columbia Court of Appeals (Dec., 1981)
United States Supreme Court (Jan., 1984)
United States Court of Appeals for the Fourth Circuit (Sept., 1992)
United States Court of Appeals for the Eighth Circuit (March, 1997)
United States Court of Appeals for the Ninth Circuit (Jan., 1993)
United States Court of Appeals for the D.C. Circuit (April, 1993)

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.**

Co-chair, Emergency Committee to Defend the First Amendment (1996-present)
Christian Legal Society
Committee on Religious Liberty, National Council of Churches
Home School Legal Defense Association (family membership)

Other organizations:
Constitutional Law Section, Ass'n of American Law Schools (Chair, 1998-99)
American Academy of Arts and Sciences
The Federalist Society, Faculty Advisor
U.S. Association of Constitutional Law
Center for Church/State Studies of the DePaul University College of Law, Executive Board
Utah Conservation Council (part of Nature Conservancy of Utah)
Journal of Supreme Court History, Board of Editors (1987-93)
Religious Freedom Reporter, Board of Advisors
The Becket Fund, Advisory Board
Washington Legal Foundation, Legal Policy Advisory Board
The Blackstone Fellowship, Advisory Board
National Association of Scholars
American Political Science Association
Utah 3-Rs Project, Board of Advisors
Evangelical Free Church of Salt Lake City

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 (Dec., 1981)
United States Supreme Court (Jan., 1984)
United States Court of Appeals for the Fourth Circuit (Sept., 1992)
United States Court of Appeals for the Eighth Circuit (March, 1997)
United States Court of Appeals for the Ninth Circuit (Jan., 1993)
United States Court of Appeals for the D.C. Circuit (April, 1993)

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.

First Amendment

"The Problem of Singling Out Religion," 50 DEPAUL L. REV. 1 (2000)

"Believers As Equal Citizens," in Nancy L. Rosenblum, ed. OBLIGATIONS OF CITIZENSHIP AND DEMANDS OF FAITH (Princeton Univ. Press, 2000)

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"Neutrality, Separation, and Accommodation: Tensions in American First Amendment Doctrine, in LAW AND RELIGION (Rex J. Ahdar, ed., Ashgate Publishing Co. United Kingdom 2000)

"The New Establishmentarianism," 75 CHICAGO-KENT L. REV. 453 (2000)

"Why Is Religious Liberty The 'First Freedom?'", 21 CARDOZO L. REV. 1243 (2000)

"Five Reasons to Reject the Claim that Religious Arguments Should be Excluded from Democratic Deliberation," 1999 UTAH L. REV. 639

"Religion and Free Speech," ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION, Supp. II, 2000

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"Freedom from Persecution or Protection of the Rights of Conscience?: A Critique of Justice Scalia's Historical Arguments in City of Boerne v. Flores, *"* 39 WM. & MARY L. REV. 819 (1998)

"Equal Treatment and Religious Discrimination," in S. Monsma & J. C. Soper, EQUAL TREATMENT OF RELIGIOUS IN A PLURALISTIC SOCIETY (1998)

"Establishment and Toleration in Edmund Burke's 'Constitution of Freedom,'" 1996 SUP. CT. REV. 275

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"The Doubtful Constitutionality of the Clinic Access Bill," 1 VA. J. OF SOC. POL & LAW 261 (1994) (with Michael Stokes Paulsen)

"Religion and the Search for a Principled Middle Ground on Abortion," 92 MICH. L. REV. 6 (1994)

"God Is Dead and We Have Killed Him!": *Freedom of Religion in the Post-Modern Age,"* 1993 B.Y.U. L. REV. 163

"Religious Freedom at a Crossroads," 59 U. CHI. L. REV. 115 (1992)

"RELIGIOUS LIBERTY (Update)," in Encyclopedia of the American Constitution 444 (Supp. I, 1992)

"Christ, Culture, and Courts: A Niebuhrian Examination of First Amendment Jurisprudence," 42 DEPAUL L. REV. 191 (1992)

"Accommodation of Religion: An Update and a Response to the Critics," 60 GEO. WASH. L. REV. 685 (1992)

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"Should Congress Pass Legislation Restoring the Broader Interpretation of Free Exercise of Religion?" 15 HARV. J. OF LAW & PUB. POL. 181 (1992)

"For the Religious Freedom Restoration Act," FIRST THINGS, No. 21 (Mar. 1992), at 42 (with Cole Durham, Edward McGlynn Gaffney, & Douglas Laycock)

"The Selective Funding Problem: Abortions and Religious Schools," 104 HARV. L. REV. 989 (1991)

"A Response to Professor Marshall," 58 U. CHI. L. REV. 329 (1991)

"An Open Letter on Religious Freedom," FIRST THINGS, No. 11, (Mar. 1991), at 44 (with Edward McGlynn Gaffney & Douglas Laycock).

"Multiculturalism, Majoritarianism, and Educational Choice: What Does Our Constitutional Tradition Have to Say?" 1991 U. CHI. L. FOR. 123

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"*Academic Freedom in Religious Colleges and Universities*," 53 LAW & CONTEMP. PROB. 303 (1990), reprinted in W. Van Alstyne, ed., FREEDOM AND TENURE IN THE ACADEMY (Duke 1993)

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"*An Economic Approach to Issues of Religious Freedom*," 56 U. CHI. L. REV. 1 (1989) (with Richard A. Posner)

"*Unconstitutional Conditions: Unrecognized Implications for the Establishment Clause*," 26 SAN DIEGO L. REV. 255 (1989)

"*The Religion Clauses of the First Amendment: Where Is The Supreme Court Heading,?*" 32 THE CATHOLIC LAWYER 187 (1989)

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"*Remedial Education Programs for Private School Students: Judicial Developments and Future Prospects,*" *in* THE CHURCH, THE STATE, AND THE SCHOOLS: CONTEMPORARY ISSUES IN LAW AND POLICY (C. Vergon, ed. 1986)

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"The Asymmetricality of Constitutional Discourse," XL NOMOS 300 (1998)

"Institutions and Interpretation: A Critique of City of Boerne v. Flores," 111 HARV. L. REV. 153 (1997)

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"*The Role of Democratic Politics in Transforming Moral Convictions Into Law*," 98 YALE L.J. 1503 (1989)

"*A Moral Realist Defense of Constitutional Democracy*," 64 CHI. - KENT L. REV. 89 (1988)

"*On Reading the Constitution*," 73 CORN. L. REV. 359 (1988)

"*The Rule of Law and the Role of the Solicitor General*," 21 LOY.--L.A. L. REV. 1105 (1988)

"*The Counter-Revolution in Legal Thought*," 41 POLICY REVIEW 18 (Summer 1987), reprinted in revised form as "*Four Faces of Conservative Legal Thought*," 34 U. CHI. L. SCH. REC. 12 (Spring 1988)

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"Institutions and Interpretation: A Critique of City of Boerne v. Flores," 111 HARV. L. REV. 153 (1997)

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"*Why Hold Elections? Using Consent Decrees to Insulate Policies From Political Change*," 1987 U. CHI. L. FOR. 295 (1987)

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"State Action, Due Process, and Regulated Health Care: The Downstream Effects of American Manufacturers Mutual Insurance Company v. Sullivan," Health Care Monthly 3 (June 1999) (with Steffan N. Johnson)

"*When Cities Go Broke: A Conceptual Introduction to Municipal Bankruptcy*," 60 U. CHI. L. REV. 425 (1993) (with Randal C. Picker)

"*Contract Rights and Property Rights: A Case Study in the Relationship Between Individual Liberties and Constitutional Structure*," 76 CALIF. L. REV. 267 (1988), also printed in E. Paul, ed., LIBERTY, PROPERTY, AND THE FOUNDATIONS OF THE AMERICAN CONSTITUTION (SUNY Press 1988)

"*Public Utilities' Private Rights: Paying for Failed Nuclear Power Projects*," 1988 REGULATION, No. 2, at 35

"*A Choice of Law Approach to Products-Liability Reform*," in NEW DIRECTIONS IN LIABILITY LAW (W. Olson, ed.), 37 PROC. OF THE ACAD. OF POL. SCI. 90 (1988)

"*The Power to Tax*," THINK (the IBM magazine) 35 (Sept. 1987)

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"*The Redistricting Cases: Original Mistakes and Current Consequences*," 24 HARV. J. OF LAW & PUB. POL. 103 (2000)

"*The Originalist Case for* Brown v. Board of Education," 19 HARV. J. OF LAW & PUB. POL. 457 (1996)

"*Segregation and the Original Understanding--A Reply to Professor Maltz,*" 13 CONST. COMM. 233 (1996)

"*Originalism and the Desegregation Decisions,*" 81 VA. L. REV. 947 (1995)

"*The Originalist Justification for* Brown*: A Reply to Professor Klarman,*" 81 VA. L. REV. 1937 (1995)

"*The Forgotten Constitutional Moment*," 11 CONST. COMM. 115 (1994)

"*America's First 'Hate Speech' Regulation*," 9 CONST. COMM. 17 (1992)

"*The Fourteenth Amendment: A Second American Revolution or the Logical Culmination of the Tradition?*" 25 LOY.-L.A. L. REV. 1159 (1992)

"*How Not To Promote Serious Deliberation About Abortion*," 58 U. CHI. L. REV. 1181

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"Affirmative Action After Teal: A New Twist or a Turn of the Screw?" 7 REGULATION, No. 2, at 38 (Mar./Apr. 1983)

Newspaper Columns and Miscellaneous

"We Need Justices Who Mean Business," May 10, 2001 at 12:01 a.m. EDT, OPINION JOURNAL *from* WALL ST. J., http://www.opinionjournal.com/extra/?id=95000448

"A Muddled Ruling," Wall St. Journal (Dec. 14, 2000)

"Supremely Ill-Judged," Wall St. Journal (Nov. 24, 2000)

"The Supreme Court 2000: A Symposium, 106 First Things, p. 36 (Oct. 2000

"Lee, Rex Edwin," ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION, Supp. II, 2000

"Is Nothing Secular?," THE NEW YORK TIMES MAG. (Jan. 30, 2000) section 6 at p. 40

"Protecting our Tradition of Religious Liberty, Chicago Tribune, July 17, 1999

Lies, Damned Lies, and the 'Evidence' for the Violence Against Women Act," Salt Lake Tribune, June 4, 2000

"We Worship the Same God You Do," in Paul M. Anderson, ed., PROFESSORS WHO BELIEVE: THE SPIRITUAL JOURNEY OF CHRISTIAN FACULTY 200 (1998)

"School Choice in America," THE WEEKLY STANDARD (Dec. 21, 1998)

"Salt Lake City Council Deserves Credit for Wrestling With Gay Rights Ordinance," Salt Lake Tribune AA6 (Nov. 22, 1998)

"Protecting Free Exercise: A Compelling Case for "Compelling State Interest," LIBERTY Nov./Dec. 1998, at 15

"The Supreme Court 1998," FIRST THINGS (Nov. 1998), at 37

"Protecting our tradition of religious liberty," Chicago Tribune (July 17, 1998)

"Roe v. Wade *at 25: Still Illegitimate,"* Wall Street Journal (Jan. 22, 1998)

"A Constitutional *Campaign Finance Plan,"* Wall Street Journal (Dec. 11, 1997)

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"Breaking the Law, Bending the Law," FIRST THINGS (June/July 1997), at 13

"Supreme Humility," Wall Street Journal (July 2, 1997)

"Don't Neglect the Little Platoons," in FOR LOVE OF COUNTRY: DEBATING THE LIMITS OF PATRIOTISM (J. Cohen, ed. 1996)

"Keeping Faith in the Political Arena," Currents (Newsday magazine), Sept. 22, 1996, at A42.

Stuck With A Lemon: A New Test for Establishment Clause Cases Would Help Ease Current Confusion, 83 ABA JOURNAL 46 (Feb. 1997)

"*The Church-State Game: A Symposium on Kiryas Joel*, 47 First Things 40 (Nov. 1994)

"*A Basic Right Turned Into A Wrong*," Chicago Tribune, § 1, p. 15 (July 6, 1994)

"Redefine campaign finance 'reform," Chicago Tribune (June 29, 1993)

"Free Speech Outside Abortion Clinics," Wall Street Journal (Mar. 31, 1993).

"Freedom From Religion," The American Enterprise, Jan/Feb 1993, at 34.

"'Hate Speech' Case: Twisted Path to Good Result: the Right Embraces This Right," Legal Times of Washington (and associated newspapers), July 27, 1992, at S30

"*What's the Alternative?", A Roundtable on the Confirmation Process*, ABA JOURNAL (Jan. 1992)

"*Trashing Natural Law*," New York Times, op-ed page (July 15, 1991)

"*Inquisition Isn't Needed*," USA Today, 10A (Sept. 11, 1991)

"An analysis of the Court's religious freedom decisions of the last decade," in RELIGIOUS FREEDOM 11 CHRISTIAN LEGAL SOCIETY QUARTERLY 5 (Spring 1990)

"*We Need Justices Who Mean Business: A Good Choice for President Dukakis: Stephen Breyer*," Wall. St. Journal (July 27, 1988)

"*The Religion Clauses of the First Amendment: Where is the Supreme Court Heading?*," 32 CATHOLIC LAWYER, No. 3 (1988)

"*He Is A Talented Jurist*," Newsday, Ideas 5 (July 12, 1987)

Comment, "*The Appealability of Orders Denying Motions for Disqualification of Counsel in the Federal Courts*," 45 U. CHI. L. REV. 450 (1978)

Slate Magazine (internet) "Dialogues"

What Now?, Dialogue with Alan Brinkley, http://slate.msn.com/Dialogues/00-11-15/Dialogues.asp?iMsg=2, Nov. 15, 2000, at 9:55 a.m. PT

School Vouchers, Dialogue with Kathleen M. Sullivan, http://slate.msn.com/Dialogues/99-12-09/Dialogues.asp?iMsg=1, Dec. 8, 1998, at 11:00 a.m. PT

Assisted Suicide, Dialogue with Ronald Dworkin, http://slate.msn.com/Dialogues/97-04-10/Dialogues.asp?iMsg=1, Apr. 9, 1997, at 4:30 p.m. PT

Congressional Testimony

Hearings on S. 2148, Religious Liberty Protection Act of 1998, Before the Senate Committee on the Judiciary (June 23, 1998)

Hearings on the State of Religious Liberty in America, before the Senate Judiciary Committee (Sept. 29, 1995)

Hearings on the State of Religious Liberty in America, before the Subcommittee on the Constitution of the House Judiciary Committee (June 7, 1995)

Hearings on S. 1021, the Native American Free Exercise of Religion Act, Before the Senate Committee on Indian Affairs (Sept. 10, 1993)

Written Testimony (with Professor Michael Paulsen) on S. 636, the Freedom of Access to Clinic Entrances Act of 1993, Before the Senate Committee on Labor and Human Resources (May 20, 1993)

Testimony Before the Independent Commission Established Pursuant to Pub. L. No. 101-121, § 304(C) to Review the Grant Making Procedures of the National Endowment of the Arts (July 31, 1990)

Testimony Before the Senate Judiciary Committee on the Nomination of Judge Robert H. Bork to the Supreme Court of the United States (Sept. 22, 1987)

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

Excellent
Last examination: March 26, 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.

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.

Member, President's Intelligence Oversight Board (1988-90) (appointed)
Assistant to the Solicitor General, Department of Justice (1983-85) (appointed)
Assistant General Counsel, Office of Management and Budget (1981-83) (appointed)
Law Clerk to Justice William J. Brennan, Jr. (1980-81) (appointed)
Law Clerk to Chief Judge J. Skelly Wright, Jr. (1979-80) (appointed)

Never ran for elective office

17. Legal Career:

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

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;

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;

Chief Judge J. Skelly Wright, U.S. Court of Appeals for the D.C. Circuit, 1979-80
Justice William J. Brennan, Jr., U.S. Supreme Court, 1980-81

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;

University of Utah College of Law
332 South 1400 East

Salt Lake City, UT 84112
Presidential Professor (1997-present)
Visiting Professor of Law (1994-95)

Harvard University Law School
Cambridge, MA 02138
Visiting Professor (Winter Term 1999)

University of Chicago, The Law School
1111 E. 60th St.
Chicago, IL 60637
William B. Graham Professor of Law (1992-96)
Professor of Law (1989-92)
Assistant Professor of Law (1985-89)

Mayer, Brown & Platt
190 S. LaSalle St.
Chicago, IL 60603
Special Consultant (1989-present)
Summer Associate (1977)

United States Department of Justice
Washington, D.C. 20530
Assistant to the Solicitor General (1983-85)

Office of Management and Budget
Old Executive Office Bldg.
Washington, D.C.
Assistant General Counsel (1981-83)

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?

1981-83: Assistant general counsel, Office of Management & Budget
Principally administrative, budget, and constitutional law in the capacity of an attorney advisor
1983-85: Assistant to the Solicitor General, Dep't of Justice
Principally engaged in Supreme Court practice: writing certiorari petitions, briefs in opposition, briefs on the merits, and appeal recommendation memos; argued 6 cases in the Supreme Court
1985-present: Professor of Law
University of Chicago (1985-97) – tenured 1989; named William B. Graham Professor 1992
University of Utah (1997-present), Presidential Professor, visited 1994-95
Harvard Law School (Winter 1999), visiting professor
Subjects: constitutional law, regulated industries, family law, state & local government law, constitutional history, and others
1989-present: Special consultant, Mayer, Brown & Platt
Part-time litigation practice, mostly in the federal appellate courts; generally involving

constitutional issues.

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

In the intersection of regulatory and first amendment issues, I have represented such clients as NBC, GTE, Ameritech, Bell South, NYNEX, U.S. Telephone Ass'n.

Other clients involved in first amendment litigation included: Gerawan Farming, International Society for Krishna Consciousness, Jimmy Swaggart Ministries, United States Catholic Conference, Boy Scouts of America, Columbia Union College, First Church of Christ, Scientist, Church of Jesus Christ of Latter-Day Saints, New York Metropolitan Transit Authority, and numerous individuals, families, and religious and civil liberties organizations.

Clients in cases involving other constitutional and legal issues included: American Mfgrs. Mutual Ins. Co. and 7 other workers compensation insurance firms, R.H. Macy & Co., Lexecon, State Farm Mutual Insurance, and Chicago Mayor Harold Washington.

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 1981-83, I never appeared in court.
From 1983-85, I appeared in the United States Supreme Court six times.
From 1988 to the present, I have conducted oral argument in court, on average, 2-3 times per year

2. **What percentage of these appearances was in:**
   (a) federal courts;
   (b) state courts of record;
   (c) other courts.

   Over 90% federal, the remainder being state appellate or supreme courts.

3. **What percentage of your litigation was:**
   (a) civil;
   (b) criminal.

   1983-85: 66% civil; 33 1/3 % criminal.
   After 1985, 100% civil.

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

I have argued 11 cases in the United States Supreme Court, and participated substantially in approximately 8 other cases in the Supreme Court, generally as principal author of the brief.

I have been principal author of the petition for certiorari or brief in opposition in approximately 11 other cases in the Supreme Court, and co-counsel in connection with 2 other petitions for certiorari, since 1985. From 1983-85, I was principal author of well over 50 briefs in opposition on behalf of the United States

I have been principal author of amicus curiae briefs in approximately 15 cases in the Supreme Court.

I have argued 7 cases in state or federal appellate courts, and participated substantially in approximately 6 more.

I have tried 3 cases as chief counsel in district court, resulting in a judgment, all of them on motions for summary judgment, and participated substantially in approximately 3 more.

5. **What percentage of these trials was:**
   (a) jury;
   (b) non-jury.

   100% 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. 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.

Capital Cities Cable, Inc. v. *Crisp*, 467 U.S. 691 (1984). Represented the Federal Communications Commission as amicus curiae in a case involving the permissibility of a state ban on advertising of alcoholic beverages over cable television. I presented oral argument on behalf of the FCC. The case involved issues of First Amendment, Twenty-first Amendment, and preemption. The Court accepted our argument.

Date argued: Feb. 21, 1984
Court: U.S. Supreme Court
Co-counsel:
Rex E. Lee, deceased
Paul M. Bator, deceased

Richard M. Wilkins
J. Reuben Clark Law School
Brigham Young University
Provo, UT 84602
801-378-2669

Counsel for other parties:
Brent N. Rushforth
Heller Ehrman White & McAuliffe LLP
815 Connecticut Avenue, N.W., Suite 200
Washington, D.C. 20006-4004
(202) 263-8900

Robert L. McDonald, Oklahoma, present location unknown

Richardson v. *United States*, 468 U.S. 317 (1984). Represented the United States in this criminal appeal, raising the constitutional question of whether the Double Jeopardy Clause precludes retrial of a criminal defendant after a hung jury. I was principal author of the brief, and presented oral argument. The Court accepted our argument.

Date of argument: March 20, 1984
Court: U.S. Supreme Court
Co-counsel:
Rex E. Lee, deceased
Andrew Frey
Mayer, Brown & Platt
1675 Broadway
New York, NY 10019
212-506-2635

Opposing counsel:
Alan M. Palmer
1707 N St., N.W.
Washington, D.C. 20036
202-785-3900

Bennett v. *New Jersey*, 470 U.S. 632 (1985). Represented the Secretary of Education in case seeking reversal of an appellate decision holding that changes in statutory grant standards must be applied retroactively, and interpreting standards for nonsupplementation. I was principal author of the brief, and presented oral argument. The Court accepted our arguments.

Date of argument: Jan. 8, 1985
Court: U.S. Supreme Court
Co-counsel:
Rex E. Lee, deceased
Kenneth Geller
Mayer, Brown & Platt
1909 K St., N.W.
Washington, D.C. 20006
202-263-3225

Opposing counsel:

Mary Ann Burgess, New Jersey, present location unknown

School District of Grand Rapids v. *Ball*, 473 U.S. 373 (1985). Represented the United States as amicus curiae in case involving the constitutionality of a state program in which public school teachers provided remedial and enrichment courses for students at private religious schools. I was principal author of the brief, and presented oral argument. This was a companion case to *Aguilar v. Felton*, 473 U.S. 402 (1985), involving a federal program, in which I was principal author of the brief, and the case was argued by Solicitor General Lee. The Court rejected our arguments in both cases. Twenty years later, in *Agostini v. Felton*, 521 U.S. 203 (1997), the Court accepted our arguments, and overruled *Grand Rapids* and *Aguilar* in relevant part.

Date of argument: Dec. 5, 1984
Court: U.S. Supreme Court
Co-counsel:
Rex E. Lee, deceased
Paul M. Bator, deceased
Michael Jay Singer
Civil Division, Appellate Section
U.S. Dep't of Justice
Washington, D.C. 20530
(202) 514-5432

Judge Kenneth F. Ripple
U.S. Court of Appeals for the Seventh Circuit
219 S. Dearborn Street
Suite 2660
Chicago, IL 60604
(312) 435-5510

Opposing counsel:
A. E. Dick Howard
University of Virginia School of Law
580 Massie Rd.
Charlottesville, VA 22903
904-924-3097

Bowen v. *Kendrick*, 487 U.S. 589 (1988). Represented United Families of America, intervenor-appellant, pro bono publico, in case seeking reversal of lower court judgment holding the Adolescent Family Life Act unconstitutional on the ground that it permitted grants to religious entities to perform services relating to pregnancy and abortion. The Solicitor General yielded 10 minutes of argument time. I was counsel of record and principal author of the brief, and presented oral argument. The Court accepted our arguments.

Date of argument: March 30, 1988
Court: U.S. Supreme Court
Co-counsel:
Charles Fried
Harvard Law School
Cambridge, MA 02138

617-495-4636
Clarke Forsythe
301 S. Peoria St.
Suite 300
Chicago, IL 60607
312-786-9494
Opposing counsel:
Janet Benshoof
Center for Reproductive Law & Policy
120 Wall Street
14th Floor
New York, NY 10005
(212) 514-7483

Jimmy Swaggart Ministries v. *California Bd. of Equalization*, 493 U.S. 378 (1990). Represented appellant Jimmy Swaggart Ministries in challenge to constitutionality of sales and use tax on evangelistic materials under Free Exercise Clause; case also involved Commerce and Due Process Clause challenge to use of evangelistic rallies a jurisdictional predicate for taxation. I was principal author of the brief, and presented oral argument. The Court rejected our Free Exercise argument and held that the Commerce and Due Process claims were barred.
Date of argument: Oct. 31, 1989
Court: U.S. Supreme Court
Co-counsel:
Charles R. Ajalat
643 S. Olive St.
Suite 200
Los Angeles, CA 90014
213-622-7400
Edward M. Gaffney, Jr.
Valparaiso University School of Law
Wesemann Hall
656 S. Greenwich St.
Valparaiso, IN 46383
219-465-7860
Opposing Counsel:
Richard E. Nielsen
Pillsbury Winthrop LLP
50 Fremont Street
San Francisco, CA 94105
(415) 983-1000

Rosenberger v. *Rector & Visitors of the Univ. of Virginia*, 515 U.S. 819 (1995). Represented a university student group, pro bono publico, seeking reversal of an appellate decision holding that a public university does not violate the Free Speech Clause when it denies student activity funds to an otherwise eligible student group on the basis of its religious viewpoint, and that such funding would

violate the Establishment Clause. I was counsel of record and principal author of the brief, and presented oral argument. The Court accepted our arguments. I also briefed and argued the case in the Court of Appeals, where we lost, and wrote the petition for certiorari.

Date of argument: March 1, 1995
Court: U.S. Supreme Court
Co-counsel:
Michael P. McDonald
1233 20th St., N.W.
Suite 300
Washington, D.C. 20036
202-833-8400

Alan Untereiner
Mayer, Brown & Platt
1909 K St., N.W.
Washington, D.C. 20006
202-263-3241

Opposing counsel:
John C. Jeffries, Jr.
University of Virginia School of Law
580 Massie Rd.
Charlottesville, VA 22903
904-924-3436

American Manufacturers Mutual Ins. Co. V. Sullivan, 119 S. Ct. 977 (1999). Represented seven workers compensation insurance carriers in case seeking reversal of appellate decision holding that decisions of private insurance companies postponing payment of disputed medical claims pending review by a utilization review board constitute state action and deny due process of law. I was counsel of record and principal author of the brief, and presented oral argument. The Court accepted our arguments. My clients were: American Manufacturers Mutual Ins. Co., Commercial Union Ins. Co., Continental Casualty Co., Donegal Mutual Ins. Co., Hartford Fire Ins. Co., Insurance Co. of North America, United States Fidelity & Guaranty Co., and Zurich Ins. Co.

Date of argument: Jan. 19, 1999
Court: U.S. Supreme Court
Co-counsel:
Sharon Swingle
Mayer, Brown & Platt
1909 K St., N.W.
Washington, D.C. 20006
202-263-3284
Opposing counsel:
Loralyn McKinley
McKinley & Vonier
1333 Race St.
Philadelphia, PA 19107
215-569-1644

Mitchell v. Helms, 120 S. Ct. 2530 (2000). Represented parent-intervenors seeking reversal of an appellate decision holding that federal program that provides computers, software, library books, and other neutral, secular, and nonideological instructional materials for the use of students at private religious schools violates the Establishment Clause. I was principal author of the petition for certiorari and the brief, and presented oral argument. The Court accepted our arguments.

Date of argument: Dec. 1, 1999
Court: U.S. Supreme Court
Co-counsel:
Steffen Johnson
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1909 K St., N.W.
Washington, D.C. 20006
202-263-7214
Patricia Dean
Arnold & Porter
555 12th St., N.W.
Washington, D.C. 20004
202-942-5000
Opposing counsel:
Lee C. Boothby
Boothby & Yingst
4545 42nd Street N.W.
Suite 201
Washington, D.C. 20016
(202)363-1773

Boy Scouts of America v. Dale, 120 S. Ct. 2446 (2000). Represented Boy Scouts of America in case challenging the constitutionality of a state court ruling requiring a private organization to appoint an openly gay assistant scoutmaster. I was principal author of the brief, and assisted at oral argument. The Court accepted our arguments.

Date of argument: April 26, 2000
Court: U.S. Supreme Court
Co-counsel:
George Davidson
Hughes, Hubbard & Reed
One Battery Park Plaza
New York, NY 10004
212-837-6000
Opposing counsel:
Evan Wolfson
120 Wall St.
Suite 1500
New York, NY 10005
212-809-8585

Lawyers who have had contact with me (the first three of whom being lawyers whom I have

supervised):

Steffen Johnson
Mayer, Brown & Platt
1909 K St., N.W.
Washington, D.C. 20006
202-263-7214

Sharon Swingle
Mayer, Brown & Platt
1909 K St., N.W.
Washington, D.C. 20006
202-263-3284

Alan Untereiner
Robbins, Russell, Englert, Orseck & Untereiner LLP
1801 K Street, N.W., Suite 411
Washington, DC 20006
202-775-4505

Walter Dellinger
O'Melveny & Myers
555 13th St., NW
Washington, DC 20004

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Dean Robert Clark
Harvard Law School
Cambridge, MA 02138
(617) 495-4601

Dean Lee Teitelbaum
Cornell Law School
Myron Taylor Hall
Ithaca, NY 14853
(607) 255-3527

Dean Edward M. Gaffney, Jr.
Valparaiso University School of Law
Wesemann Hall
656 S. Greenwich St.
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U.S. Catholic Conference
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Boston College Law School
885 Centre St.
Newton, MA 02459
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Von Keetch
Kirton & McConkie
60 South Temple
Salt Lake City, UT 84111
(801) 328-3600

Kenneth Geller
Mayer, Brown & Platt
1909 K St., NW.
Washington, D.C. 20009
(202) 262-3225

George Davidson
Hughes, Hubbard & Reed
One Battery Park Plaza
New York, NY 10004
212-837-6000

Brian Leighton
701 Pollasky Ave.
Clovis, CA 93612
(209) 297-6190

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.)**

My most significant legal activity has involved teaching and scholarship. Also served on the board of a low income legal clinic, mostly in a policy-setting and fund-raising role, and as member of the President's Intelligence Oversight Board, a three-member board charged with reporting to the President regarding compliance of intelligence agencies with legal and constitutional constraints.

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. Until appointment and confirmation, I will continue to receive salary for services as a professor of law, and payment for services as special consultant to Mayer, Brown & Platt. All such payments will cease upon appointment and confirmation. As a professor, I have contributed to, and received employer contributions to, retirement accounts under TIAA-CREF, and in connection with Mayer, Brown & Platt, have shares in a tax-deferred stock fund.

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 would recuse myself from any cases involving Mayer, Brown & Platt, or my current clients, for the appropriate period of time. I intend to adhere to 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.**

   I hope to be able to teach law school courses on a part time basis, probably at the University of Utah College of Law or during the Winter Semester at Harvard Law School. Any such engagement would be strictly subordinate to my duties as a judge.

4. **List sources and amount 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 refer to Financial Disclosure Report.

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

   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. I have never held a position or played a role in a political campaign, other than to be a member of organizations like "Law Professors for Bush-Cheney."

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 Chicago, I served on the board of a low income legal clinic, the Austin Christian Law Center, now merged into the Chicago Legal Aid Clinic, and also provided advice and assistance to students working on cases at the Mandel Legal Aid Clinic, where I had relevant expertise. As faculty advisor, I assisted students at the University of Chicago Christian Law Fellowship to find pro bono opportunities, often with the Austin Christian Law Center. These activities occupied over 150 hours each year. In addition, a substantial portion of my practice has been pro bono, usually in the area of civil liberties law. I do not have a firm estimate of this time because I usually did not keep records, but in many years it would exceed 250 hours. I also contribute financially to the Chicago Legal Aid Clinic, and serve as a volunteer in Scouting.

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, with the exception of religious organizations, membership in which is by definition limited to people who adhere to the 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. I expressed an interest in serving to Senator Orrin Hatch, to the Attorney General, and to members of the White House Counsel's office. I interviewed with White House Counsel Gonzalez and his Deputy, Tim Flannigan.

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.

I believe very strongly that judges should not decide cases according to their own political or philosophical preferences, but should be constrained by constitutional and statutory text, legislative history or historical context where appropriate, and subsequent practice and precedent. Judges should defer to reasonable judgments of the political branches, especially where they have considered the constitutional issue. Part of judicial restraint is understanding litigation as limited to the actual case and controversy presented by the parties to the litigation, rather than as an opportunity for free-wheeling problem-solving.

Financial Statement: Net Worth

Michael William McConnell

Listed Securities:	
American Performance Cash Management	20,188
Dodge & Cox Stock Fund	114,711
Bankers Trust Inst. Equity 500 Index	14,376
Franklin Small Cap Growth	210,750
TIAA-CREF	595,577
Spartan 500 Index	3,078
Fidelity Worldwide	48,157
Spartan Total Mkt. Index	50,722
Spartan 500 Index	266,091
Fidelity Magellan	53,302
Fidelity Municipal Money Mkt.	20,089
Fidelity Retirement Reserves	80,815
Fidelity Magellan IRA	129,292
Spartan 500 Index Sep-IRA	2,244
Fidelity Cash Reserves Sep-IRA	4,083
Total	1,613,475

Mary C. McConnell (IRAs)	
Fidelity Worldwide	33,691
Fidelity Emerging Mkts.	9,597
Fidelity Blue Chip Growth	12,266
Fidelity Magellan IRA	128,864
Fidelity Low Priced Stock	85,983
Total	270,401

Children	
Spartan 500 Index	35,335
Spartan 500 Index	47,118
Spartan 500 Index	47,118
Total	129,571

Real Estate:

Residence: 2301 S. Benchmark Cir., Salt Lake City, UT 84109

Value (estimated): $440,000

Real Estate Mortgages Payable:

Michael W. McConnell
Questionnaire Page 30

Real Estate:

Residence: Salt Lake City, UT
Value (estimated): $440,000

Real Estate Mortgages Payable: $325,000
Mortgage holder: Bank United

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			cents	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	2,013	447	00	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				Unpaid income tax			
Due from others				Other unpaid tax and interest			
Doubtful				Real estate mortgages payable--add schedule	325	213	00
Real estate owned--add schedule	440	000	00	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts--itemize:			
Autos and other personal property	15	000	00				
Cash value--life insurance	49	465	00				
Other assets--itemize:							
furniture & effects	12	000	00				
				Total liabilities	328	213	00
				Net Worth	2,201	699	00
Total Assets	2,529	912	00	Total liabilities and net worth	2,529	912	00
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule.)	No	[redacted]	
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)	2. Court or Organization	3. Date of Report
McConnell, Michael W.	Court of Appeals, 10th 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. Ct of Appeals Judge (nominee)	X Nomination, Date 05/09/ 2001 Initial ___ Annual ___ Final	01/01/2000 to 05/00/2001
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.**	
Univ.of Utah College of Law 332 South 1400 East Rm. 101 Salt Lake City, UT 84112	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
☐	NONE (No reportable positions.)	
1	Special Consultant (partner status)	Mayer, Brown & Platt, 190 S. LaSalle St., Chicago, IL 60603
2	Professor	University of Utah College of Law
3		

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

	DATE	PARTIES AND TERMS
☐	NONE (No reportable agreements.)	
1	2001	University of Utah College of Law: Have discussed possibility of part-time teaching.
2	2001	Harvard Law School: Have discussed possibility of part-time teaching.
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)
☐	NONE (No reportable non-investment income.)		
1	2000	University of Utah, salary	127472
2	2000	Mayer, Brown & Platt compensation	138975
3	2000	Boy Scouts of America, fee for legal services	51412
4	2000	Liberty Fund, honorarium	700

FINANCIAL DISCLOSURE REPORT | Name of Person Reporting: McConnell, Michael W. | Date of Report: 05/14/2001

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	None		
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: McConnell, Michael W.

Date of Report: 05/14/2001

(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions

A. Description of Assets (including trust assets) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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 American Performance Cash Management (Retirement)	A	Interest	K	T	Exempt				
2 Dodge & Cox Stock (Mutual Fund) (Retirement)	A	Gain	M	T					
3 Bankers Trust Inst. Equity 500 Index (Retirement)	A	Gain	J	T					
4 Franklin Small Cap Growth Mutual Fund	E	Gain	M	T					
5 Spartan Mkt. Index Fund	A	Dividend	J	T					
6 Fidelity Worldwide (IRA) (Mutual Fund)	C	Dividend	K	T					
7 Fidelity Emerging Markets Fund (IRA)	A	Dividend	J	T					
8 Fidelity Blue Chip Growth Fund (IRA)	B	Dividend	J	T					
9 Fidelity Magellan Fund (IRA)	D	Dividend	M	T					
10 Fidelity Magellan Fund (IRA)	C	Dividend	M	T					
11 Fidelity Low Priced Stock Fund (Sep IRA)	D	Dividend	L	T					
12 Spartan 500 Index Fund (Sep IRA)	A	Dividend	J	T					
13 Fidelity Cash Reserves (Sep IRA)	A	Interest	J	T					
14 Spartan 500 Index Fund (UTMA)	A	Dividend	K	T					
15 Spartan 500 Index Fund (UTMA)	A	Dividend	K	T					
16 Spartan 500 Index Fund (UTMA)	A	Dividend	K	T					
17 Fidelity Worldwide (Mutual Fund)	D	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: 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

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: McConnell, Michael W.

Date of Report: 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) *Place "(X)" after each asset exempt from prior disclosure*	B. Income during reporting period: (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period: (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period: (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 Spartan Total Mkt. Index Fund	A	Dividend	L	T					
19 Spartan 500 Index	B	Dividend	N	T					
20 Fidelity Magellan Fund	B	Dividend	L	T					
21 Fidelity Municipal Money Mkt. Fund	B	Interest	K	T					
22 Fidelity Retirement Reserve (Retirement Annuity Contract)		None	L	T					
23 Prudential Mutual Life Ins. Co. Policy		None	K	T					
24 TIAA	E	Interest	M						
25 CREF Equity Index		Loss	M	T					
26 CREF Global Equities		Loss	K	T					
27 Wells Fargo Bank checking account	A	Interest	J	T					
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

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
McConnell, Michael W.	05/14/2003

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

None

Name of Person Reporting	Date of Report
McConnell, Michael W.	05/14/2001

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	2000	Dow Jones & Co., fee for articles for Wall St. Journal	1050
6	2000	Federalist Society, honorarium	1000
7	2000	Ethics & Public Policy Center, honorarium	2000
8	2000	De Paul University, honorarium	3500
9	2000	Slate Magazine, fee for articles	3500
10	2000	Ill Inst. of Technology, Chicago-Kent School of Law, honorarium for article	500
11	2000	Stanford University, honorarium for tenure review	500
12	2000	Institute of Religion & Public Life, fee for article	300
13	03/10/01	University of Utah College of Law, salary	29,112
14	02/28/01	Mayer, Brown & Platt, compensation	10,000
15	1999	University of Utah, salary	114,705
16	1999	Harvard Law School, salary for Winter Semester 1999	45,450
17	1999	Boy Scouts of America, fee for legal services	8469
18	1999	Federalist Society honorarium	1000
19	1999	Urban Institute honorarium	5000
20	1999	New York University honorarium	1500
21	1999	Harvard Law School honorarium	1000
22	1999	Slate Magazine fee for articles	1000
23	1999	Liberty Fund honoraria	2800
24	1999	Mayer, Brown & Platt, compensation	206,578

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	McConnell, Michael W.	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 Michael W McConnell Date 5/14/2001

Note: Any individual who knowingly and willfully 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

Chairman LEAHY. Let's take a 3- or 4-minute break while we reset the table.

[Recess.]

Chairman LEAHY. Would the five most patient people here please stand and raise your hands.

Do you, and state your name, swear that the testimony you are about to give before the committee will be the truth, the whole truth, and nothing but the truth so help you God?

Mr. JORDAN. I do.

Judge LUDLUM. I do.

Mr. MARTINI. I do.

Mr. PHILLIPS. I do.

Mr. WHITE. I do.

Chairman LEAHY. I am sorry that you have had to wait so long, but I am sure that when you consider the fact that the alternative is we are running out of time in this session, nobody is absolutely sure when we end, would be to have this hearing sometime in February or March, that a delay, as of today, you probably would feel a little bit better. I hope you don't mind.

Let me do this just before we start. Would you each introduce the members of your family. I mention this, again, I say it somewhat facetiously, but it's true. You get a transcript of this, and someday somebody going through the records in your family will be delighted to see who was there.

So, Mr. Jordan, could we start with you, please.

STATEMENT OF KENT A. JORDAN, OF DELAWARE, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF DELAWARE

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

Sitting in the back is my wife, Michelle. Oh, she moved up.

[Laughter.]

Mr. JORDAN. My wife Michelle. By her is my son Clint. In the back is my son Tyler, and my son K.C., and my son Jesse. With us today is a dear friend, Pat Hannigan, as well as my niece's husband, who is a law student here in Washington, D.C., Jon Lear.

Chairman LEAHY. Jon, where are you going to school?

Mr. LEAR. Howard.

Chairman LEAHY. Good for you.

Now, Judge Ludlum, what about you?

STATEMENT OF ALIA MOSES LUDLUM, OF TEXAS, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TEXAS

Judge LUDLUM. Thank you, Mr. Chairman.

I'd like to introduce my husband, John Ludlum, who is here with me today, and I would very much like to mention members of my family who could not make the trip, my parents, Abdalla and Amelia Moses; my sisters, Deania and Lilia Moses, Diana Gomez and Marina Munoz, and my brother Henry Moses. I also have a stepson, Tom Ludlum.

Chairman LEAHY. We will probably have to check with you later, the staff will, to make sure we get the spelling of all of the names, but that will be in the record, and thank you for mentioning them. That was very nice.

Judge LUDLUM. Thank you.

Chairman LEAHY. Mr. Martini?

STATEMENT OF WILLIAM J. MARTINI, OF NEW JERSEY, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY

Mr. MARTINI. Yes, thank you very much, Mr. Chairman.

I'd like to introduce my wife, Gloria Martini, who is here today; and also our son, Bill Martini; and, unfortunately, our daughter is in college and couldn't be here today. That is Marissa Martini.

Chairman LEAHY. Feel fortunate. Where is she in school?

Mr. MARTINI. She's at Villanova, and our son just graduated your alma mater, Georgetown.

Chairman LEAHY. Thank you. Well, good to have you all here.

Go ahead, sir.

STATEMENT OF THOMAS W. PHILLIPS, OF TENNESSEE, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF TENNESSEE

Judge PHILLIPS. Thank you, Mr. Chairman.

I would like to introduce my wife, Dorothy Phillips, who is here with me today; and my brother-in-law, Johnny Madson; and I have two very close friends, members of the Knoxville Bar, Wilson Horde and Bob Murrian, with whom I have served as a magistrate judge for the past 12 years, who have come to give me moral support.

I would also like to mention, for the record, my daughter, Lori Phillips Jones, who is busy taking care of my 1-year-old grandson, Alexander Phillips Jones, and my son-in-law, Philip Jones, who could not be here. I would also like to mention my son, Wade Phillips, who is at work and couldn't be here either.

Thank you, Mr. Chairman.

Chairman LEAHY. Judge, you will find that grandson is the best part of life.

Judge PHILLIPS. I have already found that out to be true, Mr. Chairman. Thank you.

Chairman LEAHY. When our one grandchild is around, no matter who is calling on the phone, if he wants to play with toy trains or read books, it takes top priority, and it is a nice part of life.

Judge PHILLIPS. It does, indeed.

Chairman LEAHY. Mr. White?

STATEMENT OF JEFFREY S. WHITE, OF CALIFORNIA, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA

Mr. WHITE. Thank you, Mr. Chairman.

I'd first like to introduce my wife, Jane White, who is my wife of 33 years and has supported me throughout this entire process and every other process I've been party to.

I'd like to introduce my son, Eric White. Eric is an honor grad of the University of California, Davis, at this time; and my son, Joshua White, who is a student at the Hastings College of the Law in his second year.

I'd like to introduce my father, Mack White, from New York City, and his wife, Thelma White, from New York City, of course.

And I'd like to introduce my sister, Leslie Parrino, from New York, and her husband, Robert Parrino, from New York.

And I'd like to introduce my extended family. First of all, my mother- and father-in-law, Ruth Stabbe and Arthur Stabbe, originally from New York and now from California; and Jane's aunt, Lillian Gerstein from Maryland; and my wife's cousins, Barbara and Irv Cohen from Maryland; their son, Larry Cohen, from Maryland—and I'm almost done, Mr. Chairman.

Chairman LEAHY. No, I just think we should have had a bigger room.

[Laughter.]

Mr. WHITE. And just a few more people, Herb and Michelle Better are in the back from Baltimore. They are our closest friends. Herb worked with me at the United States Attorney's Office at the beginning of my career, and they have remained very dear friends, and their daughter Laurie, who is a member of the staff of the Banking Committee. I'm very proud of her; and, finally, Denise Alter, who is my former partner and teaches with me at the University of California at Boalt Hall.

Chairman LEAHY. Anybody else?

[Laughter.]

Mr. WHITE. I hope not or I'm in trouble, Mr. Chairman.

Chairman LEAHY. I was going to say we may not finish today. No, I think that's wonderful, Mr. White, and all of you, Mr. Jordan, and Judge Ludlum, and Congressman Martini, and Judge Phillips, and each one of you to have your family here.

Mr. Jordan, I notice one of your pro bono cases was *Hameen* v. *State of Delaware*, and I mention this because I always check to see what nominees have done on pro bono-type things of whatever nature because all of us, as members of the bar, tend to live a somewhat privileged life, and we should give some of that back. This involved a Delaware amendment to the death penalty statute which was retroactively applied to your client, and then he was subsequently executed.

A lot of questions have come up about the death penalty. In a speech last summer, Justice O'Connor, who had supported the death penalty said there were serious questions about whether it is fairly administered in the U.S., and she added, "The system may well be allowing some innocent defendants to be executed."

Do you feel that it is being fairly administered or are there changes that you would propose? I'm not asking you what your position is on the death penalty, but do you feel the administration of it is fair or are there some changes that should be made?

Mr. JORDAN. Mr. Chairman, it is, being perfectly candid, I have not searched my heart and considered the broad policy implications of the way it is applied. My experience with the death penalty was very unique, very localized, very specific. It was this man's case, and as an advocate, I certainly felt that a fundamental constitutional right was not vindicated, as I had hoped it would be, and my hope and concern is that, if I were confirmed, I would have that in my mind and the importance of constitutional rights affecting criminal defendants of all sorts, but particularly when the death penalty is at stake, in considering any habeas review that might come before the Court.

Chairman LEAHY. You've taken on a lot of time serving the legal needs of others, both civil and criminal cases, and as has already

been pointed out, your background is such you're obviously a highly competent attorney.

Do you feel, to the extent you've seen it, that courts—not necessarily the Federal courts which have higher standards—but courts are always careful enough when they have to appoint counsel in a criminal case?

Mr. JORDAN. I know, Mr. Chairman, that in the District of Delaware, where I am familiar with the practice, that the Court has been extremely careful about that.

Chairman LEAHY. You're talking about the Federal court.

Mr. JORDAN. Yes. Although it might seem self-serving, since I've just finished talking about myself being appointed in a case, I think the Court has been at pains to try to find and balance the types of skills and resources that can be brought to bear on behalf of a defendant when they're looking for counsel to appoint.

Chairman LEAHY. If I might say, Mr. Jordan, if you're on the bench, you're going to be in a position where you're going to have to appoint counsel in criminal cases. Speaking as a former prosecutor, and one who handled thousands of criminal cases, if you have a good prosecutor, and you're going to be dealing with the Federal prosecutors, they usually are pretty good, they are actually better served if you appoint a good attorney on the other side.

There is nothing more difficult for a prosecutor than to do things, so that you don't have a reversal later on, to try to handle both the State case or the Government's case and the defense case. I just pass that on for whatever it's worth.

Mr. JORDAN. I absolutely agree with that, sir. When I was an assistant U.S. attorney, I found that I was always grateful to have strong and competent defense counsel because it often served to resolve cases before trial.

Chairman LEAHY. I noticed that, as I was going through the backgrounds, a lot of the nominees have very recently joined the Federalist Society. In fact, we had one nominee who was very honest about it and said he had never thought about it, and somebody told him, well, if you want to be a judge, you better join the Federalist Society. But I noticed you resigned in 1997. Why? You still made it to here.

Mr. JORDAN. The truth is, Mr. Chairman, I wasn't even really conscious that I had signed up.

[Laughter.]

Mr. JORDAN. I had some good friends there in Delaware who were interested in law and public policy and invited me to a luncheon. I supported them in their organizing the local chapter and attended three or four luncheons with them over the course of a year or 18 months, and I think that that put me on the rolls of the national organization. I guess when I stopped going to the lunches, I stopped being on the rolls. That's the only thing I can assume.

Chairman LEAHY. Fair enough.

Obviously, the usual answer to the stare decisis question. You will follow your circuit's decisions and the U.S. Supreme Court decisions, whether they comport with your own personal beliefs or not.

Mr. JORDAN. To the utmost of my ability, sir.

Chairman LEAHY. Judge Ludlum, let me ask you a question, and this is actually one that has been ingrained in me by Senator Thurmond over the years, both when Senator Thurmond was chairman of this committee and when he was ranking member, and Senator Thurmond had already served on this committee for years when I first became a member, but he would put it this way, and he did this with everybody, no matter whether it was somebody that was nominated basically because of his recommendation, and Senator Hatch has certainly asked this question a hundred times, a thousand times.

He talks about the fact that a judge in a court, especially a District Court judge, when they are the only one there—it's not a Court of Appeals—they're the only one there. As the most powerful person there, they can humiliate a litigant that they don't agree or, for whatever reason, don't like or they can treat everybody with courtesy and fairness, so that when somebody leaves that courtroom, they have a sense that justice has been done, not that one side was favored over the other because of a judge's attitude toward an individual.

Now you've been a magistrate for some time now, so you've had to deal with a whole lot of people. How do you feel about the idea and the question about how a judge should be toward litigants who come before them?

Judge LUDLUM. Mr. Chairman, I very much agree with the premise of your question, and that is that all litigants and all parties, all attorneys, members of the court family ought to be treated courteously and with respect when they come into court. I think that everybody ought to be afforded a fair and complete opportunity to litigate the issues that they feel are important to them and should be able to do so without any judge have any preconceived notions, prior to hearing the facts and applying the law, and I very much agree with that.

I have been on the bench five and a half years, and I can say, Mr. Chairman, that there is a transition period, there is a learning curve of moving from being an advocate, as I was, and I was a pretty passionate advocate, to being what I call an active listener, an active participant in the court proceedings.

And I have learned a lot over the last five and a half years, and I hope that I have grown as a jurist, and I hope to continue to grow as a jurist and to continue to learn as I go through the job. I have been very fortunate to have some very good mentors and District judges who have helped me and have taught me a lot in being a jurist.

I can assure you, Mr. Chairman, that everyone will be treated with respect in my court and will be viewed very fairly.

Chairman LEAHY. Thank you. Do you believe mandatory minimum sentences are effectively deterring drug use?

Judge LUDLUM. Well, Senator, in my area——

Chairman LEAHY. You've had a lot of drug cases before you as magistrate.

Judge LUDLUM. Yes, sir. In my area, where I come from, from Del Rio, Texas, when we talk about drug cases, we're talking about 5,000 pounds of cocaine, we're talking about 98 kilos of 98-percent pure cocaine. So we're talking about excessive amounts of drugs

and very extreme amounts of drugs. And so minimum mandatories, as a philosophy and a question, have never really been disputed or discussed in my area, just because of the types of cases that we do see in our courts.

I know that those are the laws, and it's the area of the legislature to mandate minimum mandatory sentences, and I will fully comply with the mandates of the legislature with regard to the minimum mandatories.

Chairman LEAHY. You have seen cases where the prosecutors have try to predetermine the sentence, depending upon how they charge. I mean, a prosecutor has a great deal of discretion. They can bring charges above the trigger level on a mandatory minimum or just below it. They really have total discretion.

Have you seen, in effect, sentence shopping on the part of prosecutors?

Judge LUDLUM. I don't know the subjective or the motivation for the type of charging decisions that have been made by the prosecutors. I have seen instances where, factually, the sentences are different based on the charging document versus the facts, and now that we have the *Apprendi* decision, as well as the *Harris* decision, the courts are having to grapple with the charging of cases, compared to the facts that are presented in the case, and we will look at those very carefully.

Chairman LEAHY. Thank you. Judge, like so many of us on this committee, you had about a decade of experience as a prosecutor, and prosecutors are there to make sure they win within the realms of fairness. Because a lot of the cases that have come before you—again, as you have already pointed out, in the district where you are, they are not going to be the civil cases, they're going to be criminal cases—can you be sure, in your own mind, that you will not come into that courtroom with a predisposition as a prosecutor? And I would ask the same question of somebody who has been a defense attorney for a long time, too, that can you come in there without that predisposition?

Judge LUDLUM. Yes, sir, I believe I can. Having been a prosecutor, I always viewed my job as seeing that justice was done, not necessarily seeing that someone was convicted, thrown in jail and the key thrown away. So when I made the transition to judge, I was able to put that experience behind me and to learn to be impartial and independent.

Chairman LEAHY. Thank you.

Congressman Martini, let me ask you, again, what I call the Thurmond question. It's very easy for a judge to get frustrated, to lose his or her temper in court, but the lasting thing is that people walk out of there thinking his personal disposition decided this, not the law, whichever way the case goes.

Strom Thurmond says the more power a person has, the more courteous they should be. Do you agree with that? Do you feel you can keep that kind of levelheadedness in a courtroom?

Mr. MARTINI. Yes, I do, Mr. Chairman. Unfortunately, as a trial lawyer, I've had the occasion where I've been before a judge who has been less courteous than I would have liked and somewhat maybe partial in certain situations, and those have always been unsettling experiences, both as a prosecutor and as a defense attor-

ney, and so I'm very mindful of that fact, that it's extremely important to be courteous, and it's extremely important, and the real challenge is being courteous, but maintaining a certain degree of authority in the courtroom.

Chairman LEAHY. No question about that.

Mr. MARTINI. And I think that's the challenge that a judge has, and it's one that I'm very mindful of.

Chairman LEAHY. It's interesting what you say about being a litigant on both sides and having judges to do that. I know it's been, with my experience in trying cases, occasionally you do get that kind of judge. And you sit there afterward, even if you win, you wonder what is it based on? And if you're wondering that, you can imagine how the litigants feel, how the public who watches that feels.

I think that, just as members of the Senate or the House, but even more so members of the judiciary with a lifetime appointment, have this overriding responsibility to maintain the integrity and the respect of the Court. It doesn't mean you let the litigants run away in the courtroom by any means. The reason you are there is to keep the trial or the proceedings going. But I think that even people that are just visiting, they're going to walk away thinking, boy, I was in Federal court, and man they know what they're doing, no matter where they are.

I think I've heard a lot of questions, a lot of things asked in here, but Senator Thurmond's question in that area stuck in my mind over the years, and I try to make sure that every, but especially a trial judge, is going to get that question.

Now, as you have mentioned yourself, you have been a prosecutor, you have been a defense attorney. You had one with capital murder I see in the report here, *New Jersey* v. *William Fitzpatrick*. You introduced, when you were in the Congress, the Death Penalty Clarification Act of 1995. It would have expanded the list of aggravating factors in the Federal death penalty statute.

There have been concerns raised about how the death penalty is administered. Is it, aside from whether you are for or against it, is it administered fairly, in your judgment?

Mr. MARTINI. I think when we talk about the death penalty, Mr. Chairman, we always have to be reflective on that particular question, and I don't know if we'll ever get to the point where we could say, with 100-percent assurance, that it is being implemented fairly.

I think in that instance, in the instance of the capital punishment, the laws provide for more assurance than perhaps in other types of crimes, as they should, but I do think that we have to strive, and I think Congress has to continue to strive to be sure in its enacting of laws, that it will be implemented fairly, and then I think, of course, the courts have to be particularly sure that the rights of the defendant, in a capital case, are, in fact, being protected during that process.

Chairman LEAHY. What would you look for if you are the judge, you've got a murder case before you, an indigent defendant, fits all of the criteria for assigned counsel, what would you look for in the counsel you would assign?

Mr. MARTINI. I would certainly look for experience. I would look for counsel who have been through the death penalty process and be sure that a counsel who is assigned to a death penalty case has that type of experience.

Chairman LEAHY. When you were a Congressman, you wrote an article saying you wanted to make English our Nation's official language. You suggested the bilingual movement is, "an elitist form of political oppression." But you are going to have some people who are going to come in who speak very little English. I am somewhat interested in this. When my grandparents came here from Italy, they didn't speak any English, and even as a child I had to speak Italian with them to be—I understand my mother didn't speak English until she was in grade school. My wife's family came here, while she was born here in the United States, she didn't speak English until she started school.

There are a lot of people with different languages. How do you make sure, if somebody comes in and has a very limited command of the English language in your courtroom, that they are being adequately represented?

Mr. MARTINI. Certainly, Mr. Chairman, we would be sure that they would get an interpreter, that the interpreter would be there throughout the entire process. That would be expected.

The issue of English First or English as the principal language arose in my district, which at the time that was a very controversial issue, but one which there was a lot of sentiment on, and it really had to do with the fact that there was multilingualism developing in the district.

The district was extremely diverse. The diversity was a terrific part of the district, but I think a lot of the local officials were having great difficulty in trying to address the many different expectations that there were with respect to the number of different languages that were being spoken in the district, and there were some very honest and reasonable differences of opinion on that.

But I do understand the difference in terms of the role of a judge. Obviously, when we're protecting individual's rights and their rights at trial, we would have to be sure that they would have the benefit of an interpreter.

Chairman LEAHY. You, also, as a Congressman, resisted efforts to cut back on legal services and felt that there has to be money for people for representation. I think you and I took basically the same position in that regard.

Mr. MARTINI. I did, yes, Mr. Chairman.

Chairman LEAHY. Now you have, and very appropriately so, been actively involved in politics, in the political life, and like Senator Hatch and myself, I'm sure you find a lot of that being very enjoyable, being involved in people's campaigns and so forth.

Now, as a judge, it's going to be a lot different. Now are you going to have any, I mean, you are still going to have the right to vote, you can read all you want about politics, you can entertain your own thoughts, and should, are you going to have any difficulty going into that judicial monastery?

Mr. MARTINI. I don't believe so, Mr. Chairman, particularly since I've already made that transition in waiting for this process to go forward. In one way, this wait has been very good. It has taken me

out of the political process, and I might add that most of my career was really in the practice of law. It's the last 10 or 12 years that I was very actively involved in politics, so that most of my career was in the day-to-day practice of law, and I'm looking forward, actually, to going back to dealing with very factual issues and applying the law to the facts that are before me.

Chairman LEAHY. Actually, I know a couple of members of the judiciary who rather enjoy being able to step back from that. As one said to me somewhere, and there was some political event that I had to go to that I didn't want to go to—it was one of these going to be interminable, you know, the 18 speeches before you lead up to the five important speeches kind of thing—and he said, "Gee, Pat, you know I'd go with you, but of course I'm judiciary now." So he said, "I'm going to have a beer, watch the game, and go to bed."

[Laughter.]

Mr. MARTINI. I've already used that excuse.

[Laughter.]

Chairman LEAHY. I'm sure you have.

Judge Phillips, in your position as U.S. magistrate, and you are now chief U.S. magistrate, aren't you?

Judge PHILLIPS. I am, Mr. Chairman. That is correct.

Chairman LEAHY. You've had a lot of pretrial hearings, evidentiary hearings. One of these was in the local press, *U.S.* v. *Leek*.

You recommended that the District Court deny a motion to suppress drugs seized as a result of warrantless search of the home rented by the defendant. You found an exigent circumstance existed when an officer entered the home without a warrant to accompany a landlady, in their needs to protect them, while they looked for a water leak that they suspected was due to a water bill.

You told them he couldn't enter the residence. You later decided he must enter the residence because the woman had decided to go in and was therefore going to be in immediate need of protection. You wrote the officer had to respond to respond to this emergency because to have abandoned these two ladies at that juncture in order to obtain a warrant does not appear to be a reasonable resolution.

I mean, the women could have been asked to just stay out by the officer. They didn't have to go into the rental room. I mean, do we have an emergency? Is this a case where it swallows the rule itself requiring a warrant? I mean, if a water bill is enough to set up an ability to do a warrantless search, is there anything that would stop somebody from doing that warrantless search? I mean, you could have a barking dog. You could have a whole lot of other things.

Judge PHILLIPS. Mr. Chairman, that case dealt with very specific facts. The testimony presented at the evidentiary hearing established that these ladies who were elderly were going to go back into the house. They were not going to wait for the police officers, and the Supreme Court has said that you have to look at the totality of the circumstances in determining whether the officers have acted reasonably under the circumstances. And it was my feeling that, under those peculiar circumstances, it did qualify as exigent circumstances that allowed the police officers to enter. However——

Chairman LEAHY. Back in 1914, in *Weeks* v. *United States*, the Supreme Court developed the exclusionary rule. I remember lecturing to police departments in my jurisdiction over and over again why this was an important rule to keep in mind.

Do you feel that there is a deterrent effect in the exclusionary rule, a deterrent in the sense of keeping police officers from not following the rules?

Judge PHILLIPS. Certainly, Mr. Chairman. I believe that the exclusionary rule serves a very vital and important function in the administration of criminal justice. I do, indeed.

Chairman LEAHY. Have you ever recommended the District Court grant a motion to suppress evidence that was obtained without a warrant?

Judge PHILLIPS. I have, Mr. Chairman. I have, indeed. But I guess I should point out, Mr. Chairman, that I have been a magistrate judge now for eleven and a half years, and I have written hundreds of reports and recommendations.

Chairman LEAHY. Now let me ask the obvious question. And so you won't feel singled out, I have asked this of nominees of Democratic Presidents, too, who have had involvement in politics prior to their nomination or their current position.

Can you assure us that if somebody walks into your court, if you are now the District Court judge, that they can feel comfortable that, no matter what their political background is, no matter what their economic or any other background might be, that they can look at Judge Phillips and say, okay, if I've got a good case, I'm going to win, and if I've got a lousy case, I'm going to lose, and that's all that's going to count?

Judge PHILLIPS. Absolutely, Senator. I believe very strongly that it is the responsibility of the judge to treat every individual equally. This is the only Nation in history dedicated to the proposition of equal justice under the law and that all women and men are created equal. I believe that wholeheartedly, and I hope and pray that at no time would I ever allow anything to influence my judgment in that regard.

Chairman LEAHY. And do you agree with Senator Thurmond that a Federal judge has actually even a more difficult role or position that they have got to make sure that people in that courtroom know that they are being fair, that they are not being overbearing?

Judge PHILLIPS. Absolutely, Mr. Chairman. I believe that every individual who walks into a Federal courtroom should leave that courtroom believing that justice was done and that the judge was fair and impartial.

Chairman LEAHY. I can't stress that enough. Obviously, if you become, you've got a lifetime position, you don't have to respond to me, Senator Hatch or anybody else, but we're all lawyers here, and we should have a sense of respect for our judicial system, as I am sure you do, but it's the integrity and the independence of the judicial system and it's a respect for it because courts can't call out armies to enforce their rules, and, ultimately, their rules, no matter what they've got to back them up, whether it's U.S. Marshals or anything else, they don't really have much effect, unless they are seen as being fair, unless they are seen as being evenhanded.

It has got to be, especially our Federal courts, it has got to be a place where anybody can say, look, I've got a right here that's being stepped on or something. I've got one place I can go, and at least whatever comes out of there will be fair. I think judges have to ask themselves that every day. They come in, and, you know, it's, "God, I hate this case. I wish these people weren't here," but you can't let that show. You've got to be fair.

Mr. White, you've had a litigation practice for almost a quarter of a century at Orrick, Herrington and Sutcliffe, and so you have been in a lot of courtrooms. I am sure it would be fair to say you have seen really good judges and you have seen some who were not really good judges.

Mr. WHITE. That is definitely correct, Mr. Chairman.

Chairman LEAHY. I'm not asking you for names. I wouldn't do that to you.

[Laughter.]

Chairman LEAHY. But you know, I mean, anybody who spends any time litigating knows instinctively what a good judge is and what a bad judge is.

Now you have generally represented large corporations, corporate officers, directors, governmental entities. You have defended corporations in high-stake employment trials, such as those involving claims of wrongful termination, sexual harassment, discrimination, contracts, fraud, and so on. You have been a Federal prosecutor for 8 years. As I said before, nothing wrong with having been a prosecutor.

But now these discrimination cases, some of these other things, a lot of those are going to land on your doorstep, and you're not the defense counsel for the corporation, you're not the plaintiff's counsel for the one making the complaint. Can you step back, step away from your days as, in fact, a high-stake litigator for a corporation and say I'm going to look at this thing, and I'm going to decide it based on whether it's a meritorious complaint by the complainant or not?

Mr. WHITE. Mr. Chairman, absolutely. I understand that the role of a judge, a jurist, is very different from that of an advocate, and I certainly welcome the oath I will take and will certainly adhere to it.

It should be pointed out that, although I've had a few trials where I have to say I've been successful in all of them representing the corporations because the jury found, always a jury trial, that my client was correct, after hearing the facts and the law given to them by the judge, those cases usually involve not a union employee or some low-level employee. These, generally speaking, are very high-level corporate officers, making millions of dollars, who claim you shouldn't have terminated me the day before my options vested so that I could have realized another $25 million.

Also, Mr. Chairman, the cases that I get, when I get them, have been well-vetted by the corporation, by their H.R. Department. And usually the cases I get, at least my clients believe—and in most cases so far in my career they've been correct—that the corporation didn't do anything wrong.

I have, in an equal number of cases, been asked by a corporation to investigate wrongdoing by corporate officials, in connection with

harassment or other forms of discrimination, where I have recommended termination of the employee, appropriate investigation or that the individual be exonerated.

In one part of my career, Mr. Chairman, which you didn't mention, which is what I think I am probably most proud of, is I have been a teacher at the University of California, Boalt Hall, and it is a very diverse campus at Berkeley, and I have been really pleased with my ability to explain the importance to my students in trial advocacy of seeing both sides of the question, and they actually get up there and act as judges, and I critique them as judges, and I teach them the importance of seeing both sides and treating people fairly, and honestly, and without any prejudices or biases.

I am excited about the opportunity of performing a service and being able to do that in every case that I have that will come before me, sir.

Chairman LEAHY. Have you had any dealing with Title VII, protecting State employees against disparate impact discrimination cases?

Mr. WHITE. No, Mr. Chairman. We actually have an Employment Department that handles those kinds of cases. I am actually in the litigation, and in fact I led it for 15 years. I only get involved in those high-stakes cases which are going to go to trial and involve very senior executives. So I don't handle those kinds of cases. I leave it to my partners in that department.

Chairman LEAHY. We had a judicial nominee who came before the committee who said that all valid employment discrimination cases are resolved by the Equal Employment Opportunity Commission. Another one said that employment discrimination claims never go to trial, but they always settle.

Has it been your experience that the EEOC handles all valid employment discrimination claims?

Mr. WHITE. I would have to, Mr. Chairman, say that I am unable to answer that question. Again, it is not my specialty. I haven't really studied the issue, and any answer I would give would be speculation, sir. I'm sorry.

Chairman LEAHY. But you could well see one coming before the Court.

Mr. WHITE. Absolutely, and I would certainly learn the law and apply it in an appropriate way as a judge, sir.

Chairman LEAHY. So instead of a member of the board of directors of a corporation coming in to see Attorney White, you now have two very nervous litigants, one plaintiff and one defendant, before Judge White. Can you feel pretty comfortable that whoever is plaintiff, whoever is defendant, Judge White is going to give fair and equal treatment?

Mr. WHITE. I feel absolutely certain of that, sir, and I was pleased to learn, in the course of the myriad investigations that have been made of my background, that even my opponents, against whom I have tried cases and denied their client significant recoveries, have characterized me as being fair, and honest, and ethical in the way I have handled cases.

And I believe—I know, for a fact—that I would be even more fair and deliberate as a judge, sir.

Chairman LEAHY. Speaking of all that background and all, don't you just love all of that paperwork you have to fill out?

[Laughter.]

Mr. WHITE. Fortunately, my secretary has learned more about me than probably anybody else, and she is kind of on automatic pilot, but it is well worth the challenge, Mr. Chairman, believe me.

Chairman LEAHY. No, no, no. Say it's a lousy amount of paperwork because Senator Hatch and I have been trying to figure out how to cut it down. No, I know what you are saying.

Senator Hatch?

Senator HATCH. Thank you, Mr. Chairman. Thanks for holding this hearing and thanks for this excellent hearing with these excellent nominees. I am very proud of the nominees that President Bush is putting forth, and certainly you five certainly set good standards, and we are pleased to support you.

Just one brief question for you, Judge Phillips, and that is it is about the *Leek* case. Did the District Court in that case adopt your recommendations?

Judge PHILLIPS. The District Court did adopt my report and recommendation, that's correct.

Senator HATCH. That was my understanding. I just wanted to make sure that's clear on the record.

I have known Mr. Jordan for a while. I know his brother better, but I know his parents even better than him and his brother, and they are really good people, and I have no doubt, Kent, that you are going to make a great judge.

Mr. JORDAN. Thank you, sir.

Senator HATCH. I know that you will have the support of your family in doing this very arduous and difficult job.

I know quite a bit about each of you, especially you, Mr. Martini, and we wish you well. We think you will enjoy the Federal bench. We will try and get you through as quickly as we possibly can.

But I want to thank the chairman for hosting this hearing. I know that you are all well-qualified. I know every one of you, each of you will make a great judge, and I think that is the best we can do for our country. So thank you for being willing to give up your lives, to a degree, and to give this public service for all of us. We appreciate it.

Mr. WHITE. Thank you, Senator.

Judge PHILLIPS. Thank you, Senator.

Mr. MARTINI. Thank you, Senator.

Judge LUDLUM. Thank you, Senator.

Mr. JORDAN. Thank you, Senator.

Chairman LEAHY. Thank you for answering Senator Hatch's hard-ball questions.

If there are no further, we will, again, the same rule. Take a look at your answers. If you want to add to them or subtract from them, please feel free to do so. We will keep the record open for a reasonable amount of time for any questions that may come here.

[The biographical information of Mr. Jordan, Judge Ludlum, Mr. Martini, Judge Phillips and Jeffrey White follow.]

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY, UNITED STATES SENATE

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

   Kent Amos Jordan

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

   United States District Judge for the District of Delaware

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

   Corporation Service Company
   2711 Centerville Road, Suite 400
   Wilmington, Delaware 19808
   Tel. (302) 636-5400

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

   October 24, 1957, West Point, New York

5. **Marital Status**: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please also indicate the number of dependent children.

   Married to Michelle Weaver Jordan (maiden name = Weaver), who's full-time occupation is homemaker. We are the parents of six children.

6. **Education**: List in reverse chronological order, listing most recent first, each college, law school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   Georgetown University Law Center; attended 9/81 to 5/84; J.D. awarded, *cum laude*, May 28, 1984

   Brigham Young University; attended 9/75 to 12/76 and 1/79 to 4/81; B.A. in Economics awarded, with High Honors, April 24, 1981

7. **Employment Record**: List in reverse chronological order, listing most recent first, all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, with which you have been affiliated

as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808; Vice President & General Counsel (1998 to Present)(related operating entities include The Company Corporation, Corporate Domains, Inc., Corporate Agents, Inc., The Prentice-Hall Corporation System, Inc., The United States Corporation Company, and AccountStreet, Inc. The holding company of these entities is WMB Holdings, Inc. The foregoing entities can be reached at the address noted for CSC)

The Capital Trust Company of Delaware, 2711 Centerville Road, Suite 210, Wilmington, DE 19808; Member of the Board of Directors (2000 to Present)

Entity Services Group, LLC, 103 Foulk Road, Suite 101, Wilmington, DE 19803; Member of the Board of Directors (2000 to Present)

Afilias Limited, Office 125, 52 Broomhill Road, Tallaght, Dublin 24, Ireland; Member of the Board of Directors of company and its predecessor in interest, Afilias LLC (2000 to 2002), Member of Executive Committee (2000 to 2001)

Board of Bar Examiners, 200 West Ninth Street, Suite 300-B, Wilmington, DE 19801; Member of the Board (2001 to Present), Secretary (1997), Assistant Secretary (1995 to 1996), Associate Member (1993 to 1994)

Delaware Valley Chapter of the American Corporate Counsel Association, P.O. Box 38, Fairless Hills, PA 19030; Member of the Board of Directors (1999 to present), First Vice President (2002), Second Vice President (2001)

Greater Hockessin Area Development Association, P.O. Box 238, Hockessin, DE 19707; Member of the Board of Directors (1991 to 2001), President (1992)

Village of Manley Civic Association, P.O. Box 813, Hockessin, DE 19707; Member of the Board of Directors (1998 to 2001), President (2000 to 2001), Vice President (1998 to 1999)

Japan America Society of Delaware, 303 W. 18th St./2nd Floor, Wilmington, DE 19802; Member of the Board of Trustees (1999-2000).

Richard S. Rodney American Inn of Court, c/o Kathy Winchell, P.O. Box 636, Wilmington, DE 19899; Counselor (1996 to1999), Member of the Executive Committee (1994 to 1999), Secretary-Treasurer (1994 to1996)

Morris James Hitchens & Williams, 222 Delaware Avenue, 10th Floor, Wilmington, DE 19801; Partner (1994 to 1997), Associate (1992 to 1993)

Delaware Chapter of the Federal Bar Association, c/o Neal Belgam, Esq., Blank Rome Comisky & McCauley, 1201 Market Street, Suite 800, Wilmington, DE 19801; Treasurer (1997)

Community Legal Aid Society, Inc., 100 West 10th Street, Suite 801, Wilmington, DE 19801; Member of the Board of Directors (1994 to 1997)

Widener University School of Law, 4601 Concord Pike, P.O. Box 7474, Wilmington, DE 19803; Adjunct Professor of Law (1995 to1996)

Assistant United States Attorney for the District of Delaware, 1201 Market Street, Suite 1100, Wilmington, DE 19801 (1987 to 1992)

Hickory Hill Civic Association, no address known, Member of the Board of Directors and President (late 80's, early 90's)

Potter Anderson & Corroon, 1313 North Market Street, Wilmington, DE 19801; Associate (1985 to 1987)

U.S. District Court, Chambers of The Honorable James L. Latchum, 844 King Street, Wilmington, DE 19801; Law Clerk (1984 to 1985)

VanCott Bagley Cornwall & McCarthy, 58 S. Main, Suite 100, Salt Lake City, UT 84144; Summer Law Clerk (Summer 1983)

Crystal Springs (Water Park), Highway 69 N., Honeyville, UT 84314; Laborer (Summer 1982)

Steve Zundel (Forestry Services), 336 North Bridge, St. Anthony, ID 83445; Laborer (Summer 1982)

Fraser Associates, 1210 Connecticut Ave., NW, Washington, D.C. 20005; Research Assistant (Summer 1981)

8. **Military Service**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge received.

I have never served in the military. (I was an ROTC cadet while a student at Brigham Young University from 1975 to 1976 and in 1979.)

9. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or

professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Recipient, Caleb R. Layton III Service Award, presented periodically by the Judges of the United States District Court for the District of Delaware to an attorney who, "personifies the qualities of a federal practitioner: legal acumen, professional decorum, public service" (1998).

Recipient, New Lawyers Distinguished Service Award, presented annually by the Delaware State Bar Association to an attorney with less than ten years at the bar, "who by exemplary leadership and service dedicated to the cause of good citizenship in civic and humanitarian service ... has maintained the integrity and honored recognition of the legal profession in community affairs ..., thus reflecting high honor on both country and profession" (1992).

Juris Doctor degree awarded *cum laude* from Georgetown University Law Center (1984); Dean's list (1981-84); Selected to join the staff (1982-83) and the Editorial Board (Articles Editor; 1983-84) of the Georgetown Law Journal.

Bachelor of Arts in Economics awarded with High Honors from Brigham Young University (1981); Dean's list (1980); Earl Crockett Scholarship for Economics (1980); Army ROTC Scholarship (1976); Dean's Scholarship (1975).

10. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Ombudsman for the United States District Court for the District of Delaware (by appointment of the District Court; 1995 to present).

Member of the Board of Bar Examiners of the Delaware Supreme Court (by appointment of the Delaware Supreme Court; 2001 to present); Member of the Administrative Committee of the Board (2001 to present); Secretary of the Board (by appointment of the Delaware Supreme Court; 1997); Assistant Secretary of the Board (by appointment of the Delaware Supreme Court; 1995-96); Associate Member of the Board (by appointment of the Delaware Supreme Court 1993-94).

Member of the Delaware State Bar Association (1984 to present); Member of the Executive Committee (beginning July 2002); Member of the Standing Committee on the Provision of Legal Services to Low Income People (1998 to present); Member of the Intellectual Property Section (1996 to present); Council Member of the Intellectual Property Section (1996-1998); Member of the Ethics Committee (1991-1995); Chairman of the New Lawyers Committee (1989-1990).

Member of the Board of Directors of the Delaware Valley Chapter of the American Corporate Counsel Association (1999 to present), First Vice President (2002), Second Vice President (2001).

"Bencher" of the Richard S. Rodney Chapter of the American Inns of Court (1996 to present); Counselor (1996 to 1999), Member of the Executive Committee (1994 to 1999), Secretary-Treasurer (1994 to 1996); Barrister (1985 to 1988; 1994 to 1996).

District of Columbia Bar Association, Member (1996 to present).

Delaware Chapter of the Federal Bar Association (1996 to present), Steering Committee Member (1996 to 1997); Treasurer (1997).

Member of the Republican National Lawyers Association (2002 to present)

Member of the American Intellectual Property Law Association (mid 90s to present).

Member of the Computer Law Association (mid 90s to present).

Member of the Advisory Committee for the United States District Court for the District of Delaware (by appointment of the District Court; 1995 to 1999).

Member of the Intellectual Property Advisory Committee of the United States District Court for the District of Delaware (by appointment of the District Court; 1997 to 1998).

Member of the Federalist Society (1995 to 1997).

Member of the Board of Directors of Community Legal Aid Society, Inc., 100 West 10th Street, Suite 801, Wilmington, DE 19801 (1994 to 1997).

Member of the District of Delaware Advisory Group under the Civil Justice Reform Act of 1990 (by appointment of the District Court; 1995); Alternate Member (1990 to 1994).

Member of the Criminal Justice Act Blue Ribbon Panel of the United States District Court for the District of Delaware (by appointment of the District Court; 1993 to 1998).

Member of the American Bar Association (1984 to early 90s).

Member, Judicial Conference of the United States Ad Hoc Committee on the American Inns of Court (by appointment of the Chief Justice of the United States; 1983 to1985).

Student Member of the Charles Fahy Chapter of the American Inns of Court (1983 to 1984)

11. **Bar and Court Admission**: List each state and court in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Delaware Supreme Court (1984 to present)
United States District Court for the District of Delaware (1985 to present)
United States Court of Appeals for the Third Circuit (1988 to present)
United States Supreme Court (1994 to present)
United States Court of Appeals for the Federal Circuit (1995 to present)
District of Columbia Court of Appeals (1996 to present)

12. **Memberships**: List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, charitable, or other organizations since graduation from college, other than those listed in response to Questions 10 or 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion - either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

The Church of Jesus Christ of Latter-Day Saints, Member, have been a full-time missionary (Japan, 1977-78) and held various responsibilities in lay leadership

Republican Party, Volunteer for various local, state, and national races within the State of Delaware

Financial Planning Association, Member (2000 to present)

Greater Hockessin Area Development Association, Member of the Board of Directors (1991 to 2001), President (1992)

Village of Manley Civic Association, Member of the Board of Directors (1998 to 2001), President (2000 to 2001), Vice President (1998 to 1999)

Japan America Society of Delaware, Member of the Board of Trustees (1999-2000).

Hickory Hill Civic Association, Member of the Board of Directors and President (late 80's or early 90's)

Delaware Society for the Prevention of Cruelty to Animals, Member of the Board of Directors (late 80's to early 90's)

Mental Health Association in Delaware, Member of the Board of Directors (mid 80's)

St. Thomas More Society, Member (late 80's to present)

Lincoln Club of Delaware, Member (late 80's to pesent)

Blood Bank of Delaware, Member (mid 80's to present)

Delaware Historical Society, Member (mid 80's)

Delaware Nature Education Society, Member (mid 80's)

Mary Campbell Center (residence and rehabilitation center for the disabled), Volunteer (mid 80's to mid 90's)

Georgetown Law Journal, Editorial Board Member and Staff Member (1982 to 1984)

To the best of my knowledge, none of the foregoing organizations has ever discriminated, either through formal membership requirements or the practical implementation of membership policies, against anyone on the basis of race, sex, or religion.

13. **Published Writings**: List the titles, publishers, and dates of books, articles, reports, or other material you have written or edited, including material published on the Internet. Please supply four (4) copies of all published material to the Committee, unless the Committee has advised you that a copy has been obtained from another source. Also, please supply four (4) copies of all speeches delivered by you, in written or videotaped form over the past ten years, including the date and place where they were delivered, and readily available press reports about the speech.

Author, "Electronic Service of Process: Coming Soon to a Lawsuit Near You?" *Corporate Counsel* magazine, pg. A20 (October 1999)

Author, "The Online Copyright Infringement Liability Limitation Act: A New Tool to Preserve Copyright Protection in Cyberspace," *The Metropolitan Corporate Counsel* newspaper, pg. 18 (January 1999)

Author, "Motions Practice And Summary Disposition Of Appeal," Chapter 9, Vol. I, Federal Appellate Procedure, Third Circuit (Lawyers Cooperative Publishing 1996)

Co-Author, "Motions For Achieving Adjudication Without Trial," Chapter 16, Vol. III, Federal Civil Procedure Before Trial, Third Circuit (Lawyers Cooperative Publishing

1996)

Co-Author, "Legal Mentoring," Chapter 8, The Delaware Bar in the Twentieth Century (Delaware State Bar Association 1994)

Author of Note, "The Extent of Independent Presidential Authority to Conduct Foreign Intelligence Activities," 72 Geo.L.J. 1855 (1984)

I have been a lecturer or speaker at professional conferences and classes (e.g., on civil procedure, intellectual property issues, advocacy, and professional responsibility) over the years, but I am not aware of any of the speeches or lectures having been reproduced in print or on videotape. Outlines, partial text, and PowerPoint slides for presentations I have made are enclosed.

14. **Congressional Testimony**: List any occasion when you have testified before a committee or subcommittee of the Congress, including the name of the committee or subcommittee, the date of the testimony and a brief description of the substance of the testimony. In addition, please supply four (4) copies of any written statement submitted as testimony and the transcript of the testimony, if in your possession.

I have never testified before Congress.

15. **Health**: Describe the present state of your health and provide the date of your last physical examination.

I am in excellent health. I underwent a physical examination on May 21, 2002.

16. **Citations**: If you are or have been a judge, provide:

(1) a short summary and citations for the ten (10) most significant opinions you have written;

(2) a short summary and citations for all rulings of yours that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court; and

(3) a short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions.

If any of the opinions or rulings listed were in state court or were not officially reported, please provide copies of the opinions.

Not Applicable.

17. **Public Office, Political Activities and Affiliations**:

(1) List chronologically any public offices you have held, federal, state or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or nominations for appointed office for which were not confirmed by a state or federal legislative body.

I served by appointment as an Assistant United States Attorney in the District of Delaware from June 1987 to June 1992. During that time, I also served as Chief of the Civil Division in the Office (1991-92) and as an instructor on civil litigation at the Attorney General's Advocacy Institute, Washington, D.C. (1991).

(2) 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.

Volunteer with George W. Bush for President campaign (2000) (participated in get-out-the-vote efforts during the Primary and General Elections)

Volunteer with William V. Roth, Jr. for Senate campaigns (1994 and 2000) (participated in get-out-the-vote phone drive in 1994 and was poll greeter in 2000)

State Chair for Richard G. Lugar for President campaign (1996) (coordinated Primary campaign effort within the state, including speaking at Republican Party regional meetings and assisting at Party events where others spoke on the Senator's behalf)

Campaign Manager for Steve Taylor for State Representative campaign (1986)

18. **Legal Career**: Please answer each part separately.

(1) Describe chronologically your law practice and legal experience after graduation from law school including:

(1) whether you served as clerk to a judge, and if so, the name for the judge, the court and dates of the period you were a clerk;

Law Clerk to the Honorable James L. Latchum, United States District Court for the District of Delaware, 1984-85.

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

I did not practice alone.

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

Associate (1985-87) with Potter Anderson & Corroon
1313 North Market Street, Wilmington DE 19801

Assistant United States Attorney (1987-92), U.S. Attorney's Office for the District of Delaware, 1201 North Market Street, Suite 1100, Wilmington, DE 19801

Associate (1992-93) and Partner (1994-97) with Morris James Hitchens & Williams, 222 Delaware Avenue, 10th Floor, Wilmington, DE 19801

Vice President & General Counsel (1998- Present) with Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808

(2) (1) Describe the general character of your law practice and indicate by date if and when its character has changed over the years.

From 1984 to 1985, I served as a law clerk to the Honorable James L. Latchum, a judge on the United States District Court for the District of Delaware. Following my clerkship with Judge Latchum, I worked for approximately two years (1985-87) with the law firm of Potter Anderson & Corroon, 1313 North Market Street, Wilmington, DE 19801, as an associate assigned mainly to corporate and commercial litigation matters. I was then offered the opportunity to serve as an Assistant United States Attorney for the District of Delaware (1987-92). The U.S. Attorney's Office is currently located at 1201 Market Street, Suite 1100, Wilmington, DE 19801. I became the lead attorney in the office on civil matters, as well as serving as lead counsel and co-counsel on a variety of criminal cases. Following my five years in the U.S. Attorney's Office, I became an associate (1992-93) and then a partner in the law firm of Morris James Hitchens & Williams (1994-97), 222 Delaware Avenue, 10th Floor, Wilmington, DE 19801, handling mainly intellectual property, corporate, and commercial litigation. At the end of 1997, I accepted an offer to join the senior management team of Corporation Service Company

("CSC"), as a Vice President and the General Counsel, beginning in 1998. CSC, located at 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, is a national provider of registered agent, public records filing and retrieval, corporate and intellectual property information management, and litigation information management services. As General Counsel, I am responsible for all of the legal affairs of the company and for managing a legal department with eight attorneys, including me, and two paraprofessionals. I supervise dispute resolution, risk management, certain labor and employment issues, contract negotiation and review, intellectual property, and real estate matters, as well as participating in the planning and execution of business acquisitions and other strategic development in the company.

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

In private practice, my clients were typically business entities involved in patent and related disputes in the U.S. District Court for the District of Delaware. To a lesser degree, I handled corporate disputes in Delaware's Court of Chancery and commercial disputes in Delaware's Superior Court or in adversary proceedings related to bankruptcies pending in the Bankruptcy Court in Delaware. As an Assistant United States Attorney, my clients in civil cases included various agencies of the United States government with a broad array of legal disputes, from basic torts to complex federal regulatory and contractual problems. In criminal cases, I managed grand jury investigations and prosecuted cases involving matters as diverse as drug trafficking, environmental crime, extortion, bank robbery, firearms violations, tax violations, and complex fraud. I also represented individual defendants, including directors and officers of corporations and indigent individuals in federal criminal and post-conviction relief proceedings.

(3) (1) Describe whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe each such variance, providing dates.

As a law clerk (1984-85), I was in court daily. As a new associate (1985-87), I appeared infrequently in court and then generally in a supporting role. During my five years as an Assistant United States Attorney (1987-92), I appeared in federal court nearly every day for some purpose: arguing motions, handling initial appearances or arraignments, presenting evidence to grand juries, representing the U.S. in various pretrial hearings, trying cases, or participating in case conferences related to civil

or criminal matters. During the five and a half years I worked at Morris James Hitchens & Williams (1992-97), I regularly appeared in court for mediations, case conferences, arguments, Markman hearings, and, occasionally, trial. As General Counsel for CSC (1998-2002), I have appeared in court sporadically in relation to disputes involving the company, and, on pro bono matters, I twice argued constitutional issues in a death penalty habeas matter before the United States Court of Appeals for the Third Circuit, and have appeared several times in Delaware's Family Court as an attorney guardian ad litem for at-risk children.

(2) Indicate the percentage of these appearances in

(1) federal courts;
I estimate that my court appearances have been 95% in federal court.
(2) state courts of record;
The remaining 5% has been in state courts.
(3) other courts. 0%

(3) Indicate the percentage of these appearances in:

(A) civil proceedings;
In terms of total percentage of appearances (not trial appearances alone), probably 70% have been in civil cases.
(2) criminal proceedings.
The remaining 30% have been in criminal cases. (Please note, however, that if trial experience alone is considered, those percentages would be largely reversed, since criminal matters tended with greater frequency to be resolved by trial than did civil matters.)

(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 estimate that I have tried to conclusion 25 to 30 cases. To the best of my recollection, in all but two of those cases, I was either sole counsel (six or seven cases), sole lead counsel (another two or three cases), or (in all the rest) co-lead counsel, sharing equally with a partner or another Assistant United States Attorney in the responsibility to develop the case, prepare the witnesses, handle the examination and cross-examination, and present either the opening statement or the closing argument or both.

(5) Indicate the percentage of these trials that were decided by a jury.

Roughly two-thirds to three quarters (66% to 75%) were jury trials. Of the civil cases I tried, the majority were bench trials.

(4) Describe your practice, if any, before the United States Supreme Court. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the U.S. Supreme Court in connection with your practice.

I have never argued before the United States Supreme Court. I have twice submitted petitions to the Court for writs of certiorari, the first time following an unsuccessful appeal in a criminal matter (Rosebar) in which I served as court-appointed defense counsel, the second time following an unsuccessful appeal of the denial of habeas relief in a death penalty case (Hameen) on which I served as court-appointed counsel. I have never submitted a brief, amicus or otherwise, to the United States Supreme Court. (I have enclosed a copy of the petition for cert. in the Hameen case and a copy of an unsigned version of the petition that was prepared in Rosebar. I believe this unsigned version is the final version that was ultimately signed and filed with the Court, but I cannot verify that.)

(5) Describe legal services that you have provided to disadvantaged persons or on a *pro bono* basis, and list specific examples of such service and the amount of time devoted to each.

I was court appointed to represent the petitioner in a death penalty habeas case. That appointment was made in 1996. With co-counsel, and in consultation with our client and his family, I worked on that case through briefing and argument in the District Court, through briefing and supplemental briefing, two rounds of argument, and a motion for reargument en banc in the Third Circuit, and a petition to the U.S. Supreme Court for a writ of certiorari. Following the denial of relief at each of those stages, my co-counsel and I worked with our client to secure a reduction in sentence from the Delaware authorities. Ultimately, we were unsuccessful and our client was executed in May of 2001. Over a period of five years, largely on an uncompensated basis, I probably devoted hundreds hours to the representation of our client but do not have records to give a precise estimate.

At the end of 2001, I undertook on a pro bono basis the representation of two at-risk children as their attorney guardian ad-litem. I have appeared in court five times and am scheduled to appear at least once more. Counting court appearances, interviews with parents, stepparents, extended family members, psychologists/counselors, and Division of Family Services personnel, discussions with opposing counsel and with the assigned Deputy

Attorneys General for the state, correspondence to the court and to health care providers, and miscellaneous other matters, I estimate that I have devoted approximately seventy to eighty hours to the representation thus far.

In 1994, I represented, under a Criminal Justice Act court appointment and at a substantially reduced rate, an indigent defendant in a federal drug trafficking case. Along with co-counsel (a partner whom I convinced to join me in the representation), we filed pre-trial motions, handled a suppression hearing, prepared witnesses and evidence, tried the case (a three or four day trial), appealed the conviction, and filed a petition for a writ of certiorari. Again, the time investment was very substantial, but it is long enough ago that I cannot recall now how much time was devoted to the matter.

Also in the mid 90's, I was appointed by the court on an emergency basis to represent an indigent material witness in a capital case in federal court. The matter required several interviews and the negotiation of immunity with the government. I do not recall receiving compensation for the representation, and, if there was any, it was at the substantially reduced Criminal Justice Act rate. I do not now recall how much time was devoted to the matter.

In the early 90's ('92 or '93), I represented on a pro bono appointment through Delaware Volunteer Legal Services an indigent woman in a landlord tenant dispute, which was resolved to my client's satisfaction. Again, I cannot recall how much time was devoted to the matter.

In the mid 80's, I represented on a pro bono basis a young father and family friend in Family Court in relation to a custody dispute. I cannot recall how much time was devoted to the matter.

In addition to the foregoing pro bono efforts, I have spent many hours over the years on issues associated with the delivery of legal services to those who otherwise would be unable to afford representation. From 1994 to 1997, I served on the Board of Directors of the Community Legal Aid Society, Inc. ("CLASI"), a statewide non-profit agency responsible for providing legal services to low income people, and since 1998 I have served on the standing committee of the Delaware State Bar Association dedicated to the provision of legal services to people with low income. I also was a member of an informal committee convened by the District Court to explore ways to handle prisoner litigation (Sec. 1983 claims) coming before the Court.

19. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, and for each provide the date of representation, the name of the court, 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. In addition, please provide the following:

(1) the citations, if the cases were reported, and the docket number and date if unreported;

(2) a detailed summary of the substance of each case outlining briefly the factual and legal issues involved;

(3) the party or parties whom you represented; and

(4) describe in detail the nature of your participation in the litigation and the final disposition of the case.

Hameen v. Delaware, 212 F.3d 226 (3d Cir. 2000), *cert. denied*, 532 U.S. 924 (2001)(opinion below at Ferguson, a/k/a Hameen v. Delaware, C.A. No. 96-306-LON, 1996 WL 1056727 (D.Del. Dec. 13, 1996)).

In the District Court, the case was before Judge Joseph J. Longobardi; in the Court of Appeals, it was first before Judges Mannsman, Greenberg, and McKee and subsequently before Judges Greenberg, McKee, and Rendell. My appointed co-counsel was John S. Malik, Esquire, 100 East 14th Street, Wilmington, DE 19801, Tel. 302-427-2247. Not court appointed but working closely with us on the case were former colleagues at Morris James who have since moved to other positions: The Honorable Joseph R. Slights, III, Superior Court of the State of Delaware, Daniel L. Herrmann Courthouse, 1020 North King Street, Wilmington, DE 19801, Tel. 302-577-2400, ext. 220, and Ricardo Palacio, Esquire, Ashby & Geddes, 222 Delaware Avenue, 17th Floor, Wilmington, DE 19801, Tel. 302- 654-1888. Opposing counsel was Loren C. Meyers, Chief of Appeals Division, Delaware Department of Justice, Carvel State Office Bldg, 820 N. French Street, Wilmington, DE 19801, Tel. 302-577-8500.

This is the death penalty habeas case to which I have referred in answering question 18(5), *supra*. When John Malik and I were appointed as co-counsel for Mr. Hameen, we reviewed the issues and agreed to divide them and focus our separate efforts on specific issues within the case. We agreed that I would be responsible for the lead constitutional argument in the case, which asserted that Delaware's retroactive application of its revised death penalty statute violated the *ex post facto* clause of the Constitution. While the overall effort put into the case was collaborative and included excellent work by Joe Slights and Rick Palacio, with occasional support by other colleagues at Morris James, I did have the opportunity to take the lead in briefing that issue and arguing it at the various levels at which we pursued relief. We were not successful in our efforts to obtain post-conviction relief, and Mr. Hameen was executed on May 25, 2001. The case was

highly significant to me because it literally involved a question of life or death, it had at its heart a fundamental constitutional issue, and it involved the then-newly emerging standards for habeas corpus review under the Antiterrorism and Effective Death Penalty Act.

United States v. Morales, 861 F.2d 396 (3d Cir. 1988)

The case in the District Court was before Judge Murray M. Schartz. It was reviewed on appeal by Judges Hutchinson, Seitz, and Sloviter. I was the sole attorney for the United States on the case. (It should be noted, of course, that even in cases like this, where I was the only Assistant United States Attorney assigned to the matter, the attorneys in the office regularly discussed our cases and shared counsel and lent other support as needed.) Opposing counsel was Joel DeFabio, then of Malman, DeFabio & Lapidus, now located at 2121 Ponce de Leon Blvd., Coral Gables, FL 33134, Tel. Number unknown.

This was a drug trafficking case in which the District Court ruled the cocaine seized during a traffic stop on I-95 should be suppressed as evidence against one of the defendants because it was seized during a warrantless search as to which that defendant had not consented. I was responsible for the entire case, including the suppression hearing and briefing in the District Court and the briefing and argument of the matter on appeal. It was a significant case because it vindicated on appeal the propriety of the search and seizure and allowed us to move forward with a successful prosecution of both defendants.

CFMT v. Steag Microtech, Inc., 965 F. Supp. 561 (D.Del. 1997).

The case in the District Court was before Judge Joseph J. Longobardi. It was reviewed in the first instance by Magistrate Judge Mary Pat Trostle (now Mary Pat Thynge) and she issued a report and recommendation. I was the lead counsel for Steag Microtech GmbH Donaueschingen ("SMTD"), a German entity related to the lead defendant, and I coordinated my efforts with those of the attorneys for the lead defendant, Steag Microtech, Inc. ("SMTI"). The Attorneys for SMTI were Arthur G. Connolly, Jr., Esq., of Connolly Bove Lodge & Hutz, 1220 Market Street, Wilmington, DE 19801, Tel. 302-888-6212; G. Thomas Delahunty, Esq., of Brooks Haidt Haffner & Delahunty, 99 Park Ave., New York, NY 10016, Tel. 212-697- 3355, and George F. Stradar, Jr., Esq., Northrop, Stradar & Glenn, P.C., One Corwin Court, P.O. Box 2395, Newburgh, NY 12550, Tel. 914-561-8000. Opposing counsel were Edward B. Maxwell, 2nd, Esq., and Josy W. Ingersoll of Young Conaway Stargatt & Taylor, The Brandywine Building, 17th Floor, 1000 West Street, Wilmington, DE 19801, Tel. 302-571-6600, and Thomas B. Kenworthy, Esq., Morgan Lewis & Bockius, 2000 One Logan Square, Philadelphia, PA 19103, Tel. 215-963-5000.

This was a patent case in which my client prevailed on a motion to dismiss for lack of personal jurisdiction and which involved the interpretation of a then-relatively new amendment to Fed.R.Civ.P. 4, pertaining to service of process and the exercise of personal jurisdiction. I dealt with SMTD personnel in Germany on the discovery conducted regarding SMTD's contacts with the United States. With the assistance of an associate, I researched the relevant law, filed and

briefed the motion to dismiss, and made the case for dismissal both to the Magistrate Judge and to the District Judge who reviewed the case and rendered the opinion in our favor. This case was significant to me because it involved a rule which, though technical in nature, nevertheless bore on the fundamental constitutional question of when it is appropriate for a United States court to exercise jurisdiction over a foreign citizen, and it was a favorable result in a hard-fought case.

United States v. Skerianz, et al., Criminal Action No. 89-15-LON.

The case in the District Court was before Judge Joseph J. Longobardi. On appeal, in which I was not substantially involved, it was before Judges Hutchinson, Nygaard, and Rosenn and is reported as United States v. Inigo, at 925 F.2d 641 (3d Cir. 1991). I was co-counsel with my U.S. Attorney's Office colleague Edmond ("Corky") Falgowski, 1201 Market Street, Suite 1100, Wilmington, DE 19801, Tel. 302-573-6277. Opposing counsel were, for defendant Bruno Skerianz, Richard A. Zappa, Esq., and Melanie K. Sharp, Esq. of Young Conaway Stargatt & Taylor, The Brandywine Building, 17th Floor, 1000 West Street, Wilmington, DE 19801, Tel. 302-571-6600; for defendant Raul Giordano, John S. Malik, Esq., 100 East 14th Street, Wilmington, DE 19801, Tel. 302-427-2247; for defendant Antonio Inigo, Raymond M. Radulski, Esq., 1225 N. King Street, Suite 301, Wilmington, DE 19801, Tel. 658-9388; and for material witness Maria deBianchini, Jerome M. Capone, 4 East 8th Street, #200, Wilmington, DE 19801, Tel. 655-5358.

This was a prosecution under the Hobbs Act against several defendants from Argentina who conspired and attempted to extort $10,000,000 from the DuPont Company. They had stolen DuPont's trade secrets associated with the production of its highly valuable Lycra spandex fiber. Corky Falgowski and I worked with the victim, the FBI, and law enforcement officers from Europe to develop the case, which, given the crimes and the international character of the defendants and venues involved, was complicated. After a trial that lasted ten days or two weeks, we succeeded in convicting all of the defendants. The convictions of three of the defendants were overturned on appeal because the Third Circuit held that the evidence was insufficient to sustain the convictions. That was, of course, not a result with which I agreed. The case was significant to me because it was fascinating and tragic in its human dimensions and very challenging in terms of logistics and evidence to bring to trial.

United States v. One Million Three Hundred Twenty-Two Thousand Two Hundred Forty-Two Dollars and Fifty-Eight Cents ($1,322,242.58), 938 F.2d 433 (3d Cir. 1991) (In the District Court as Civil Action No. 88-654-CMW).

The case in the District Court was before Judge Caleb M. Wright. The opinion on appeal was written by Judge Alito. I was sole counsel for the U.S. in this matter. The opposing counsel was Bartholomew J. Dalton, Esq., 919 Market Street, Suite 900, P.O. Box 2307, Wilmington, DE 19899, Tel. 302-652-2050, and Paul R. Regensdorf, formerly with Fleming, O'Bryan & Fleming, now with Akerman, Senterfitt & Eidson, P.A., 350 East Las Olas Boulevard, Suite 1600, Ft. Lauderdale, FL 33301, Tel. 954-463-2700.

This was a civil forfeiture action involving proceeds of illegal drug trafficking, deposited as gold bullion in a Wilmington, Delaware bank. I worked with the DEA agents responsible for the matter in Florida and Delaware and filed the action on behalf of the United States. Because of the claimant's recalcitrance in discovery, we were able to have the claim dismissed and the forfeiture was upheld. The case was significant because it involved what was then a relatively new tool in the war on drugs, because it highlighted the complexities inherent in using the tools of civil discovery in a case with criminal overtones, and because it emphasized the importance of judicial insistence on fair compliance with the rules of discovery. The case became important to me in an additional way. In private practice, I later represented a friend whose family home was at risk of forfeiture because a grown son had used drugs on the premises. I therefore saw the power in the forfeiture law from both the government's and the property-owner's perspectives.

Discovision Associates v. Disc Mfg., Inc., Civil Action No. 95-21-SLR (opinions at 1997 WL 699275 (D.Del. Sept. 16, 1997); 42 U.S.P.Q. 1749 (D.Del. Apr. 3, 1997), and, after my involvement in the case, at 25 F.Supp.2d 301 (D.Del. 1998))

The case was before District Judge Sue L. Robinson. My co-counsel in the case included Thomas J. Nolan, Esq., and John S. Schuster, Esq. of Howrey & Simon (now Howrey Simon Arnold & White), 550 S. Hope Street, #1400, Los Angeles, CA 90071, Tel. 213-892-1800; Stephen L. Sulzer, Esq., and Frederick Frei, Esq., then with Steptoe & Johnson, now, respectively, with Dickinson Wright, 1901 L Street, NW, Suite 800, Washington, D.C. 20036, Tel. 202-659-6940, and Dorsey & Whitney, Suite 300 South, 1001 Pennsylvania Ave., NW, Washington, D.C. 20004, Tel. (202) 442-3595; and Anthony C. Roth, Esq., and D. Michael Underhill, Esq., of Morgan Lewis & Bockius, 1111 Pennsylvania Ave., NW, Washington, D.C. 20004, Tel. 202-739-3000. Opposing counsel included Robert H. Richards, III, Esq., of Richards Layton & Finger, One Rodney Square, Wilmington, DE 19801, Tel. 302-651-7740; James B. Blanchard, Esq., of Brinks Hofer, Gilson & Lione, 455 N. Cityfront Plaza Drive, NBC Tower, Suite 3600, Chicago, IL 60611, Tel. 312-321-4200; and The Hon. Michael Chertoff, formerly of Latham & Watkins, now Assistant Attorney General, Criminal Division, U.S. Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530, Tel. 202-514-2601.

This was a complex patent case dealing with the technology for compact discs and involving a very large number of attorneys. (I have not listed all of the participants from all of the firms.) I had the role of local counsel for the plaintiff. I was involved with the case from the beginning and watched the logistical issues mount for the court and the parties as the case moved through discovery, claims construction, and trial. I had some substantive involvement but was never lead counsel on any substantive issue. My primary responsibilities concerned procedural issues and assisting the various attorneys for the plaintiff to work within the local rules and customs of practice in the District Court in Delaware. The result of the litigation, when I left it, was a mixture of rulings, with each side able to claim some victory. The importance and value of the technology at issue and the sheer size of the workforce that each side deployed made this case significant. I felt that I made a positive contribution in a very complicated case and learned, from this and similar patent cases, the challenges that counsel and the court must address in resolving highly technical questions in high-stakes patent disputes.

Ajinomoto Co., Inc. v. Archer-Daniels-Midland Co., Civil Action No. 95-218-SLR, 1996 WL 621830, and 621837 (D.Del. Oct. 21, 1996) and 1998 WL 151411 (D.Del. Mar. 31, 1998), *aff'd*, 228 F.3d 1338 (Fed. Cir. 2000), *cert. denied*, 532 U.S. 1019 (2001).

The case was before District Judge Sue L. Robinson. My co-counsel in the case included Arthur I. Neustadt, Esq., of Oblon Spivak McClelland Maier & Neustadt, 1755 Jefferson Davis Highway, Fourth Floor, Arlington, VA 22202, Tel. 703-413-3000; Marc R. Labgold, Esq., formerly of Oblon Spivak and now with Patton Boggs, 8484 Westpark Drive, 9th Floor, McLean, Virginia 22102, Tel. (703) 744-8000; Thomas Field, Esq., and Lawrence Rosenthal, Esq., of Strook & Stroock & Lavan, 180 Maiden Lane, New York, NY 10038, Tel. 212-806-5400. Opposing counsel included Jack B. Blumenfeld, Esq., of Morris Nichols Arsht & Tunnell, 1201 N. Market Street, Wilmington, DE 19801, Tel. 302-658-9200; Charles A. Laff, Esq., of Laff Whitesel Conte & Stewart, 401 N. Michigan Avenue, Chicago, IL 60611, Tel. 312-661-2100; and J. Alan Galbraith, Esq., of Williams & Connolly, 725 Twelfth Street, NW, Washington, D.C. 20005, Tel. 202-434-5000.

This was another complex patent case, in this instance dealing with the bioengineering of bacteria to produce amino acids for livestock feed. Again, the case involved a large number of attorneys (I have not listed all of them), and presented particularly technical scientific issues. What made the case significant for me was the international character of the dispute and the very human motivations that appeared to drive the actors. In addition, my co-counsel were adept at presenting evidence through the use of computer technology, and that was one of my first opportunities to see such technology applied to a significant degree in a courtroom setting. We were successful in enforcing our client's patent rights. My role as local counsel to plaintiff became increasingly substantive as the case progressed and I was closely involved in the development of the case for the plaintiff throughout discovery (which ranged over Europe, Japan, and the United States), claims construction, and trial.

Buena Vista, Inc., et al. v. Wilmington Trust Company, Civil Action No. 87C-12-043, 1994 WL 555373 (Del. Super. Aug. 31, 1994).

The judge who presided over this case was Superior Court Judge Fred S. Silverman. My co-counsel was my partner P. Clarkson Collins, Jr., Esq., Morris James Hitchens & Williams, 222 Delaware Avenue, 10th Floor, Wilmington, DE 19801, Tel. 302-888-6800, and we were assisted by associates and paralegals in the firm. Opposing counsel was Darryl K. Fountain, Esq., 1225 King Street, Suite 400, Wilmington, DE 19801, Tel. 302-655-9805.

This case involved a commercial dispute between our client, the defendant bank, and a real estate developer and architect who claimed the bank's lending practices resulted in the failure of his real estate project. Clark and I developed the case together through discovery and shared the load equally at trial. Among other things, I handled the cross-examination of the plaintiffs' principal and made the closing argument. The case was significant because it was contentious litigation in which we obtained a very favorable result at trial, with plaintiffs owing the bank

hundreds of thousands of dollars rather than collecting the seven figure damages sum demanded.

Diltz v. United States, 771 F. Supp. 95 (D.Del. 1991).

District Judge Murray M. Schwartz presided over this case. My co-counsel was a colleague in the U.S. Attorney's Office, Patricia C. Hannigan, Esq., 1201 Market Street, Suite 1100, Wilmington, DE 19801, Tel. 302-573-6277. Opposing counsel was Bernard A. Van Ogtrop, Esq., then of Cooch & Taylor, now with Seitz Van Ogtrop & Green, 222 Delaware Avenue, Suite 1500, Wilmington, DE 19899, Tel. 302-888-7601; and Walter A. Oleniewski, Esq., then with Shulman Rogers Gandal Pordy & Ecker, now located at 2315 Twin Valley Lane, Silver Spring, MD 20906, Tel. Number unknown.

This was a medical malpractice action brought under the Federal Tort Claims Act and based upon allegations that mishandled surgeries by armed forces doctors on the plaintiff's eye had complicated a congenital condition. Pat and I developed the defense and shared responsibility in discovery. I took the lead in briefing our unsuccessful motion for summary judgment. Pat and I worked together to negotiate a settlement, which Pat succeeded in doing after I left the U.S. Attorney's Office for private practice. Because this case involved allegations of malpractice that stretched over a number of years and different surgeries, the case was significant in the challenge of marshalling evidence. It was also a particularly interesting case because of the medical science involved.

United States v. Ecke, Criminal Action No. 87-102-JRR.

The presiding judge was then District Judge Jane R. Roth. I was sole counsel in handling the case for the United States. Opposing counsel were, for defendant Wolfgang G. Ecke, Joseph A. Hurley, Esq., 1215 King Street, Wilmington, DE 19801, Tel. 302-658-8980; and, for defendant Johann W. Zalud, J. Calvin Williams, Jr., Esq., Pike Creek Office Park, Suite 200, 5307 Limestone Road, Wilmington, DE 19808, Tel. 302-234-8656.

This was a bank fraud case involving two German confidence men and a trail of evidence across Europe. The case was significant for me because it was one of the first criminal cases, if not the first, that I managed from beginning to end. I worked with the FBI and other government officials in securing evidence in the United States and abroad, and I handled all aspects of the trial, which concluded with convictions.

20. **Criminal History**: State whether you have ever been convicted of a crime, within ten years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and disposition and describe the particulars of the offense.

I have not.

21. **Party to Civil or Administrative Proceedings**: State whether you, or any business of

which you are or were an officer, have ever been a party or otherwise involved as a party in any civil or administrative proceeding, within ten years of your nomination, that is reflected in a record available to the public. If so, please describe in detail the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings in which you were a guardian *ad litem*, stakeholder, or material witness.

Corporation Service Company and its wholly-owned subsidiary, The Company Corporation, have brought suit and been sued in the past ten years. Because both companies provide registered agent services, they are occasionally named in error as defendants in litigation. The following list of cases does not include such matters.

WMB Holdings, Inc. v. Safeco Insurance Company, Civil Action No. 02C-03-144(WCC) (Del. Superior Ct., New Castle County 2002). WMB has filed suit against our insurance carrier based upon a dispute over a sublimit in the coverage, which is now at issue because CSC's New York City office was destroyed in the September 11, 2001 terrorist attack. I am the primary point of contact with our outside counsel in the matter.

Dimension Funding, LLC v. Coast National Bank, Civil Action No. MC 010728 (Cal. Superior Ct., San Luis Obispo County 2001). CSC was named as a cross-defendant in a suit involving a dispute over the payment of proceeds of certain loan collateral. The allegation was that CSC was under an implied obligation to indemnify one of the defendants in connection with a UCC filing. The matter is being concluded by settlement, with CSC having no liability. One of my colleagues in the CSC Legal Department is the primary interface with our outside counsel in the matter and periodically provides an update to me.

WMB Holdings, Inc. v. Devechio, Civil Action No. 17767NC (Del.Ch.Ct. 2000). I represented WMB in the Delaware Court of Chancery on an expedited basis in an action against a former employee who was discovered embezzling. The action was filed to freeze the defendants assets pending further judicial proceedings. Subsequently, Mr. Devechio pled guilty in federal court to his crime. My involvement in the criminal action was solely as a representative of the victimized business. The caption of that action was United States v. Devechio, Criminal Action No. 1:00CR00077001 JJF(2001).

Smiley v. ICANN, et al., Case No. BC 254659 (Calif. Superior Ct. 2002). This is a class action suit in California in which the defendants are the Internet Corporation for Assigned Names and Numbers ("ICANN"), NeuLevel, which is the domain name registry for the ".biz" extension, and the ICANN accredited domain name registrars who offered ".biz" registration services in cooperation with the NeuLevel registry. CSC's internet domain name registrar business,

Corporate Domains, Inc., is one of the named defendants. The charge is essentially that NeuLevel structured the offering of domain names with a ".biz" extension in a way that violated California law against operating a lottery. CSC has not had to take an active role in the litigation, which appears to be headed toward settlement. One of my colleagues in the CSC Legal Department is the primary interface with our outside counsel in the matter and periodically provides an update to me. Companion litigation is pending as Eprize, LLC v. Neulevel, Inc., Case No. 257632 (Calif. Superior Ct. 2002).

The Company Corporation v. Meservy, Civil Action No. CV98-07535 (Washoe County District Court, Nev. 1998). CSC purchased The Company Corporation ("TCC") in 1998 and began integrating certain of its operations with CSC's immediately thereafter. An individual who acted as an agent for TCC in Nevada prior to the purchase began soliciting the TCC client base using the TCC name. We filed suit to prevent that practice, claiming infringement of the TCC trade name and unfair competition. He cross-claimed for unpaid agent fees. A bench trial took place on November 16-17, 2000. The Court has not yet issued a ruling. One of my colleagues in the CSC Legal Department is the primary interface with our outside counsel in the matter and periodically provides an update to me.

Simon vs. Value Behavioral Health, 208 F.3d 1073 (9th Cir. 2000). The plaintiff sued CSC and another registered agent provider and scores of other businesses in his attempt to frame an ERISA complaint against certain health care providers. His dispute with CSC and the other registered agent provider was over the companies' not serving legal process in the way he thought fit. The matter was dismissed and the dismissal upheld on appeal. The suit was initiated before I joined the company. After I joined the company, I became the primary point of contact for our outside counsel on the matter.

Baines v. CSC, Civil Action No. 00cv10368 (D. Mass. 2000). A former office manager who was fired for performance deficiencies filed an age discrimination claim with the Massachusetts Commission Against Discrimination, and, subsequently, filed suit in Massachussets Superior Court. CSC removed the action to U.S. District Court, denied the allegations, and prevailed on a motion for summary judgment. Initially I was the primary contact with our outside counsel but I turned that responsibility over to one of my colleagues in the Legal Department, who periodically provided an update to me.

Milliken v. CSC, Civil Action No. CV99-99-1207 (D.Ariz. 1999). The plaintiff had a trademark registration on the name IncSpot which conflicted with CSC's use of that mark, for which CSC had similar registrations. The plaintiff created a website offering registered agent and public document filing and retrieval services directly competing with the services CSC offers on its www.incspot.com website. To the best of my recollection, I sent a "cease and desist" letter on behalf of CSC

to the plaintiff in July of 1999. The plaintiff immediately filed suit in federal court in Arizona and CSC counterclaimed for relief. The case was settled in late 1999. There was a brief dispute over the terms of settlement in 2000, which was also resolved by mutual consent. I worked with CSC's outside counsel in the development of CSC defense to the plaintiff's case and on our counterclaim case.

CSC v. Kroll Associates, Civil Action No. 99C-12-210-JRS (Del. Super. Ct. 1999). CSC filed suit in Delaware to collect fees for public records searches undertaken on behalf of Kroll Associates. The suit was tried to the bench in 2000, and judgment was rendered for CSC, albeit for an amount less than the company sought. I was initially the primary contact with our outside counsel but subsequently gave that responsibility to one of my colleagues in the Legal Department, who periodically provided updates to me.

Bowen Plumbing Co., Inc. v. The United States Corporation Company, Civil Action No. 992070912 (Pierce County Superior Ct., Wash.1999). The plaintiff sued a wholly-owned subsidiary of CSC, alleging that the defendant failed to provide notice to plaintiff of certain requirements for corporate entities to remain in good standing in Washington. One of my colleagues in the CSC Legal Department was the primary interface with our outside counsel in the matter and periodically provided an update to me. To the best of my recollection, the case was dismissed for lack of prosecution.

Allstate Financial Corporation v. CSC The United States Corporation Co., Civil Action No. 98-173-A (E.D.Va. 1998). The plaintiff sued CSC for an allegedly faulty UCC search. I was the primary contact with our outside counsel and assisted in the preparation of CSC's defense. The case went to trial and CSC won judgment as a matter of law.

Quebecor Printing v. CSC , Case No. 90 98L 10382 (Circuit Court of Cook County, Ill. 1998). Quebecor sued CSC alleging that CSC had improperly filed a UCC financing statement. One of my colleagues in the CSC Legal Department was the primary interface with our outside counsel in the matter and periodically provided an update to me. CSC won a dispositive motion and subsequently settled with plaintiff.

Gonzalez v. CSC, Civil Action No. 98CA 596JN (W.D.Tex; Austin Div. 1998). A former employee alleged racial and sexual discrimination and constructive discharge. I was the primary contact with CSC's outside counsel. CSC denied the charges and reached a settlement with plaintiff.

North Jersey Secretarial School, Inc. v. Prentice-Hall Corporation System, Inc., New Jersey Superior Court, Law Division, Hudson County, No. HUD-L-2872-97. Someone attempting to sue another party asserted that corporate information

given by a CSC owned entity was erroneous. The suit was eventually terminated on grounds favorable to CSC.

TAG Co. v. The Company Corporation, Civil Action No. 203-275 (Montgomery County Circuit Court, Maryland 1998). A web-page development company sued TCC based upon a contract pursuant to which the plaintiff was to have provided services to TCC clients in exchange for advertising and an exclusive listing and link on TCC's website. To the best of my recollection, the matter was settled. One of my colleagues in the CSC Legal Department was the primary interface with our outside counsel in the matter and periodically provided an update to me.

Tighue v. CSC, MER-L-000510-98 (New Jersey Superior Court, Law Div., Mercer County 1998). The plaintiff, a former employee, claimed she was discharged in retaliation for a workers compensation claim and that she was discriminated against on the basis of a handicap. CSC denied the charges and defended itself against the claim, which was concluded by settlement. One of my colleagues in the CSC Legal Department was the primary interface with our outside counsel in the matter and periodically provided an update to me.

Artis vs. CSC, SDHR No. 4-E-R-96-1202443-E; EEOC Charge No. 16G965978 (NY Div. Of Human Rights and EEOC) (1996). An employee, then with one year on the job, alleged race discrimination. She contested the application to her of the company's rules for authorizing leave, contended, without factual basis, that a fellow employee who received discipline for similar infractions had never been disciplined, challenged a preliminary performance evaluation, and claimed discrimination for being denied a promotion that was also denied to numerous whites with far longer tenure than hers. She subsequently filed a second charge (NY Div. Of Human Rights, SDHR No.: 4-E-O-96-1202543-E), alleging retaliation against her because of the filing of the first charge. I believe that the matter was resolved with no adverse findings against the company. This matter was resolved before I joined the company.

Mathiason v. Prentice-Hall Legal & Financial Services, NY City Comm'n on Human Rights Complaint No. E-94-0188; EEOC Charge No. 16F930421 (NY City Comm'n on Human Rights Complaint and EEOC 1994). Former employee, a white woman, alleged "reverse" racial discrimination and retaliation for her having complained of discriminatory acts. Her employment was terminated for inadequate job performance on July 14, 1993. I believe that the matter was resolved with no adverse findings against the company. This matter was initiated before CSC acquired Prentice-Hall Legal & Financial Service and was resolved before I joined the company.

Redmon v. Prentice-Hall Legal & Financial Services, SDHR No. 4-E-RS-94-1201713; EEOC Charge No. 16G945922 (NY Div. Of Human Rights and EEOC 1994). Former employee contended that she was discriminated on the basis of her gender and race when her job was not held open until she returned from pregnancy-

related disability leave. The company's position included the assertion that the position was not offered to the employee again because of her poor job performance and attendance. I believe that the matter was resolved with no adverse findings against the company. This matter was initiated before CSC acquired Prentice-Hall Legal & Financial Service and was resolved before I joined the company.

The only time that, to my knowledge, I have personally been named in a civil or administrative proceeding was in June of 1996, when a former law partner, Joanne B. Wills, sued the law firm in which I was then a partner, Morris James Hitchens & Williams. She named all of her former partners as defendants in the suit. The suit was filed in the Superior Court of the State of Delaware in and for New Castle County, and carried the Civil Action No. 96C-05-228-SCD. To the best of my recollection, the complaint sought what Ms. Wills contended were additional monies owed to her under the partnership agreement after she left the partnership. The case was settled in 1997 or early 1998, again to the best of my recollection. I did not take an active part in the litigation.

2. **Potential Conflict of Interest**: 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.

Because I am coming out of an in-house counsel position and have not practiced privately for more than four years, I do not anticipate any conflicts of interest to arise, except in the unlikely event that Corporation Service Company or one of its affiliates is a party to suit in the District Court. In that event, I would recuse myself from any participation in the litigation. My wife and I do not own securities, except for mutual funds held in 401(k) accounts, and I therefore do not anticipate any conflict in handling litigation involving companies that are publicly held. I have served in a variety of non-profit community organizations. If one of them were to become a party to litigation in the Court, I would have to determine on a case-by-case basis whether my involvement with the organization had been recent enough to warrant recusal. I will follow the guidelines of the Code of Judicial Conduct in resolving any conflicts that may arise.

3. **Outside Commitments During Court Service**: Do you have any plans, commitments, or arrangements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I do not have any plans to pursue outside employment of any kind while serving on the bench. The Court has a busy docket and I expect to devote my full time and attention to the work of the Court.

24. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding the nomination, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500. 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.

25. **Statement of Net Worth**: Complete and attach the financial net worth statement in detail. Add schedules as called for.

See net worth statement.

26. **Selection Process**: Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?

No.

(1) If so, did it recommend your nomination?

(2) Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.

I submitted a resume to and was interviewed by Congressman Michael N. Castle, who, I understand, interviewed all candidates who expressed an interest in the judicial opening occasioned by the retirement of Judge Roderick R. McKelvie from the District Court. Because mine was one of three names forwarded to the White House by Congressman Castle, I was invited to the White House for an interview, which was conducted by a panel of attorneys from the Office of White House Counsel.

(3) 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 or seeking a commitment as to how you would rule on such case, issue, or question? If so, please explain fully.

No.

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
Jordan, Kent A.	District Court -- Delaware	07/26/2002
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 07/25/2002 ___ Initial ___ Annual ___ Final	01/01/2001 to 07/15/2002
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.**	
Corporation Service Company 2711 Centerville Rd, Suite 400 Wilmington, DE 19808	**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 & General Counsel	Corporation Service Company
2	Director	The Capital Trust Company of Delaware
3	Director	Entity Services Group, LLC

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

	DATE	PARTIES AND TERMS
x **NONE** (No reportable agreements.)		
1		NONE
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	12/31/00	Corporation Service Company	$189,517
2	12/31/01	Corporation Service Company	$189,910
3	07/15/02	Corporation Service Company	$164,497
4			

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting: Jordan, Kent A.	Date of Report: 07/26/2002

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

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

	SOURCE (No such reportable reimbursements.)	DESCRIPTION
NONE		
1	EXEMPT	
2		
3		
4		
5		
6		
7		

V. GIFTS

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

	SOURCE (No such reportable gifts.)	DESCRIPTION	VALUE
NONE			
1	EXEMPT		
2			
3			

VI. LIABILITIES

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

	CREDITOR (No reportable liabilities.)	DESCRIPTION	VALUE CODE*
NONE			
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 | Jordan, Kent A. | 07/26/2002

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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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						EXEMPT				
2	Dreyfus S&P 500 Fund (401(k))		None	K	T					
3	Fidelity Magellan Fund (401(k))		None	K	T					
4	Vanguard Growth Index Fund (401(k))		None	J	T					
5	Vanguard Wellington Fund (401(k))		None	J	T					
6	Vanguard Windsor Fund (401(k))		None	J	T					
7	Vanguard 500 Index Fund (401(k))		None	J	T					
8	Vanguard International Growth Fund (401(k))		None	J	T					
9	Vanguard Small Cap Growth Fund (401(k))		None	J	T					
10	Vanguard Medium Cap Index Fund (401(k))		None	J	T					
11	Vanguard Total Investment Stock Fund (401(k))		None	J	T					
12	Vanguard Retirement Savings Trust (401(k))	A	Interest	J	T					
13	Delaware College Investment Plan for Child		None	J	T					
14	Delaware College Investment Plan for Child		None	J	T					
15	Delaware College Investment Plan for Child		None	J	T					
16	ING Money Market Account	A	Interest	K	T					
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	Jordan, Kent A.	07/26/2002

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

FINANCIAL DISCLOSURE REPORT | Jordan, Kent A. | 07/26/2002

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	Director	Afilias Limited
5	Member	Board of Bar Examiners of the Delaware Supreme Court
6	First Vice President	Delaware Valley Chapter of American Corporate Counsel Association
7	Director	Greater Hockessin Area Development Association
8	President	Village of Manley Civic Association
9	Guardian ad Litem	by appt of Delaware Family Court

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 7/26/02

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

NET WORTH

ASSETS	
Cash on hand and in banks	$33,204
U.S. Government securities-add schedule	none
Listed securities-add schedule	$132,132 (see schedule A)
Unlisted securities–add schedule	none
Accounts and notes receivable	none
Due from relatives and friends	none
Due from others	none
Doubtful	none
Real estate owned-add schedule	$250,000 (estimated; see schedule B)
Real estate mortgages receivable	none
Autos and other personal property	$11,360 (autos, est.) + $25,000 (other personalty, est.)(see schedule C)
Cash value-life insurance	none
Other assets itemize:	$15,506 (education accnts) + $29,238 (deferred comp.)(see schedule D)
Total Assets	$ 496,440
CONTINGENT LIABILITIES	
As endorser, comaker or guarantor	None
On leases or contracts	None
Legal Claims	None
Provision for Federal Income Tax	None
Other special debt	None

LIABILITIES	
Notes payable to banks-secured	None
Notes payable to banks-unsecured	None
Notes payable to relatives	None
Notes payable to others	None
Accounts and bills due Our typical monthly credit card bills = $ 2,000 (we put groceries, gas, and other general living expenses on a credit card; we pay off the balance monthly)	
Unpaid income tax	None
Other unpaid income and interest	None
Real estate mortgages payable-add schedule	$73,833 (see schedule E)
Chattel mortgages and other liens payable	None
Other debts-itemize:	None
Total liabilities	$75,833
Net Worth	$420,607
Total liabilities and net worth	$ 496,440
GENERAL INFORMATION	
Are any assets pledged? (Add schedule)	No
Are you defendant in any suits or legal actions?	No
Have you ever taken bankruptcy?	No

SCHEDULE A

Listed Securities

My wife and I own shares in the following mutual funds, held in my 401(k) accounts (values as of 5/24/02):

Dreyfus S&P 500 Index Fund	$32,459.63
Fidelity Magellan Fund	$33,088.01
Vanguard Growth Index Fund	$14,472.23
Vanguard Wellington Fund	$ 2,822.66
Vanguard Windsor Fund	$ 2,540.25
Vanguard 500 Index Fund	$14,885.53
Vanguard International Growth Fund	$ 5,458.13
Vanguard Small Cap Growth Fund	$ 2,149.72
Vanguard Medium Cap Index Fund	$ 1,426.72
Vanguard Total Investment Stock Fund	$ 8,328.62
Vanguard Retirement Savings Trust	$14,500.03
TOTAL	$132,131.53

SCHEDULE B

Real Estate Owned

My wife and I jointly own our residence. Based on recent sales in the neighborhood, I estimate the value of the home to be approximately $250,000. We own no other real estate.

SCHEDULE C

Autos and other personal property

My wife and I jointly own the following automobiles (values estimated from Kelley's Blue Book):

• '91 Dodge Caravan	$1,670
• '95 Ford Contour	$3,155
• '96 Infiniti G20	$6,535
SUBTOTAL	$11,360

Our remaining personal property consists of our household furnishings, lawn and garden equipment, consumer durables and electronics, and food storage. We estimate that the present value (not the replacement value) of such property is approximately $25,000

TOTAL $36,360

SCHEDULE D

Other assets

We are investing in education funds for our three younger children. The investments are through Fidelity Investments and the Delaware College Investment Plan, in the following amounts (values are as of 5/24/02):

For the benefit of Clinton James Jordan	$5,521.45
For the benefit of Kent Carver Jordan	$5,527.45
For the benefit of Jesse Weaver Jordan	$4,457.15
TOTAL	$15,506.05

I have the following deferred compensation through CSC that is vested and which I anticipate will be paid when I leave the company's employment:

	$29,238
TOTAL OF OTHER ASSETS	$44,744.05

SCHEDULE E

Real estate mortgage payable

On our residence, my wife and I owe the following on a mortgage held by Wells Fargo Home Mortgage, Inc. (as of May 24, 2002):

$73,833

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY, UNITED STATES SENATE

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

   ALIA MOSES LUDLUM
   ALIA MOSES (maiden name)

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

   United States District Judge for the Western District of Texas
   Del Rio Division
   Del Rio, Texas

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

   United States Courthouse and Federal Bldg.
   111 E. Broadway A-202
   Del Rio, Texas 78840
   (830) 703-2038

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

   January 6, 1962
   Eagle Pass, Maverick County, Texas

5. **Marital Status**: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please also indicate the number of dependent children.

   Married to John Campbell Ludlum (retired). We do not have children.

6. **Education**: List in reverse chronological order, listing most recent first, each college, law school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   University of Texas School of Law, August 1983 - May 1986
   Doctorate of Jurisprudence awarded on May 25, 1986

   Texas Woman's University, August 1980 - August 1983
   B.B.A. with a concentration in Accounting
   Minors in Computer Science and Government/History
   Degree awarded August 1983

7. **Employment Record**: List in reverse chronological order, listing most recent first, all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

2000 - Present:	**Full-time United States Magistrate Judge** **Western District of Texas** **Del Rio Division** **Del Rio, Texas**
1997 - 2000:	**Part-time United States Magistrate Judge** **Western District of Texas** **Del Rio Division** **Del Rio, Texas**
1997 - 2000:	**Worked part-time as a self-employed mediator not affiliated with any law firm or business entity.** **Del Rio, Texas**
1990 - 1997:	**Litigation Attorney and Chief of the Del Rio Division** **United States Attorney's Office** **Western District of Texas** **Del Rio Division** **Del Rio, Texas**
1986 - 1990:	**Trial Attorney Level I, Trial Attorney Level II, and Chief of Appellate Division** **Ken Oden, Travis County Attorney** **Travis County Attorney's Office** **314 West 11th Street** **Austin, Texas 78701**
1985 - 1986:	**Law Clerk** **Ken Oden, Travis County Attorney** **Travis County Attorney's Office** **314 West 11th Street** **Austin, Texas 78701**
1984 - 1985:	**Legal Researcher** **Office of the County Judge** **Travis County**

1000 Guadalupe
Austin, Texas 78701

1984: **Clerk Typist**
University of Texas Public Affairs Library
The University of Texas
Main Bldg., Room 1
Red River and 26th Streets
Austin, Texas 78701

1983 - 1984: **Babysitter for the Beaman Family and St. David's Episcopal Church**
Austin, Texas 78701

All positions were compensated by a salary or a fee.

8. Military Service: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge received.

Not applicable.

9. Honors and Awards: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

In 1995, I received a cash bonus for outstanding service to the United States Attorney's Officer for the Western District of Texas. A year earlier, in 1994, I received the Victim/Witness Assistance Award from the United States Attorney for the Western District of Texas. In 1992 - 1993, I was inducted as the first member of the Eagle Pass High School Hall of Fame. While at Texas Woman's University, I was inducted into Alpha Phi Sigma (National Criminal Justice Honor Society) and Omicron Delta Epsilon (Honor Society in Economics).

10. Bar Associations: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

- **Fifth Circuit Court of Appeals**
- **State Bar of Texas**
  Judicial Section Member: 2000 to the present
- **Hispanic National Bar Association**
  Judicial Council Member: 1999 to the present
  Judicial Council Secretary: 2000 to the present

- **National Association of Women Judges**
- **Federal Magistrate Judges Association**
- **Val Verde County Bar Association**
  - **Law Day Committee Chair: 1997 - 1998**
  - **President-Elect: 1998 - 1999**
  - **President: 1999 - 2000**
  - **Executive Board Member: 2000 through June 2002**
- **National Association of Assistant United States Attorneys (former member)**
- **Fifth Circuit Court of Appeals Bar Association (former member)**
- **Austin Dispute Resolution Center (former volunteer)**

11. **Bar and Court Admission**: List each state and court in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

State Bar of Texas: November 1986 - Present
United States District Court for the Western District of Texas: May 1990 - Present
United States Fifth Circuit Court of Appeals: October 1990 - Present

12. **Memberships**: List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, charitable, or other organizations since graduation from college, other than those listed in response to Questions 10 or 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion - either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

- **American Cancer Society - Val Verde County Unit**
  - **Relay for Life Co-Chair: 1999 - 2000**
  - **Relay for Life Chair: 2000 - 2001**
  - **Relay for Life Chair Advisor: 2001 - 2002**
- **Pan American Round Table**
  - **Scholarship Distribution Committee: 2000 - 2002**
- **Del Rio Christmas Committee**
- **Texas Women in Law Enforcement**
- **Texas Department of Public Safety Officers' Association**
- **Eagle Pass High School Mock Trial Team Advisor**
- **San Felipe Creek Walk Association (former member)**
- **Texas District and County Attorneys Association (former member)**
- **Chicano Law Students' Association (former member and president)**
- **San Felipe Country Club (former member)**
- **Body Shapers Gym (former member)**

- **YMCA of Austin, Texas (former member)**
- **YWCA of Austin, Texas (former member)**

I am not aware of any discriminatory policies or practices by any of the above listed organizations.

13. **Published Writings**: List the titles, publishers, and dates of books, articles, reports, or other material you have written or edited, including material published on the Internet. Please supply four (4) copies of all published material to the Committee, unless the Committee has advised you that a copy has been obtained from another source. Also, please supply four (4) copies of all speeches delivered by you, in written or videotaped form over the past ten years, including the date and place where they were delivered, and readily available press reports about the speech.

I have not published any books, articles, or notes, although I assisted former Texas Court of Criminal Appeals Judge Charles Campbell research an article entitled *An Economic View of Developments in the Harmless Error and Exclusionary Rules*, 42 Baylor L.R. 499. Four copies of the article are attached.

I have been asked to speak at many functions. The core themes of the speeches include the following: personal background information, the importance of an education, the importance of making responsible choices in life, character and perseverance. My speeches do not include any matters relating to constitutional law issues or legal policy. These speeches, however, were never published in either written or videotaped form. Copies of notes and outlines typical of the remarks I usually present are attached.

14. **Congressional Testimony**: List any occasion when you have testified before a committee or subcommittee of the Congress, including the name of the committee or subcommittee, the date of the testimony and a brief description of the substance of the testimony. In addition, please supply four (4) copies of any written statement submitted as testimony and the transcript of the testimony, if in your possession.

I have never testified before a committee or subcommittee of the Congress.

15. **Health**: Describe the present state of your health and provide the date of your last physical examination.

I am in excellent physical condition. My last physical was October 12, 2001.

16. **Citations**: If you are or have been a judge, provide:

(a) a short summary and citations for the ten (10) most significant opinions you have written;

(b) a short summary and citations for all rulings of yours that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court; and

(c) a short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions.

If any of the opinions or rulings listed were in state court or were not officially reported, please provide copies of the opinions.

(a) United State Magistrate Judges primarily issue reports and recommendations, which are non-appealable and unpublished findings. We are statutorily prohibited from presiding over felony criminal trials, and felony sentencing matters. Thus, I have not issued opinions in criminal matters, nor have I issued any reports and recommendations on any novel or significant state or federal constitutional issues. In civil cases, we may preside over cases with the consent of the parties. To date, only reports and recommendations have been issued in civil cases. None involve novel or significant state or federal constitutional issues.

(1) United States v. Rito Torres-Galvan, DR-99-CR-306(1)-WWJ. The District Court referred the matter of the defendant's motion to suppress evidence for an evidentiary hearing. A hearing was conducted and findings of fact and conclusions of law were issued, along with a recommendation that the motion to suppress evidence be denied. The defendant filed objections to the findings and recommendation, and they were overruled by the District Court. My findings were upheld. The defendant pleaded guilty, was sentenced, and did not appeal his case.

(2) Ignacio Martinez, Sr., et al. v. Agrigenetics, Inc., d/b/a Mycogen Seed, DR-00-CA-44. The defendants filed a motion for a transfer of venue from the Western District of Texas to the Northern District of Texas. I recommended that the motion be denied. The parties did not file objections to my findings. The District Court accepted the report and recommendation. The case was later dismissed at the request of the parties.

(3) Vicente Carachure Rios v. United States of America, DR-00-CA-69. Rios filed a petition pursuant to Title 28, United States Code,

§ 2255 challenging his conviction and sentence. Rios's primary argument was that his attorney was ineffective. I recommended that the petition be denied. The parties did not file objections and the District Court accepted the report and recommendation. Rios has filed a notice of appeal and the matter is still pending.

(4) Graciela Contreras v. William Halter, Acting Commissioner of the Social Security Administration, DR-00-CA-21. Contreras was seeking review of the denial of disability insurance benefits. I recommended her motion be granted and the case remanded to the Administrative Law Judge for further review and findings. The parties did not file objections to the findings. The District Court accepted the report and recommendation. Judgment was entered and the case formally remanded to the Administrative Law Judge for further proceedings.

(5) Rogelio Perez v. Housing Authority of the City of Uvalde, et al., DR-00-CA-14. The defendants filed a motion for summary judgment. I recommended that summary judgment be granted on all federal claims, but the state law claim should be allowed to move forward. The plaintiff filed objections to the recommendations. The District Court accepted the reasoning and the majority of the findings in the report and recommendation. The District Court declined to exercise jurisdiction over the state law claim and ordered the case dismissed. The case is pending, although no appeal notices have been filed.

(6) Ricardo Cervera, et al. v. Adcock Gin Company, et al. DR-00-CA-47. The defendants filed motions to dismiss the cause of action citing as the main reason that the Del Rio Division was not the proper venue for the cause of action. I recommended that the motion to dismiss be granted because the venue chosen by the plaintiffs was improper. The parties did not file objections to the findings. The report and recommendation was accepted by the District Court and the case was dismissed. No further action was taken in the Western District of Texas. The decision to dismiss the case was not appealed.

(7) Robert Raul Martinez v. Board of Governors, et al., DR-99-CA-69. The defendants, medical care professionals and medical care institutions, filed a motion for summary judgment. The defendants asserted their decisions with respect to the plaintiff,

Dr. Martinez, were excused by the immunity clause of Title 42, United States Code, § 11111. The defendants also argued the plaintiff had failed to state a cause of action pursuant to Title 42, United States Code, § 1983 (civil rights violations). I recommended that all allegations against all defendants be dismissed and the motions for summary judgment be granted. The parties did not file objections to the findings and the District Court accepted the report and recommendation. The case was dismissed and no further actions were taken by the parties.

(8) Scotty Lee Herrell v. United States of America, DR-01-CA-70. Herrell filed a petition pursuant to Title 28, United States Code, § 2255. He challenges his conviction and sentence on the basis of Apprendi v. New Jersey, 530 U.S. 466 (2000). Herrell also argues he should be given a free transcript. I recommended to the District Court that both requests be denied. This matter is still pending before the District Court.

(9) Irene Medina Hernandez, et al. v. General Motors Corp., et al., DR-02-CA-07. The plaintiffs filed a motion to remand the case to state court. After reviewing the record, I recommended the motion be denied. The parties did not object to the findings and the District Court accepted the report and recommendation. The District Court stayed the litigation pending the outcome of a previously filed cause of action in Kansas.

(10) United States of America v. Santos Burrola-Andrade, DR-97-CR-365(2)-WWJ. The District Court referred the government's motion to revoke the defendant's term of supervised release to my court for a final hearing. Such a hearing was held and a report and recommendation were issued. The parties did not object to the findings and the report was accepted by the District Court. The case was closed.

Copies of the reports and recommendations listed above are submitted as part of this questionnaire and are representative of the work assigned by the U.S. District Judges to my court.

(b) I have not been reversed by an appellate court nor has any appellate court criticized any of my findings.

(c) I have not issued any reports and recommendations involving any novel or significant state or federal constitutional issues.

17. **Public Office, Political Activities and Affiliations**:

(a) List chronologically any public offices you have held, federal, state or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or nominations for appointed office for which were not confirmed by a state or federal legislative body.

I have never held public office and I have never been a candidate for an elective public office.

(b) 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.

While employed as an Assistant Travis County Attorney, I was encouraged to participate in the campaigns of local judicial officers. I volunteered time to the first campaign of the Honorable Brenda Kennedy, Travis County Court-At-Law # 7, in the late 1980's. My job for one Saturday was to seal envelopes. In early 1990, I assisted the Honorable David Puryear, now a Third Supreme Judicial District Court of Appeals Justice, meet persons who could further aid in his first election to the bench as a County Court-at-Law Judge. Additionally, I assisted two persons type information into a data base file for the Honorable Charles "Chuck" Miller, Texas Court of Criminal Appeals, in 1988. All of the work was on a volunteer basis and did not last more than one or two days.

My father sits on the Maverick County Water Control and Improvement District #1. He was elected in a non-partisan election in 1998. I did not actively or publicly assist his campaign, although at private family gatherings his campaign was discussed.

18. **Legal Career**: Please answer each part separately.

(a) Describe chronologically your law practice and legal experience after graduation from law school including:

(1) whether you served as clerk to a judge, and if so, the name for the judge, the court and dates of the period you were a clerk;

I did not serve as a clerk to a judge.

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

Part-time magistrate judges are allowed to practice law so long as their private businesses do not conflict with their judicial duties. See Title 28, United States Code, § 632(b). For the three and a half years I worked as a part-time judicial officer, I mediated state court cases, which principally concerned child custody matters. I also researched and assisted in writing the brief in the case styled Montemayor vs. State of Texas at the request of the trial attorney, but did not sign or argue the brief. The attorney is Victor Roberto Garcia, 301 E. Greenwood, Del Rio, Texas 78840, (830) 775-7466. I was not affiliated with Mr. Garcia, his office, or any other practitioner. I was self employed and worked out of my home. The corresponding dates are from January 1997 through July 2000.

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

1986 - 1990: Trial Attorney Level I, Trial Attorney Level II, and Chief of Appellate Division
Travis County Attorney's Office
314 West 11th Street
Austin, Texas 78701

1990 - 1997: Litigation Attorney and Chief of the Del Rio Division
United States Attorney's Office
Western District of Texas
111 E. Broadway, A-306
Del Rio, Texas 78840

1997 - 2000: Part-time United States Magistrate Judge
Western District of Texas
111 E. Broadway, A-202
Del Rio, Texas 78840

1997 - 2000: Worked part-time as a Mediator not affiliated with any law firm or business entity.
113 Park Avenue
Del Rio, Texas 78840

2000 - Present: Full-time United States Magistrate Judge

Western District of Texas
111 E. Broadway, A-202
Del Rio, Texas 78840

(b) (1) Describe the general character of your law practice and indicate by date if and when its character has changed over the years.

Upon graduating from law school, I continued to work as a law clerk in the Travis County Attorney's Office until November 7, 1986, when I was promoted to Intake Attorney. Thereafter, I was promoted to Trial Attorney and Chief of the Appellate Division.

My primary responsibility as an Assistant County Attorney was the prosecution of criminal cases at the trial and appellate levels. I also handled all civil expunction suits, some mental health commitment cases, and represented battered spouses in protective order proceedings. Collateral duties included legislative research and lecturing at law enforcement seminars.

On April 30, 1990, just four years after graduating from law school, United States Attorney Ron Ederer hired me to work as the sole resident Assistant United States Attorney for the Del Rio Division of the Western District of Texas, 111 Broadway, Del Rio, Texas 78840. I was elevated to the position of Senior Litigation Attorney and then promoted to the position of Chief of the Del Rio Division, a position I held until I was selected to serve as a part-time United States Magistrate Judge.

As an Assistant United States Attorney, I prosecuted an average of 125 felony criminal cases per year. I was responsible for these cases from the initial investigation phase through the adjudication of the cases whether by trials or pleas of guilty, and the appellate process, when required. Additionally, I litigated asset and bond forfeiture cases for the Financial Litigation Unit. My responsibilities also included supervising the staff and performing the administrative tasks needed to manage the Del Rio Division for the United States Attorney for the Western District of Texas. Among my prosecutorial and managerial duties, I lectured at various seminars for law enforcement organizations and conducted many training seminars for the United States Border Patrol stations in the Del Rio Division. It was my duty to ensure the agents understood the applicable "search and seizure" and criminal immigration laws.

The District Judges of the Western District of Texas selected me as a part-time United States Magistrate Judge for the Del Rio Division

and I was sworn-in on January 23, 1997. On August 9, 2000, I was elevated to the position of full-time United States Magistrate Judge, the position I currently hold. The address for both positions is 111 East Broadway, A-202, Del Rio, Texas 78840.

The Del Rio Division has never had a full-time resident United States District Judge. Therefore, the United States Magistrate Judges in the Del Rio Division are required to preside over a criminal docket of misdemeanor cases, all preliminary proceedings in felony cases, including setting conditions of pretrial release, jury selections, and a majority of felony re-arraignments. I have the additional task of presiding over the Central Violations Bureau Docket, which consists of criminal cases filed by the Laughlin Air Force Base Military Police and the National Park Service Rangers stationed at the Amistad National Recreational Area. My misdemeanor docket consists of more than 1500 cases annually and a felony docket, which consists of more than 450 felony defendants annually.

In addition to my heavy criminal caseload, I preside over civil pre-trial matters and trials upon consent of the parties. The majority of the work consists of issuing reports and recommendations on motions for summary judgment; motions to transfer venue; motions for default judgment; motions for judgment on the pleadings; motions to dismiss pursuant to Rule 12(b), Federal Rules of Civil Procedure; motions to compel discovery; motions to file amended complaints/answers; motions to return seized property pursuant to Rule 41, Federal Rules of Criminal Procedure; motions to proceed in forma paurperis; motions to disqualify attorneys; issuing scheduling orders; and, issuing orders referring cases to mediation. On occasion, cases are referred to the Magistrate Judges for the purpose of conducting mediations. If parties consent to my jurisdiction, then I am responsible for conducting all proceedings in these cases, including ruling on all dispositive and non-dispositive motions, conducting pretrial conferences, settlement conferences, and evidentiary hearings, and presiding over the trials.

Additionally, I research and write reports and recommendations in quasi-civil cases filed pursuant to Title 28, United States Code, §§ 2254 and 2255. These cases involve collateral review of criminal convictions and/or sentences in felony or misdemeanor cases previously litigated in state or federal courts. It is necessary to resolve preliminary disputes and conduct evidentiary hearings pursuant to the Federal Rules Governing Sections 2254 and 2255 Cases in the United States District Courts (see Title 28, United States Code, foll. §§ 2254, 2255).

A portion of my civil docket consists of reviewing appeals from orders denying Social Security benefits issued by the Appeals Council of the Social Security Administration. Reports and Recommendations are issued in cases without consent to proceed before me and Orders and Judgments are issued in cases if consent has been given.

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

The majority of my legal career consisted of work as a prosecutor, either in the state or federal criminal justice systems. As a mediator, I worked with litigants in state civil court cases, usually divorce proceedings or child custody disputes. I did mediate a few cases involving personal injury claims.

I am not board certified in any area of the law.

(c) (1) Describe whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe each such variance, providing dates.

I appear in court on a daily basis and have done so for the past fifteen years. For the past five and-a-half years, I have appeared in court as a judicial officer. Prior to that, I appeared in court as a federal prosecutor for almost seven years. As a state prosecutor, I appeared in court daily either before a trial judge or an appellate court.

(2) Indicate the percentage of these appearances in

(A) federal courts; **65%**
(B) state courts of record; **30%**
(C) other courts. **5%**

(3) Indicate the percentage of these appearances in:

(A) civil proceedings; **20%**
(B) criminal proceedings. **80%**

(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.

As a state prosecutor, I tried cases on almost a daily basis. My

best estimate of the number of cases tried is between 300 to 400 cases. Approximately 85 percent of the cases were tried to the court as the trier of fact.

I managed a caseload of 150 to 200 felony criminal cases my last year as an Assistant United States Attorney. I was sole counsel in these cases. As a division chief, I supervised one to three junior attorneys who carried about 200 additional criminal cases. The majority of the cases were settled without the need for trials, although a large number of these cases did not settle until after hearings on motions to suppress evidence were litigated. I tried approximately 30 cases to a jury as either sole or chief counsel. Two or three more cases were tried to the court without a jury.

As a United States Magistrate Judge, I have presided over approximately 6,000 misdemeanor cases in the past four years. Of those cases, I have presided over 15 misdemeanor trials. I have also presided over more than 1,000 pretrial matters in felony cases and have accepted approximately 500 pleas of guilty in felony cases. We are not allowed to preside over felony jury trials, although I have selected juries on behalf of the district judges in about 10 cases and have received the jury verdicts in about five of those cases.

(5) Indicate the percentage of these trials that were decided by a jury.

Approximately 15 percent.

(d) Describe your practice, if any, before the United States Supreme Court. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the U.S. Supreme Court in connection with your practice.

I have never practiced before the United States Supreme Court and have never filed any briefs with the Supreme Court.

(e) Describe legal services that you have provided to disadvantaged persons or on a *pro bono* basis, and list specific examples of such service and the amount of time devoted to each.

While in law school, I volunteered at the East Austin Legal Clinic. The students' job was to conduct the initial interview of persons seeking legal assistance. I spent approximately four or five evenings at the clinic.

While employed as an Assistant Travis County Attorney, I worked as a volunteer mediator with the Austin Dispute Resolution Center.

I participate in several community projects throughout the year. I am a community volunteer with the Val Verde County Chapter of the American Cancer Society. I also work on various projects of the Val Verde County Bar Association. Such projects include coaching high school mock trial teams, conducting discussions among high school students, and work with educators to organize educational field trips to the Federal Courthouse. Two mock trial teams competed in San Antonio, Texas and won second place at regional competitions. For the past several years, I have donated time to the organizers of the City of Del Rio Christmas program and parade. As a member of the Pan American Round Table, I am assigned to the scholarship distribution committee. We meet several times a year to review applications and award scholarships.

19. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, and for each provide the date of representation, the name of the court, 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. In addition, please provide the following:

(a) the citations, if the cases were reported, and the docket number and date if unreported;

(b) a detailed summary of the substance of each case outlining briefly the factual and legal issues involved;

(c) the party or parties whom you represented; and

(d) describe in detail the nature of your participation in the litigation and the final disposition of the case.

1. **United States v. Morales-Cantu, 968 F.2d 16 (Table) (5th Cir. 1992). The defendant was arrested and tried before a jury for conspiring and possessing with intent to distribute a quantity of marihuana. The defendant was acting as a scout for his co-defendant, who was transporting the marihuana. He also possessed a firearm in relation to the transportation of the marihuana. The defendant was convicted and sentenced to eight years in prison. A portion of the sentence was later vacated due to the United States Supreme Court decision in Bailey v. United States, 516 U.S. 137 (1995). I was counsel for the United States. Opposing counsel was Victor Roberto Garcia, 301 E. Greenwood, Del Rio, Texas 78840, (830) 775-7466. The Honorable Edward C. Prado presided**

over the trial.

2. United States v. Barksdale, et al, 972 F.2d 111 (5th Cir. 1992), cert. denied Barksdale v. United States, 506 U.S. 1084 (1993), and Copado v. United States, 507 U.S. 997 (1993). Seven defendants were arrested for the abduction of a man from the Republic of Mexico. The victim was brought into the United States and kept in captivity for several days. The victim was repeatedly beaten and held at gunpoint. A jury convicted six of the defendants of kidnapping and one was convicted of misprision of a felony. All convictions were affirmed on appeal. I was counsel for the United States. My co-counsel was Collis White, 401 So. Presa, San Antonio, Texas 78205, (210) 223-5333. The defendants were represented by: Rod Ponton, 1701 N. Stanton, El Paso, Texas 79902, (915) 544-9446 (2 defendants); Martin Underwood, P.O. Box 966, Comstock, Texas 78837, (915) 292-4560; Pedro Nieto, 109 B Nopal, Uvalde, Texas 78801, (210) 278-9106; Richard Gonzalez, 231 S. Getty, Uvalde, Texas 78801, (210) 278-7812; Robert Garza, 2116 Avenue F., Del Rio, Texas 78840, (830) 775-6762; and Joe Petsch (deceased). The Honorable Emilio Garza presided over the trial.

3. United States v. Mendoza-Burciaga, 981 F.2d 192 (5th Cir. 1992), reh'g denied 986 F.2d 1420 (5th Cir.), cert. denied, 510 U.S. 936 (1993). Four defendants were arrested for conspiracy to possess with intent to distribute approximately 800 kilograms of cocaine. Two of the defendants were carrying firearms. All four defendants were convicted by a jury. All convictions were affirmed on appeal. I was counsel for the United States. My co-counsel was Collis White, 401 So. Presa, San Antonio, Texas 78205, (210) 223-5333. The defendants were presented by: George Sharman, 401 So. Presa, San Antonio, Texas 78205, (210) 226-6808; Ronald Guyer, 1202 S. Alamo, San Antonio, Texas 78210, (210) 226-6808; and Robert and Raymond Rangel, 211 N. Comal, San Antonio, Texas 78207, phone number unknown. The Honorable Emilio Garza presided over the trial.

4. United States v. Trevino-Alderete, 992 F.2d 64 (5th Cir. 1993). The defendant was indicted for narcotics trafficking. She absconded and lived in the Republic of Mexico for several years. She finally returned to the United States and surrendered to the custody of the Federal government. A jury found her guilty of the narcotics offenses and failing to appear in court as ordered. Her convictions were affirmed on appeal. I was counsel for the United States. The defendant was initially represented by Formecio Reyes, 3715 N. Main Street, Houston, Texas 77009, (713) 864-4700. Robert Garza, 2116 Avenue F., Del Rio, Texas 78840, (830) 775-6762, was later hired to represent the defendant. The Honorable Edward C. Prado presided over the trial.

5. United States v. Limones, 8 F.3d 1004 (5th Cir. 1993), cert. denied Limones v.

United States, 114 S. Ct. 1562 (1994) and Fuentes v. United States, 114 S.Ct. 1543 (1994). Three defendants were involved in the transportation of 91 kilograms of cocaine from the Del Rio, Texas area to Fort Worth, Texas. The cocaine was part of a stolen shipment, which had led to the death of a fourth defendant. One defendant pleaded guilty prior to the commencement of the jury trial. Defendants Limones and Fuentes were convicted by a jury of conspiring and possessing with intent to distribute the cocaine. The convictions were affirmed on appeal. I was counsel for the United States. The attorneys for the two defendants tried before a jury were: Alfredo Villarreal, Assistant Federal Public Defender, 727 E. Durango Blvd., San Antonio, Texas 78206, (210) 229-6700; and Martin Underwood, P.O. Box 966, Comstock, Texas 78837, (915) 292-4560. The Honorable Edward C. Prado presided over the trial.

6. United States v. Raul Long, Jr., Gilberto Mendez, Jr., Kenneth Wayne Cruz, Joseph Thomas Parker, Rodolfo Cruz, Jr., and Reynaldo Mendez, DR-92-CR-70 (December 1992). The defendants were arrested for attempting to purchase more than 1000 kilograms of marihuana from undercover officers. Some of the defendants were also carrying firearms. At the conclusion of a jury trial, Long, Gilberto Mendez, Parker and Reynaldo Mendez were convicted of the narcotics charges. The Mendez brothers were also convicted of carrying firearms during and in relation to a narcotics trafficking offense. The Cruz brothers were acquitted. I was counsel for the United States. The defendants were represented by: Ronald Piperi, 1018 Preston, Suite 300, Houston, Texas (713) 224-2224; Robert Garza, 2116 Avenue F., Del Rio, Texas 78840, (830) 775-6762; Alfredo Villarreal, Assistant Federal Public Defender, 727 E. Durango Blvd., San Antonio, Texas 78206, (210) 229-6700; Martin Underwood, P.O. Box 966, Comstock, Texas 78837, (915) 292-4560; Joe Petsch (deceased); and Filemon Ortiz, Jr., 310 N. Main, Del Rio, Texas 78840, (830) 775-0544. The Honorable Edward C. Prado presided over the trial.

7. United States v. Antonio Vasquez, DR-93-CR-22 (July 1993). The defendant was arrested at the conclusion of a controlled delivery of heroin to Dallas, Texas. The defendant received 322 grams of black tar heroin from a co-defendant, who later pleaded guilty. A jury convicted Vasquez. I was counsel for the United States. The defendant was represented by Layne Harwell, 1220 N. Main, Suite 304, Fort Worth, Texas 76106, (817) 624-8299. The Honorable Edward C. Prado presided over the trial.

8. United States v. Jorge Rodrigo Garcia, Rene Garcia, DR-90-CR-103 (July 1991). The defendants were arrested transporting approximately 220 pounds of marihuana. The defendants elected to a trial by jury. They were both convicted of conspiracy and possession with intent to distribute marihuana. I was the counsel for the United States. Rene Garcia was represented by G. Allen

Ramirez, Drawer 905, Roma, Texas 78584, (512) 849-1266. I do not recall the name of counsel for Jorge Rodrigo Garcia. The Honorable Edward C. Prado presided over the trial.

9. **United States v. Juan Ramirez-Ortiz, DR-90-CR-47(3) (September 1990). The defendant was arrested with three co-defendants for importing more than 1000 kilograms of marihuana into the United States from the Republic of Mexico. The marihuana was transported via rafts floated down the Rio Grande River. The three co-defendants pleaded guilty. Ramirez-Ortiz elected to be tried by the Court. The Honorable Emilio Garza presided over the trial. The defendant was convicted. I was counsel for the United States. The defendant was represented by Eugene Mireles, 500 Quarry Street, Eagle Pass, Texas, (830) 773-3520.**

10. **United States v. Fernando Garcia, Jr., DR-96-CR-68 (March 1996). The defendant was arrested along with his nephew for possessing with intent to distribute more than 100 kilograms of marihuana. The defendant also possessed firearms he admitted were for the protection of the load of marihuana. The defendant confessed he had recruited his nephew to help in the loading of the marihuana into the truck. The defendant was convicted following a trial to the Court. The Honorable Fred Biery presided over the trial. I was counsel for the United States. The defendant was represented by Alan Brown, 222 Main Plaza, San Antonio, Texas 78205, (210) 227-5103.**

20. Criminal History: State whether you have ever been convicted of a crime, within ten years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and disposition and describe the particulars of the offense.

I have never been convicted of a crime.

21. Party to Civil or Administrative Proceedings: State whether you, or any business of which you are or were an officer, have ever been a party or otherwise involved as a party in any civil or administrative proceeding, within ten years of your nomination, that is reflected in a record available to the public. If so, please describe in detail the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings in which you were a guardian *ad litem*, stakeholder, or material witness.

Domingo Martinez-De Leon sued me in DR-00-CV-66. His pro se suit arose from his criminal prosecution for a narcotics-related offense in DR-91-CR-06. Mr. Dominguez claimed co-counsel, Richard Durbin, Jr., and I violated his rights by relying on the testimony of an informant. Additional allegations contained in his pro se

pleadings attacked his convictions, sentences, and his counsel as ineffective. The case was dismissed as frivolous on February 7, 2001.

I was sued by James Mitchell in DR-94-CV-66. Mr. Mitchell was originally prosecuted for narcotics-related offenses in DR-88-CR-008 by another Assistant United States Attorney. Mr. Mitchell fled the jurisdiction of the court and was a fugitive for a number of years. When he was returned to federal custody, I was assigned to prosecute all of his cases. Mr. Mitchell attempted to cooperate with the government. He had been admonished in the presence of his attorney that he would not receive consideration for his information if it proved to be fruitless or unreliable. He was further admonished that I, as the prosecuting attorney, retained all discretion to decide the value of the information. Mr. Mitchell did not receive any sentencing consideration because his information could not be substantiated and he lacked credibility. He then sued claiming a breach of his plea agreement. His suit was dismissed as frivolous on December 8, 1994. Mr. Mitchell appealed the dismissal to the Fifth Circuit Court of Appeals. The appeal was dismissed on March 7, 1995.

I was included as a class member in the class action suit, John Doe, et al., on behalf of themselves and all others similarly situated v. United States, No. 98-896C, brought by present and former Assistant United States Attorneys. The nature of the action related to the nonpayment of wages for overtime work hours. I asked to be dismissed from the case.

22. Potential Conflict of Interest: 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.

Recusal and disqualification are the mechanisms available to avoid any potential or actual conflicts of interest, and to avoid any appearances of impropriety. I will employ such mechanisms if I learn of any previous involvement by me in a case in any capacity other than as a judicial officer.

Matters involving the revocation of defendants' terms of supervised release sentenced during the years I was an Assistant United States Attorney is one category of cases which could potentially present a conflict-of-interest. However, most of the matters falling into this category have worked their way through the criminal justice system.

A second category of cases raising the specter of a potential conflict-of-interest concern my immediate family's financial holdings. A listing of those holdings are listed below in the Schedule portion of this questionnaire. The Judicial Canon of Ethics

require recusal in any cases involving any financial holdings or interests owned by a judge or the judge's immediate family.

23. **Outside Commitments During Court Service**: Do you have any plans, commitments, or arrangements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No

24. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding the nomination, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500. 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.

A copy of Financial Disclosure Report is attached.

25. **Statement of Net Worth**: Complete and attach the financial net worth statement in detail. Add schedules as called for.

See attached schedules.

26. **Selection Process**: Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?

(a) If so, did it recommend your nomination?

(b) Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.

(c) 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 or seeking a commitment as to how you would rule on such case, issue, or question? If so, please explain fully.

The process began with a letter to the Senators of Texas asking to be considered for the district judgeship created in December 2000 for the Del Rio Division of the Western District of Texas. An extensive questionnaire was completed and returned to Senators Phil Gramm and Kay Bailey Hutchison. A committee of lawyers reviewed the questionnaires and selected persons to be interviewed. After the committee interview, I was selected to be further interviewed by the Senators. The Senators then submitted my name to the President of the United States for further consideration. I was

interviewed by the White House Counsel and staff members. A background investigation was conducted and I was formally nominated on July 11, 2002. No one discussed specific cases, legal issues, or questions in a manner which could reasonably be interpreted as asking or seeking a commitment with regard to any future court rulings or opinions.

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	45	254	30	Notes payable to banks-secured	46	567	09
U.S. Government securities-add schedule	1,030	459	11	Notes payable to banks-unsecured	21	764	92
Listed securities-add schedule	10	473	47	Notes payable to relatives	0	000	00
Unlisted securities–add schedule	0	000	00	Notes payable to others	0	000	00
Accounts and notes receivable:	0	000	00	Accounts and bills due	0	000	00
Due from relatives and friends	4	000	00	Unpaid income tax	0	000	00
Due from others	0	000	00	Other unpaid income and interest	0	000	00
Doubtful	0	000	00	Real estate mortgages payable-add schedule	39	466	55
Real estate owned-add schedule	323	000	00	Chattel mortgages and other liens payable	38	070	92
Real estate mortgages receivable	0	000	00	Other debts-itemize:			
Autos and other personal property	203	000	00				
Cash value-life insurance	10	000	00				
Other assets itemize:							
U.S. Thrift Savings	60	000	00				
				Total liabilities	145	869	48
				Net Worth	1,540	317	40
Total Assets	1,686	186	88	Total liabilities and net worth	1,686	186	88
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor	0	000	00	Are any assets pledged? (Add schedule)	YES*		
On leases or contracts	0	000	00	Are you defendant in any suits or legal actions?	NO		
Legal Claims	0	000	00	Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax	0	000	00				
Other special debt	0	000	00				

SCHEDULES - ASSETS

I.	Bank Accounts (Cash in Accounts):	
	Border Federal Credit Union Checking	$22,021.82
	Border Federal Credit Union Savings	620.51
	Wachovia Securities #1 (Separate Prop.)	18,091.70
	Wachovia Securities #2 (Investment Acct.)+	0.00
	Del Rio Bank & Trust (Checking Account)	1,349.94
	Del Rio Bank & Trust (Money Market Account)	2,529.55
	Wachovia Securities #3 (Separate Prop.)	484.13
	Del Rio National Bank Money Market	156.65
		$45,254.30
II	U.S. Government Securities:	
	GNMA Trust 71 (Wachovia Securities Acct. #3)	$1,030,459.11
III.	Listed Securities:	
	ATSI Communications, Inc. (1000 shares)	$100.00
	Continental Airlines (5 shares)	55.00
	Inhale Theraputics System (100 shares)	729.00
	Western Resources (250 shares)**	2,822.50
	Western Resources in Stock Reinvestment Acct** (155.9225 shares)	1,760.92
	Lending Tree, Inc. (500 shares)	5,006.05
		$10,473.47
IV.	Real Estate:	
	Property #1, Del Rio, Texas*	$76,000.00
	Property #2, Del Rio, Texas (4.25 acres)*	60,000.00
	Property #3, Del Rio, Texas (12.58 acres)	187,000.00
		$323,000.00

SCHEDULES - LIABILITIES

I.	Notes Payable to Banks - Secured:	
	Del Rio National Bank (Property #2 Property)*	$46,567.09
II.	Notes Payable to Banks - Unsecured:	
	MBNA	$21,764.92

III.	Mortgages:	
	Property #1*	$39,466.55
IV.	Chattel Mortgages and Other Liens Payable:	
	Cadillac Escalade (GMAC)*	$29,381.78
	John Deere Corp.*	8,689.14
		$38,070.92

* These assets are pledged to lenders or vendors.
** Now called Westar Energy, Inc.
+ The account with the Lending Tree stock listed as a security.

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY, UNITED STATES SENATE

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

William John Martini

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

U.S. District Court for the District of New Jersey

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

Sills Cummis Radin Tischman Epstein and Gross
One Riverfront Plaza
11th Floor
Newark, New Jersey 07102
(973) 643-5468

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

February 10, 1947
Passaic, New Jersey

5. **Marital Status**: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please also indicate the number of dependent children.

Gloria Martini, Unemployed; 2 dependent children
Maiden Name: DeStefano

6. **Education**: List in reverse chronological order, listing most recent first, each college, law school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

09/69 to 05/72	Rutgers School Of Law	Newark, N.J.	J.D.	05/72
09/68 to 03/69	Columbia University School of Dental and Oral Surgery	New York, N.Y.	--	--
09/64 to 05/68	Villanova University	Villanova, P.A.	BA	05/68

7. **Employment Record**: List in reverse chronological order, listing most recent first, all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

06/97 to Present	Sills, Cummis et al.	1 Riverfront Plaza Newark, N.J. 07102	Law Partner
02/97 to 05/97	Unemployed		
01/95 to 01/97	U.S. House of Representatives	Longworth Building Washington, D.C. 20515	Congressman
02/77 to 12/94	Law Offices of William J. Martini	1064 Pompton Ave. Cedar Grove, N.J. 07009	Attorney
1993 to 1995	County of Passaic	Hamilton Street Paterson, N.J. 07505	Freeholder
1991 to Present	Nicholas Martini Foundation	777 Passaic Ave. Clifton, N.J.	Trustee
09/74 to 02/77	U.S. Attorney Office	970 Broad Street Newark, N.J. 07102	Ass't U.S. Attorney
09/73 - 08/74	Hudson County Prosecutor's Office	595 Newark Ave. Jersey City, N.J. 07306	Ass't Prosecutor
09/72 - 08/73	Superior Court of New Jersey	595 Newark Avenue Jersey City, N.J. 07306	Law Clerk
1970 & 1971 (Summers)	Institute for Continuing Legal Education	One Constitution Sq. New Brunswick, N.J. 08901	Legal Intern

03/68 - 09/69	Travelers Insurance Company	80 John Street New York, NY 10001	Claims Adjuster

8. **Military Service**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge received.

None

9. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Peter W. Rodino, Jr. Law Society
1994 Community Contribution Award

Mendel Distinguished Service Award
1995 Villanova University

10. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Member, Association of the Federal Bar of the State of New Jersey
Member, New Jersey State Bar Association
Member, Essex County Bar Association
Member, Passaic County Bar Association
Member, American Trial Lawyers Association
Former Member, Lawyers Ethics Committee, Passaic County Bar Association
Former Trustee, Passaic County Bar Association

11. **Bar and Court Admission**: List each state and court in which you have been admitted to practice, including dates of admission and any lapses in membership. 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 the United States
U.S. Court of Appeals, Third Circuit 1983

State of New Jersey 1972

District of Columbia 1997

U.S. District Court, District of N.J. 1972

12. **Memberships**: List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, charitable, or other organizations since graduation from college, other than those listed in response to Questions 10 or 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion - either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

Sills Cummis, et al. (Law Partner) 1997 to present
The Nicholas Martini Foundation (Trustee) 1991 to present
Port Authority of New York and New Jersey (Commissioner) 1999 to present
Hackensack University Medical Center (Director) 2000 to present
John Cabot University (Trustee) 1999 to present
Tri-County Scholarship Fund (Trustee) 1994 to present
Italian-American Cultural Center (Trustee) 1995 to present
United Way of Passaic Valley (Trustee) 1991 to 1995
Passaic Valley Council, Boy Scout's (Trustee) 1993 - 1997
UNICO (Member) 1999 to 2001
ELKS Clifton, New Jersey (Member) 1990 - 1997

None discriminated to my knowledge

13. **Published Writings**: List the titles, publishers, and dates of books, articles, reports, or other material you have written or edited, including material published on the Internet. Please supply four (4) copies of all published material to the Committee, unless the Committee has advised you that a copy has been obtained from another source. Also, please supply four (4) copies of all speeches delivered by you, in written or videotaped form over the past ten years, including the date and place where they were delivered, and readily available press reports about the speech.

Publication	**Name of Article**	**Date**
The Italian Voice	Consumers Benefits from GOP Cuts to Red Tape	05/11/95
The Record	Let's Join Forces on Sterling Forest	01/28/96
The Italian Voice	It's a Matter of Fairness	05/09/96
The Record	Martini Responds to Column	06/96
The Italian Voice	In Union There is Strength: English Should be America's Official Language	09/05/96

The Star Ledger	Make English the Official Language	10/16/96
The Record	8th Congressional District; Bill Martini, Republican	10/28/96
The Star Ledger	Region's economy depends on a Strong Port Authority	04/23/99

(Copies of above are attached)

14. **Congressional Testimony**: List any occasion when you have testified before a committee or subcommittee of the Congress, including the name of the committee or subcommittee, the date of the testimony and a brief description of the substance of the testimony. In addition, please supply four (4) copies of any written statement submitted as testimony and the transcript of the testimony, if in your possession.

House Resources Committee - Purchase of Parkland
September 28, 1995
Testified in support of funding for preservation of Sterling Forest, a watershed along the New York and New Jersey border.
(Copies of testimony attached)

Senate Committee on the Judiciary - False Statements Statute
May 14, 1996
Testified in support of enacting False Statements Statute.
(Copies of testimony attached)

House Appropriations Subcommittee
Estimate - 1996
Energy and Water
Testified in support of funding for flood prevention projects in the district.
(Unable to locate testimony)

15. **Health**: Describe the present state of your health and provide the date of your last physical examination.

11/27/01 - Date of last physical examination - Good

16. **Citations**: If you are or have been a judge, provide:

N/A

(a) a short summary and citations for the ten (10) most significant opinions you have written;

(b) a short summary and citations for all rulings of yours that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court; and

(c) a short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions.

If any of the opinions or rulings listed were in state court or were not officially reported, please provide copies of the opinions.

17. **Public Office, Political Activities and Affiliations**:

(a) List chronologically any public offices you have held, federal, state or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or nominations for appointed office for which were not confirmed by a state or federal legislative body.

1999 - Present - Port Authority of New York and New Jersey
Commissioner - Appointed by Governor Christie Whitman

1996 - Unsuccessful Candidate for re-election to Congress

1995 - 1997 - Member of the United States House of Representatives
8th District, New Jersey - Elected

1993 - 1995 Freeholder - County of Passaic - Elected

Councilman 1990 - 1994 - City of Clifton - Elected

(b) 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 addition to my own campaigns for elected office, I was a member of the finance committee for the Whitman for Governor campaign 1997 and the Bush for President campaign 2000 and hosted fundraiser for D'Amato for U.S. Senate Campaign 1998

18. **Legal Career**: Please answer each part separately.

(a) Describe chronologically your law practice and legal experience after graduation from law school including:

(1) whether you served as clerk to a judge, and if so, the name for the

judge, the court and dates of the period you were a clerk;

Legal clerkship - Honorable Joseph P. Hanrahan, J.S.C.
Superior Court of New Jersey, Hudson County,
Jersey City, New Jersey; 09/72 - 08/73

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

Law Offices of William J. Martini
663 Main Avenue, Passaic, New Jersey 07055;
Apprx. 1978 - 1986

1064 Pompton Avenue
Cedar Grove, New Jersey 07009
1986 - 1994

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

Sills Cummis Radin Tischman Epstein and Gross
One Riverfront Plaza
Newark, New Jersey 07102
06/97 to present (Partner)

United States Attorney Office
District of New Jersey
570 Broad Street
Newark, New Jersey 07102
Estimate 1974 to 1977 (Ass't U.S. Attorney)

Hudson County Prosecutor's Office
595 Newark Avenue
Jersey City, New Jersey 07306
09/73 to 08/74 (Ass't Prosecutor)

(b) (1) Describe the general character of your law practice and indicate by date if and when its character has changed over the years.

Upon graduation from law school until 1977 I served as a law clerk and then a prosecutor, both State and Federal. As a State Assistant Prosecutor I was assigned to the trial division and tried approximately 15 jury trials to completion. As an Assistant U.S. Attorney from 1974 to approximately 1977. I was a member of the criminal trial division and tried approximately 12 jury trials to completion.

Upon leaving the U.S. Attorneys office in approximately 1977 - 1978 I returned to my home town of Passaic, New Jersey and opened my own law office. I remained in the sole practice of law until 1995 when I was sworn in as a member of Congress. The early years of my law practice were devoted to criminal defense work. By the mid1980's my practice expanded into civil litigation including plaintiff's personal injury actions and commercial contract disputes. Upon election to congress in 1995 I closed my practice. In June of 1997 I became a partner at Sills Cummis Radin Tischman Epstein and Gross one of New Jersey's largest law firms and practiced government affairs/regulatory law and general litigation.

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

While an assistant state prosecutor and assistant U.S. attorney I represented the State of New Jersey and the United States in prosecutions of criminal matters. The dominant area of my private practice was in criminal law. My clients were often targets of governmental investigations and/or charged with white collar crimes.

(c) (1) Describe whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe each such variance, providing dates.

From 1973 through 1992 I appeared in court frequently both as a state and federal prosecutor and also as a criminal defense attorney. Upon being elected to public office in the early 1990's my appearances in Court were less frequent.

(2) Indicate the percentage of these appearances in

(A) federal courts;

40%

(B) state courts of record;

55%

(C) other courts.

5%

(3) Indicate the percentage of these appearances in:

(A) civil proceedings;

35%

(B) criminal proceedings.

65%

(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 estimate I tried to verdict or judgment 115 cases almost exclusively as sole counsel with the exception of a number of criminal matters that had co-defendants and therefore separate counsel for each defendant.

(5) Indicate the percentage of these trials that were decided by a jury.

80%

(d) Describe your practice, if any, before the United States Supreme Court. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the U.S. Supreme Court in connection with your practice.

None

(e) Describe legal services that you have provided to disadvantaged persons or on a *pro bono* basis, and list specific examples of such service and the amount of time devoted to each.

During the period 1978 to 1994 while in private practice I represented indigent defendants in criminal matters on a pro bono basis. Approximately 5% to 10% of my time was devoted to such service.

19. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, and for each provide the date of representation, the name of the court, 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. In addition, please provide the following:

(a) the citations, if the cases were reported, and the docket number and date if unreported;

(b) a detailed summary of the substance of each case outlining briefly the factual and legal issues involved;

(c) the party or parties whom you represented; and

(d) describe in detail the nature of your participation in the litigation and the final disposition of the case.

Upon being elected to congress in 1994, I was required to terminate my law practice. I disposed of my files in 1998 when I sold my law office building and joined the Sills Cummis law firm. The list of 10 litigation matters below includes cases prior to 1998 which I am detailing from my best recollection.

1. United States vs. Howard Slatkin and Company, Inc.,
Prosecutor: Assistant U.S. Attorney David Wales; Current address unknown
Last known address: United States Attorney's Office
Southern District of New York
One Saint Andrew's Plaza
New York, N.Y. 10007
(212) 791-1972

File opened in September 1997; Closed Summer of 1998

Represented Howard Slatkin and Company, Inc., a corporation of the State of New York with regard to a criminal tax investigation conducted by the United States Attorney's Office of the Southern District of New York. The investigation was handled by Assistant U.S. Attorney David Wales. The government alleged that Howard Slatkin and Company, Inc., had unlawfully deducted personal items as business expenses to the extent of $400,000 thereby evading taxes in the amount of $200,000. The investigation included a grand jury inquiry of voluminous business records over a period of 4 years. After a complete reconstruction of the business conduct of Howard Slatkin and Company, Inc., the matter was disposed of without criminal charges being filed against the Company.

2. United States vs. Richard Mamarella (United States District Court
Southern District of New York)
Cr.83-364-01 Honorable Milton Pollack, U.S.D.J.
Prosecutor: Assistant U.S. Attorney William Schwartz; Current address unknown
Last known address: United States Attorney's Office
Southern District of New York
One Saint Andrew's Plaza
New York, N.Y. 10007
(212) 791-1972

File Opened 05/83; verdict returned summer 1983

I represented Richard Mamarella, a defendant indicted for conspiracy and extortion arising out of a $18 million dollar insurance premium refinancing fraud. The matter was fully litigated in a 7 day trial commencing August 10, 1983 and concluding August 16, 1983 with a jury returning a verdict of guilty. The judgment of guilty was appealed to and affirmed by the United States Court of Appeals 2nd Circuit. See docket number 83-381.

3. United States vs. Bruce Rossmeyer (United States District Court
District of New Jersey)
Cr. 85-373 Honorable Anne E. Thompson, U.S.D.J.
Prosecutor: Assistant U.S. Attorney Hon. Joseph Greenaway
Judge United States District Court
Current address: Martin Luther King, Jr. Federal Bldg. & Courthouse
Newark, New Jersey 07102
(973) 622-4828

File Opened 1986; verdict returned June 1986

I represented William Zimmerman, one of 5 co-defendants charged with conspiracy to distribute a controlled dangerous substance and substantive charges related thereto. It was alleged that Mr. Zimmerman and his co-defendants were distributing controlled dangerous substance from their new automobile dealership in Toms River, New Jersey. This case involved extensive wire taps and surveillances. A 10 week jury trial concluded with a hung jury.

4. United States vs. Acceturo, et al. (United States District Court
District of New Jersey)
CR.85-292
Honorable Harold Ackerman, Judge U.S.D.C.
Prosecutor: Assistant U.S. Attorney Joseph P. Braunreuther
Current Address: Johnson and Johnson
One Johnson and Johnson Plaza
Law Dept. WH5142
New Brunswick, N.J. 08933
(732) 524-2563

File opened August 1986; verdict returned August 1988

I represented 1 of 21 co-defendants in a sweeping indictment charging Rico, conspiracy and multiple other criminal infractions. My client, Thomas Cataldo was principally charged with violations of the gambling laws of the State of New Jersey. The case involved extensive and lengthy pre-trial motions. The jury trial

lasted for a period of approximately 18 months, which at the time was the longest criminal trial in the State of New Jersey. A not guilty verdict was returned as to all 21 defendants in August of 1988.

Michael Critchley, Esq. (Co-Counsel)
Current Address: 354 Main Street
West Orange, New Jersey 07052
(973) 731-9831

5. State of New Jersey vs. William Fitzpatrick (Superior Court, New Jersey - Passaic County) Indictment No. 82-1928; Docket No. FFH7214
Honorable Bruno Leopizzi, S.C.N.J.
Assistant Prosecutor: Honorable Randolph Subryan, Judge S.C.N.J.
Current Address: Passaic County Courthouse
77 Hamilton Street
Paterson, New Jersey 07505
(973) 247-8420

File opened November 1982; filed closed 1983

I represented William Fitzpatrick, a certified public account charged with the homicide of his wife. At the time of the offense, the New Jersey Death Penalty Statute had just been reinstated and Mr. Fitzpatrick was the first defendant in the County of Passaic exposed to the death penalty. My representation of Mr. Fitzpatrick included an aggressive and thorough private investigation of the crime scene and cause of death. This included a controversial dispute over blood analysis and identification. Extensive pre-trial motions challenging the medical examiner's conclusions and the blood analysis were held before the Honorable Bruno Leopizzi. The case was fully prepared for trial. On the eve of selecting a jury, the defendant agreed to plead guilty to aggravated manslaughter and was sentenced to a period of 10 years incarceration.

6. State of New Jersey vs. John Peters (Superior Court of New Jersey, Morris County)
First Assistant Prosecutor-John Reilly; Current address unknown
(973) 596-4811

File opened October 1983; closed 1984

John Peters was indicted for the murder of his girlfriend. An extensive forensic investigation was conducted. Mr. Peters was interviewed on multiple occasions before any charges were filed against him. A lengthy pre-trial hearing was held challenging the admissibility of the statements and evidence seized from the crime scene. Based on the testimony elicited during the hearing serious questions were raised as to the admissibility of a substantial portion of the States evidence against

Mr. Peters. Plea negotiations commenced and an agreement was reached whereby Mr. Peters would plead guilty to manslaughter. He was sentenced to 7 ½ years of incarceration.

7. United States vs. Dominic Padula (United States District Court
District of New Jersey)
Honorable Garrett Brown, Jr., Judge U.S.D.C.
(Searched for Court docket number without success)
Prosecutor: Assistant U.S. Attorney - Honorable Terence P. Flynn Judge, S.C.N.J.
County Courts Building
50 W. Market Street
Newark, New Jersey 07102
(973) 693-6746

File opened early 1990's

Mr. Padula was charged in a federal indictment with stock fraud and manipulation of penny stocks arising out of the investigation of First Jersey Investors. The case involved undercover surveillance and extensive document production. On the eve of trial, Mr. Padula pled guilty pursuant to a plea agreement.

8. United States vs. John Klemans (United States District Court
District of New Jersey)
Honorable Herbert Stern (U.S.D.C.N.J.)
(Searched for Court docket number without success)

File opened early 1980's

Defendant John Klemans was charged along with 4 co-defendants with conspiracy and fraud arising out of there promotion of "Wild Bills" fast food franchises. The fraud involved several million dollars. Mr. Klemans was the controller of Wild Bills. After extensive pre-trial investigation and motions, Mr. Klemans plead guilty pursuant to a plea agreement and was sentenced to a short period of incarceration.

9. Labano vs. Bergen County Vocational Tech. (New Jersey Superior Court -
Bergen County) Docket No.: BER-L_-3186-95
Honorable Patrick F.X. Fitzpatrick (S.C.N.J.)
Plaintiff's Counsel: Stephen Weinstein, Esq.
20 Park Place
Morristown, New Jersey 07960
(973) 267-5200
File opened 1997; closed late 1998

I defended Bergen County VoTech in a personal injury claim arising out of a serious injury sustained by a student on the property of the Bergen County school. Plaintiff alleged a failure to adequately supervise the students on school property causing an incident which resulted in permanent mental and physical injuries to plaintiff. Extensive civil discovery was conducted including numerous depositions. On the eve of trial a structured settlement was agreed upon between the parties.

10. United States vs. John V. Goephfert (United States District Court
Southern District of New York)
Honorable Whitman Knapp, Judge U.S.D.C.
Assistant United States Attorney Santangello
Current Address: Unknown (Do not recall full name nor could locate new address)
Last known address: United States Attorney's Office
Southern District of New York
One Saint Andrew's Plaza
New York, N.Y. 10007
(212) 791-1972

File opened 1980; closed early 1980's

Indictment was returned against Mr. Goephfert and several other co-defendants including Richard Mamarella alleging conspiracy and the fraudulent diversion of premiums owed to Lloyds of London to the extent of $9 million dollars. After protracted pre-trial hearings and negotiations, Mr. Mamarella pled guilty to perjury pursuant to a plea agreement with the United States. Mamarella was sentenced by the Honorable Whitman Knapp.

20. **Criminal History**: State whether you have ever been convicted of a crime, within ten years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and disposition and describe the particulars of the offense.

No

21. **Party to Civil or Administrative Proceedings**: State whether you, or any business of which you are or were an officer, have ever been a party or otherwise involved as a party in any civil or administrative proceeding, within ten years of your nomination, that is reflected in a record available to the public. If so, please describe in detail the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings in which you were a guardian *ad*

litem, stakeholder, or material witness.

No

22. **Potential Conflict of Interest**: 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 any significant conflicts of interest. My personal financial matters are almost exclusively handled by a manager who exercises complete discretion as to individual trades of stocks and bonds. I would request that he periodically provide me a listing of my financial holdings in order for me to be sensitive to any significant holdings that I have in a corporation or other entity with a matter pending on my docket.

As to categories of litigation, of course, I would be sensitive to any potential conflicts of interests due to a personal and/or financial relationship I have or have had with a litigant and/or counsel.

Should a conflict issue arise full disclosure would be appropriate and I would be guided by the Judicial Cannons of ethics and would also welcome guidance from other members of the bench.

23. **Outside Commitments During Court Service**: Do you have any plans, commitments, or arrangements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

Yes, I would like to remain as a trustee of The Nicholas Martini Foundation, a Non-For Profit Charitable Family Foundation founded by my uncle, Nicholas Martini in 1986. Since Nicholas' death in 1991 I have served as the only family trustee on a board of 3 members. The Board meets 3 times a year, usually in the evenings or on Saturdays.

24. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding the nomination, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500. 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 STATEMENT ATTACHED

25. **Statement of Net Worth**: Complete and attach the financial net worth statement in detail. Add schedules as called for.

SEE STATEMENT ATTACHED

26. **Selection Process**: Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?

Yes.

(a) If so, did it recommend your nomination?

I understand the selection committee reviews applicants after a formal nomination.

(b) Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.

My name was presented to the Office of the Counsel to the President by New Jersey Governor, Donald DiFrancesco for appointment to the Federal Judiciary. I was interviewed by the Honorable Timothy E. Flanigan, Deputy Counsel to the President.

(c) 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 or seeking a commitment as to how you would rule on such case, issue, or question? If so, please explain fully.

No

Q. #24 - ANSWER

William J.Martini
Sources of Income 2001

Non-Investment Income

Sills, Cummis etal. ()Salary)	274,239
Nicholas Martini Foundation (Fees)	22,000
Rental Property-Clifton New Jersey	9,000
Novartis Pharmaceuticals (Spouse Salary)	-
	305,239

Investment Income

Prudential Securities Brokerage Account	827
FIA Capital Group Brokerage Account	1,084
Vanguard Brokerage Account	1,800
Lockridge Brokerage Accounts (estimated)	10,000
	13,711

AO 10 (rev.)
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
Martini, William J.	District Court-New Jersey	01/28/2002
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 01/23/2002 ___ Initial ___ Annual ___ Final	**6. Reporting Period** 01/01/2000 to 12/31/2001
7. Chambers or Office Address Sills, Cummis, etal One Riverfront Plaza Newark, New Jersey 07102-5400	**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	Sills Cummis Radin Tischman Epstein & Gross
2	Commissioner	Port Authority of New York And New Jersey
3	Trustee	Nicholas Martini Foundation

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

☐ NONE (No reportable agreements.)

	DATE	PARTIES AND TERMS
1	12/31/01	Sills Cummis etal, profit sharing plan and pension plan balances will be rolled over into an individual retirement account.
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	Sills Cummis etal	276,736
2	2001	Sills Cummis etal	274,239
3	2000	Nicholas Martini Foundation	24,000
4	2001	Nicholas Martini Foundation	22,000

NANCIAL DISCLOSURE REPORT | Name of Person Reporting: Martini, William J. | Date of Report: 01/28/2002

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

cludes those to spouse and dependent children. See pp. 25-26 of Instructions.)

	SOURCE (NONE: No such reportable reimbursements.)	DESCRIPTION
1		Exempt
2		
3		
4		
5		
6		
7		

V. GIFTS

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

	SOURCE (NONE: No such reportable gifts.)	DESCRIPTION	VALUE
1		Exempt	
2			
3			

VI. LIABILITIES

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

	CREDITOR (NONE: No reportable liabilities.)	DESCRIPTION	VALUE CODE*
1	Hudson City Savings Bank	Mortgage on Rental Property #1 Clifton NJ (Part VII Line 2)	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: Martini, William J.

Date of Report: 01/28/2002

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

A. Descriptions of Assets (including trust assets) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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					Exempt				
2 Rental Property #1 Clifton NJ (1990 $178,000)	D	Rent	M	R					
3 Brokerage Account #1									
4 NJ Edu.FACS FING Auth Rev Prime. Thso.-SER C 07/01/12	A	Interest	J	T					
5 Port Auth. NY & NJ Consd. Bonds 86 Series 07/01/02	A	Interest	J	T					
6 NJ St Transit TR FD Auth. Series A 06/15/03	A	Interest	J	T					
7 South Orange-Maplewood NJ Bsd Gen Oblig Essex Co.	A	Interest	J	T					
8 New Jersey St. Turnpike Auth. Series C 01/01/09	A	Interest	J	T					
9 NJ ST Gen Oblig RFDG Series D 02/15/03	A	Interest	J	T					
10 Northwest Bergen Cnty NJ Utils Auth Util System	A	Interest	J	T					
11 Command Money Fund	A	Interest	J	T					
12 Brokerage Account #2									
13 AT&T Corp Stock	A	Dividend	J	T					
14 American Electric Power Co. Stock	A	Dividend	J	T					
15 Chevron Texaco Corp Stock	A	Dividend	J	T					
16 PG & E Corp Stock	A	Dividend	J	T					
17 Pilgrim Prime Rate Tr New SB Ben Int	A	Dividend	J	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: Martini, William J.

Date of Report: 01/28/2002

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) *Place "(X)" after each asset exempt from prior disclosure*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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				
15 Public Service Enterprises Group Inc. Stock	A	Dividend	J	T					
19 Alliance Money Reserves	B	Interest	L	T					
20 Brokerage Account #3									
21 Federated Kaufman Fund K	B	Dividend	K	T					
22 Vanguard New Jersey Tax-Exempt Money Market Fund	B	Dividend	K	T					
23 Brokerage Account #4									
24 United HealthCare Corp Stock	A	Dividend							
25 Ryder System Inc. Stock	A	Dividend							
26 Quantum Corp Holding Stock	A	Dividend							
27 Aetna Inc. Stock	A	Dividend							
28 Alcan Aluminum Ltd Stock	A	Dividend							
29 American General Corp. Stock	A	Dividend							
30 AMBAC Financial Group Inc Stock	A	Dividend							
31 Arrow Electronics Inc. Stock	A	Dividend							
32 American Standard Companies	A	Dividend							
33 Bank One Corp. Stock	A	Dividend							
34 Bank of America Corp Stock	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: Martini, William J.

Date of Report: 01/28/2002

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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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 Canadian Pacific LTD New Stock	A	Dividend							
36 Cigna Corp. Stock	A	Dividend							
37 Consolidated Edison Inc. Corp. Stock	A	Dividend							
38 CSX Corp Stock	A	Dividend							
39 Central & South West Corp Stock	A	Dividend							
40 Champion International Corp. Stock	A	Dividend							
41 Cinergy Corp Stock	A	Dividend							
42 Consolidated Papers, Inc. Stock	A	Dividend							
43 Crown Cork & Seal Corp. Stock	A	Dividend							
44 Dana Corp. Stock	A	Dividend							
45 Dow Chemical Co. Stock	A	Dividend							
46 Eastman Chemical Co. Stock	A	Dividend							
47 Firstenergy Corp. Stock	A	Dividend							
48 FMC Corp. New Stock	A	Dividend							
49 Fannie Mae Stock	A	Dividend							
50 Federated Department Stores Stock	A	Dividend							
51 Genuine Parts Co. Stock	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: Martini, William J.

Date of Report: 01/28/2002

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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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 BF Goodrich Co.Stock	A	Dividend							
53 International Paper Stock	A	Dividend							
54 Litton Industries Stock	A	Dividend							
55 Lubrizol Corp. Stock	A	Dividend							
56 Millennium Chemicals Inc. Stock	A	Dividend							
57 May DepartmentStore Stock	A	Dividend							
58 Mead Corp. Stock	A	Dividend							
59 National City Corp. Stock	A	Dividend							
60 Norfolk Southern Corp. Stock	A	Dividend							
61 Occidental Petroleum Corp. Stock	A	Dividend							
62 Quantum Corp. DSSG Stock	A	Dividend							
63 Old Republic Intl Corp. Stock	A	Dividend							
64 Philip Morris Companies Inc. Stock	A	Dividend							
65 Phillips Petroleum Co.Stock	A	Dividend							
66 Praxair Inc.	A	Dividend							
67 St. Paul Companies Inc.Stock	A	Dividend							
68 Seagate Technology Inc. Stock	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: Martini, William J. | Date of Report: 01/28/2002

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) *Place "(X)" after each asset exempt from prior disclosure*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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 Sears Roebuck & Co. Stock	A	Dividend							
70 Supervalu Inc. Stock	A	Dividend							
71 Tech Data Corp. Inc. Stock	A	Dividend							
72 Thomas & Betts Corp. Stock	A	Dividend							
73 Union Carbide Corp. Stock	A	Dividend							
74 Union Pacific Corp. Stock	A	Dividend							
75 V F Corp. Stock	A	Dividend							
76 Westvaco Corp. Stock	A	Dividend							
77 Whirlpool Corp. Stock	A	Dividend							
78 Bernstein Diversified Municipal Portfolio Fund	A	Dividend							
79 Bernstein Tax-Managed International Value Portfolio	A	Dividend							
80 Brokerage Account #5									
81 Alliance Technology Fund	A	Dividend							
82 Invesco Dynamics Fund	A	Dividend							
83 Mass Invs Growth Stock Cl A Fund	A	Dividend							
84 Putnam Global Growth FD CL A	A	Dividend							
85 Alliance Growth Fund Class A	A	Dividend							

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

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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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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 Alliance Century Income & Growth Fund	A	Dividend							
87 Templeton World Fund	A	Dividend							
88 Brokerage Account #6									
89 Cash & Cash Equivalents	A	Interest	K	T					
90 Montville Township Bond 5.65% 08	A	Interest	J	T					
91 Avalon Boro Wtr & Swr 5.250%	A	Interest	K	T					
92 Ocean City Utils Auth 5.0%	A	Interest	K	T					
93 Evesham Twp NJ Brd 4.6%	A	Interest	K	T					
94 Lower Township Fire Dist. No. 3 6.850%	A	Interest	K	T					
95 Manchester Twp. NJ FSCl Ad). 6.4%	A	Interest	K	T					
96 Middletown Twp. Board of Ed 5.00%	A	Interest	K	T					
97 Mount Arlington Board of Ed 5%	A	Interest	K	T					
98 North Arlington Sch Dist 5.375%	A	Interest	K	T					
99 Union City Faa B/E Ut N/C 6.27%	A	Interest	K	T					
100 Atlantic Cnty NJ Util Auth 5.0%	A	Interest	K	T					
101 Port Authority NY & NJ Cons. 5.40%	A	Interest							
102 Brokerage Account #7									

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

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Name of Person Reporting: Martini, William J.

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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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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 Cash & Cash Equivalents	A	Interest	J	T					
104 Abbott Laboratories Stock	A	Dividend	J	T					
105 American Intl Group Inc. Stock	A	Dividend	J	T					
106 AOL Time Warner Stock	A	Dividend	J	T					
107 Applied Materials Inc Stock	A	Dividend	J	T					
108 Bank of America Stock	A	Dividend	J	T					
109 Baxter International Inc Stock	A	Dividend	J	T					
110 CVS Corp Del Stock	A	Dividend	J	T					
111 Cisco Systems, Inc Stock	A	Dividend	J	T					
112 Citigroup Inc Stock	A	Dividend	J	T					
113 Coca Cola Stock	A	Dividend	J	T					
114 Dominion Res Inc Va New Stock	A	Dividend	J	T					
115 Exxon Mobil Stock	A	Dividend	J	T					
116 Fifth Third Bank Stock	A	Dividend	J	T					
117 Flextronics Intl Ltd Stock	A	Dividend	J	T					
118 General Electric Company Stock	A	Dividend	K	T					
119 Goldman Sachs Group, Inc Stock	A	Dividend	J	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

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VII. Page 8 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 35-54 of Instructions.)*

A. Description of Assets (including trust assets) *Place "(X)" after each asset exempt from prior disclosure*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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 Guidant Corp Stock	A	Dividend	J	T					
121 Intel Corp Stock	A	Dividend	J	T					
122 Intl Business Machines Stock	A	Dividend	J	T					
123 JDS Uniphase Corporation Stock	A	Dividend	J	T					
124 Johnson & Johnson Stock	A	Dividend	J	T					
125 Lauder Estee Co. Inc. CL A Stock	A	Dividend	J	T					
126 Lilly Eli & Company Stock	A	Dividend	J	T					
127 Medtronic Inc. Stock	A	Dividend	J	T					
128 Micron Technology Inc. Stock	A	Dividend	J	T					
129 Microsoft Corp Edit	A	Dividend	J	T					
130 Morgan Stnly Dean Witter Stock	A	Dividend	J	T					
131 Mirant Corp Stock	A	Dividend	J	T					
132 Oracle Corp. Stock	A	Dividend	J	T					
133 Popsico Inc. Stock	A	Dividend	J	T					
134 Pfizer Inc. Stock	A	Dividend	J	T					
135 Qwest Communs Intl Inc. Stock	A	Dividend	J	T					
136 Raythoon Company New Stock	A	Dividend	J	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

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VII. Page 9 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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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				
137 S & C Communications Inc Stock	A	Dividend	J	T					
138 Safeway Inc. Stock	A	Dividend	J	T					
139 Schlumberger LTD Stock	A	Dividend	J	T					
140 Target Inc. Stock	A	Dividend	J	T					
141 Texas Instruments Stock	A	Dividend	J	T					
142 Transocean Sedco Forex Stock	A	Dividend	J	T					
143 Tyco Intl LTD New Stock	A	Dividend	J	T					
144 Verizon Communications Stock	A	Dividend	J	T					
145 Viacom Inc. Non Vtg Cl B Stock	A	Dividend	J	T					
146 Wal-Mart Stores Inc. Stock	A	Dividend	J	T					
147 Bank of New York Stock	A	Dividend							
148 BP PLC ADR F Stock	A	Dividend							
149 Du Pont EI De Nemours&Co Stock	A	Dividend							
150 EMC Corp Stock	A	Dividend							
151 Exelon Corp. Stock	A	Dividend							
152 Interpublic Group of Cos Stock	A	Dividend							
153 McGraw-Hill COS Stock	A	Dividend							

1 Inc/Chgs 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

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VII. Page 10 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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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				
154 Merck & Co. Inc. Stock	A	Dividend							
155 Nortel Networks CP New Stock	A	Dividend							
156 Schering Plough Corp. Stock	A	Dividend							
157 Staples Inc. Stock	A	Dividend							
158 Sun Microsystems Inc. Stock	A	Dividend							
159 The Southern Company Stock	A	Dividend							
160 US Bancorp Del New Stock	A	Dividend							
161 Wells Fargo & Co. New	A	Dividend							
162 Brokerage Account #B									
163 Cash & Cash Equivalents	A	Dividend	J	T					
164 AT&T Wirless Svcs Stock	A	Dividend	J	T					
165 Agere Systems Inc Cl A Stock	A	Dividend	J	T					
166 American Express Stock	A	Dividend	J	T					
167 American Intl Group Inc. Stock	A	Dividend	J	T					
168 Bank of America Corp Stock	A	Dividend	J	T					
169 Bank of New York Co Inc Stock	A	Dividend	J	T					
170 BP PLC ADR F Stock	A	Dividend	J	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
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VII. Page 11 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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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				
171 Chevron Texaco Corp Stock	A	Dividend	J	T					
172 Citigroup Inc. Stock	A	Dividend	J	T					
173 Conoco Inc New Stock	A	Dividend	J	T					
174 Diageo PLC New ADR F Stock	A	Dividend	J	T					
175 DU Ponte De Nemour & Co Stock	A	Dividend	J	T					
176 El Paso Corp Stock	A	Dividend	J	T					
177 Entergy Corp New Stock	A	Dividend	J	T					
178 Fannie Mae Stock	A	Dividend	J	T					
179 First Data Corp Stock	A	Dividend	J	T					
180 Fleet Boston Financial Corp Stock	A	Dividend	J	T					
181 General Electric Co Stock	A	Dividend	J	T					
182 Gillette Co Stock	A	Dividend	J	T					
183 Hartford Finl Svcs Group	A	Dividend	J	T					
184 Heineken N V ADR F Stock	A	Dividend	J	T					
185 Honeywell Intl Stock	A	Dividend	J	T					
186 Intel Corp Stock	A	Dividend	J	T					
187 Intl Business Machines Stock	A	Dividend	J	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

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VII. Page 12 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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(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				
188 Kroger Company Stock	A	Dividend	J	T					
189 Liberty Media New Ser A Stock	A	Dividend	J	T					
190 Lilly Eli & Company Stock	A	Dividend	J	T					
191 McDonalds Corp Stock	A	Dividend	J	T					
192 Merck & Co. Inc. Stock	A	Dividend	J	T					
193 Merrill Lynch & Co Inc Stock	A	Dividend	J	T					
194 Microsoft Corp Stock	A	Dividend	J	T					
195 Minnesota Mining & Mfg Stock	A	Dividend	J	T					
196 Motorola Inc Stock	A	Dividend	J	T					
197 Pepsico Inc Stock	A	Dividend	J	T					
198 Pharmacia Corp Stock	A	Dividend	J	T					
199 Pfizer Inc. Stock	A	Dividend	J	T					
200 PNC Finl Services GP Inc Stock	A	Dividend	J	T					
201 Philip Morris Cos Stock	A	Dividend	J	T					
202 Proctor & Gamble Co Stock	A	Dividend	J	T					
203 PUB SVC ENT Group Inc	A	Dividend	J	T					
204 Royal Dutch 1.25 GuilderF Stock	A	Dividend	J	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

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VII. Page 13 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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (I-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code (I-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions.)					Exempt				
205 S B C Communications Inc	A	Dividend	J	T					
206 Target Corp Stock	A	Dividend	J	T					
207 United Technologies Corp Stock	A	Dividend	J	T					
208 Verizon Communications Stock	A	Dividend	J	T					
209 Viacom Inc Non Vtg Cl B Stock	A	Dividend	J	T					
210 News Ltd Corp ADR PFD F Preferred Stock	A	Dividend	J	T					
211 Allstate Corp Stock	A	Dividend							
212 Comcast Corp Spl Cl A Stock	A	Dividend							
213 Compaq Computer Corp Stock	A	Dividend							
214 Federated Dept Del New Stock	A	Dividend							
215 Gannett Co Inc Del Stock	A	Dividend							
216 Qwest Communications Intl Inc	A	Dividend							
217 Halliburton Co Hldg Co Stock	A	Dividend							
218 JP Morgan Chase	A	Dividend							
219 Johnson & Johnson Stock	A	Dividend							
220 Kimberly Clark Corp Stock	A	Dividend							
221 Lucent Technologies Stock	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
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VII. Page 14 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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period: (1) Amount Code (A-H)	B: (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period: (1) Value Code (J-P)	C: (2) Value Method Code (Q-W)	D. Transactions during reporting period: (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				
222 Schering Plough Corp Inc	A	Dividend							
223 IRA #1	D	Div & Int	N	T					
224 Cash & Cash Equivlents									
225 AT&T Corp Bond 6% 09									
226 DaimlrChryslr AG 7.40% Bond 05									
227 Ford Motor Cred Bond 6.70% 04									
228 Genl Motors ACC Bond 6.38% 04									
229 Lehman Bros Hldg Bond 7.75% 05									
230 Morgan Stan DW Bond 7.75% 05									
231 Natl Rural Util Bond 6% 06									
232 Raytheon Co Bond 7.9% 03									
233 Sears Roebuck Accep Bond 6% 03									
234 WorldCom Inc Bond 7.875% 03									
235 Fedl Natl Mtg 7.12% 05									
236 Fedl Natl Mtg AS 6.50% 04									
237 US Treas Note 5.0% 8/11									
238 US Treas Note 7.00% 07/06									

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: 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

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

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Name of Person Reporting: Martini, William J.

Date of Report: 01/28/2002

VII. Page 15 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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period: (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period: (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period: (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				
239 FNMA Pl # 254048 6.50% 16									
240 FNMA Pl #323319 7% 28									
241 Bank of America Notes 7.80%									
242 Heller Financial Inc MTN Bond 5.746%									
243 Lehman Bros Hldgs Notes 6.50%									
244 Morgan St DW Bond 7.125% 03									
245 Morgan ST DW Bond 5.6%									
246 US Treasury Notes 6.625%									
247 US Treas Note 5.75% 08/03									
248 US Treas Note 7.50% 02/05									
249 IRA #2	D	Dividend	N	T					
250 Cash & Cash Equivalents									
251 Abbott Laboratories Stock									
252 American Intl Group Inc Stock									
253 AOL Time Warner Inc Stock									
254 Applied Materials Inc Stock									
255 Bank of America Stock									

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: Martini, William J.

Date of Report: 01/28/2002

VII. Page 16 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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period: (1) Amount Code (A-H)	B: (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period: (1) Value Code (J-P)	C: (2) Value Method Code (Q-W)	D. Transactions during reporting period: (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				
256 Baxter Intl Inc Stock									
257 CVS Corp Del Stock									
258 Cisco Systems Inc Stock									
259 Citigroup Inc Stock									
260 Coca Cola Co Stock									
261 Dominion Res Inc Va New Stock									
262 Exxon Mobil Corp Stock									
263 Fifth Third Bancorp Stock									
264 Flextronics Intl LTD Stock									
265 General Electric Co Stock									
266 Goldman Sachs Group Inc Stock									
267 Guidant Corp Stock									
268 Intel Corp Stock									
269 Intl Business Machines Stock									
270 JDS Uniphase Corp Stock									
271 Johnson & Johnson Stock									
272 Laudor Estee Co Inc Cl A Stock									

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: Martini, William J. | Date of Report: 01/28/2002

VII. Page 17 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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period: (1) Amount Code (A-H)	B: (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period: (1) Value Code (J-P)	C: (2) Value Method Code (Q-W)	D. Transactions during reporting period: (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				
273 Lilly Eli & Company Stock									
274 Medtronic Inc Stock									
275 Micron Technology Inc Stock									
276 Microsoft Corp Stock									
277 Mirant Corp Stock									
278 Morgan Stnly DW Stock									
279 Oracle Corp Stock									
280 Pepsico Incorp Stock									
281 Pfizer Inc Stock									
282 Qwest Comm Intl Inc Stock									
283 Raytheon Company New Stock									
284 S B C Communications Inc Stock									
285 Safeway Inc Stock									
286 Schlumberger LTD Stock									
287 Target Corp Stock									
288 Texas Instruments Inc Stock									
289 Transocean Sedco Forex F Stock									

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: Martini, William J.

Date of Report: 01/26/2002

II. Page 18 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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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				
290 Tyco Intl LTD New Stock									
291 Verizon Communications Stock									
292 Viacom Inc Non Vtg Cl B									
293 Wal-Mart Stores Inc Stock									
294 Bank of New York Co Stock									
295 BP PLC ADR F Stock									
296 Du Pont EI De Nemour & Co.Stock									
297 EMC Corp Mass Stock									
298 Exelon Corp Stock									
299 Interpublic Group of COS Stock									
300 McData Corp Cl A Stock									
301 McGraw Hill COS Stock									
302 IRA #3	C	Dividend	M	T					
303 Cash & Cash Equivalents									
304 Abgenix Inc. Stock									
305 Altera Corp Stock									
306 Andrx Group Stock									

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: Martini, William J.

Date of Report: 01/28/2002

VII. Page 19 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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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				
307 Applied Micro Circuits Stock									
308 Bed Bath & Beyond Stock									
309 Cablevision Sys NY Gp A Stock									
310 Cablevision Sys-Rainbow Stock									
311 Checkfree Corp New Stock									
312 Cincinnati Financial CP Stock									
313 Clear Channel Comm Stock									
314 Cox Radio Inc. Cl A Stock									
315 Ebay Inc Stock									
316 Echostar Comm CP Cl A Stock									
317 Elantec Semiconductor Inc Stock									
318 Expedia Inc Stock									
319 Gemstar TV Guide Intl Stock									
320 Genetech Inc New Stock									
321 Gilead Sciences Inc. Stock									
322 Half Roberts Intl Stock									
323 Hispanic Broadcasting CP Stock									

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

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VII. Page 20 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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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				
324 Hotel Reservations Inc Stock									
325 Human Genome Sciences Stock									
326 Juniper Networks Inc Stock									
327 Liberate Technologies Stock									
328 Maxim Integrated Prods Stock									
329 Mediacom Commun Group Stock									
330 Network Appliance Inc Stock									
331 Novellus Systems Inc Stock									
332 ONI Systems Corp Stock									
333 OpenWave Systems Inc Stock									
334 Overture Services Inc Stock									
335 Paychex Inc. Stock									
336 Rational Software CP New Stock									
337 Research In Motion LTD F Stock									
338 Rowe T Price Group Inc Stock									
339 SEI Investments Co Stock									
340 Sapient Corp Stock									

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

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VII. Page 21 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependant children. See pp. 36-54 of instructions.)*

A. Description of Assets (including trust assets) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. Income during reporting period (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. Gross value at end of reporting period (2) Value Method Code (Q-W)	D. Transactions during reporting period (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				
341 Sepracor Inc Stock									
342 Siebel Systems Inc Stock									
343 Sonus Networks Inc Stock									
344 Univision Communs Inc Stock									
345 Verisigns Inc Stock									
346 Vertex Pharmaceuticals Stock									
347 Westwood One Inc Stock									
348 Xilinx Inc Stock									
349 Yahoo Inc. Stock									
350 Acther Systems Stock									
351 Affymetrix Inc Stock									
352 Ariba Inc Stock									
353 Akamai Technologies Inc Stock									
354 Amazon.Com Inc Stock									
355 American Tower Corp Cl A Stock									
356 Cervis Corp Stock									
357 Commerce One Inc Del Stock									

1 Inc/Chgn 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

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VII. Page 22 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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period: (1) Amount Code (A-H)	B: (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period: (1) Value Code (J-P)	C: (2) Value Method Code (Q-W)	D. Transactions during reporting period: (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				
358 Exodus Communications Inc Stock									
359 Globespan Inc Stock									
360 Homestore.Com Inc Stock									
361 MCLeod USA Inc Cl A Stock									
362 Metromedia Fiber Network Inc Stock									
363 Minimed Inc Stock									
364 New Focus Inc									
365 Sycamore Neworks Inc Stock									
366 Spectrasite Hldgs Inc Stock									
367 Storagenetworks Inc Stock									
368 Talbots Inc Stock									
369 Time Warner Telecom Inc Cl A Stock									
370 Transmeta Corp Del Stock									
371 Vignette Corp Stock									
372 Webmethods Inc Stock									
373 IRA #4	C	Dividend	M	T					
374 Cash & Cash Equivalents									

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: Martini, William J.

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VII. Page 23 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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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				
375 AXA Sponsored ADR F Stock									
376 AB Electrolux ADR Cl B F Stock									
377 ABN-Amro Holding NV ADR F Stock									
378 Aegon NV Ord Reg Amer F Stock									
379 Akzo Nobel NV Spon ADR F Stock									
380 Allied Domecq PLC ADR F									
381 Allied Irish Banks ADR F Stock									
382 Astrazeneca Plc ADR F Stock									
383 BOC Group Plc SP ADR F Stock									
384 Bayer AG Sponsored ADR F Stock									
385 Benetton Group SPA ADR F Stock									
386 BHP Billiton LTD ADR F Stock									
387 BP PLC ADR F Stock									
388 British Airways Def ADR Stock									
389 Cable & Wireless PLC ADR Stock									
390 Cadbury Schweppes ADR F Stock									
391 Cannon Inc Sponsored ADR Stock									

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

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VII. Page 24 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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period: (1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period: (1) Value Code (J-P)	(2) Value Method Code (Q-W)	D. Transactions during reporting period: (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				
392 Cemex SA ADR New F Stock									
393 Danske Bank A/S ADR F Stock									
394 EON AG ADR F Stock									
395 Ezaki Co Ltd Spon ADR F Stock									
396 Endesa SA ADR F Stock									
397 ENI SPA Spon ADR F Stock									
398 Fuji Photo Film LTD ADR F Stock									
399 Fujitsu LTD ADR F Stock									
400 Gallaher GRP Spon ADR F Stock									
401 Hellenic Telecomman ADR F Stock									
402 Honda Motor Co LTD ADR F Stock									
403 Koninklijke Ahold New ADR F Stock									
404 Kon Philips Elec NV New F Stock									
405 Kyocera LTD ADR F Stock									
406 Lloyds Tsb Group ADR Stock	A	Dividend	J	T					
407 L V M H Moet Spon ADR F Stock									
408 Nestle A Reg B ADR F Stock									

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: Martini, William J.

Date of Report: 01/28/2002

VII. Page 25 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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period: (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period: (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period: (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				
409 Novartis AG Spon ADR F Stock									
410 Repsol Ypf SA ADR F Stock									
411 Rio Tinto PLC Spon ADR F Stock									
412 Scottish Power PLC ADR F Stock									
413 Siemens AG ADR F Stock									
414 TDK Corporation ADR F Stock									
415 Talisman Energy Inc F Stock									
416 TDC AS ADR F Stock									
417 Telecom Italia SPA ADR F Stock									
418 Telefonica Spon ADR F Stock									
419 Total Fina Elf SA ADR F Stock									
420 TPG NV ADR F Stock									
421 UBS AG New F Stock									
422 Unilever PLC ADR New F Stock									
423 Volvo A B ADR F Stock									
424 Zurich Finl SVCS ADR F Stock									
425 Alcatel ADR F Stock									

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: Martini, William J.

Date of Report: 01/28/2002

VII. Page 26 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-34 of Instructions.)*

A. Description of Assets (including trust assets) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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				
426 Fosters Brewing Group LTD ADR Stock									
427 Glaxosmithkline Plc ADR F Stock									
428 Group Danone Spon ADR F Stock									
429 Invensys Plc SA ADR F Stock									
430 Magna Intl Inc Class A Stock									
431 Nintendo LTD ADR F Stock									
432 Nokia Corp Spon ADR F Stock									
433 Royal Kpn NV Sponsored ADR Stock									
434 Sony Corp ADR New F Stock									
435 Westpac Banking Ltd Spon ADR F Stock									
436 TRA #5	B	Div & Int	M	T					
437 Cash & Cash Equivalents									
438 AT&T Corp Bond 6% 09									
439 Ford Motor Credit Bond 6.70% 04									
440 Genl Motors Acc Bond 6.38% 04									
441 Morgan Stan DW Bond 7.75% 05									
442 Natl Rural Util Bond 6% 06 Stock									

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: Martini, William J.

Date of Report: 01/28/2002

VII. Page 27 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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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				
443 Sprint Cap Corp Bond 5.70% 03									
444 WorldCom Inc Bond 7.875% 03									
445 US Treas Note 6% 09									
446 US Treas Note 5.625% 2/06									
447 Morgan Stan DW Bond 5.6%									
448 US Treas Note 5.75% 08/03									
449 IRA #6	B	Dividend	L	T					
450 Cash & Cash Equivalents									
451 AON Corp Stock									
452 Agere Systems Inc Cl A Stock									
453 American Express Co Stock									
454 American Home Products Stock									
455 American Intl Group Stock									
456 Bank One Corp Stock									
457 Berkshire Hathaway CL B Stock									
458 Bristol-Meyers Squibb Co Stock									
459 Citigroup Inc Stock									

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: Martini, William J.

Date of Report: 01/28/2002

VII. Page 28 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) *Place "(X)" after each asset exempt from prior disclosure*	B. Income during reporting period: (1) Amount Code (A-H)	B: (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period: (1) Value Code (J-P)	C: (2) Value Method Code (Q-W)	D. Transactions during reporting period: (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				
460 Costco Whsl Corp New Stock									
461 Devon Energy Corp New Stock									
462 Dover Corp Stock									
463 Dun & Bradstreet CP New Stock									
464 Golden West Financial Stock									
465 Hewlett Packard Co Stock									
466 Household International Stock									
467 Kindor Morgan Inc Stock									
468 Lexmark Intl Inc CL A Stock									
469 Lilly Eli & Company Stock									
470 Loews Corporation Stock									
471 Marriott Intl Inc Cl A Stock									
472 Masco Corp Stock									
473 Mc Donalds Corp Stock									
474 Merck & Co Inc Stock									
475 Minnesota Minning & MFG Stock									
476 Moodys Corp Stock									

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: Martini, William J.

Date of Report: 01/28/2002

VII. Page 29 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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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				
477 Morgan Stanley DW Stock									
478 Philip Morris COS Inc Stock									
479 Phillips Petroleum Co Stock									
480 Progressive Corp Ohio Stock									
481 Sealed Air Corp New Stock									
482 Safeway Inc. Stock									
483 Tellabs Inc Stock									
484 Transatlantic Holdings Inc. Stock									
485 Tyco Intl LTD New Stock									
486 United Parcel Service B Stock									
487 Vulcan Materials Co Stock									
488 Wells Fargo & Co New Stock									
489 Freddie Mac Voting Shares Stock									
490 Providian Finl CP Stock									
491 Stillwell Financial Inc Stock									
492 IRA #7	A	Dividend	K	T					
493 Equitable Alliance Common Stock Fund									

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: Martini, William J.

Date of Report: 01/28/2002

VII. Page 30 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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code (I-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)					Exempt				
494 Equitable Balanced Fund									
495 Equitable Agressive Stock Fund									
496 IRA #8	A	Dividend	K	T					
497 Equitable Alliance Common Stock Fund									
498 Equitable Balanced Fund									
499 Equitable Aggressive Stock Fund									
500 Varible Life #1	C	Div & Int	M	T					
501 Guaranteed Interest									
502 Equitable Balance Fund									
503 Equitable Alliance Common Stock Fund									
504 Equitable Alliance Growth Investors Fund									
505 Equitable T.Rowe Price International Stock Fund									
506 Pension Plan #1	A	Dividend	K	T					
507 Index 500 Fund									
508 Pension Plan #2	A	Dividend	K	T					
509 New Millenium Fund									
510 Index 500 Fund									

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: Martini, William J.

Date of Report: 01/28/2002

VII. Page 31 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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period: (1) Amount Code (A-H)	B: (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period: (1) Value Code (J-P)	C: (2) Value Method Code (Q-W)	D. Transactions during reporting period: (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				
S11 Harris County Texas Series A	A	Interest	J	W					
S12 Pension Plan #3	D	Div & Int	M	T					
S13 Government Money Market Fund									
S14 Interest Income Fund									
S15 Asset Allocation Fund									
S16 S&P Index 500 Fund									
S17 Small Company Fund									
S18									
S19									
S20									
S21									
S22									
S23									
S24									
S25									
S26									
S27									

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
Martini, William J.	01/28/2002

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

Brokerage account assets without an entry in column C were disposed prior to the reporting date.

NANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Martini, William J.	01/28/2002

CTION HEADING. (Indicate part of report.)

formation continued from Parts I through VI, inclusive.

PART 1. POSITIONS (cont'd.)

ne	Position	Name of Organization/Entity
4	Trustee	Hackensack University Medical Center
5	Trustee	John Cabot University
6	Trustee	Italian American Cultural Center
7	Trustee	Tri-County Scholarship Fund

PART 3. NON-INVESTMENT INCOME (cont'd.)

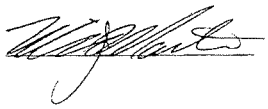
ine	Date	Source and Type	Gross Income
5	2000	Novartis Pharmaceutical Company	
6	2001	Novartis Pharmaceuticals Company	

NANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Martini, William J.	01/28/2002

C. 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 1/28/02

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		69	847	Notes payable to banks-secured		85	750
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		953	126	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 2001 due 4/15/02		12	000
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		89	750
Real estate owned-add schedule		525	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		160	000				
Cash value-life insurance		182	395				
Other assets itemize:							
Retirement assets (Schedule)	1	595	820				
				Total liabilities		187	500
				Net Worth	3	298	689
Total Assets	3	486	189	Total liabilities and net worth	3	486	189
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor		N/A		Are any assets pledged? (Add schedule)		NO	
On leases or contracts ACURA Auto lease $550 per mo.				Are you defendant in any suits or legal actions?		NO	
Legal Claims		N/A		Have you ever taken bankruptcy?		NO	
Provision for Federal Income Tax		N/A					
Other special debt							

William J. Martini
Financial Disclosure Schedules

Listed Securities		
Brokerage Account #1	70,318	
Brokerage Account #2	103,165	
Federated Kaufman Fund K	32,984	
Brokerage Account #3	731,659	
Harris County Texas Series A Bond	15,000	
Total Listed Securities		953,126
Real Estate Owned		
Residential Pt. Pleasant Boro NJ	325,000	
Rental Clifton NJ	200,000	
Total Real Estate Owned		525,000
Retirement Assets		
IRA #1	1,024,389	
IRA #2	196,886	
IRA # 3	37,331	
IRA #4	29,064	
Pension Plan #1	38,241	
Pension Plan #2	57,388	
Pension Plan #3	212,522	
Total Retirement Assets		1,595,821
Real Estate Mortgages		
Mortgage on Clifton NJ Rental		89,750

BROKERAGE #1

Prudential Financial — **Client Statement** — PruFN.e

COMMAND Account

Securities products and services are offered through Prudential Securities Incorporated, a Prudential company and a member of SIPC

For The Period:
December 1 - December 31, 2001 MR WILLIAM J MARTINI

Page 2 of 6

Portfolio Detail

	SYMBOL	QUANTITY	CURRENT PRICE		CURRENT VALUE	ESTIMATED ACCRUED INTEREST	ESTIMATED ANNUALIZED INCOME	CURRENT YIELD	COMMENTS
Municipal Bonds-97.0% of Portfolio									
NJ EDUCATIONAL FACS FING AUTH REV PRINCETON THEOLOGICAL - SER C RO JJ 5.250 07/01/2012 DTD 06/01/92 PREREFUNDED 07/01/2002 AT 102.00 BOOK ENTRY ONLY		10,000	104.327	E	$10,432.70	$313	$525	5.99%	Rating: AAA/AAA
PORT AUTHORITY OF NEW YORK & NEW JERSEY CONSOLIDATED BONDS EIGHTY SIXTH SERIES RO JJ 4.600 07/01/2002 DTD 07/01/93 BOOK ENTRY ONLY		10,000	101.367	E	$10,136.70	$230	$460	4.54%	Rating: A1/AA-
NEW JERSEY ST TRANSN TR FD AUTH TRANSN SYS-SER A RO JD 4.750 06/15/2003 DTD 04/01/93 BOOK ENTRY ONLY ESCROWED TO MATURITY		5,000	103.530	E	$5,176.50	$11	$238	4.60%	Rating: AAA/AAA FSA Insured
SOUTH ORANGE-MAPLEWOOD NJ RSD GEN OBLIG ESSEX CO - SCHOOL BONDS - BANK QUALIFIED RO JD 4.450 12/01/2004 DTD 01/01/94 BOOK ENTRY ONLY		5,000	104.588	E	$5,229.40	$19	$223	4.26%	Rating: NR/AA
NEW JERSEY ST TURNPIKE AUTHORITY TPK REVENUE SER G CP JJ 5.750 01/01/2009 DTD 07/01/72 ESCROWED TO MATURITY		10,000	107.833	E	$10,783.30	$288	$575	5.33%	Rating: AAA/AAA
NEW JERSEY ST GEN OBLIG RFDG-SER D FITCH LT RTG AA+ RO FA 6.000 02/15/2013 DTD 12/15/92 CALL 02/15/2000 102.00 BOOK ENTRY ONLY		10,000	105.354	E	$10,535.40	$227	$600	5.70%	Rating: AA1/AA+
NORTHWEST BERGEN CNTY N J UTILS AUTH UTIL SYSTEM REVENUE RFDG RO JJ 6.000 07/15/2013 DTD 12/15/92 CALL 07/15/2003 102.00 BOOK ENTRY ONLY		15,000	106.184	E	$15,927.60	$415	$900	5.65%	Rating: AAA/AAA MBIA Insured
TOTAL PRICED SECURITIES VALUE		65,000			$68,221.60	$1,503	$3,521		
Money Market Funds-3.0% of Portfolio									
COMMAND MONEY FUND		2,096	1.000		$2,096.00		$35	1.70%	7-Day Yield [illegible]
TOTAL MONEY MARKET FUNDS					$2,096.00		$35		

01/21/02 12:51 FAX 9736434 FILA 002

FIA Capi.. Group, Inc.
FIA
Member NASD and SIPC
119 Littleton Road
Parsippany, NJ 07054
973-402-2700 800-875-0086

BROKERAGE #2

YOUR BROKERAGE ACCOUNT STATEMENT

YTD COMM: $.00

PORTFOLIO HOLDINGS

Stocks, Rights and Warrants

Quantity	Description	Price	Value	Div/Cap Gain Option	Estimated Yield	Annual Income	Security ID	Account Type	Location
100	AT&T CORP COM	18.1400	1,814.00	CASH	.820%	15.00	T	CASH	
32	AT&T WIRELESS SVCS INC COM	14.3700	459.84	CASH			AWE	CASH	
333	AMERICAN ELECTRIC POWER CO	43.5300	14,495.49	CASH	5.510%	799.20	AEP	CASH	
4	AVAYA INC COM ISIN#US0534991098	12.1500	48.60	CASH			AV	CASH	
102	CHEVRONTEXACO CORP COM	89.6100	9,140.22	CASH	3.120%	285.60	CVX	CASH	
45	LUCENT TECHNOLOGIES INC COM	6.3000	283.50	CASH			LU	CASH	
267	PG & E CORP	19.2400	5,137.08	CASH			PCG	CASH	
417	PILGRIM PRIME RATE TR NEW SH BEN INT	6.6400	2,768.88	CASH	7.590%	210.16	PPR	CASH	
334	PUBLIC SERVICE ENTERPRISES GROUP INC.	42.1900	14,091.46	CASH	5.110%	721.44	PEG	CASH	
Total Stocks, Rights and Warrants			$48,239.07			$2,031.40			

	Market Value	Annual Income
Total – All Securities	$48,239.07	$2,031.40

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FIA Capi... Group, Inc.
FIA
Member NASD and SIPC
119 Littleton Road
Parsippany, NJ 07054
973-402-2700 800-875-0086

BROKERAGE #2

YOUR BROKERAGE ACCOUNT STATEMENT

YTD COMM: $.00

MONEY MARKET FUND SUMMARY

Fund Name	Account Number	Activity Ending	Opening Balance	Closing Balance	Accrued Income	Income This Year	Current Yield	30-Day Yield
ALLIANCE MONEY RESERVES	0360754485	12/31/01	54,373.95	54,745.76	.00	331.68	1.010	1.120
Total Money Market Fund Holdings			**$54,373.95**	**$54,745.76**	**$.00**	**$331.68**		

MONEY MARKET FUND DETAIL

Alliance Money Reserves — **Account Number : 0360754485** — **Activity Ending : 12/31/01**

Date	Activity Type	Description	Debit Amount	Credit Amount	Share Balance
12/01/01	OPENING BALANCE				54,373.95
12/11/01	DEPOSIT	SHARES PURCHASED BY WIRE		271.20	54,645.15
12/26/01	DEPOSIT	SHARES PURCHASED BY WIRE		17.93	54,663.08
12/31/01	DEPOSIT	INCOME REINVEST		82.68	54,745.76
12/31/01	CLOSING BALANCE				54,745.76
Total Closing Balance - All Money Market Funds					**$54,745.76**

MESSAGES

ANNUAL MARGIN DISCLOSURE STATEMENT

SECURITIES PURCHASED ON MARGIN ARE YOUR FINANCIAL ORGANIZATION'S AND PERSHING'S COLLATERAL FOR THE LOAN TO YOU. IF THE SECURITIES IN YOUR ACCOUNT DECLINE IN VALUE, SO DOES THE VALUE OF THE COLLATERAL SUPPORTING YOUR LOAN, AND, AS A RESULT, YOUR FINANCIAL ORGANIZATION OR PERSHING CAN TAKE ACTION, SUCH AS ISSUE A MARGIN CALL AND/OR SELL SECURITIES OR OTHER ASSETS IN ANY OF YOUR ACCOUNTS HELD WITH PERSHING IN ORDER TO MAINTAIN THE REQUIRED EQUITY IN THE ACCOUNT. IT IS IMPORTANT THAT YOU FULLY UNDERSTAND THE RISKS INVOLVED IN TRADING SECURITIES ON MARGIN. THESE RISKS INCLUDE THE FOLLOWING:

* YOU CAN LOSE MORE FUNDS THAN YOU DEPOSIT IN THE MARGIN ACCOUNT.

Taxlot Holdings & Unrealized Gains/Losses

William J Martini

Security	Symbol	Units	Purchase Date	Total Cost	Average Unit Cost	Price	Market Value	Percent of Account
Cash & Cash Equivalents								
Cash & Cash Equivalents	CASH-1			88,536.04	1.00	1.00	88,536.04	
Total Cash & Cash Equivalents				**88,536.04**			**88,536.04**	
Corporate Bonds								
Worldcom Inc Notes 7.875% 05/1...	98157DAB2	15,000	02-05-2001	15,484.55	103.10	104.29	15,643.20	0
Sears Roebuck Acc Glbl B 6.000...	812404BC4	10,000	01-25-2001	9,857.60	98.58	102.93	10,293.30	0
Raytheon Co 7.900% 03/01/03	755111BF7	15,000	02-26-2001	15,564.00	103.76	104.03	15,604.35	0
Natl Rural Utilities 6.000% 05...	637432CQ8	15,000	05-24-2001	15,036.55	100.24	102.13	15,319.80	0
Morgan St Dean Witter Gl Nts 7...	617446DW8	15,000	10-18-2001	16,525.20	110.17	109.56	16,434.40	0
Lehman Bros Hldgs Notes 7.750%...	524908CG3	15,000	08-05-2001	15,862.65	105.75	107.93	16,189.50	0
Genl Mtrs Accept Corp 6.360% 0...	37042WC58	15,000	11-16-2001	15,232.49	101.55	103.28	15,491.70	0
Ford Motor Credit Co Bonds 8.7...	345397SJ3	15,000	01-16-2001	15,033.00	100.22	101.09	15,163.65	0
Daimlechrysler Notes 7.400% 01...	233835AD9	15,000	01-16-2001	15,072.30	100.48	103.14	15,470.70	0
At&T Corp 6.000% 03/15/09	001957AV1	15,000	02-12-2001	13,897.10	93.31	88.08	13,211.85	0
Total Corporate Bonds				**147,745.44**			**156,317.15**	0
Municipal Bonds								
Montville Twp NJ Fire Dist 5.6...	615301AR9	10,000	05-01-2001	10,683.20	106.83	106.17	10,617.00	0
Total Municipal Bonds				**10,683.20**			**10,617.00**	0
G.O.s								
Union City Fsa B/E Ut N/C 6.37...	905734JG5	25,000	01-05-2001	27,648.72	110.59	110.77	27,691.75	1
North Arlington Sch Dist 5.375...	657271AV4	20,000	01-12-2001	21,602.40	108.01	105.68	21,135.80	1
Mount Arlington Board Of Ed 5....	5207568H8	25,000	02-06-2001	26,499.17	106.00	104.32	26,079.75	1
Middletown Twp Board Ed 5.000%...	597324HJ4	25,000	02-15-2001	26,543.00	106.17	104.33	26,081.75	1
Lower Twp Fire Dist No 3 6.850...	54852MAS4	25,000	01-23-2001	28,988.50	115.95	115.25	28,811.50	1
Evesham Twp NJ Brd 4.600% 02/0...	300479DW9	20,000	01-05-2001	20,365.40	101.83	103.76	20,751.80	1
Avalon Boro Wtr & Swr 5.250% 0...	053375HM6	25,000	01-19-2001	25,883.50	103.93	104.71	26,178.75	1
Total G.O.s				**177,630.69**			**176,788.90**	10
Revenue Bonds								
Ocean City Utils Auth 5.000% 0...	674758GD3	25,000	12-03-2001	26,827.69	107.31	103.90	25,973.75	1
Atlantic Cnty NJ Util Auth 5.0...	048510FR7	25,000	03-02-2001	26,332.75	105.33	104.40	26,099.00	1
Total Revenue Bonds				**53,160.44**			**52,072.75**	
U.S. Treasury Bonds								
U S Treasury Notes 7.000% 07/1...	912827Y55	15,000	01-10-2001	18,429.49	109.53	111.41	16,710.90	1
Fedl Natl Mtge Assn Notes 6.50...	31359MEX7	15,000	10-18-2001	16,195.75	107.97	106.84	16,026.60	0
Federal Natl Mtg Assn Nts 7.12...	31359MFH1	15,000	01-05-2001	15,900.00	106.00	109.22	16,382.85	0
Total U.S. Treasury Bonds				**48,525.24**			**49,120.35**	2
U.S. Treasury Notes								
U S Treasury Notes 5.000% 08/1...	912827ZB2	15,000	10-04-2001	15,571.88	103.81	103.78	15,117.15	0
Total U.S. Treasury Notes				**15,571.88**			**15,117.15**	0
GNMA								
FNMA Pass Thru Pool 323319 7.0...	31374TDY2	15,708	02-15-2001	15,880.35	101.11	101.75	15,985.92	0
FNMA Pass Thru Pool 254048 8.5...	31371KEV9	29,175	11-20-2001	30,104.30	103.18	101.61	29,645.69	1
Total GNMA				**45,984.65**			**45,631.61**	2
Common Stocks								
Zurich Fnl Svcs ADR Sponsored	ZFSVY	105	09-28-2001	2,248.11	21.41	22.65	2,378.04	0

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	Yahoo Inc	YHOO	203	12-29-2000	6,090.00	30.00	19.20	3,897.60	0
	Xilinx Inc	XLNX	349	12-29-2000	16,228.50	46.50	41.07	14,333.43	0
	Westwood One Inc	WON	230	12-29-2000	4,441.88	19.31	29.38	6,762.80	0
▶	Wal Mart Stores Inc	WMT	380	10-01-2001	19,677.61	51.78	58.35	21,413.00	1
	Volvo Aktiebolaget ADR F	VOLVY	200	12-28-2000	3,287.50	16.44	17.00	3,400.00	0
▶	Viacom Inc Non Vtg Cl B	VIAB	485	10-01-2001	21,344.83	45.90	40.54	16,851.10	1
	Vertex Pharm Inc	VRTX	45	12-29-2000	3,380.63	75.13	20.93	941.85	0
▶	Verizon Communications	VZ	430	11-05-2001	22,277.38	51.81	48.90	21,027.00	1
	Verisign Inc	VRSN	169	12-29-2000	12,611.63	74.63	33.05	5,737.55	0
	Univision Communications Inc C...	UVN	201	12-29-2000	8,379.19	41.69	36.24	7,284.24	0
	United Technologies Corp	UTX	50	01-04-2001	3,668.75	73.38	63.65	3,182.50	0
	Unilever Plc ADR Spon	UL	140	12-28-2000	4,847.50	34.63	31.56	4,418.12	0
	Ubs Ag New Ord	UBS	90	12-28-2000	4,792.50	53.25	48.26	4,343.40	0
▶	Tyco Intl Ltd	TYC	470	10-01-2001	25,925.88	55.16	45.45	21,361.50	0
▶	Transocean Sedco Forex Inc	RIG	505	10-01-2001	22,402.19	44.36	28.26	14,271.30	0
	Tpg N V Spnsr ADR	TP	170	12-28-2000	4,101.25	24.13	21.40	3,638.00	0
	Total Fina Elf S A	TOT	130	12-28-2000	9,555.00	73.50	68.30	8,879.00	0
▶	Texas Instruments Inc	TXN	285	01-03-2002	10,869.99	38.14	27.54	7,848.90	0
	Telefonica De Espana Spons ADR	TEF	196	12-28-2000	9,183.96	46.86	37.35	7,320.60	0
	Telecom Italia Spa-Sponsored A...	TI	90	12-28-2000	9,990.00	111.00	83.56	7,520.40	0
	Tdk Corp ADR	TDK	110	06-27-2001	5,413.69	49.22	44.50	4,895.00	0
	Tdc A/S Spons ADR	TLD	160	12-28-2000	3,190.00	19.94	16.35	2,616.00	0
▶	Target Corp	TGT	520	12-29-2000	17,023.44	32.74	40.68	21,143.20	1
	Talisman Energy Inc	TLM	150	11-21-2001	5,084.29	33.90	34.21	5,131.50	0
	T Rowe Price Group Inc	TROW	89	12-29-2000	3,832.56	43.06	36.25	3,226.25	0
	Sonus Networks Inc	SONS	142	12-29-2000	3,834.00	27.00	4.27	606.34	0
	Siebel Sys Inc	SEBL	336	12-29-2000	21,840.00	65.00	34.26	11,511.36	0
	Sepracor Inc	SEPR	69	12-29-2000	5,489.81	79.56	49.80	3,443.10	0
	Sei Investments Co	SEIC	25	06-29-2001	1,187.50	47.50	38.82	970.50	0
	Scottish Pwr Plc Spons ADR Fin...	SPI	150	12-28-2000	4,575.00	30.50	24.05	3,607.50	0
▶	Schlumberger Ltd	SLB	185	12-29-2000	15,193.13	82.13	49.62	9,179.70	0
▶	Sbc Communications Inc	SBC	395	12-29-2000	18,775.00	47.53	36.51	14,421.45	0
	Sapient Corp	SAPE	109	01-24-2001	2,064.73	18.94	5.41	589.69	0
▶	Safeway Inc	SWY	340	11-06-2001	19,493.48	57.33	40.10	13,634.00	0
	Royal Dutch Petro-NY Shares	RD	60	12-26-2000	3,686.25	61.44	48.77	2,926.20	0
	Robert Half Intl Inc	RHI	34	10-16-2001	785.25	23.10	24.17	821.78	0
▶	Rio Tinto Plc Sponsored ADR	RTP	75	06-29-2001	5,345.33	71.27	73.33	5,499.45	0
▶	Research In Motion Ltd	RIMM	105	04-17-2001	6,516.47	62.06	21.96	2,305.80	0
	Repsol SA ADR	REP	340	12-28-2000	5,397.50	15.87	12.10	4,114.00	0
▶	Raytheon Co New	RTN	260	12-05-2001	8,761.22	33.70	32.87	8,545.20	0
	Rational Software Corp	RATL	85	12-29-2000	3,440.00	40.00	22.61	1,944.46	0
▶	Qwest Communications Intl Inc	Q	530	10-23-2001	15,020.14	28.34	12.58	6,666.40	0
	Public Svc Enterprises	PEG	65	05-09-2001	3,694.19	45.81	41.00	3,465.00	0
	Procter & Gamble Company	PG	50	01-04-2001	3,578.13	71.56	79.81	3,990.50	0
	Pnc Financial Corp	PNC	50	02-01-2001	3,606.63	73.01	61.26	3,063.00	0
	Philip Morris Cos Inc	MO	75	12-19-2001	3,503.25	46.71	48.81	3,660.75	0
	Pharmacia Corp	PHA	75	02-23-2001	3,660.75	48.81	39.15	2,936.25	0
▶	Pfizer Inc	PFE	380	12-19-2001	16,682.62	43.90	40.10	15,238.00	0
▶	Pepsico Inc	PEP	325	01-04-2001	15,413.75	47.43	49.11	15,960.75	0
	Paychex Inc	PAYX	138	12-29-2000	7,071.63	50.88	36.24	5,037.36	0
▶	Overture Services Inc	OVER	160	11-01-2001	3,328.33	20.79	37.67	6,027.20	0
▶	Oracle Corporation	ORCL	420	10-01-2001	11,959.95	28.48	16.48	6,921.60	0
▶	Openwave Systems Inc	OPWV	88	06-05-2001	4,165.63	47.23	8.72	767.36	0
▶	Onl Sys Corp	ONIS	62	04-27-2001	2,209.43	35.63	5.41	335.42	0
▶	Novellus Systems Inc	NVLS	45	10-16-2001	1,433.74	31.86	37.84	1,702.80	0
	Novartis Ag - ADR	NVS	140	12-28-2000	6,142.50	43.87	34.87	4,881.80	0
▶	Network Appliance Inc	NTAP	185	11-13-2001	5,294.51	19.97	18.34	3,026.10	0
	Nestle S A Sponsored ADR	NSRGY	120	12-28-2000	6,900.00	57.50	53.99	6,479.16	0
	Motorola Inc	MOT	200	06-13-2001	2,914.24	14.57	14.25	2,850.00	0
▶	Morgan Stanley Dean Witter & C...	MWD	220	10-18-2001	11,526.62	52.38	58.82	12,456.40	0
▶	Mirant Corp	MIR	277	11-28-2001	6,828.39	24.65	12.36	3,423.72	0
	Minnesota Mng & Mfg Co	MMM	35	06-24-2001	3,132.19	89.49	106.80	3,738.00	0
▶	Microsoft Corp	MSFT	395	11-06-2001	18,425.14	46.64	66.10	26,109.50	1

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▶	Micron Technology Inc	MU	530	10-01-2001	16,8[illegible]4	31.71	31.79	16,848.70
▶	Merrill Lynch & Co. Inc.	MER	65	08-28-2001	3,865.50	59.47	58.48	3,801.20
	Merck & Co Inc	MRK	50	12-28-2000	4,712.50	94.25	66.00	2,300.00
▶	Medtronic Inc	MDT	205	05-24-2001	8,872.60	43.77	48.48	9,938.40
▶	Mediacom Communications Corp C...	MCCC	249	08-28-2001	4,234.76	17.01	16.45	4,095.05
	McDonalds Corp	MCD	110	01-04-2001	3,671.25	33.38	26.43	2,907.30
	Maxim Integrated Prods Inc	MXIM	254	12-29-2000	12,584.12	49.94	54.77	13,911.58
	Lvmh Moet Hennessy Louis Vuitt...	LVMHY	630	12-28-2000	8,308.13	13.19	7.69	4,844.70
	Lloyds Tsb Group ADR Spon	LYG	120	12-10-2001	5,014.47	41.79	42.00	5,040.00
▶	Lilly, Eli and Company	LLY	280	02-22-2001	25,544.74	88.00	74.59	21,631.10
▶	Liberty Media Corp Series A	L	215	07-10-2001	3,323.43	15.46	14.25	3,063.75
▶	Liberate Technologies	LBRT	254	02-05-2001	3,517.57	13.85	9.28	2,352.04
▶	Lauder Estee Cos Inc Cl A	EL	260	10-01-2001	11,240.63	43.23	34.38	8,938.80
	Kyocera Corp Spn ADR	KYO	45	03-06-2001	4,117.33	91.50	61.02	2,745.90
	Kroger Co	KR	115	04-06-2001	2,850.75	23.05	20.53	2,360.95
	Koninklijke Philips Electrs Sp...	PHG	150	12-28-2000	5,193.75	34.63	28.26	4,239.00
	Koninklijke Ahold Nv Spons ADR	AHO	150	07-25-2001	4,592.38	30.62	25.80	3,853.50
	Juniper Networks Inc	JNPR	143	12-29-2000	18,618.62	130.19	17.00	2,431.00
▶	Johnson & Johnson	JNJ	225	07-10-2001	11,785.18	52.38	59.70	13,432.50
▶	Jds Uniphase	JDSU	585	10-01-2001	14,360.85	24.55	8.18	4,785.30
▶	Intl Business Machines	IBM	145	07-24-2001	14,068.80	97.01	114.25	16,566.25
▶	Intel Corp	INTC	670	10-01-2001	19,488.17	29.09	33.48	22,431.60
	Human Genome Sciences Inc	HGSI	113	12-29-2000	7,934.71	70.22	26.83	3,031.79
	Hotel Reservations Network Icl...	ROOM	26	10-10-2001	798.29	30.70	44.83	1,165.58
	Honeywell International, Inc.	HON	50	08-29-2001	1,885.00	33.70	29.35	1,467.50
	Honda Motor Co Spon ADR	HMC	320	12-28-2000	5,830.00	18.22	19.20	6,144.00
	Hispanic Broadcasting Co	HSP	108	12-29-2000	2,754.00	25.50	23.88	2,579.04
	Hellenic Telecommunications AD...	OTE	625	03-15-2001	4,437.00	7.10	8.01	5,006.25
	Heineken N V ADR	HINKY	75	12-28-2000	3,690.00	49.20	38.44	2,882.52
	Hartford Financial Services	HIG	80	01-09-2001	5,813.75	62.37	62.89	5,880.10
▶	Guidant Corp	GDT	135	11-07-2001	5,923.14	43.88	45.80	6,183.00
▶	Goldman Sachs Group Inc	GS	130	10-01-2001	14,093.88	108.41	89.21	11,597.30
	Gillette Co	G	85	02-26-2001	2,758.25	32.45	32.22	2,738.70
	Gilead Sciences Inc	GILD	82	12-29-2000	3,515.75	42.87	65.74	5,390.68
▶	General Electric	GE	875	10-01-2001	42,222.35	48.25	38.88	33,845.00
	Genentech Inc New	DNA	93	12-29-2000	7,899.19	84.94	47.69	4,435.17
	Gemstar Tv Guide International...	GMST	74	10-09-2001	1,380.64	18.66	20.00	1,480.00
	Gallaher Group Plc Sponsored A...	GLH	150	12-28-2000	3,750.00	25.00	27.40	4,110.00
	Fujitsu Ltd ADR 5	FJTSY	60	12-28-2000	4,590.00	76.00	34.53	2,071.92
	Fuji Photo Film Co Ltd ADR	FUJIY	160	12-28-2000	6,630.00	41.44	33.00	5,280.00
▶	Flextronics Intl Ltd	FLEX	430	10-01-2001	11,749.63	27.32	23.08	9,924.40
	Fleetboston Financial Corp	FBF	150	01-03-2001	5,925.00	39.50	33.81	5,071.50
	First Data Corp	FDC	85	01-09-2001	3,684.69	56.69	79.94	5,190.10
▶	Fifth Third Bancorp	FITB	300	12-29-2000	18,018.76	60.06	62.22	18,666.00
	Federal Natl Mtg Assn	FNM	45	01-09-2001	3,484.69	77.44	82.60	3,717.00
▶	Exxon Mobil Corp	XOM	470	11-15-2001	19,480.58	41.45	38.40	18,048.00
▶	Expedia Inc Cl A	EXPE	45	05-26-2001	1,588.35	35.30	44.49	2,002.05
	Entergy Corp New	ETR	90	05-15-2001	3,814.12	42.38	41.95	3,775.50
	Eni S P A Sponsored ADR	E	80	12-28-2000	5,160.00	64.75	64.25	5,140.00
	Endesa Sponsored ADR	ELE	320	12-28-2000	5,360.00	16.75	14.69	4,700.80
	Elantec Semiconductor Inc	ELNT	52	01-24-2001	2,835.64	54.53	38.72	2,013.44
	El Paso Corporation	EP	85	10-24-2001	3,134.95	48.23	39.30	2,554.50
	Eisai Company Ltd Sponsored AD...	ESALY	300	12-28-2000	10,500.00	35.00	25.23	7,569.30
▶	Echostar Commun Corp New Cl A	DISH	280	02-05-2001	6,658.12	23.78	26.78	7,501.20
	Ebay Inc	EBAY	177	12-29-2000	6,128.63	34.63	60.18	10,651.86
	E.On-Ag-Spon ADR	EON	80	12-28-2000	5,394.38	59.94	52.10	4,688.00
	Du Pont E I De Nemours Co	DD	75	12-28-2000	3,870.31	48.94	40.68	3,051.00
▶	Dominion Res Inc Va New	D	125	10-31-2001	7,926.24	63.41	58.25	7,281.25
	Danske Bk A/S ADR	DNSKY	280	12-28-2000	4,550.00	17.50	16.05	4,173.28
▶	Cvs Corporation	CVS	350	12-19-2001	16,687.10	47.68	27.91	9,768.50
	Cox Radio Inc Cl A	CXR	116	12-29-2000	2,595.50	22.37	22.60	2,621.60
	Conoco Inc	COC	95	06-11-2001	2,851.32	30.12	28.02	2,661.90
▶	Coca Cola Co	KO	275	09-17-2001	12,870.93	46.80	45.44	12,496.00

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Clear Channel Comm	CCU	53	12-29-2000	2,587.06	48.81	47.24	2,503.72	0
Citigroup Inc	C	625	10-01-2001	32,279.40	51.65	48.96	31,225.00	0
Cisco Sys Inc	CSCO	1,065	10-01-2001	30,392.89	28.54	18.85	20,075.25	0
Cincinnati Finl Corp	CINF	19	10-08-2001	761.41	40.07	37.28	707.94	0
Chevrontexaco Corporation	CVX	70	01-03-2001	5,613.13	80.19	86.80	6,076.00	0
Checkfree Corp	CKFR	124	07-25-2001	4,693.12	37.85	16.33	2,024.92	0
Cemex SA ADR Sprd New	CX	230	06-15-2001	4,734.94	20.59	25.70	5,911.00	0
Canon Inc Sponsored ADR	CAJ	270	12-28-2000	9,247.50	34.25	32.63	8,810.10	0
Cadbury Schweppes Plc Sponsore...	CSG	270	12-28-2000	7,762.50	28.75	24.62	6,647.40	0
Cablevision Sys Corp Rainbow M...	RMG	88	10-10-2001	2,185.70	24.61	27.50	2,420.00	0
Cablevision Sys Corp Cl A	CVC	91	12-29-2000	6,502.82	71.46	43.50	3,958.50	0
Cable & Wireless Plc ADR	CWP	140	12-28-2000	5,600.00	40.00	13.68	1,915.20	0
British Airways Plc ADR 2nd In...	BAB	60	08-21-2001	2,744.97	45.75	31.80	1,908.00	0
Boc Group Plc Sponsored ADR	BOX	110	12-28-2000	3,430.53	31.19	29.18	3,207.27	0
Bhp Ltd Sponsored ADR	BHP	433	06-05-2001	4,745.57	10.96	11.04	4,780.32	0
Benetton Group Sponsored ADR [...	BNG	140	12-28-2000	5,740.00	41.00	23.65	3,311.00	0
Bed Bath & Beyond Inc	BBBY	270	02-05-2001	6,873.37	24.72	31.82	8,591.40	0
Bayer Ag Sponsored ADR	BAYZY	120	12-28-2000	6,225.00	51.87	31.15	3,737.52	0
Baxter Intl Inc	BAX	125	07-24-2001	5,954.78	47.24	53.37	6,671.25	0
Bank Of America	BAC	270	07-24-2001	15,827.58	58.82	60.80	16,416.00	0
Bank New York Inc	BK	85	07-17-2001	3,644.83	42.88	42.85	3,642.25	0
BP Amoco Plc Sponsored ADR	BP	200	01-04-2001	9,657.50	48.29	44.18	8,836.00	0
Axa SA Sponsored ADR	AXA	190	06-29-2001	5,445.56	28.66	19.90	3,781.00	0
Astra Zeneca Plc ADR	AZN	140	12-28-2000	7,183.75	51.31	45.04	6,305.60	0
Applied Micro Circuits Corp	AMCC	211	10-16-2001	3,134.85	14.86	10.41	2,196.51	0
Applied Matls Inc	AMAT	195	10-01-2001	7,230.38	37.08	40.35	7,868.25	0
Aol Time Warner	AOL	490	10-01-2001	19,550.23	39.90	29.58	14,494.20	0
Andrx Corporation Common Share	ADRX	92	12-29-2000	5,300.81	57.62	60.90	5,602.92	0
American Intl Group Inc	AIG	375	11-06-2001	35,291.60	94.11	79.50	29,812.50	0
American Express Co	AXP	65	04-03-2001	2,523.55	38.82	37.02	2,406.30	0
Altera Corp	ALTR	118	12-29-2000	3,119.63	26.44	23.01	2,715.18	0
Allied-Domecq Plc Sponsored AD...	ALDCY	590	12-28-2000	4,056.25	6.87	5.58	3,295.15	0
Allied Irish Bks Plc Sponsored...	AIB	300	12-28-2000	6,825.00	22.75	22.20	6,660.00	0
Akzo Nobel N V Sponsored ADR	AKZOY	90	12-28-2000	4,741.20	52.68	44.11	3,969.90	0
Aktiebolaget Electrolux Sponso...	ELUX	130	12-28-2000	3,331.25	25.63	29.85	3,880.37	0
Agile Software Corp Del	AGIL	61	12-18-2001	993.00	16.28	13.26	808.86	0
Agere Sys Inc	AGRA	300	03-28-2001	1,815.00	6.05	5.22	1,566.00	0
Aegon N.V. ADR	AEG	140	12-28-2000	5,792.50	41.37	24.01	3,361.40	0
Abn Amro Hldg N V Sponsored AD...	ABN	240	12-28-2000	5,430.00	22.63	17.50	4,200.00	0
Abgenix Inc	ABGX	156	12-29-2000	9,408.75	60.31	25.40	3,962.40	0
Abbott Labs	ABT	369	01-04-2002	18,340.98	50.25	57.41	20,954.65	0
AT & T Wireless	AWE	225	07-12-2001	3,695.09	16.42	11.55	2,598.75	0
Total Common Stocks				1,367,491.75			1,104,353.39	66
Preferred Stock								
Newscorp Ltd Spon ADR Pfd	NWSA	140	10-31-2001	3,342.67	23.88	24.95	3,493.00	0
Total Preferred Stock				3,342.67			3,493.00	0
Grand Total				1,858,672.00			1,756,048.28	1

IRA #1: $1,024,989
BROKERAGE #3: 731,659
TOTAL: $1,756,048

YTD Summary of Gains/Losses

Year to date Unrealized Short Term Gains	27,675.42
Year to date Unrealized Short Term Losses	-44,011.21
Year to date Unrealized Long Term Gains	35,698.35
Year to date Unrealized Long Term Losses	-221,866.32
Year to date Realized Short Term Gains/Losses	-545.42
Year to date Realized Long Term Gains/Losses	-1,217.77

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Taxlot Holdings & Unrealized Gains/Losses

FCC 1/18/2002 Schwab 1/18/2002

i Simple IRA

Security	Symbol	Units	Purchase Date	Total Cost	Average Cost / Unit Price	Market Value	% Portfol
Cash & Cash Equivalents							
Cash & Cash Equivalents	CASH-1			8,658.02	1.00	1.00	8,658.02	4.4
Total Cash & Cash Equivalents				**8,658.02**			**8,658.02**	**4.4**
Corporate Bonds							
AT&T Corp 6.000% 03/15/09	001957AV1	10,000	08-30-2001	9,752.10	97.52	96.08	9,607.90	4.9
Ford Motor Credit Co Bonds 6.7...	345397SJ3	10,000	08-21-2001	10,338.00	103.38	101.00	10,100.10	5.1
Gen! Mtrs Accept Corp 6.380% 0...	37042WC58	10,000	08-31-2001	10,524.19	105.24	103.28	10,327.80	5.2
Morgan St Dean Witter Gl Nts 7...	617446DW6	10,000	10-18-2001	11,016.80	110.17	109.54	10,953.60	5.6
Natl Rural Utilities 6.000% 05...	637432CQ6	10,000	09-04-2001	10,199.70	102.03	102.13	10,212.60	5.2
Sprint Capital Corp Sr Note 5....	852060AB8	10,000	08-28-2001	10,128.00	101.28	102.17	10,216.79	5.2
Worldcom Inc Notes 7.875% 05/1...	98157DAB2	10,000	10-02-2001	10,486.30	104.86	104.29	10,426.80	5.3
Total Corporate Bonds				**72,443.09**			**71,858.50**	**36.5**
U.S. Treasury Notes							
U S Treasury Notes 5.625% 02/1...	912827W81	15,000	08-20-2001	15,759.35	105.06	106.03	15,904.65	8
U S Treasury Notes 6.000% 08/1...	9128275N8	10,000	08-30-2001	10,803.13	108.03	107.66	10,765.60	5.5
Total U.S. Treasury Notes				**26,562.51**			**26,670.25**	**13.5**
Common Stocks							
Agere Sys Inc	AGRA	215	08-15-2001	1,083.60	5.04	5.22	1,122.30	0.6
American Express Co	AXP	165	08-15-2001	6,392.10	38.74	37.02	6,108.30	3.1
American Intl Group Inc	AIG	50	08-15-2001	4,062.50	81.25	79.50	3,975.00	2
Aon Corp	AOC	30	08-27-2001	1,179.91	39.33	35.03	1,050.90	0.5
Bank One Corp	ONE	35	08-15-2001	1,334.55	38.13	38.14	1,334.90	0.7
Berkshire Hathaway Inc Del Cl ...	BRKB	1	08-15-2001	2,313.00	2,313.00	2,499.00	2,499.00	1.3
Citigroup Inc	C	80	08-15-2001	3,857.60	48.22	49.96	3,996.80	2
Costco Wholesale Corp New	COST	80	08-15-2001	3,212.00	40.15	42.93	3,434.40	1.7
Devon Energy Corp New	DVN	30	08-15-2001	1,517.70	50.59	36.45	1,093.50	0.6
Dover Corp	DOV	35	08-15-2001	1,292.90	36.94	34.97	1,223.95	0.6
Dun & Bradstreet Corp Del New	DNB	35	08-15-2001	1,050.00	30.00	32.40	1,134.00	0.6
Eog Res Inc	EOG	30	01-09-2002	1,120.39	37.35	32.75	982.50	0.5
Golden West Finl Corp	GDW	35	08-15-2001	2,282.70	65.22	61.01	2,135.35	1.1
Hewlett Packard Co	HWP	80	08-15-2001	1,956.00	24.45	22.61	1,808.80	0.9
Household Intl Corp	HI	80	08-15-2001	5,438.80	67.96	54.85	4,388.00	2.2
Kinder Morgan Inc	KMI	26	12-06-2001	1,274.86	50.99	54.79	369.75	0.7
Kraft Foods Inc Cl A	KFT	25	01-15-2002	852.50	34.10	34.59	864.75	0.4
Lexmark Intl Group Inc Cl A	LXK	40	08-15-2001	1,885.00	47.15	57.20	2,288.00	1.2
Lilly, Eli and Company	LLY	35	08-15-2001	2,779.35	79.41	74.58	2,610.65	1.3
Lloyds Tsb Group ADR Spon	LYG	30	01-17-2002	1,269.70	42.32	42.00	1,260.00	0.6
Loews Corp	LTR	20	08-15-2001	1,080.00	54.00	60.15	1,203.00	0.6
Marriott Intl Inc New Cl A	MAR	20	08-15-2001	944.60	47.23	39.61	792.20	0.4
Masco Corp	MAS	115	08-15-2001	2,969.30	25.82	25.20	2,898.00	1.5
McDonalds Corp	MCD	70	08-15-2001	1,995.00	28.50	26.43	1,850.10	0.9
Merck & Co Inc	MRK	75	01-03-2002	5,113.89	68.19	58.00	4,350.00	2.2
Minnesota Mng & Mfg Co	MMM	15	08-15-2001	1,642.35	109.49	106.80	1,602.00	0.8
Moodys Corp	MCO	25	08-15-2001	849.50	33.98	39.90	997.50	0.5
Morgan Stanley Dean Witter & C...	MWD	30	08-15-2001	1,652.70	55.09	56.62	1,698.60	0.9
Philip Morris Cos Inc	MO	100	08-15-2001	4,409.00	44.09	46.81	4,681.00	2.5
Phillips Petroleum Company	P	35	08-15-2001	2,034.90	58.14	58.02	2,030.70	1
Progressive Corp Ohio	PGR	10	08-15-2001	1,311.20	131.12	147.17	1,471.70	0.7

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Radioshack Corp	RSH	30	01-15-2002	878.61	29.29	28.49	854.70	0.4	
Safeway Inc	SWY	30	12-14-2001	1,222.09	40.74	40.10	1,203.00	0.6	
Sealed Air Corp	SEE	55	08-15-2001	2,287.65	41.23	37.11	2,041.05	1	
Tellabs Inc	TLAB	125	08-15-2001	1,903.75	15.23	15.21	1,901.25	0.9	
Transatlantic Hldgs Inc	TRH	25	08-15-2001	1,901.25	76.05	89.80	2,245.00	1.1	
Tyco Intl Ltd	TYC	120	01-16-2002	6,226.80	51.89	46.45	5,574.00	2.8	
United Parcel Svc Inc Cl B	UPS	55	08-15-2001	3,070.10	55.82	56.52	3,108.60	1.6	
Vulcan Materials Co	VMC	20	08-15-2001	878.40	48.92	45.65	917.00	0.5	
Wells Fargo & Co	WFC	75	08-15-2001	3,528.75	47.05	45.38	3,403.50	1.7	
Total Common Stocks				**92,133.80**			**89,703.75**	**45.6**	
Grand Total				**199,795.42**			**196,686.52**	**100**	

YTD Summary of Gains/Losses

Year to date Unrealized Short Term Gains	2,758.31
Year to date Unrealized Short Term Losses	-5,667.21
Year to date Unrealized Long Term Gains	.00
Year to date Unrealized Long Term Losses	.00
Year to date Realized Short Term Gains/Losses	.00
Year to date Realized Long Term Gains/Losses	.00

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IRA #3

EQUITABLE

Owner Name MR WILLIAM J MARTINI
Owner Address

General Information

Premium Information

Policy Values

Account Value $37,331.36

Investment Values as of 01/18/2002

Funds	Account Value	Number of Units	Unit Price	Alloc %
EQ/Alliance Common Stock	$14,945.42	52.0695	287.028287	34
EQ/Balanced	$13,118.54	268.5848	48.843195	33
EQ/Aggressive Stock	$9,267.40	141.8468	65.333881	33
Guaranteed Interest Account	$0.00			0
Total Annuity Acct Value	$37,331.36			

IRA #4

EQUITABLE

Owner Name
Owner Address

General Information

Premium Information

Policy Values

Account Value $29,064.42

Investment Values as of 01/18/2002

Funds	Account Value	Number of Units	Unit Price	Alloc %
EQ/Alliance Common Stock	$12,962.48	45.1610	287.028287	34
EQ/Balanced	$8,979.76	183.8488	48.843195	33
EQ/Aggressive Stock	$7,122.18	109.0120	65.333881	33
Guaranteed Interest Account	$0.00			0
Total Ability Acct Value	$29,064.42			

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PENSION PLAN #1

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January 21, 2002

Sills Cummis Salary Deferral and Savings Plan

Account Information
- Fund Positions
- Account Summary
- Election Report
- Loan Report
- Transaction History

Account Changes
- Change Pin
- Update Elections
- Update Address

Transfer Options
- Transfer
- Reallocation

Plan Information
- Fund Performance
- Market Recap

Fund Positions — Account Holder: William J. Martini

As of Date: January 18, 2002

Investment Fund	Quantity	Price	Value	Pending	Total	Portfolio Percent
Vanguard 500 Index	367.489	104.06	38,240.91	0.00	38,240.91	100.00%
Account Total			38,240.91	0.00	38,240.91	100.00%

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Fund Summary

PENSION PLAN #2

Fund Positions

Account Holder: William J. Martini

As of Date: January 18, 2002

Investment Fund	Quantity	Price	Value	Pending	Total	Portfolio Percent
Fidelity New Millennium	1,148.060	27.40	31,456.84	0.00	31,456.84	54.81%
Vanguard 500 Index	249.190	104.06	25,930.71	0.00	25,930.71	45.19%
Account Total			57,387.55	0.00	57,387.55	100.00%

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William J. Martini
Pension Plan #3
Novartis Investment Plan (Spouse)

Government Money Market Fund	26,063
Interest Income Fund	36,740
Asset Allocation Fund	29,837
S&P Index 500 Fund	51,947
Small Company Fund	67,935
Total	212,522

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY, UNITED STATES SENATE

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

   Answer: Thomas Wade Phillips (Tom or Tommy).

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

   Answer: United States District Judge, Eastern District of Tennessee.

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

   Answer: Howard H. Baker, Jr., U.S. Courthouse, 800 Market Street, Suite 145, Knoxville, Tennessee, 37902. Telephone: (865)545-4255.

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

   Answer: July 6, 1943; Oneida, Scott County, Tennessee.

5. **Marital Status**: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please also indicate the number of dependent children.

   Answer: Married to Dorothy Mae Mills on January 2, 1971. My wife teaches English at Oneida Middle School, Oneida Independent School District, Main Street, Oneida, Tennessee.

6. **Education**: List in reverse chronological order, listing most recent first, each college, law school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   Answer: (1) George Washington University Law School, Washington, D.C., 1971-73; LL.M. (Labor Law 1973).

   (2) Vanderbilt University Law School, Nashville, Tennessee; 1965-January 1969; J.D. 1969.

   (3) Berea College, Berea, Kentucky; 1961-65; B.A. 1965.

7. **Employment Record**: List in reverse chronological order, listing most recent first, all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, with which you have

been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

Answer: (1) February 14, 1991- present, U.S. District Court for the Eastern District of Tennessee, U.S. Magistrate Judge, Howard H. Baker, Jr. U.S. Courthouse, 800 Market Street, Suite 145, Knoxville, Tennessee 37902. Telephone: (865)545-4255.

(2) 1992-present, Adjunct Associate Professor of Law, University of Tennessee College of Law, 1505 W. Cumberland Avenue, Knoxville, Tennessee 37996. Telephone: (865) 974-4241.

(3) 1986-1991, Senior Partner, Phillips and Williams, 313 Industrial Lane, Oneida, Tennessee 37841. Telephone: (423) 569-8313. Attorney.

(4) 1979-86, Partner, Phillips and Wilson, 313 Industrial Lane, Oneida, Tennessee 37841 Telephone: (423) 346-6403. Attorney.

(5) 1979-91, Member of the Board of Directors, First Trust & Savings Bank of Oneida, Tennessee, Main Street, Oneida, Tennessee 37841. Telephone: (423) 569-6313.

(6) 1980-86, Member of the Board of Directors of Scott County Hospital, 18797 Alberta Street, Oneida, Tennessee 37841. Telephone: (423) 569-8521.

(7) 1980-84, Member of the Oneida Lions Club, Main Street, Oneida, Tennessee 37841. Telephone: (423) 569-6244.

(8) 1983-89, Member of the Board of Directors, Vanderbilt Law School Alumni Association, 131 21st Avenue, South, Nashville, Tennessee 37203. Telephone: (615) 322-2606.

(9) 1977-79, Partner, Phillips and Phillips, Scott Office Building, Highway 27, Oneida, Tennessee 37841. Telephone: (423) 569-8313. Attorney.

(10) 1976-91, Elected County Attorney for Scott County, Tennessee (part-time position), Scott County Courthouse, Huntsville, Tennessee 37756. Telephone: (423) 663-2000.

(11) 1974-77, Associate, then Partner, Baker, Worthington, Crossley, Stansberry & Woolf, 3 Courthouse Square, Huntsville, Tennessee 37756. Telephone: (423) 663-2321. Attorney.

(12) 1973-74, Associate, Griffith & Stokes, First American Center, Nashville, Tennessee 37219. Telephone: (615) 256-3338. Attorney.

(13) 1969-73, Judge Advocate Generals Corps., United States Army, Nassif Building, Falls Church, Virginia. Telephone: (703) 756-1905. Captain, United States Army.

(14) 1965-69, Vanderbilt University, West End Avenue, Nashville, Tennessee 37203. Telephone: (615) 322-2617. Dorm Advisor and employee of student-run laundry while in law school.

8. **Military Service**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge received.

Answer: (1) June 1969-August 31, 1969, Basic Training at Fort Dix, New Jersey; rank of Private E-1; serial No. RA12907292; received Honorable Discharge on August 31, 1969, to accept a commission in the Judge Advocate Generals Corps.

(2) 1 September 1969-December 31, 1969, Judge Advocate Generals School, Charlottesville, Virginia.

(3) January 1969-June 1973, assigned to the Government Appellate Division, U.S. Army Judiciary (Legal Services Agency), Nassif Building, Falls Church, Virginia, 22041, rank of Captain. Received Honorable Discharge in June 1973.

9. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Answer: (1) Phi Kappa Phi, Berea College, 1965.

(2) Pi Gamma Mu, Berea College, 1965.

(3) Assistant Articles Editor, Vanderbilt Law Review, 1968-69.

(4) Vanderbilt Law School, Dean's Award for Best Senior Dissertation, 1969.

(5) Attended Vanderbilt Law School on full academic scholarship.

(6) Outstanding Appellate Advocacy Award, Judge Advocate Generals Corps., Government Appellate Division, 1973.

(7) U.S. Army Commendation Medal, 1973.

(8) Master of the Bench, Hamilton Burnette American Inns of Court, 1991-present.

10. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Answer: (1) American Bar Association, 1969-present. Chair of Bar Relations Committee of the National Conference of Federal Trial Judges, 1996-97.

(2) Tennessee Bar Association, 1969-present; member of the House of Delegates, 1989-93.

(3) Scott County Bar Association, 1974-91, President 1988-89.

(4) Knoxville Bar Association, member of the Board of Governors, 1998-99.

11. **Bar and Court Admission**: List each state and court in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Answer: (1) Tennessee Supreme Court - April 1969.

(2) U.S. Supreme Court - October 1972.

(3) U.S. Court of Military Appeals - October 1969.

(4) U.S. Court of Claims - October 1972.

(5) U.S. Court of Appeals, Sixth Circuit - February 1980.

(6) U.S. Court of Appeals, Fifth Circuit - October 1980.

(7) U.S. District Court for the Eastern District of Tennessee - 1975.

(8) U.S. District Court for the Eastern District of Kentucky - 1975.

12. **Memberships**: List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, charitable, or other organizations since graduation from college, other than those listed in response to Questions 10 or 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion - either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

Answer: (1) Huntsville Presbyterian Church, 1974-present; Elder, 1985-present.

(2) American Inns of Court, 1991-present.

(3) American Legion Post #136 of Oneida, Tennessee, 1973-present.

(4) Opportunities for the Handicapped, Inc., Vice-Chairman, 1986-89.

None of these organizations formally discriminated or currently discriminates on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies.

13. **Published Writings**: List the titles, publishers, and dates of books, articles, reports, or other material you have written or edited, including material published on the Internet. Please supply four (4) copies of all published material to the Committee, unless the Committee has advised you that a copy has been obtained from another source. Also, please supply four (4) copies of all speeches delivered by you, in written or videotaped form over the past ten years, including the date and place where they were delivered, and readily available press reports about the speech.

Answer: (1) Author, case comment, 20 Vanderbilt Law Review 690 (1967).

(2) Student note, 20 Vanderbilt Law Review 948 (1967).

(3) Note, 22 Vanderbilt Law Review 322 (1969) (Dean's Award). Copies attached.

(4) Cooke, et al., *Federal Civil Procedure Before Trial*, 6th Circuit, Chapter 15 of Vol. 3 (1996).

(5) I have spoken at numerous seminars on pretrial litigation, *Daubert* hearings, and the duties of United States Magistrate Judges. A few of these speeches were delivered from a prepared text, but most were delivered from outlines. To my knowledge, none of my presentations has been videotaped and I am not aware of any press reports concerning any of my presentations. I have attached copies of the following presentations:

(a) Speech delivered to the Barrister's Advocate Society on Thursday, September 17, 1992, in Knoxville, Tennessee, on the role of magistrate judges in federal courts.

(b) Presentation for the Federal Bureau of Investigation in conjunction with its witness readiness training program held on June 23, 1992, in Knoxville, Tennessee, along with Honorable Leon Jordan, U.S. District Judge.

(c) Seminar on local rules for United States District Court presented to the Scott County Bar Association on March 2, 1993, in Oneida, Tennessee.

(d) Address to the Knoxville Civitan Club on the Federal Judiciary, delivered on Friday, March 12, 1993, in Knoxville, Tennessee.

(e) Seminar presented by the Tennessee Bar Association in 1994, in Nashville, Tennessee, on Expert Testimony and Scientific Evidence: The View from the Bench.

(f) Presentation for Bench-Bar Conference on Federal Court Practice presented on Friday, September 18, 1998, in Knoxville, Tennessee.

(g) Presentation on Evidence and Rule 26, Federal Rules of Civil Procedure, on May 30, 2000, to the Sixth Circuit Conference in Cincinnati, Ohio.

(h) Presentation to District Fall Conference on Emerging Issues in Federal Court Civil Practice delivered on September 22, 2001, in Kingsport, Tennessee.

(i) Presentation to the Federal Bar Association on the Federal Rules of Evidence on July 19, 2001, in Greeneville, Tennessee.

(j) Speech delivered to Women's Auxiliary of St. John's Episcopal Church on naturalization requirements for United States citizenship, delivered on October 15, 2001, in Knoxville, Tennessee.

(k) Presentation to University of Tennessee College of Law and Knoxville Bar Association Barristers relating to the USA Patriot Act delivered on April 22, 2002, in Knoxville, Tennessee.

14. **Congressional Testimony**: List any occasion when you have testified before a committee or subcommittee of the Congress, including the name of the committee or subcommittee, the date of the testimony and a brief description of the substance of the testimony. In addition, please supply four (4) copies of any written statement submitted as testimony and the transcript of the testimony, if in your possession.

Answer: None.

15. **Health**: Describe the present state of your health and provide the date of your last physical examination.

Answer: My health is excellent and my last physical examination was conducted on April 23, 2002.

16. **Citations**: If you are or have been a judge, provide:

(a) a short summary and citations for the ten (10) most significant opinions you have written;

Answer: (1) *Voss Products, Inc. v. Carlton*, 147 F.Supp. 2d 892 (E.D. Tenn., April 25, 2001) (Judge Jarvis opinion which includes my Report and Recommendation regarding a

writ of garnishment). Defendant argued that even though he had agreed to a voluntary wage assignment for his child support obligations, the Consumer Credit Protection Act prohibited garnishment on behalf of a judgment creditor where the employee's disposable income is already garnished to the extent of 25 percent or more. I concluded that the wage assignment made by the plaintiff to satisfy his support obligations was a "garnishment" within the meaning of 15 U.S.C. § 1672(c). I further interpreted 15 U.S.C. § 1673 as placing a ceiling of 25 percent on the amount of an employee's disposable earnings that is subject to garnishment, with the exception that the ceiling may be raised as high as 65 percent if the garnishment is to enforce family support orders. I thus found that where a support garnishment has priority and results in the withholding of 25 percent or more of defendant's disposable earnings, plaintiff's creditor garnishment is impermissible under the Act. Counsel for the plaintiff was Steven D. Lipsey, Stone & Hinds, PC, Knoxville, Tennessee, telephone (865) 546-6321. The defendant was Brenda G. Brooks, Moore, Brooks & Ragle, Knoxville, Tennessee, telephone (865) 637-2523.

(2) *Messner v. Lockheed Martin Energy Systems, Inc.*, 126 F.Supp.2d 502 (E.D. Tenn., Oct. 24, 2000) In this employment discrimination action, I held that there was no circumstantial or statistical evidence that the plaintiff's layoff pursuant to a reduction in force or the failure to transfer him to other positions was the result of age discrimination. I further found that plaintiff had presented no "direct evidence" of age discrimination in the layoff decision, only hearsay testimony. Summary judgment was entered for defendant. Counsel for plaintiff was David A. Burkhalter, II, Burkhalter & Associates, Knoxville, Tennessee, telephone (865) 524-4974. Counsel for defendant was Edward G. Phillips, Kramer, Rayson, Leake, Rodgers & Morgan, Knoxville, Tennessee, telephone (865) 525-5134.

(3) *Eddins v. Geneva Pharmaceuticals, Inc.*, 877 F.Supp. 413 (E.D. Tenn., Dec. 5, 1994). This retaliatory discharge case was before me by consent of the parties. I held that material issues of fact existed as to whether plaintiff's jury duty service was a substantial factor in defendant's motivation to terminate him. Therefore, the entry of summary judgment in favor of the employer was precluded. Counsel for plaintiff were Perry H. Windle, III telephone (865) 588-0099 and David A. Burkhalter, Burkhalter & Associates, Knoxville, TN, telephone (865) 524-4974. Counsel for defendant was Robert N. Townsend of Arnett, Draper & Hagood, Knoxville, Tennessee, telephone (865) 546-7000.

(4) *Wynn v. Morgan*, 861 F.Supp. 622 (E.D. Tenn., Jul. 6, 1994). In this § 1983 action before me on consent of the parties, the arresting officer moved for summary judgment, arguing that the motorist stopped for a traffic violation and then arrested for drunk driving did not have a claim premised on the Constitution; that officer had probable cause for stop and arrest; and that officer's actions were objectively reasonable such that he was entitled to qualified immunity. I found that defendant was entitled to summary judgment in his individual capacity because plaintiff had not been deprived of any rights, privileges, or immunities secured by the Constitution and laws. I further concluded that even if defendant did not have probable cause to stop and arrest plaintiff, defendant was

entitled to rely upon the defense of qualified immunity. Counsel for the plaintiff was Gloria S. Moore, Moore & Clark, Knoxville, TN, telephone (865) 546-7074. Counsel for the defendant was J. Robert Walker and Ronald C. Leadbetter, Office of the General Counsel, University of Tennessee, Knoxville, TN, telephone (865) 974-3245.

(5) *Stevens v. Dialamerica Marketing, Inc.*, 1993 WL 590141 (E.D. Tenn., Oct. 5, 1993) (unpublished opinion). I tried this ADEA case by the consent of the parties. The jury found for plaintiff on the issue of whether age was a determining factor in defendant's decision to terminate or failure to promote plaintiff. Defendant filed a motion for a judgment as a matter of law or, in the alternative, for a new trial. I concluded that the evidence supported the jury verdict. Counsel for plaintiffs were Perry H. Windle, III, Knoxville, TN, telephone (865) 588-0099 and David A. Burkhalter, Knoxville, TN, telephone (865) 524-4974. Counsel for defendants were Courtney N. Pearre, Knoxville, TN, telephone (615) 252-2431 (2002 Davidson Co. TN) and Paul I. Weiner and Barry A. Aisenstock of Timins & Weiner, Roseland, NJ., telephone (201) 740-1771.

(6) *United States v. Pollard*, 128 F.Supp.2d 1104 (E.D. Tenn., Jan. 24, 2001)(Judge Jarvis opinion which includes my Report and Recommendation). This case dealt with the admission of expert testimony in a child pornography case. A *Daubert* hearing was held during the course of which counsel for the defendant sought to establish that the government's expert witness was not qualified to render an expert opinion in the case. I heard the case by order of reference from the Honorable James H. Jarvis, and in my Report and Recommendation, I determined that the government's expert witness was qualified and would render relevant testimony at the criminal trial of the defendant. Counsel for the government was Nancy Harr with the U.S. Attorney's Office in Knoxville, Tennessee, telephone (865) 545-4167. Counsel for defendant was Ken Irvine with the firm of Eldridge, Irvine & Gaines in Knoxville, Tennessee, telephone (865) 523-7731.

(7) *Downs v. Perstorp Components, Inc.*, 126 F.Supp.2d 1090 (E.D.Tenn., Dec. 27, 1999). This case involved a *Daubert* hearing to determine if the plaintiff's expert witness would be permitted to give expert testimony in a civil case. The case dealt with expert medical testimony, the qualifications of the experts, and the reliability of plaintiff's expert testimony. After a *Daubert* hearing, I determined that plaintiff's expert was not reliable and his expert opinion would not be permitted at trial. I heard this case by consent of the parties, and upon the completion of the *Daubert* hearing, I granted the defendant's motion for summary judgment. Plaintiff was represented by Carl R. Ogle, Jr., P.O. Box 129, Jefferson City, Tennessee 37760, telephone (865) 475-2011. Defendant was represented by Harry Ogden with the firm of Lewis, King, Krieg & Waldrop in Knoxville, Tennessee, telephone (865) 546-4646.

(8) *Pride v. Bic Corp.,* Memorandum and Order, No. 3:96-cv-445 (E.D. Tenn. May 12, 1998). This case also dealt with expert testimony, but the issue before the court was whether plaintiff's expert was qualified to render an expert opinion. A *Daubert* hearing was held which lasted for more than three days, at the conclusion of which I

recommended to the District Court that plaintiff's expert not be allowed to provide expert opinion in the case inasmuch as the expert was attempting to render an opinion in an area in which he had no expertise by training, education or experience. My recommendation was accepted by the District Court, and the case was dismissed on a motion for summary judgment. Counsel for the plaintiff was Sidney Gilreath of Gilreath & Associates in Knoxville, Tennessee, telephone (865) 637-2442. Counsel for the defendant was Robert R. Campbell of the firm of Hodges, Doughty & Carson in Knoxville, Tennessee, telephone (865) 292-2307.

(9) *Cassidy v. Spectrum Rents*, 959 F.Supp. 823 (E.D. Tenn., Jan. 29, 1997). I tried this employment discrimination case by consent of the parties. The issue before the court was whether plaintiff had been unlawfully terminated for pursuing a worker's compensation claim under the Tennessee Worker's Compensation Act. This was a jury trial, and the jury found for the plaintiff. In addition, the jury found that plaintiff was entitled to punitive damages. In my opinion on the motion for judgment notwithstanding the verdict, I upheld the jury's findings and the punitive damages award. Counsel for the plaintiff was David Burkhalter of Burkhalter, Rayson & Associates in Knoxville, Tennessee, telephone (865) 524-4974. Counsel for defendant was Gerard Jabaley of Arnett, Draper & Hagood in Knoxville, Tennessee, telephone (865) 546-7000.

(10) *Myers v. Copper Cellar Corp.,* 1996 WL 766505 (E.D.Tenn., Sep. 27, 1996) (unpublished opinion). This matter was a collective action pursuant to the Fair Labor Standard Act. This was a nonjury case tried by the consent of the parties. I found that plaintiffs had not demonstrated wrongdoing by defendant and dismissed the case. The Sixth Circuit court of Appeals affirmed my decision on September 7, 1999. Counsel for the plaintiffs was Justin M. Schwamm, Sr., 4901 Shady Dell Trail, Knoxville, Tennessee, 37914, telephone (865) 522-0389, and Helen de Haven, Appalachian School of Law, P.O. Box 2825, Grundy, VA 24614, telephone (540) 935-5647. Counsel for defendant was Dudley W. Taylor, The Taylor Law Firm in Knoxville, Tennessee, telephone (865) 523-3672.

(11) *Dan Bradley v. L.M. Berry & Co.*, No. 3:98-cv-262 (E.D. Tenn. Apr. 27, 1999). This was a breach of contract and negligence case before me on consent of the parties. The jury returned a verdict for the plaintiff. The Sixth Circuit Court of Appeals noted in their opinion that my ruling on the defendant's motion to enter judgment as a matter of law was "comprehensive [and] well-researched ...." Counsel for plaintiff were Douglas Yates and Joseph P. Stapleton, Brabson, Yates & Hamilton, Sevierville, TN, telephone 865-453-9035. Counsel for defendant was James E. Wagner, Frantz, McConnell & Seymour, Knoxville, TN, telephone 865-546-9321.

(b) a short summary and citations for all rulings of yours that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court; and

Answer: The only case which I can recall which was tried by consent of the parties and reversed by the Sixth Circuit Court of Appeals is *Hall v. Associated Doctors,* 1993 WL 94323 (6th Cir. Tenn.) (Unpublished opinion). This was an ADEA case and the jury found for the plaintiff. The Sixth Circuit Court of Appeals found, however, the evidence of constructive discharge insufficient to support the verdict and ruled that judgment as a matter of law should have been entered. Counsel for plaintiff was James H. Varner, Jr., Suite 1776, 900 Gay Street, Knoxville, Tennessee 37902, telephone (865) 637-3900. Counsel for defendant was R. Hunter Cagle, 4th Floor, 550 Main Street, P.O. Box 442, Knoxville, Tennessee 37901, telephone (865) 546-7311.

A second case which was affirmed in part and reversed in part by the Sixth Circuit Court of Appeals is *Cantrell v. Knoxville Community Development Corp.,* 60 F.3d 177 (6th Cir. 1995), wherein a former employee brought a race discrimination action against the Knoxville Community Development Corp. The Sixth Circuit Court of Appeals ruled that I improperly took judicial notice of the mental instability of the employee's attorney for purposes of determining whether the filing deadline for the employee's EEOC complaint could be equitably tolled and returned the case for a determination on that issue. The Sixth Circuit further ruled that the employee's shoulder injury did not preclude an award of damages, that the employer did not prove that the employee failed to mitigate damages, but ruled that I improperly calculated back pay at the rate that the employee should have received if the employer had not engaged in discrimination before the discharge and required a rehearing as to that issue. After the case was returned to me, I held a hearing and determined that the mental instability of the employee's attorney tolled the filing deadline for the EEOC's complaint and corrected the calculation of damages for the plaintiff. Counsel for plaintiff was Douglas J. Toppenberg and Elaine Burke, Suite 1, 612 S. Gay Street, Knoxville, Tennessee 37902, telephone (865) 522-8767. Counsel for defendant was William S. Lockett, Jr., and Rebecca B. Murray, 4th Floor, 550 Main Street, P.O. Box 442, Knoxville, Tennessee 37901, telephone (865) 546-7311.

The only case I can recall where the district court disagreed with my report and recommendation is *United States v. Stonebraker,* Criminal Action No. 3:00-CR-145, E.D. Tenn. The district judge found that the drug dog was not qualified and there was not sufficient probable cause for a search.

(c) a short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions.

If any of the opinions or rulings listed were in state court or were not officially reported, please provide copies of the opinions.

Answer: I have authored numerous reports and recommendations relating to Fourth, Fifth, Sixth, and Fourteenth Amendment Constitutional issues and specifically dealing with search and seizure, the right to representation, the right to remain silent, and due

process issues. None of the reports and recommendations, however, were significant to the body of law addressed by the reports and recommendations.

17. **Public Office, Political Activities and Affiliations**:

(a) List chronologically any public offices you have held, federal, state or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or nominations for appointed office for which were not confirmed by a state or federal legislative body.

Answer: I was elected County Attorney for Scott County, Tennessee, in five general elections. I was first elected in 1976 for a two (2) year term and was subsequently elected four (4) consecutive four (4) years terms. I served consecutively as County Attorney for Scott County, Tennessee, from 1976 until my resignation to accept the appointment as a Magistrate Judge in 1991. I have not been an unsuccessful candidate for an elective office or nominated for an appointed office for which I was not confirmed by a state or federal legislative body.

(b) 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.

Answer: I served as Secretary/Treasurer of the Scott County Republican Party from 1976 to 1991 and was active in Republican political affairs. In that capacity, I worked in each of the senatorial campaigns of Senator Howard H. Baker, Jr., and Senator Bill Brock. I also worked in the gubernatorial campaigns of Governor Winfield Dunn and Governor Lamar Alexander, and in the congressional campaigns of Congressman John J. Duncan and Congressman Jimmy Duncan. I was not directly related with the campaigns, however, and did not hold a title or have any specific responsibilities.

18. **Legal Career**: Please answer each part separately.

(a) Describe chronologically your law practice and legal experience after graduation from law school including:

(1) whether you served as clerk to a judge, and if so, the name for the judge, the court and dates of the period you were a clerk;

Answer: I did not serve as a clerk for a judge.

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

Answer: My brother and I formed a law firm in 1977 and practiced together until 1979 with the firm name of Phillips and Phillips, Scott Office Building, Highway 27, Oneida, Scott County, Tennessee.

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

Answer: (A) Judge Advocate Generals Corps., United States Army, served as a JAG officer with the Government Appellate Division of the United States Army Judiciary, 1969-73.

(B) Associate, Griffith & Stokes, First American Center, Nashville, Tennessee, 1973-74.

(C) Associate, then Partner, Baker, Worthington, Crossley, Stansberry & Woolf, 3 Courthouse Square, Huntsville, Tennessee, 1974-77.

(D) Partner, Phillips and Phillips, Scott Office Building, Highway 27, Oneida, Tennessee, 1977-79.

(E) Partner, Phillips and Wilson, Scott Office Building, Highway 27, Oneida, Tennessee, 1979-86.

(F) Senior Partner, Phillips and Williams, 313 Industrial Lane, Oneida, Tennessee, 1986-appointment as U.S. Magistrate Judge, February 14, 1991.

(b) (1) Describe the general character of your law practice and indicate by date if and when its character has changed over the years.

Answer: As an associate and as a partner in the law firm of Baker, Worthington, Crossley, Stansberry & Woolf, I handled many general practice, negligence, and labor related lawsuits. My brother and I formed our own law firm in 1977. This was a general practice with an emphasis on litigation. My brother, William Paul Phillips, was appointed District Attorney General for the Eighth Judicial District of Tennessee in 1979, and I continued as a sole practitioner in a general practice. The firm gradually grew to ten attorneys with offices in Oneida and Knoxville, Tennessee. While the firm was a general practice law firm, it handled municipal, labor, and negligence cases. The firm originally handled cases primarily in state courts, but over the years developed a large federal practice as well.

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

Answer: Typical former clients included Scott County, Tennessee; the town of Oneida, Tennessee; Scott County Hospital; Citizens Gas Utility District; First Trust & Savings Bank of Oneida, Tennessee; BF Goodrich Co.; Underwriters Adjusting Co.; Southern Labor Union Welfare & Pension Funds; South Kentucky Purchasing Co.; Western Reserves Oil Co.; and the Oneida Independent School District. I personally specialized in the areas of labor, municipal, and tort law, with an emphasis on litigation.

(c) (1) Describe whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe each such variance, providing dates.

Answer: Prior to becoming a United States Magistrate Judge, I was in both state and federal courts frequently. Since I have become a Magistrate Judge, I am in court on a daily basis.

(2) Indicate the percentage of these appearances in

(A) federal courts; Answer: Prior to 1991 - 15%; since 1991 - 100%.
(B) state courts of record; Answer: Prior to 1991 - 75%; after 1991 - 0%.
(C) other courts. Answer: Prior to 1991 - 10%; after 1991 - 0%.

(3) Indicate the percentage of these appearances in:

(A) civil proceedings; Answer: 1973-77, 50%; 1977-91, 100%; 1991-present, 50%.
(B) criminal proceedings. Answer: 1973-77, 50%; 1977-91, 0%; 1991-present, 50%.

(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.

Answer: While in the private practice of law, my firm averaged trying between 35-50 major cases each year. I personally averaged trying between 15-20 cases each year, but as the supervising partner, and later senior partner of my firm, I supervised all cases in litigation.

(5) Indicate the percentage of these trials that were decided by a jury.

Answer: Approximately 75% of these cases were decided by a jury.

(d) Describe your practice, if any, before the United States Supreme Court. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any

oral argument transcripts before the U.S. Supreme Court in connection with your practice.

Answer: I have never had the honor of appearing before the United States Supreme Court to argue a case.

(e) Describe legal services that you have provided to disadvantaged persons or on a *pro bono* basis, and list specific examples of such service and the amount of time devoted to each.

Answer: As a general practitioner in a small town, we tried to make sure that at least 10% of our time was spent on *pro bono* cases. I personally served from 1976-91 as counsel for an organization that provided training and employment opportunities for mentally and physically handicapped individuals. The name of the organization is Opportunities for the Handicapped, and I served as Vice-Chairman of this organization from 1986-89, and provided legal services for the organization, free of charge, from 1976-91. My firm also did the legal work for Appalachia Habitat for Humanity, running title searches on property purchased by Habitat for Humanity, preparing warranty deeds for the new owners, and any other legal services which needed to be provided. We also provided legal services to senior citizens at the Scott County Hospital and Nursing Home, preparing such documents as wills, living wills, and powers of attorney. We represented many indigent individuals in cases brought in criminal, civil, and chancery courts. While we tried to make sure that at least 10% of our time was spent on pro bono projects, we actually spent far more time than that representing indigent individuals.

Since I took the bench on February 14, 1991, I have not been able to handle pro bono cases, and most of my civic work has been on behalf of bar organizations. In 1996-97, I served as Chairman of the Bar Relations Committee of the ABA National Council of Federal Trial Judges and I currently serve on the Criminal and Civil Rules Committee of the Federal Magistrate Judges Association. I speak frequently at the University of Tennessee College of Law and at seminars sponsored by the Tennessee Bar Association, Federal Bar Association, Knoxville Bar Association, and for numerous local civic organizations. I also serve as Chairman of the Arbitration Approval Committee for the U.S. District Court of the Eastern District of Tennessee.

19. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, and for each provide the date of representation, the name of the court, 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. In addition, please provide the following:

(a) the citations, if the cases were reported, and the docket number and date if unreported;

(b) a detailed summary of the substance of each case outlining briefly the factual and legal issues involved;

(c) the party or parties whom you represented; and

(d) describe in detail the nature of your participation in the litigation and the final disposition of the case.

Answer: (1) *Terry v. Plateau Electric Cooperative,* 825 S.W.2d 418 (Tenn.App. 1991). This was a negligence action against Plateau Electric Cooperative which took ten days to try and resulted in a $5.5 Million judgment against the defendant electric company. The case was reversed on appeal and a new trial ordered, with one judge dissenting, because an expert witness for the plaintiff inadvertently testified that previously he had performed work for the electric company's insurance carrier. This case was tried before Tennessee adopted a modified form of comparative fault, and the issue in the case was whether the plaintiff had been contributorily negligent. I represented the plaintiff along with co-counsel, W. Holt Smith, 209 Tellico Street, N., Madisonville, Tennessee 37354, telephone (423) 442-4012. Counsel for defendant was Thomas M. Donnell, Jr., Third National Center, Nashville, Tennessee, 37219, telephone (615) 244-6538. I served as co-counsel for the plaintiff in the trial of the case and in the appeal of the case to the Tennessee Court of Appeals. Permission to appeal was denied by the Tennessee Supreme Court on February 18, 1992, approximately one year after I had been sworn in as a United States Magistrate Judge. The trial judge who presided at the trial was the Honorable Conrad Troutman, Circuit Court Judge for the Eighth Judicial District, P.O. Box 208, LaFollette, Tennessee, telephone (423) 562-8444.

(2) *State, ex rel. Weaver v. Ayres,* 756 S.W.2d 217 (Tenn. 1988). The issue in this case was whether a county commission or a county school board in Tennessee had the authority to set a school budget. I represented the County Commission of Campbell County. The trial judge found for the Campbell County School Board, but the Tennessee Supreme Court found for the Campbell County Board of Commissioners, my client. Counsel for the plaintiff was Philip P. Durand, now deceased, and Stephen W. Gibson, Ambrose, Wilson & Grimm, PO Box 2466, Knoxville, Tennessee, telephone (865) 544-3000. I served as counsel for the defendant, Board of Commissioners of Campbell County, Tennessee. I also represented defendant before the Tennessee Supreme Court. The trial judge who handled the case was Honorable Charles D. Haston, Judge of the 31st Judicial District of Tennessee, 111 S. Court Square, P.O. Box 573, McMinnville, Tennessee 37111, telephone (931) 473-5119.

(3) *Edith Todd v. Scott Co. Bd. Of Education,* Scott Chancery, No. 6385, filed on July 10, 1986. Plaintiff, a tenured teacher with the Scott County School System brought suit against the Scott County Board of Education for terminating her employment as an

elementary school teacher. Plaintiff was terminated by the Scott Co. Bd. of Education fo physically abusing her students, and plaintiff filed suit against the school board alleging that she was terminated because of her age. Counsel for plaintiff was Charles Hampton White, Suite 2700, Nashville City Center, P.O. Box 190695, Nashville, Tennessee 37219 telephone (615) 244-1440. Following a nonjury trial, judgment was entered for defendar board of education. I handled the case as sole counsel, and the case was not appealed. The judge who presided at the trial was Honorable B.J. White, Chancellor of the Eighth Judicial District, 1740 Main Street, P.O. Box 254, Tazewell, Tennessee 37879, telephone (423) 626-5282.

(4) *Professional Administrators Ltd v. Kopper-Glo Fuel, Inc.,* 819 F.2d 639 (6th Cir. 1987). Professional Administrators Ltd., successors in interest to the trustees of the Southern Labor Union Welfare & Pension Funds, brought suit against two coal companies seeking to collect alleged delinquent contributions. The issue in the case deal with whether trustees of collectively bargained, Employee Retirement Income Security Act of 1984 (ERISA) welfare and pension funds could increase the rates payable to the funds necessary to maintain the financial stability of the funds which were higher than th rates established by the applicable collective bargaining agreements. The case was ordered to arbitration by the United States District Judge at the pretrial conference conducted in the case, and the arbitration proceeding took place over a 8-day period, at the conclusion of which the arbitrator rendered a decision and award in favor of the trustees. The trustees filed a motion to confirm and enforce the arbitration award, and the district court confirmed the arbitration award. The case was appealed to the Sixth Circuit Court of Appeals which reversed, holding that the arbitration award permitting the trustees of the welfare and pension funds to unilaterally increase contribution rates was contrary to public policy requiring wages and benefits to be collectively bargained, and thus the arbitration award was unenforceable. I represented the plaintiffs, trustees of the Southern Labor Union Welfare & Pension Funds, and Professional Administrators Ltd., the successors in interest to the trustees, as sole counsel. Defendant coal companies were represented by William Goddard, Dandridge, Tennessee, who is now deceased, and John A. Lucas, Hunton & Williams, P.O. Box 951, Knoxville, Tennessee, telephone (865) 549-7700. The judge who presided at trial was Honorable Thomas G. Hull, United States District Judge, 4th Floor, U.S. Courthouse, Greeneville, Tennessee, 37743, telephone (423) 638-1305.

(5) *Johnson v. Valley Fork Coal Corporation,* 1986 WL 4600, Scott Law, No. 25 (Tenn.App. 1986) (copy attached and available on WestLaw). The issue involved in this case was whether trustees of collectively bargained welfare and pension funds could bring suit in state court pursuant to ERISA for delinquent contributions owed to the welfare and pension funds. Defendant coal corporation filed a motion to dismiss, asserting that Tennessee courts lacked jurisdiction over defendant. The trial court granted defendant's motion to dismiss for lack of jurisdiction, finding that the proper forum of the action was in the State of Virginia, the situs of defendant's business organization. The Tennessee Court of Appeals reversed the trial court, finding that Tennessee state courts did have jurisdiction to hear and determine suits by trustees of collectively bargained

employee benefit funds under ERISA even if the employer and the employees were located in a state different from Tennessee, if the funds were administered in Tennessee. This case had far-reaching implications for employee benefit funds seeking to bring suit in state courts. I represented the trustees of the Southern Labor Union Welfare & Pension Funds as sole counsel, both at the trial and on the appellate levels. Counsel for defendant coal company was Randall E. Nichols, City & County Building, 420 Main Avenue, Knoxville, Tennessee 37902, telephone (865) 215-2515. The trial judge who presided over the case was Honorable Conrad E. Troutman Jr., Circuit Judge for the Eighth Judicial District, P.O. Box 208, LaFollette, Tennessee 37766, telephone (423) 562-8444. The case was subsequently settled after the jurisdictional issue had been resolved.

(6) *Burress v. Woodward*, 665 S.W.2d 707 (Tenn. 1984). This case dealt with failure of mineral owners to pay taxes on severed minerals under Tennessee real property law. Plaintiffs brought suit against defendant for damages and injunctive relief against mining activities undertaken by lessees of the defendants. The Chancellor of the Chancery Court for Scott County granted defendant's motion for summary judgment based on the plaintiffs' failure to pay taxes on mineral rights for more than twenty years. The Court of Appeals, however, reversed, and defendant appealed to the Tennessee Supreme Court. The Supreme Court ruled that plaintiffs' action, based on a claim for mineral rights, was statutorily barred for nonpayment of taxes, where neither plaintiffs nor their predecessors in title had paid taxes on the mineral rights for thirty-six years. I represented the defendant, won the case in the trial court, lost before the Court of Appeals, and won before the Tennessee Supreme Court. Counsel for the plaintiffs was Johnny V. Dunaway and Gabriela P. Cacuci, P.O. Box 1760, LaFollette, Tennessee 37766, telephone (423) 562-0836. The trial judge who heard the case was Honorable B. J. White, Chancellor of the Eighth Judicial District of Tennessee, 1740 Main Street, P.O. Box 254, Tazewell, Tennessee 37879, telephone (423) 626-5282.

(7) *Duncan v. City of Oneida*, 564 F.Supp. 425 (E.D.Tenn. 1983), *aff'd* 735 F.2d 998 (6th Cir. 1984). This case dealt with the termination of a city policeman. Plaintiff alleged that he was denied procedural due process in connection with his termination as a police officer with the City of Oneida, Tennessee. The plaintiff/policeman alleged he was terminated for political reasons and the City of Oneida contended that defendant was terminated for abusing prisoners. I represented the City of Oneida as sole counsel both at the trial and appellate levels, I won the case before the district court, and the case was affirmed by the Sixth Circuit of Appeals. Counsel for the plaintiff was David A. Stuart, Suite 200, 300 Market Street, Clinton, Tennessee, 37716-3720, telephone (865) 457-6409. The judge who heard the case was Honorable Robert L. Taylor, United States District Judge, now deceased.

(8) *West Coal Corp. v. State Bd. of Equalization,* 649 S.W.2d 595 (Tenn.App. 1983). In this case, a coal company failed to file a schedule of tangible personal property as required by state statute, necessitating a forced assessment by the county tax assessor. Plaintiff, West Coal Corp., appealed a decree of the Chancery Court for Davidson County, Tennessee, affirming the decision of the Assessment Appeals Commission of the

State Board of Equalization which assessed plaintiff's tangible personal property at an amount higher than that set by the county tax assessor. The tax assessor for Scott County, Tennessee, placed a forced assessment on the plaintiff for personal property when the plaintiff failed to file the required schedules setting forth their tangible personal property. The Scott Co. Board of Equalization affirmed the tax assessor's valuation, but after a hearing, the Assessment Appeals Commission set the valuation higher than that established by the county based upon evidence presented to the commission during its hearing. Such assessment was affirmed by the Chancery Court for Davidson County, Tennessee, and the coal company appealed to the Court of Appeals. The Court of Appeals held that the Appeals Commissioner did not act illegally when it increased valuation of the coal company's property, notwithstanding its comment that taxpayers appealing an initial assessment did not generally carry their burden of proof as to the value of the company's property. I represented the Scott Co. Assessor of Property, Trustee, and County Executive as County Attorney for Scott County, Tennessee, at both the trial and appellate levels. Jerome Templeton, Knoxville, Tennessee, now deceased, represented the plaintiff, West Coal Corporation. Peter J. Alliman, III, 135 College Street, Madisonville, Tennessee 37354, telephone (423) 442-9000, represented the individual defendants. The judge who presided at the trial was Honorable Robert S. Brandt, Chancellor of Davidson County, Tennessee, 222 Fourth Avenue, N., Nashville, Tennessee, telephone (615) 256-8585.

(9) *EEOC v. High Top Coal Co.,* 508 F.Supp. 553 (E.D.Tenn. 1980). This was a sex discrimination case brought under Title VII against a coal company alleging that the defendant discriminated against the individual plaintiff, and against women as a class by refusing to hire them on account of their sex. Plaintiffs sought to recover under both the "disparate impact" theory and the "disparate treatment" theory, but after a nonjury trial, the court ruled that the plaintiffs had failed to state a claim under the disparate impact theory where there was no showing of discriminatory intent, and that plaintiffs failed to prove that the employer engaged in a pattern or practice of discrimination sufficient to support their disparate treatment theory. I represented one of the defendants, Southeast Coals, along with my co-counsel, Jerome Templeton, Knoxville, Tennessee, now deceased, at the trial court level, and the case was not appealed. The EEOC was represented by Carolyn Howard of the Memphis regional office of EEOC in Memphis, Tennessee, and by Dorothy B. Stulburg, Suite 104, 136 S. Illinois Avenue, Oak Ridge, Tennessee 37830, telephone (865) 482-4466. Defendant High Top Coal Company was represented by Courtney Pearre, Suite 2100, 511 Union Street, P.O. Box 198966, Nashville, Tennessee 37219, telephone (615) 244-6380. The judge who heard and decided the case was the Honorable Robert L. Taylor, U.S. District Judge, now deceased.

(10) *West v. Butler,* 621 F.2d 240 (6th Cir. 1980). This case was brought pursuant to ERISA by the trustees of the Southern Labor Union Welfare & Pension Funds seeking to enjoin secondary picketing at mine sites signatory to collective bargaining agreements providing for contributions to be paid to employee benefit funds. This case was one of the first cases to test the availability of ERISA to protect the fiscal integrity of employee benefit funds. The issue before the court was whether ERISA allowed pension fund

trustees to file civil actions to enjoin secondary picketing. After the presentation of plaintiff's proof at the nonjury trial, the trial court dismissed the plaintiff's complaint for failure to state a cause of action under ERISA. On appeal, the Court of Appeals ruled that ERISA does not allow pension fund trustees to file civil actions to enjoin secondary picketing and the trustees had no right to enforce § 510 of ERISA punishing coercive forms of conduct that interfered with rights protected under the Act, since enforcement of that provision was the exclusive prerogative of the Attorney General because it was a criminal provision. In effect, the Sixth Court of Appeals ruled that the ERISA provision governing interference with rights protected under the Act neither guaranteed fiscal integrity of pension funds nor prohibited secondary picketing. I represented the plaintiffs, trustees of the Southern Labor Union Welfare & Pension Funds, both at the trial and at the appellate levels. Counsel for the defendants was E.H. Rayson, Suite 2500, 800 S. Gay Street, P.O. Box 629, Knoxville, Tennessee 37901, telephone (865) 525-5134. The judge at the trial level was the Honorable Robert L. Taylor, U.S. District Judge, now deceased.

20. **Criminal History**: State whether you have ever been convicted of a crime, within ten years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and disposition and describe the particulars of the offense.

Answer: None.

21. **Party to Civil or Administrative Proceedings**: State whether you, or any business of which you are or were an officer, have ever been a party or otherwise involved as a party in any civil or administrative proceeding, within ten years of your nomination, that is reflected in a record available to the public. If so, please describe in detail the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings in which you were a guardian *ad litem*, stakeholder, or material witness.

Answer: *Clifford Houston v. Kingston, Tennessee, et al.,* 3:95-CV-645, U.S. District Court, Eastern District of Tennessee (1995). In this case, a prisoner named me, along with the district judge, in a *pro se* complaint alleging that he was wrongfully convicted at his jury trial. I was the assigned magistrate judge on the case and had recommended to the district judge that defendant's motions to dismiss the indictment be overruled. The district judge who presided over defendant's trial was also a party to the case. The complaint was summarily dismissed by another district judge to whom the case was assigned. Other than this prisoner lawsuit, the answer is none.

22. **Potential Conflict of Interest**: 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.

Answer: As a United States Magistrate Judge, I have always in the past and shall always in the future follow both the letter and the spirit of the Code of Judicial Conduct. Moreover, I review my financial holdings each year when I file my Financial Disclosure Statement. At that time, I update the conflict of interest list that is kept by the Clerk of the Court and which alerts the clerk's office to notify me if any case assigned to me involves any of the companies in which I have a financial interest. The areas where I frequently encounter a conflict of interest stem from the fact that my wife owns stock in Wal-Mart and my brother is a certified financial planner with American Express Financial Advisors. The Clerk of the Court for the Eastern District of Tennessee keeps a listing of all entities in which the judges hold a financial interest, and that list is updated continuously. In addition, if I purchase any additional stock, I immediately notify the clerk to add it to my conflict of interests list.

23. **Outside Commitments During Court Service**: Do you have any plans, commitments, or arrangements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

Answer: I have served as an adjunct associate professor of law at the University of Tennessee College of Law since 1992. I teach one class in Pretrial Litigation, for which I have obtained permission from the Chief Judge of the Eastern District and the Chief Judge of the Sixth Circuit Court of Appeals. I have not taught the class for the past two years because the law school has been able to find other attorneys to teach the class. Should the law school need me to fill in and teach a class, however, and should I receive the permission of the Sixth Circuit Court of Appeals, I would like to be able to teach the class again. The compensation paid for the class is $3,000.00 per semester.

24. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding the nomination, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500. 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.

Answer: Financial Disclosure Report attached.

25. **Statement of Net Worth**: Complete and attach the financial net worth statement in detail. Add schedules as called for.

Answer: Financial Net Worth Statement attached.

26. **Selection Process**: Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?

Answer: There is not a selection commission in my jurisdiction.

(a) If so, did it recommend your nomination?

Answer: N/A.

(b) Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.

Answer: In May 2001, two of the district judges for the Eastern District of Tennessee announced at a judges meeting that they would be taking senior status in the Fall of 2001 and in the Spring of 2002. I requested and received permission to meet with the district judges to discuss my qualifications for appointment to the district bench. After meeting with the district judges, I was informed that they would support my application to become a U.S. district judge. I submitted my resume to Senators Fred Thompson and Bill Frist, and in January 2002, I, along with several other individuals, was invited to appear before the chiefs of staff and other staff personnel for Senators Thompson and Frist. The interview was conducted in Nashville, Tennessee, and lasted approximately one hour and thirty minutes. It consisted of questions about my personal qualifications, legal philosophy, and judicial experience. In March 2002, the senators submitted my name, along with the names of other individuals, to the White House for consideration for appointment as a district judge. I was invited to an interview conducted by the Office of the Counsel to the President in March 2002. The interview with White House counsel was expansive, covering my personal life, my legal career, and my experience as a judicial officer. On May 12, 2002, I was informed by White House counsel that I had been selected by the President for appointment as a U.S. district judge, pending the successful completion of applicable background investigations. On June 26, 2002, I was informed that my nomination by the President to be a U.S. district judge had been forwarded to the Senate Judiciary Committee.

(c) 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 or seeking a commitment as to how you would rule on such case, issue, or question? If so, please explain fully.

Answer: 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	54 872 00	Notes payable to banks-secured	none
U.S. Government securities-add schedule	none	Notes payable to banks-unsecured	none
Listed securities-add schedule	555 638 00	Notes payable to relatives	none
Unlisted securities–add schedule	none	Notes payable to others	none
Accounts and notes receivable:	none	Accounts and bills due	5 000 00
Due from relatives and friends	none	Unpaid income tax	none
Due from others	none	Other unpaid income and interest	none
Doubtful	none	Real estate mortgages payable-add schedule	none
Real estate owned-add schedule	333 300 00	Chattel mortgages and other liens payable	none
Real estate mortgages receivable	none	Other debts-itemize:	none
Autos and other personal property	100 000 00		
Cash value-life insurance	10 000 00		
Other assets itemize:			
		Total liabilities	10 200 00
		Net Worth	1043 630 00
Total Assets	1053 830 00	Total liabilities and net worth	1053 830 00
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor	none	Are any assets pledged? (Add schedule)	none
On leases or contracts	none	Are you defendant in any suits or legal actions?	none
Legal Claims	none	Have you ever taken bankruptcy?	none
Provision for Federal Income Tax	52 00 00		
Other special debt	none		

THOMAS W. PHILLIPS
Thomas W./Dorothy M. Phillips

Cash on hand and in banks:

1.	Checking account, First National Bank of Oneida, Tennessee	$ 1,781.31
2.	Money Market account, First National Bank of Oneida, Tennessee	5,788.75
3.	AXP Cash Management Fund	2,301.57
4.	CD, First National Bank of Oneida, Tennessee	45,000.00
		$54,871.63

THOMAS W. PHILLIPS
Thomas W./Dorothy M. Phillips

Listed Securities - Thomas W./Dorothy M. Phillips

J.C. Bradford - Wal-Mart		$ 47,960.00
Amex Investment Account		
- First Trust SPSIT Trust		11,229.75
Amex Investment Account		
- First Trust SPSIT Trust		4,915.83
	Subtotal	$64,105.58

Listed Securities - Thomas W. Phillips IRA

Amex Trust Co. - IRA		
- Amex Flexible Portfolio Annuity		$387,934.69
- Amex New Dimension Class A		9,678.88
- Amex Blue Chip Advantage Class A		9,895.80
- AXP Partners Value Fund		5,129.15
AXP Int'l Select Value Fund		8,771.48
	Subtotal	$421,410.00

Listed Securities - Dorothy M. Phillips IRA

Amex Trust Co. - IRA		
- Amex Flexible Portfolio Annuity		$ 70,142.38
	Subtotal	$ 70,142.38
	Total	$555,657.96

THOMAS W. PHILLIPS
Thomas W./Dorothy M. Phillips

Real Estate Owned

1.	Home and 5 acres of land located in Scott County, Tennessee	$253,300.00
2.	One-half interest in 60 acres located in Scott County, Tennessee	15,000.00
3.	Townhouse located in Knoxville, Tennessee	65,000.00
	Total:	$333,300.00

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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
PHILLIPS, THOMAS W.	EASTERN DISTRICT OF TENNESSE	06/28/2002
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 06/26/2002 Initial Annual Final	01/01/2001 to 06/28/2002
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.**	
HOWARD BAKER U.S. COURTHOUSE 800 MARKET STREET, SUITE 145 KNOXVILLE, TENNESSEE 37902	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		

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

DATE	PARTIES AND TERMS
NONE (No reportable agreements.)	

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

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
NONE (No reportable non-investment income.)		
2000-02	ONEIDA INDEPENDENT SCHOOL SYSTEM (TEACHER)	

ANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	PHILLIPS, THOMAS W.	06/28/2002

REIMBURSEMENTS -- transportation, lodging, food, entertainment.

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

	SOURCE	DESCRIPTION
☐ NONE	(No such reportable reimbursements.)	
		EXEMPT

GIFTS

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

	SOURCE	DESCRIPTION	VALUE
NONE	(No such reportable gifts.)		
		EXEMPT	

LABILITIES

hose of spouse and dependent children. See pp 33-35 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
ONE	(No reportable liabilities.)		

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

ANCIAL DISCLOSURE REPORT | Name of Person Reporting: PHILLIPS, THOMAS W. | Date of Report: 06/28/2002

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

A. escription of Assets cluding trust assets) *ace "(X)" after each asset empt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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				
J.C. BRADFORD-WALMART CST	A	Dividend	L	T	"				
CD-1ST NAT'L BANK, ONEIDA, TN	A	Interest			"				
CD-1ST NAT'L BANK, ONEIDA, TN	C	Interest			"				
AXP CASH MANAGEMENT FUND	A	Dividend	K	T	"				
AMEX INVESTMENT ACCT					"				
- AMER SMALLCAP WORLD	A	Interest			"				
- FIRST TRUST SPSIT TRUST	A	Interest	J	T	"				
MEX INVESTMENT ACCT					"				
- FIRST TRUST SPSIT TRUST	A	Interest	J	T	"				
EX TRUST CO. - IRA		None	N	T	"				
- AMEX FLEXIBLE PORTFOLIO NUITY					"				
- AMEX NEW DIMENSIONS CLASS					"				
AMEX BLUE CHIP ADVANTAGE SS A					"				
AMEX STRATEGY AGGRESSIVE S A					"				
AXP PARTNERS VALUE FUND					"				
AMEX INT'L CLASS A					"				
MEX GLOBAL GROWTH CLASS A					"				

s: 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

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

Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market
U=Book Value V=Other W=Estimated

ANCIAL DISCLOSURE REPORT | Name of Person Reporting: PHILLIPS, THOMAS W. | Date of Report: 06/28/2002

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

A. scription of Assets cluding trust assets) *ace "(X)" after each asset empt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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				
- AXP INT'L SELECT VALUE FUND					"				
AMEX - TRUST CO. - IRA		None	L	T	"				
- AMEX FLEXIBLE PORTFOLIO ANNUITY					"				

odes: 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
4) 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=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000 N=$250,001-$500,000
1) 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

des: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market
U=Book Value V=Other W=Estimated

ANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	PHILLIPS, THOMAS W.	06/28/2002

. **ADDITIONAL INFORMATION OR EXPLANATIONS.**

tle part of report.)

ANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	PHILLIPS, THOMAS W.	06/28/2002

CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or ependent 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 ave been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 nd Judicial Conference regulations.

Signature Thomas W. Phillips Date 6/28/02

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

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY, UNITED STATES SENATE

AFFIDAVIT

I, Thomas W. Phillips, being duly sworn, hereby state that I have read and signed the foregoing Questionnaire for Nominees Before the Committee on the Judiciary and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

Thomas W. Phillips

SUBSCRIBED AND SWORN TO before me this 3rd day of July, 2002.

Donna C. Crumpton
Notary Public
My Commission Expires 3/30/05

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY, UNITED STATES SENATE

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

   Jeffrey Steven White.

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

   United States District Judge, Northern District of California

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

   Orrick, Herrington & Sutcliffe LLP
   400 Sansome Street
   San Francisco, CA 94111
   (415) 773-5453

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

   September 2, 1945
   New York, NY

5. **Marital Status**: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please also indicate the number of dependent children.

   Married to Jane Martha Stabbe White, homemaker
   Two dependent children

6. **Education**: List in reverse chronological order, listing most recent first, each college, law school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   State University of New York, Buffalo, NY
   9/67 to 6/70
   J.D., 6/70, *magna cum laude*

   Queens College of City University of New York, New York, NY
   9/63 to 6/67
   B.A. 6/67

7. **Employment Record**: List in reverse chronological order, listing most recent first, all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name

and address of the employer and job title or job description where appropriate.

Orrick, Herrington & Sutcliffe LLP
400 Sansome Street
San Francisco, CA 94111
Partner 1980 to present
Litigation Dept. Chairman 1985 - 2000
Associate 9/78-1/80

Boalt Hall School of Law
University of California
Berkeley, CA 94720
Part-time lecturer of Civil Trial Advocacy course
1980 to present

U.S. Dept. of Justice, Criminal Division,
Public Integrity Section
950 Pennsylvania Avenue
Washington, D.C. 20530
Trial Attorney, Senior Grade
1977 – 1978

U.S. Attorney's Office, Dist. of MD
U.S. Courthouse
101 West Lombard Street
Baltimore, MD 21202-1643
Assistant U.S. Attorney
1971 – 1977

U.S. Dept. Justice, Criminal Division,
Management/Labor Section
950 Pennsylvania Avenue
Washington, D.C. 20530
Trial Attorney
1970 – 1971

Chemical Bank NY Trust Co.
20 Pine Street
New York, NY 10005
Senior Legal Clerk
4/67 – 9/67

Bar Association of San Francisco
465 California Street
San Francisco, CA 94104
Member, Board of Directors
January 2002 to present

8. **Military Service**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge received.
1/69 – 7/69, U.S. Marine Corps, inactive reserve, #25440530, private first class, honorable discharge.

9. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Law school graduate award for most distinguished all-around legal scholarship. Clinton Memorial Scholarship for attaining highest academic average in Junior Class. S.U.N.Y. Buffalo Law Review, Research Editor; graduated magna cum laude, first in class.

Recipient of 1994 Roscoe Pound Foundation Award for Excellence in Teaching Trial Advocacy.

Designated outstanding Assistant United States Attorney: August 1974 and August 1976

10. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association, Litigation Section, 1971 to present
Bar Association of San Francisco, Member, 1990 to present; Member, Board of Directors since January 2002.
Contra Costa County Bar Association, 2001 to present
District of Columbia Bar Association, 1976 to present
Civil Justice Reform Act Advisory Group for the Northern District of California 1990-1992 (Trial Delay Reduction Act Committee, appointed by Chief Judge Thelton E. Henderson)

11. **Bar and Court Admission**: List each state and court in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

State Bar of California 1/5/79
Court of Appeals for the State of New York 1/5/71
U.S. District Court for the District of Maryland 9/72
U.S. Court of Appeals for the Fourth Circuit 9/72
United States Supreme Court 4/29/74
U.S. Court of Appeals for the District of Columbia 3/1/71
Court of Appeals for the State of Maryland 5/74 (inactive: not practicing in Maryland)
U.S. Court of Appeals for the Ninth Circuit 5/79
U.S. District Court for the Northern District of California 4/6/79
District of Columbia Bar 10/6/76

12. **Memberships**: List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, charitable, or other organizations since

graduation from college, other than those listed in response to Questions 10 or 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion - either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

American Bar Association, 1971 to present

Boalt Hall School of Law, University of California, Berkeley, part-time lecturer of Civil Trial Advocacy Course, 1979 to present

Crow Canyon Country Club, Danville, CA (By-Laws attached)

Congregation B'nai Shalom, 1970 to present

To my knowledge, there are no discriminatory practices at any of these organizations.

13. **Published Writings**: List the titles, publishers, and dates of books, articles, reports, or other material you have written or edited, including material published on the Internet. Please supply four (4) copies of all published material to the Committee, unless the Committee has advised you that a copy has been obtained from another source. Also, please supply four (4) copies of all speeches delivered by you, in written or videotaped form over the past ten years, including the date and place where they were delivered, and readily available press reports about the speech.

Panelist/Instructor: Practicing Law Institute: Frequent panelist for Pretrial and Trial Skills programs (various dates).

"A Widening Net: Criminal Enforcement of Environmental Laws", Environmental Law Update, Summer 1991.

"Negligence – Complaint Alleging Mother's Mental Distress with Physical Manifestations Caused by Witnessing Death of Her Daughter Occasioned by the Alleged Negligence of Defendant Held to State a Cause of Action Even Though Mother Not in Zone of Peril", 18 Buffalo Law Review 201, Vol. 1968-69, p. 202.

"Selecting and Retaining Experts", Northern California Register of Experts and Consultants (Eleventh Edition 2000/2001), Bar Association of San Francisco, 2000.

"California Firm's Effort: Litigation, From A to Z", The National Law Journal, June 6, 1988.

"Problem Counsel, Problem Witnesses", (with Eve T. Saltman) Chapter Sixteen of Effective Depositions by Henry Hecht, American Bar Association 1997.

Boalt Hall Syllabus: Civil Trial Practice, 2002 Semester

14. **Congressional Testimony**: List any occasion when you have testified before a committee or subcommittee of the Congress, including the name of the committee or

subcommittee, the date of the testimony and a brief description of the substance of the testimony. In addition, please supply four (4) copies of any written statement submitted as testimony and the transcript of the testimony, if in your possession.

None.

15. **Health**: Describe the present state of your health and provide the date of your last physical examination.

My state of health is generally excellent. My last physical examination was in July, 2001.

16. **Citations**: If you are or have been a judge, provide:

(1) a short summary and citations for the ten (10) most significant opinions you have written;

(2) a short summary and citations for all rulings of yours that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court; and

(3) a short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions.

If any of the opinions or rulings listed were in state court or were not officially reported, please provide copies of the opinions.

Not applicable.

17. **Public Office, Political Activities and Affiliations**:

(1) List chronologically any public offices you have held, federal, state or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or nominations for appointed office for which were not confirmed by a state or federal legislative body.

None.

(2) 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.

18. **Legal Career**: Please answer each part separately.

(1) Describe chronologically your law practice and legal experience after graduation

from law school including:

(1) whether you served as clerk to a judge, and if so, the name for the judge, the court and dates of the period you were a clerk;

Not applicable. I did not serve as clerk to a judge.

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

Not applicable. I did not practice alone.

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

U.S. Dept. Justice, Criminal Division,
Management/Labor Section
950 Pennsylvania Avenue
Washington, D.C. 20530
Trial Attorney
1970 – 1971

U.S. Attorney's Office, Dist. of MD
U.S. Courthouse
101 West Lombard Street
Baltimore, MD 21202-1643
Assistant U.S. Attorney
1971 – 1977

U.S. Dept. of Justice, Criminal Division,
Public Integrity Section
950 Pennsylvania Avenue
Washington, D.C. 20530
Trial Attorney, Senior Grade
1977 – 1978

Boalt Hall School of Law
University of California
Berkeley, CA 94720
Part-time lecturer of Civil Trial Advocacy course
1980 to present

Orrick, Herrington & Sutcliffe LLP
400 Sansome Street
San Francisco, CA 94111
Partner 1980 to present
Litigation Dept. Chairman 1985 - 2000
Associate 9/78-1/80

(2) (1) Describe the general character of your law practice and indicate by date if and when its character has changed over the years.

U.S. Government, 1970-1978: When I was with the Criminal Division of the U.S. Department of Justice I prosecuted violations of federal labor racketeering laws. During my eight years as a federal prosecutor I prosecuted scores of jury trials and approximately 25 bench trials. Specifically, when I was an Assistant U.S. Attorney I prosecuted cases under many different federal criminal statutes (from investigation through appeal). When I was in the U.S. Department of Justice Public Integrity section I investigated and prosecuted U.S officials for public corruption.

Orrick, Herrington & Sutcliffe LLP, 1978 to present: Trying and litigating civil and criminal cases.

Boalt Hall School of Law, 1979 to present: Teaching Civil Trial Practice course.

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

Typical clients are large corporations, corporate officers and directors, and state and governmental entities.

(3) (1) Describe whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe each such variance, providing dates.

I appear in court frequently.

(2) Indicate the percentage of these appearances in

(1) federal courts, 50%;

(2) state courts of record, 49%;

(3) other courts, 1%.

(3) Indicate the percentage of these appearances in:

(1) civil proceedings, 85%;

(2) criminal proceedings, 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.

In my career as a federal prosecutor I was lead counsel in scores of trials. In more than half of these, I was sole attorney. As a civil practitioner I have tried

approximately four civil jury and five bench trials. I can only estimate the total number of trials, because when I was a prosecutor I was in trial for much of my tenure, which lasted six years.

(5) Indicate the percentage of these trials that were decided by a jury.

90%.

(4) Describe your practice, if any, before the United States Supreme Court. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the U.S. Supreme Court in connection with your practice.

None.

(5) Describe legal services that you have provided to disadvantaged persons or on a *pro bono* basis, and list specific examples of such service and the amount of time devoted to each.

In connection with a course at Miramonte High School (Orinda, CA) I invite high school students taking pre-law and government courses to participate at Boalt Hall and learn about the jury system.

Represented victims in a criminal case regarding illegal importation of children from India.

19. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, and for each provide the date of representation, the name of the court, 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. In addition, please provide the following:

(1) the citations, if the cases were reported, and the docket number and date if unreported;

(2) a detailed summary of the substance of each case outlining briefly the factual and legal issues involved;

(3) the party or parties whom you represented; and

(4) describe in detail the nature of your participation in the litigation and the final disposition of the case.

MICHAEL LUBIN V. DSP COMMUNICATIONS, INC., Santa Clara Superior Court Case Number CV 778705. Client: Intel Corporation. Co-counsel William T. Darden, Orrick, Herrington & Sutcliffe LLP, 400 Capitol Mall, Suite 3000, Sacramento, CA 95814-4497, (916) 447-7913, and (in-house) Denise DeRose, Intel Corporation, 2200 Mission College Boulevard, Santa Clara, CA 95052-8119 (408) 765-6644. Opposing counsel: Frank E. Rogozienski, Esq., Frank E. Rogozienski, Inc., Coronado Professional

Square, 1203 Second Street, Coronado, CA 92118. Causes of action included fraud, deceit, breach of express/implied contract, breach of the covenant of good faith and fair dealing, negligent misrepresentation, unjust enrichment, wrongful termination in violation of public policy, and common counts. Terminated executive suing for wrongful termination in violation of public policy and seeking stock options and damages. Case settled in December 2000.

CHRISTOFFERS v. SIEBEL SYSTEMS, ET AL. (Jury trial, San Mateo County Superior Court 396831, Judge Bergeron); opposing counsel: Carol L. Mittlesteadt (currently judge of San Mateo County Superior Court, 400 County Center, Redwood City, CA, 94063, (650) 599-1669). The pretrial phase (i.e., motions in limine) lasted for approximately five weeks, and the trial lasted an additional eight weeks. We took the case over from another firm just before trial was scheduled to begin. Our clients were Siebel Systems, Inc., and its Chairman and CEO. The trial was presided over by Judge Joseph Bergeron. This complaint alleged causes of action for wrongful termination in violation of public policy and breach of contract, unpaid wages, fraud, concealment, and gender discrimination. The gender discrimination claims were dropped just before trial. The jury ruled in our clients' favor on all of the tort claims, completely exonerated our individual client, and awarded only $193,000 to plaintiff on her contract claim against the corporation, as opposed to the $5 million in compensatory damages plus punitive damages that she was claiming. My co-counsel was Denise M. Alter, (415) 626-7111.

FERREIRA v. QUIK STOP MARKETS, INC., 141 Cal. App. 3d 1023; 1983 Cal. App. LEXIS 1603; 190 Cal. Rptr. 778 (1st Dist. 1983 (Jury trial, Alameda County Superior Court, Judge Barber; opposing counsel: Robert Brown, Carroll, Burdick & McDonough LLP , Suite 400, 44 Montgomery Street , San Francisco, California 94104, (415) 989-5900, April 1983). This was an action by a franchisee against our client, a franchisor (Quick Stop), alleging fraud and breach of contract in connection with the purchase of a franchise by plaintiff. Quick Stop cross-complained against the franchisee for money due and owing in connection with the operation of the franchise. The trial lasted approximately six days and resulted in a defense verdict on the complaint and a verdict in favor of Quick Stop on the cross-complaint in substantially the full amount requested in the cross-complaint. My co-counsel was Norman C. Hile, Orrick, Herrington & Sutcliffe LLP, 400 Capitol Mall, Suite 3000, Sacramento, CA 95814-4497, (916) 447-7900.

DANIEL v. AT&T, No. 1876 JCCP, (594384-5 Alameda Superior; 820204 San Francisco Superior; appeal decided 3/28/90) Judge Marsh (deceased). This was an action by a former employee of our client, AT&T, alleging wrongful termination, race discrimination, and breach of the covenant of good faith and fair dealing against AT&T and Pacific Bell. Pacific Bell was represented by Keith J. Epstein, Pacific Bell Internet Services, Pacific Telesis Legal Group, San Francisco, CA (415) 542-9000, one of its in-house attorneys. Plaintiff alleged that he was terminated from his job at AT&T on account of his race. A jury was selected and opening statements were made by both sides. I made a motion for a non-suit based upon the opening statement. The court allowed the plaintiff to reopen his opening statement, after which I renewed my motion for a non-suit. The court granted the motion. The trial judge later ordered a new trial, but the

Court of Appeal reversed the trial court and reinstated the non-suit in favor of AT&T. I was one of two counsel for defendants and was lead counsel. My co-counsel was Lynne C. Hermle, Orrick, Herrington & Sutcliffe LLP, 1000 Marsh Road, Menlo Park, CA 94025-1021, (650) 614-7422.

BARLOW v. AT&T, No. 90-15417 (United States Court Of Appeals For The Ninth Circuit, No. C-87-6122 AJZ U.S.D.C. Northern Dist. of California (Judge Zirpoli), No. 879069 San Francisco Superior; 9th Cir. opinion 7/11/91, U.S. District Court, Northern District of California, Judge Claudia Wilken). Opposing counsel was Paul S. Arons, 1616 West St., Redding, California. This was an action by a former employee of our client, AT&T, alleging sexual preference discrimination, wrongful termination, and breach of the covenant of good faith and fair dealing. After a six-day trial, the jury returned a verdict in favor of AT&T on all claims. I was one of two counsel for defendants and was lead counsel. My co-counsel was Lynne C. Hermle, Orrick, Herrington & Sutcliffe LLP, 1000 Marsh Road, Menlo Park, CA 94025-1021, (650) 614-7422.

CHUA V. AT&T No. CV-93-4756 TJH U.S.D.C., BC 045394 Los Angeles Superior; summary judgment entered 9/1/94 (Los Angeles Superior Court Case No. BC 045394; co-counsel: Carla M. Woehrle, now Magistrate Judge, U.S.D.C. Central District of California, 312 N. Spring St.,#G-8 Los Angeles, California (213) 622-4750), and Lynne C. Hermle, Orrick, Herrington & Sutcliffe LLP, 1000 Marsh Road, Menlo Park, CA 94025-1021, (650) 614-7422. This was a sexual harassment case brought by an employee against our client, AT&T. The case settled.

ROLLINS v. ELLISON, No. 394173 San Mateo Superior, settled 3/31/97. This was a shareholders derivative action against our client, the CEO and Chairman of Oracle Corp., Larry Ellison, claiming that Mr. Ellison usurped corporate opportunities. We prevailed after four successive dispositive motions. Opposing counsel Joseph Weiss and Kevin Yourman, Weiss & Yourman, 1800 Avenue of the Stars, Suite 1000, Los Angeles, CA 90067 (310) 208-2800. My co-counsel was Catherine K. O'Connell, (510) 339-3653.

U.S. v. JOHN A. DE VAUGHN, 414 F. Supp. 774; 1976 U.S. Dist. LEXIS 15900 (D. Md. 1976) (U.S. District Court, District of Maryland, Judge Frank A. Kaufman); opposing counsel, Peter Angelos, One Charles Center, 100 North Charles Street, 22nd Floor, Baltimore, Maryland 21201 410-649-2000. My client was the United States. This was a Hobbs Act, tax evasion and perjury case involving extortion in connection with the construction of a large nuclear power plant by Bechtel Corporation. De Vaughn was a senior official of Bechtel who was shaking down contractors on the project. The trial lasted for more than two months and resulted in a conviction on all counts. My co-counsel was former Assistant U.S. Attorney Herbert C. Better, Zuckerman, Spaeder, Goldstein, Taylor & Better, 100 East Pratt Street, Baltimore, MD 21202 (410) 332-0489.

U.S. v. WILLIAM R. PERL, 584 F.2d 1316, 1978 U.S. App. Lexis 8825 (4th Cir. 1978) (Northern District Court, District of Maryland, Chief Judge Edward S. Northrop, 11/24/76), opposing counsel Nathan Lewin, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., 701 Pennsylvania Avenue, N.W., Washington, District

of Columbia 20004-2608, telephone: 202-434-7300). My client was the United States. This case involved a rifle attack on the Russian Embassy by a leader of the Jewish Defense League. The case was presided over by Chief Judge Edward S. Northrop. The defendant was convicted on all counts.

U.S. v. WILLIS SCHONOWSKI, 506 F.2d 1398, 1974 (not reported) (U.S. District Court, District of Maryland, Judge Alexander Harvey, 1970). Opposing trial counsel: James White, Baltimore, MD (address unknown); opposing appellate counsel, Raymond W. Bergan, Williams, Connolly and Califano, Baltimore, MD, and Howard L. Cardin, Cardin & Gitomer, Baltimore, MD. My client was the United States. This case, the trial of which lasted several weeks, involved bribery of the president of a local branch of the International Longshoremen's Association by a management person to induce the union official to overlook violations of the Collective Bargaining Agreement. The defendant was convicted on all counts.

U.S. v. SEIDEL, 620 F.2d 1006, 1980 U.S. App. LEXIS 20337 (4th Cir. 1980). (U.S. District Court, District of Maryland, Judge C. Stanley Blair (deceased), 1978; opposing counsel Howard L. Cardin, Cardin & Gitomer, 10 E. Mulberry, Baltimore, MD 21202; (410) 727-3868). My client was the United States. The case involved a conspiracy to blow up cars and the making of pipe bombs. The case resulted in a conviction on all counts.

20. **Criminal History**: State whether you have ever been convicted of a crime, within ten years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and disposition and describe the particulars of the offense.

None.

21. **Party to Civil or Administrative Proceedings**: State whether you, or any business of which you are or were an officer, have ever been a party or otherwise involved as a party in any civil or administrative proceeding, within ten years of your nomination, that is reflected in a record available to the public. If so, please describe in detail the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings in which you were a guardian *ad litem*, stakeholder, or material witness.

I was deposed as a witness for plaintiff on December 12 and 13, 2001 in THOMAS SIEBEL AND SIEBEL SYSTEMS, INC.V. AMERICAN DYNASTY INSURANCE COMPANY, ET AL. (SF County Sup. Court Case No. 311878). I testified as to insurance coverage issues in a case I handled.

GIRI v. JOSHUA S. WHITE, No. CIVMSC96-01468, Contra Costa Superior Court, filed 4/1/96. Civil lawsuit for less than $20,000. Attorney for Joshua White: Robert R. Poindexter, Kemper National Insurance Company, San Francisco, CA ; Opposing counsel: William J. Dullea, Lafayette, California (current address and telephone unknown). My son was in a minor fenderbender auto accident. While I was not in the car at the time of the accident, I was named as a defendant by virtue of being the

registered owner of the vehicle. The matter was settled for less than $20,000.

22. **Potential Conflict of Interest**: 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 am not aware of any factor that would present potential conflicts of interest if I were selected for this position. The procedure I would follow to resolve conflicts of interest would be to request information from the parties with respect to any potential conflicts. To obtain this information, I would consider issuing a standing order that at the outset of all cases before me the parties would list information about their clients similar to that requested by the Federal Rules of Appellate Procedure, and order that the parties reveal any information that they or their clients were aware of that might present conflict issues. I would then decide if the facts presented warranted any further action on my part, such as inviting the parties to file a motion before a different judge regarding the potential conflict or, if appropriate, advise the parties of the potential conflict and ask if they objected to my presiding in the case (unless I decided that the conflict required voluntary recusal without action by the parties). In all instances I would follow the guidelines set forth in the Code of Judicial Conduct.

23. **Outside Commitments During Court Service**: Do you have any plans, commitments, or arrangements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

24. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding the nomination, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500. 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.

25. **Statement of Net Worth**: Complete and attach the financial net worth statement in detail. Add schedules as called for.

See attached Net Worth Statement.

26. **Selection Process**: Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?

Yes.

(1) If so, did it recommend your nomination?

Yes.

(2) Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.

A Selection Committee which was chaired by attorney Joseph Russoniello was created by agreement between California Senators Diane Feinstein and Barbara Boxer on the one hand, and the White House on the other. The Committee consisted of attorneys designated by the Senators and the White House. I submitted a written application to the Selection Committee. I was interviewed by the full Committee. The Committee then voted to recommend that I be considered for nomination. I was then interviewed by Gerald Parsky. Subsequently, I was interviewed by Deputy White House counsel. I then underwent a background investigation conducted by the FBI.

(3) 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 or seeking a commitment as to how you would rule on such case, issue, or question? If so, please explain fully.

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)*
White, Jeffrey S.

2. Court or Organization
Northern District of CA

3. Date of Report
07/29/2002

4. Title *(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)*
Nominee, US Dist. Judge

5. Report Type (check type)
X Nomination, Date 07/25/2002
Initial Annual Final

6. Reporting Period
01/01/2001 to 07/01/2002

7. Chambers or Office Address
400 Sansome Street
//////////////////
San Francisco, CA 94111

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	Orrick, Herrington & Sutcliffe
2	Board Member	Bar Association of San Francisco
3	Part-time lecturer	University of California at Berkeley (Boalt Hall)

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

NONE (No reportable agreements.)

	DATE	PARTIES AND TERMS
1	1980	Orrick, Herrington & Sutcliffe
2	2000	Orrick, Herrington & Sutcliffe Partner Pension Plan
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	University of California at Berkeley, School of Law (Boalt Hall) ("Boalt")	9000
2	2000	Orrick, Herrington & Sutcliffe ("Orrick")	821,400
3	2001	Boalt	9000
4	2001	Orrick	851,421

Name of Person Reporting | Date of Report

FINANCIAL DISCLOSURE REPORT White, Jeffrey S. | 07/29/2002

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

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

	SOURCE (NONE (No such reportable reimbursements.))	DESCRIPTION
1	EXEMPT	
2		
3		
4		
5		
6		
7		

V. GIFTS

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

	SOURCE (NONE (No such reportable gifts.))	DESCRIPTION	VALUE
1	EXEMPT		
2			
3			

VI. LIABILITIES

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

	CREDITOR (X NONE (No reportable liabilities.))	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: White, Jeffrey S.

Date of Report: 07/29/2002

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

Place "(X)" after each asset exempt from prior disclosure.

	A. Description of Assets (including trust assets)	B. Income during reporting period: (1) Amount Code (A-H)	B: (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period: (1) Value Code (J-P)	C: (2) Value Method Code (Q-W)	D. Transactions during reporting period: (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	Charles Schwab Account									
2	Schwab S&P 500 Select		None	M	T	Exempt				
3	Citicorp Brokerage Account									
4	Fidelity Advisor Equity Income Fund	A	Dividend	K	T	Exempt				
5	Fidelity Advisor Technology Fund		None	L	T	"				
6	Franklin Biotechnology Fund		None	L	T	"				
7	Oppenheimer Quest Balanced Value Fund	D	Dividend	M	T	"				
8	Smith Barney Diversified Large Cap Growth Fund		None	J	T	"				
9	UTS EFT Citiselctor	A	Interest	J	T	"				
10	Merrill Lynch Brokerage Account # 1									
11	CMA CA Municipal Money	A	Interest	K	T	"				
12	GM Corporate Bonds		None	K	T	"				
13	San Francisco CA Bonds SFCA ACIA	B	Interest	K	T	"				
14	California State Bond	B	Interest	K	T	"				
15	San Bernardino CA Bond TRNS S/S	A	Interest	K	T	"				
16	Foothill/Eastern Bonds TCA Tolls Road	A	Interest	K	T	"				
17	Lake Elsinore CA Unified District	A	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

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: White, Jeffrey S.

Date of Report: 07/29/2002

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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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	Rancho, CA Water District FNG REV	A	Interest	K	T	Exempt				
19	Cohen and Steers Adv Inc	A	Dividend	K	T	"				
20	Lucent Technologies Inc Common Stock	A	Dividend	J	T	"				
21	Delware Group Trend Fund		None	L	T	"				
22	ML Basic Value Fund Class B	B	Dividend	K	T	"				
23	ML Basic Value Fund Class D	C	Dividend	J	T	"				
24	ML Fundamental Growth B Fund		None	J	T	"				
25	Seligman Large Cap Value Fund Class B	A	Dividend	J	T	"				
26	Seligman Large Cap Value Fund Class D	A	Dividend	K	T	"				
27	Seligamn Small Cap Value Fund Class D		None	K	T	"				
28	Muniholdings Cal Insured Fund	A	Dividend	J	T	"				
29	Muniyield Cal Fed Insured	A	Dividend	J	T	"				
30	Los Angeles CA Bond Series A	A	Interest		T	"				
31	Allicance Premier Growth		None	J	T	"				
32	ML Large Cap Core Focus		None	K	T	"				
33	Anchor National Poleris Insurance Annuity		None	K	T	"				
34	PUTN Income Fund		None	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

Name of Person Reporting
White, Jeffrey S.

Date of Report
07/29/2002

FINANCIAL DISCLOSURE REPORT

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

Place "(X)" after each asset exempt from prior disclosure.

	A. Description of Assets (including trust assets)	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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	SCDR Money Market Portfolio		None	K	T	Exempt				
36	TRP Inc Ltd Term Bond		None	K	T	"				
37	Best of America Annuities Contract									
38	FID VIP Growth Port SC		None	L	T	Exempt				
39	FID VIP2 Contrafund Port SC		None	M	T	"				
40	OPP Capital Apprec.Fund/VA		None	M	T	"				
41	Strong SVIT Midcap Growth I		None	K	T	"				
42	OPP AGG Growth Fund/VA		None	K	T	"				
43	Orrick Investments 2000 LLC		None	J	U	Exempt				
44	Pollock Montgomery Washington Tower Investors II Pship	B	Rent		U	"				
45	Intercarp Limited Partnership		None	J	U	"				
46	Merrill Lynch Brokerage Account # 2									
47	AIM Charter Funds		None	K	T	Exempt				
48	ML Strategic Return DSA		None	J	T	"				
49	ML Strategic DSI		None	K	T	"				
50	ML Banking Advantage	A	Interest	J	T	"				
51	ML Global Tech Fund Class D	A	Dividend	J	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: White, Jeffrey S.

Date of Report: 07/29/2002

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

Place "(X)" after each asset exempt from prior disclosure.

	A. Description of Assets (including trust assets)	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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	Munder NetNet		None	J	T	"				
53	PIMCO Target		None	J	T	"				
54	ML Ready Asset Trust	A	Dividend			"				
55	S&P Industiral Portfolio OO D	A	Dividend			"				
56	S&P Industrial 2000C	A	Dividend			"				
57	Select Ten Port 2000	A	Dividend			"				
58	AIM Value Fund Class A - Account #1	A	Dividend	L	T	"				
59	Merrill Lynch Brokerage Acct # 3									
60	Delaware Small CAP Value Fund		None	J	T	Exempt				
61	ML Strategic Return DSA		None	J	T	"				
62	ML Strategic Return DSI		None	J	T	"				
63	ML Banking Advantage	A	Interest	J	T	"				
64	ML Global Tech Fund Class B		None	J	T	"				
65	PIMCO Small Cap Value		None	J	T	"				
66	PIMCO Target		None	J	T	"				
67	Seligman Commun & Info Fund Class D	A	Dividend	K	T	"				
68	CD Captial Crossing BK	A	Interest			"				

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: White, Jeffrey S. — Date of Report: 07/29/2002

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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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 PIMCO Small Cap Value	A	Dividend			"				
70 S&P Industrial 2000C	A	Dividend			"				
71 Select Ten Port 2000	A	Dividend			"				
72 AIM Value Fund Class A - Account # 2	A	Dividend	L	T	"				
73 Citicorp IRA #1	A	Dividend	L	T	Exempt				
74 AIM Constellation Fund Class A		None			"				
75 Delaware Trend Fund Class A		None			"				
76 Fidelity Advisor Technology Fund Class B		None			"				
77 MFS Total Return Fund A		None			"				
78 Smith Barney Fundamental Value Fund Class B		None			"				
79 Citicorp IRA #2	A	Dividend	K	T	Exempt				
80 Fidelity Advisor Technology		None			"				
81 MFS Total Return Fund A		None			"				
82 Smith Barney Value Fund Class B		None			"				
83 Charles Schwab - 401K Plan	E	Dividend & I	O	T	Exempt				
84 Money Market Fund		Interest			"				
85 Bank Of America Corp Bond					"				

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

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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: White, Jeffrey S. — Date of Report: 07/29/2002

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) *Place "(X)" after each asset exempt from prior disclosure*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Gain Code (J-P)	(4) Code (A-H):	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
86 Chase Manhattan Corp Bond									
87 Ford Motor Credit Note									
88 General Motors Corp Bond									
89 General Motors Acceptance Bond									
90 Merrill Lynch Corp Bonds									
91 JP Morgan Corp Bond									
92 NationsBank Corp Bond									
93 Sweden Kingdom Bond									
94 Federal High Income Bond Fund									
95 ABN AMRO Cap Preferred									
96 American Intl Group Inc Common									
97 Cisco Systems Common									
98 California Fed Preferred									
99 Cohen & Steers Adv Income									
100 Nova Chemicals Preferred									
101 Xilinx Inc Common									
102 Royce Low Price Sotck Fund									

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: White, Jeffrey S. — Date of Report: 07/29/2002

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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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	RS Partners Fund					"				
104	Schwab S&P 500 Select Shares					"				
105	William Blair Intl Growth Fund- Cl N					"				
106	AT & T Cap Corp Bond					"				
107	Chase Captial V Trust Orig Preferred					"				
108	Conseco Fin VI Trust Orig					"				
109	Intl Paper Cap Preferred					"				
110	Phoenix Quarterly Bond					"				
111	Merrill Lynch - Defined Contribution Plan	B	Dividend			Exempt				
112	Merrill Lynch C/D Plan	B	Dividend			Exempt				
113										
114										
115										
116										
117										
118										
119										

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: White, Jeffrey S.

Date of Report: 07/29/2002

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

Re: Part II- Pension Fund/Orrick Herrington & Sutcliffe. The firm has an unfunded, defined benefit pension plan for retiring partners. After I reach the age of 65, I will be eligible to participate in this plan.

Approximately one year after I leave Orrick, under our partnership agreement, the firm must refund to me my paid-in capital contribution.

Also, the firm has a partners pension plan in which I have participated. The firm has not yet obtained permission from the IRS to allow retiring partners to roll the proceeds into an IRA upon retirement. Until such a ruling is issued, my share will remain in this partner's plan.

Name of Person Reporting | Date of Report

FINANCIAL DISCLOSURE REPORT White, Jeffrey S. | 07/29/2002

SECTION HEADING. (Indicate part of report.)

Information continued from Parts I through VI, inclusive.

PART 3. NON-INVESTMENT INCOME (cont'd.)

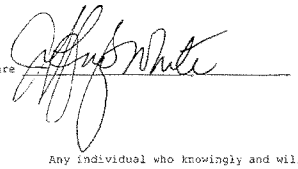
Inc	Date	Source and Type	Gross Income
5	07/29/02	Boalt 9008	
6	07/29/02	Orric:	20,000

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	White, Jeffrey S.	07/29/2002

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 7/29/02

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	15,000	Notes payable to banks-secured (auto insurance)	30,000
U.S. Government securities-add schedule		Notes payable to banks-unsecured	
Listed securities-add schedule* See attached schedule	2,503,595	Notes payable to relatives	
Unlisted securities--add schedule		Notes payable to others	
Accounts and notes receivable:		Accounts and bills due	10,000
Due from relatives and friends		Unpaid income tax	50,000
Due from others		Other unpaid income and interest	
Doubtful		Real estate mortgages payable-add schedule	50,000
Real estate owned-add schedule* See attached schedule	1,375,000	Chattel mortgages and other liens payable	
Real estate mortgages receivable		Other debts-itemize:	
Other assets itemize: Orrick Paid-in capital	283,303		
Autos and other personal property			
2002 Accura	35,000		
2002 Lexus	35,000		
2000 Honda	10,000	Total liabilities	190,000
1994 Jeep	2,500	Net Worth	4,054,398

ASSETS		LIABILITIES	
Total Assets	4,244,398	Total liabilities and net worth	4,244,398
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	50,000		
Other special debt			

ATTACHMENT TO STATEMENT OF NET WORTH
JEFFREY STEVEN WHITE

I. RETIREMENT ACCOUNTS

A. 401(k)

Cash	$487,283
Corporate Bonds	
Bank of America	$21,632
Chase Manhattan	19,848
Ford Motor	46,680
General Motors	19,078
General Motors Acceptance	10,338
Merrill Lynch Notes	19,774
JP Morgan	19,948
Nationsbank	20,516
Sweden Kingdom	21,592
	$199,406
Bond Funds	
Federated High Inc. Bond Fund A	$42,453
Equities	
ABN Amro Cap Pfd.	$19,760
Amer. Intl. Group	24,122
Cal Fed Prfd Cap SRA	30,420
Cisco	4,395
Cohen & Steens Adv. Inc.	38,157
Nova Chemicals	15,333
Xilint Inc.	5,286
	$137,473
Equity Funds	
Royce Low Priced Stock	$44,457
RS Ptnrs	22,062
Schwab S&P 500 Select	232,171
Wm. Blair, Intl.	6,421
	$305,111
Other	
AT&T Cap Corp Bond	$15,652
Chase Cap V Trust Orig. Pfd.	10,032
Conseco Fin. to VI Trust Orig.	4,600
Int'l. Paper Cap Tr. Pfd.	19,976
Phoenix Quarterly Bond	7,464
	$57,724
Grand Total value of equities	$742,167
Total Cash	$487,283
Total value of 401(k)	$1,229,450
B. Orrick Partners Pension Plan	$71,519

C. IRAs

Jeffrey White

Aim Constellation fund	15,489
Delaware Trend fund	15,877
Fidelity Advisor Tech fund	627
MFS Total Return fund	8,528
Smith Barney Fundamental Value fund	15,044
	$55,565

Wife

Fidelity Advisor Tech B	677
MFS Total Retirement A	7,851
Smith Barney Fund Value	11,579
	$20,107

TOTAL RETIREMENT FUNDS **$1,376,641**

II. PARAGON LIFE INSURANCE CO.
Variable Investment Fund

Putn. Inc. Fund	$22,262
SCDN Money Mkt Pref	21,477
TRP Inc. Ltd. Term Bond Fund	21,439
FVIP Eq. Inc. Portf.	140
	$65,318

III. SECURITIES

Brokerage 1:

Mutual Funds

Fidelity Advisor Equity Income fund	$24,972
Fidelity Advisor Technology fund	60,689
Franklin Biotechnology fund	5,926
Oppenheimer Quest Balanced Value fund	173,012
Smith Barney Diversified Large Cap Growth fund	9,530
	$274,129

Brokerage 2:

Corporate Bonds	
General Motors Debenture	$18,381
Municipal Bonds	
SFCA ACIA	30,003
CA State	30,255
San Bernardino TRNS S/S Tax RV	16,125
Foothill Eastern TCA Toll Rd	16,218
Lake Elsinore CA Unified Dist.	15,248
Rancho CA Water Dist. FNG Rev	20,447
	$128,296
Total Bonds:	**$146,677**

Equity Funds	
Del. Group Trend	$63,735
ML Basic Value Class D	42,090
ML Basic Value Class B	12,652
ML Fund Growth B	7,498
Seligman Large Cap Val. Fd. Class B	5,421
Seligman Large Cap Val. Fd. Class D	25,846
Seligman Small Cap Val. Fd. Class D	44,444
Total Equity Funds	**$201,686**
Fixed Income Funds	
Muni Hldgs CA Ins.	$9,974
Muni Yield Cal. Fed. Ins.	8,472
Total Fixed Income Funds	**$18,446**
ML Fund (separate account A)	
Alliance Premiere Growth	$14,569
ML Large Cap Core Focus	27,456
	$42,025
Total funds:	**$262,157**
Life Insurance Annuities	
Anchor Natl. Polarus Policy	$44,224
Custodial Account – Child A	
Money Market Accounts	$1,677
Equities	
ML Strategic Return (Select 10 Index)	$3,800
ML Strategic Return (Indus. 15 Index)	4,280
	$8,080
Equity Funds	
Small Cap Value	$8,927
ML Global Tech B	3,386
Pimco Target	13,271
Pimco Small Cap Value Class B	14,974
Seligman Communic. & Info D	23,197
	63,755
AIM Value Fund	$57,244
Custodial Account – Child B	
ML Banking Adv.	$2,096
Equities	
ML Strategic Return (Select 10 Index)	$8,550
ML Strategic Return (Indus. 15 Index)	19,260
	$27,810
Equity Funds	

Am Charter A	$23,587
ML Global Tech D	2,037
Munder Net B	604
Pimco Target	6,107
	$32,335
Annuity	
Sun America	$12,667
Brokerage 3:	
S&P 500 Select	$128,785
TOTAL (NON-RETIREMENT) ASSETS	**$1,126,954**
GRAND TOTAL RETIREMENT ASSETS AND OTHER SECURITIES	**$2,503,595**

IV. REAL ESTATE OWNED

Property #1	Market Rate $1,000,000
Property #2	$375,000
TOTAL REAL ESTATE OWNED	**$1,375,000**

Chairman LEAHY. We stand in recess.
[Whereupon, at 4:20 p.m., the Committee was adjourned.]
[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Written Questions for Professor Michael W. McConnell

Senator Joseph R. Biden, Jr.

Violence Against Women Act and the Commerce Clause

On June 4, 2000, you published an editorial in the Salt Lake Tribune entitled "Lies, Damned Lies, and the 'Evidence' for the Violence Against Women Act." In the article, you stated that "much of the evidence [of the need for VAWA] is so false and distorted that it could serve as an update to How To Lie With Statistics." You also stated: "A close look at the 'evidence' (even accepting it at face value) shows that it does not prove anything of legal consequence. Mountains of nothing equal nothing."

As you know, Congress' findings supporting VAWA followed four years of consultation and hearings that involved law enforcement officials, judges, social scientists, professors, physicians, and victims. In total, Congress held nine hearings with over a hundred witnesses submitting testimony. At the end of that long and thorough exploration, Congress concluded that gender-based violence and fear of these crimes reduced employment, increased health costs and reduced consumer spending in substantial ways nationwide. For instance, Congress found that medical costs associated with domestic violence topped $100 million a year and domestic violence cost employers $3-$5 billion annually as a result of victim absenteeism and reduced productivity in the workplace.

1. **What hearings and evidence would have been sufficient to authorize the civil remedy in the Violence Against Women Act under the Commerce Clause?**

The Supreme Court held portions of the Violence Against Women Act unconstitutional in *United States v. Morrison*. While in the article you cite I criticized the use of statistical evidence by "[c]ritics of the [*Morrison*] decision," the Supreme Court's decision was not based on deficiencies in the empirical record. The determinative question was not the validity or quantity of statistical evidence, but the conceptual basis for Congressional regulation. Focusing on the question of "substantial effect on interstate commerce," the Court noted first that the statute, by its terms, addressed crimes that "are not, in any sense of the phrase, economic activity." *Morrison*, 529 U.S. at 610. It then pointed to the lack of any "jurisdictional element" which might limit its reach to activities with an explicit connection with or effect on interstate commerce. Id. at 613. Finally, with respect to congressional findings of a connection between gender-motivated violence and interstate commerce, the Court stated that the logic of the claim would "allow Congress to regulate any crime as long as the nationwide, aggregated impact of that crime has substantial effects on employment, production, transit, or consumption." Id. at 615. As I stated in my op-ed, "the question must be whether the challenge[d] statute has targeted a class or category of activities that affect commerce in some way that distinguishes them from activities not regulated."

2. **As a general matter, what level of judicial deference should be paid to Congressional findings? If courts should exercise more than rational basis**

review, how closely should courts examine witnesses' testimony and documentary evidence?

I have consistently maintained, in my academic writings, that legislative judgments are entitled to greater deference than the courts have sometimes shown. The Supreme Court has not spoken directly to the specific question of Congressional findings, but from *Morrison* and *Boerne* it may be inferred that Congressional findings are entitled to greater deference with respect to empirical or policy issues, but less deference with respect to constitutional meaning.

3. As you know, some parts of VAWA have survived judicial examination and others have not. Can you assure the Committee that you will follow binding law with regard to VAWA?

Absolutely. If confirmed as a judge, I will follow binding law with regard to VAWA.

Section Five of the Fourteenth Amendment

As you know, in *United States v. Morrison*, the Court, in addition to holding that the VAWA civil remedy exceeded Congress' powers under the Commerce Clause, also held that the civil remedy exceeded Congress' powers under Section Five of the Fourteenth Amendment. In a November 1997 *Harvard Law Review* article, entitled "Institutions and Interpretation: A Critique of *City of Boerne v. Flores*," you criticized the Supreme Court for its failure to defer to Congress' interpretation of the Fourteenth Amendment as expressed in Congress' passage of the Religious Freedom Restoration Act. In that article, you wrote that

> **the courts have no right to insist that congressional interpretation of the substantive provisions of the Fourteenth Amendment be precisely congruent with the judicial interpretation. Legitimate differences of opinion are not pretexts. As Richard Posner has pointed out: "In many cases the conventional materials will lean so strongly in one direction that it would be unreasonable for the [interpreter] to go in any other. But in some they will merely narrow the range of permissible decision, leaving an open area." The question in a Section Five case should be whether the congressional interpretation is within a reasonable range of plausible interpretations -- not whether it is the same as the Supreme Court's. An analogy might be drawn to the *Chevron* doctrine, which holds that courts should not overturn agency interpretations of their governing statutes as long as they are within a reasonable range of interpretations of the statutory language. The underlying assumption is that the Constitution is designed to place outer bounds on government activity -- not to impose a single "right answer" -- and that ambiguities of language are a form of delegation to the body entrusted with the power to effectuate the law.**
>
> **Moreover, it must be understood that differences in interpretation between judicial and legislative bodies are not solely a product of intellectual**

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> **disagreement (let alone pretext), but are a natural and predictable result of institutional differences. Principal among these . . . is the policy of restraint and deference with which unelected courts approach the task of reviewing the constitutionality of democratically authorized governmental action. Since the framers of the Fourteenth Amendment vested Congress with the enforcement power, it must be assumed that they expected the Amendment to be enforced through the institutional perspectives of the legislative rather than the judicial branch.**

Later in your article, you noted that

> **the Fourteenth Amendment explicitly designates Congress as the body responsible for its enforcement. It would seem to follow that congressional interpretation is entitled to deference. As the Supreme Court said in *Ex parte Virginia*, the Fourteenth Amendment does not say that "the judicial power of the general government shall extend to enforcing the prohibitions and to protecting the rights and immunities guaranteed. . . . It is the power of Congress which has been enlarged." In the face of this "textually demonstrable constitutional commitment . . . to a coordinate . . . branch of government," the courts should be hesitant to second-guess congressional determinations about the scope of enumerated rights.**
>
> **Moreover, by its terms Section Five specifies the standard of review for congressional enforcement legislation: it must be "appropriate." This term has its origins in the latitudinarian construction of congressional power in *McCulloch*. The framers' use of this term suggests an awareness that the question whether legislation serves to "enforce" the Amendment is not clear-cut, and an intention on their part to allow Congress considerable discretion.**

Please consider how you would have applied your views on the Fourteenth Amendment in the *Morrison* case, especially in light of the following words from Justice Breyer's dissent (citations omitted):

> **[W]hy can Congress not provide a remedy against private actors? Those private actors, of course, did not themselves violate the Constitution. But this Court has held that Congress at least sometimes can enact remedial "[l]egislation ... [that] prohibits conduct which is not itself unconstitutional." The statutory remedy does not in any sense purport to "determine what constitutes a constitutional violation." It intrudes little upon either States or private parties. It may lead state actors to improve their own remedial systems, primarily through example. It restricts private actors only by imposing liability for private conduct that is, in the main, already forbidden by state law.**

To the extent that *Morrison* relied on *Boerne*, it is presumably subject to the same scholarly criticism that I have made of that underlying precedent. In *Morrison*, the Court also relied on "[t]he force of *stare decisis*" stemming from two decisions that are over

120 years old. *Id.* at 622. As it happens, I have offered academic criticism of one of those decisions, *The Civil Rights Cases* (1883). See 81 Virginia L. Rev. at 1089-91. I argued that the Court was wrong not to consider whether, as applied in a particular jurisdiction, the plaintiff could show that the jurisdiction had unconstitutionally denied the equal protection of the laws on the basis of race by failing to enforce the rights of African Americans. Putting aside the force of *stare decisis*, which obviously merits great weight, *Morrison* could be subject to the same scholarly criticism.

4. **In light of your views on the proper scope of Congress' Section Five powers, as expressed in the *Harvard Law Review* and elsewhere, do you believe that the VAWA civil remedy constituted a valid exercise of Congress' power to enact legislation under the Fourteenth Amendment? Why or why not? If not, is there anything that Congress could have done in order to make the civil remedy constitutional?**

As an academic matter, I fully adhere to the views I expressed in the Harvard Law Review regarding the broad scope of Congress's Section Five powers. In the *Morrison* case, unlike *Boerne*, the Court also had to take into account the force of contrary precedent -- both of *Boerne* itself and also of the *Civil Rights Cases* and *Harris*. As a lower court judge, if confirmed, I would be bound by precedent, whether or not I find it persuasive.

As to your question whether there is anything Congress could have done in order to make the civil remedy constitutional, I would point to a footnote in my Virginia Law Review article, in which I suggest that the constitutional issue in *The Civil Rights Cases* could have been avoided by amending the Civil Rights Act of 1875 to require the plaintiff "to allege and prove that state law did not provide equal legal redress to black and white patrons." 81 Va. L. Rev. at 1091 n. 724. Under the facts of the *Civil Rights Cases*, I stated, "in all likelihood" the plaintiffs could have made that showing. A similar provision might well obviate the constitutional problem identified by the Court in *Morrison*.

5. **The *Boerne* Court's restrictive view of Congress' Section Five powers has cast a long shadow, serving to invalidate Congress' efforts to abrogate state sovereign immunity in order to protect intellectual property rights (*Florida Prepaid Postsecondary Education Expense Board v. College Savings Bank*) and to provide an effective remedy against state-sponsored discrimination on the basis of age (*Kimel v. Florida Board of Regents*) or disability (*Board of Trustees v. Garrett*). In light of your views on the proper scope of Congress' Section Five powers, please explain whether you agree or disagree with the Fourteenth Amendment holdings in each of these cases and whether, if you agree with the holdings, you believe that Congress could have marshaled additional evidence in support of its legislation in order to render it constitutional.**

Each of the cited cases relied squarely on the interpretation of Section Five in *Boerne*, which I have criticized in my scholarly writings. My criticisms did not depend on the particular context, the free exercise of religion, but extended broadly to all legislation that is "appropriate" to enforce the provisions of Section One of the Fourteenth Amendment. While I have not studied

the legislative record, briefs, or arguments in *Florida Prepaid*, *Kimel*, or *Garrett*, they are the progeny of *Boerne* and to the extent they rest on the same reasoning may be subject to the same criticism. Under my view of Section Five as stated in my prior writings, it would not be necessary for Congress to "marshal additional evidence" because the issue is not "evidence" but interpretation of the scope and reach of constitutional rights.

Roe v. Wade

In your testimony, you described *Roe v. Wade* as "settled law," and you stated that you would follow the dictates of *Roe* and other Supreme Court precedent. However, the Supreme Court often revisits its precedents and at times revises them. Indeed, you yourself have occasionally suggested that a Supreme Court decision should be overturned.

6. Given your belief that the Court has been insufficiently protective of fetal rights, do you believe that *Roe* should be overturned? If so, under what circumstances, if any, should a state not be allowed to forbid abortion?

It is not my place, as a nominee to a lower court, to suggest to the Supreme Court how it should decide future cases. But *Roe v. Wade* is settled law, not just in the ordinary sense in which all decisions of the Supreme Court are precedent, but by virtue of repeated reconsideration and reaffirmation by the Court, by Justices appointed by Presidents Nixon, Ford, Reagan, Bush, and Clinton. As I said in my testimony, a lot has changed in the quarter century since *Roe* was decided. Much of the force of academic criticism of *Roe* was its sweeping displacement of democratic judgments, on the basis of what appeared to be weak legal arguments. The Court's Joint Opinion in *Planned Parenthood v. Casey* presented a more persuasive legal justification for the abortion right, and the Court's abortion jurisprudence is now much more reflective of the democratic judgments of the American people. That jurisprudence governs when, if ever, a state should be allowed to forbid abortion. If confirmed as a judge, my role will be to enforce the law. And the law of abortion is now settled.

Follow-up Questions for Professor Michael McConnell
Senator Richard J. Durbin
Senate Judiciary Committee

1) I would like to clarify some of your stated positions on the subject of civil rights. Please consider the following exchange at your nominations hearing:

> Senator Durbin. . . . Do you believe that we have a right to ask of Bob Jones University or the World Church of the Creator that if they are asking for privileges based on religion, such as exemption from paying taxes for commercial activities, do you believe it is wrong for us to say you cannot discriminate based on race, gender, sexual orientation?
>
> Mr. McConnell. At that level, I would say yes to that.
>
> Senator Durbin. You believe it is proper for us to enforce standards so that those guilty of racial discrimination do not receive tax benefits?
>
> Mr. McConnell. I think that when Congress passes restrictions on the receipt of benefits that, you know, of course, there is going to be some constitutional analysis involved, but I have no problem with the general proposition that antidiscrimination laws can be among those.

I have a difficult time reconciling these statements at your hearing with your prior criticism of the Supreme Court's ruling in Bob Jones University v. United States, upholding the authority of the IRS to revoke the charitable tax exemption of a private university that banned interracial dating among its students. You have described the Bob Jones ruling as one of several "egregious examples" of the Court's failure to "intervene to protect the religious freedom from the heavy hand of government."

Your statements at the hearing also seem inconsistent with your answers to Senator Leahy's follow-up questions, answers which hinged on the distinction between direct government funding and tax exemptions. For example, you wrote, "Tax exempt status is not generally regarded as 'financial assistance' for purposes of antidiscrimination laws."

> a) I am confused where you ultimately come down on this issue. Do you believe that the Free Exercise Clause of the First Amendment prohibits the IRS from revoking charitable tax-exempt status from a non-for-profit religious organization that discriminates on the basis of race? I am interested in your own reading of the Constitution, not the Supreme Court's. Please explain your answer, in light of your past statements about Bob Jones.

The issue is now settled by the *Bob Jones* decision, and if confirmed as a judge I will enforce that decision. As a legal scholar, I have raised questions about the scope and limits of the ruling, and its

potential effect on the religious freedom of other tax exempt organizations. The difficulty in the case arose from the fact that Bob Jones University was not a recipient of federal funds, and that tax exempt status had never been treated as a form of federal financial assistance for purposes of the civil rights laws. Moreover, neither Congress nor the Internal Revenue Service had established criteria to determine under what circumstances antidiscrimination provisions would apply to the internal activities of tax exempt organizations. The sole legal basis for the IRS action in the case was that tax exemptions must be consistent with "public policy." 461 U.S. at 586-590. That broad standard raises concerns, which, in my opinion as a First Amendment scholar, the Supreme Court did not satisfactorily address. For example, the Internal Revenue Service might challenge the tax exempt status of Orthodox Jewish congregations for their practice of segregating men from women. A similar challenge could be made to the Roman Catholic Church's tax exempt status because it ordains only male priests. As Justice Lewis Powell wrote in his concurring opinion, "I am troubled by the broader implications of the Court's opinion with respect to the authority of the Internal Revenue Service." Id. at 606 (Powell, J., concurring).

b) In response to Senator Leahy, you wrote that your views on Bob Jones reflect a concern with "the limits of the principle and the impact on other tax exempt organizations." Specifically, you referred to Orthodox Jewish synagogues and the Catholic Church, both of which might be said to discriminate on the basis of gender. As you know, the IRS ruling challenged in Bob Jones applied only to race discrimination in educational institutions. What has been the impact of the IRS ruling on groups that do not practice race discrimination?

The legal basis cited by the Internal Revenue Service was not confined to racial discrimination, but extended to any conflict between the organization's activities and what the IRS might deem to be "public policy." See 461 U.S. at 586-590. So far, to my knowledge, the Internal Revenue Service has not invoked this authority in any other context.

c) Would you agree that the IRS has the legal authority to narrowly target race discrimination practiced by educational groups that receive charitable tax exemptions, "based on 'the national policy to discourage racial discrimination in education'"?

Yes. That was the holding of the Supreme Court. While as a legal scholar, I have questioned the Court's failure to address the broader implications of the case, I fully accept that holding.

2) As you know, Bob Jones University challenged the IRS ruling to revoke its tax-exempt status by invoking the Free Exercise Clause. You favor a different interpretation of the Free Exercise Clause than the Rehnquist Court and its predecessors. You have argued that the government should be required to show a "compelling state interest" in order to apply a facially-neutral law in a manner that restricts a person's religious practices. As you know, the Supreme Court formally abandoned this test in 1990. Prior to 1990, the Court rejected virtually every suit brought by an individual seeking a free-exercise exemption, except for occasional claims for unemployment compensation.

In response to follow-up questions from Senator Leahy, you wrote that "[e]radication of racial discrimination is one of the most compelling of all governmental interests." In light of this belief, I have a difficult time understanding why you viewed the Bob Jones ruling as an "egregious example[]" of the Court's failure to "intervene to protect the religious freedom from the heavy hand of government"; or why you stated that part of the explanation for the Bob Jones ruling was "an exaggerated deference by conservative justices to assertions of governmental interests." Even under your broad reading of the Free Exercise Clause, it seems that religious liberty should yield to the government's compelling interest in eradicating race discrimination.

a) In Bob Jones, why do you believe that the government's interest in eradicating race discrimination in education was not sufficiently compelling to overcome the University's assertion of religious liberty?

The Supreme Court did not hold that the government's interest in eradicating racial discrimination would be sufficient to prohibit a private organization from enforcing an internal rule regarding interracial dating. By the same token, no one disputes that when Congress enacts laws denying federal financial assistance to organizations that engage in racially discriminatory practices, this is constitutional. The question in the *Bob Jones* case arose in the context of tax exemption, which is not legally regarded as federal financial assistance, nor had Congress explicitly spoken on the issue.

b) In what way did members of the Bob Jones Court exhibit "an exaggerated deference" to the government's interest in eradicating race discrimination in education, as you wrote in 1989?

My comment about the "exaggerated deference by conservative justices to assertions of governmental interests" was in reference to free exercise cases in general, not to *Bob Jones* in particular. Even prior to *Employment Division v. Smith*, the conservative majority on the Court (often over dissents by Justice William J. Brennan and others) rejected every free exercise claim outside the specific area of unemployment compensation – including the right of Jewish military officers to wear the yarmulke, objections to construction of a logging road through lands sacred to Native Americans, and the ability of Muslim prisoners to return from work details in time for religious services. In my scholarship, I have consistently argued for greater protections for the rights of members of minority religions to practice their faith – a view that has also animated Congress's enactment of such legislation as the Religious Freedom Protection Act, the Native American Free Exercise of Religion Act, and the Religious Land Use and Institutionalized Persons Act. I have provided testimony and other assistance to Congress in connection with each of these measures.

3) In Boy Scouts of America v. Dale, you filed briefs before the Supreme Court in defense of

the right of the Boy Scouts organization to expel a gay scout leader from its ranks. The Scouts challenged the application of a state gay rights law on the basis of the freedom to engage in association for the advancement of beliefs and ideas.

> **a) Your brief argued that "[a] private organization has the right to decide for itself what it believes, and to change those beliefs when it sees fit." If that is the case, can the government ever prohibit a private organization from excluding members on the basis of race, gender, or other characteristics? Under what circumstances? Please explain your answer.**

Yes, in many circumstances the government may prohibit private organizations from excluding members on the basis of race, gender, or other characteristics. The right in *Dale* extends to private, noncommercial expressive associations where "the forced inclusion of an unwanted person" in the group "affects in a significant way the group's ability to advocate public or private viewpoints." *Dale*, 530 U.S. at 648. That is a very limited category of cases.

> **b) In a trilogy of cases decided in the 1980s, the Supreme Court held that the government could compel certain private organizations to accept women as members. In part, you distinguished these cases from Dale by arguing that "the clubs did not have any moral code or philosophy that was logically related to their challenged membership criteria." How is this rationale consistent with your view that a private organization, rather than a panel of judges, should "decide for itself what it believes"?**

The organizations in the *Roberts* trilogy did not assert that they had a moral philosophy inconsistent with the admission of women. The Supreme Court recognized the distinction between those cases and *Boy Scouts of America v. Dale*, noting that in *Dale*, the organization had adopted formal position statements and had defended its position in court in various states over a period of 20 years.

4) Many states and municipalities have enacted laws to prohibit employment discrimination on the basis of sexual orientation. In an article discussing this trend, you expressed the view that these laws need to include an exception for business owners who morally object to homosexuality. Otherwise, "the antidiscrimination law would be sheer partisanship; forcing dissenters to comply with a controversial moral judgment that they cannot conscientiously support."

> **a) Opponents of the Civil Rights Act of 1964, which regulates private employers and privately-owned public accommodations, raised similar objections to the Act's prohibitions against race, sex, religion, and national origin discrimination. As you know, that Act does not include a general exemption for conscientious objectors. In your view, is the Civil Rights Act of 1964 unconstitutional as applied to a business owner who has moral objections to associating with individuals of a different race, sex, religion, or national origin? Please explain your answer.**

In my writings urging the enactment of antidiscrimination laws with appropriate exemptions, I have not suggested that the absence of such exemptions would make the laws unconstitutional. My suggestion that antidiscrimination laws covering sexual orientation should contain exemptions was a policy suggestion, designed to build consensus and reduce the divisive character of the debate on this issue, and was confined to small businesses. As an example, Title VII of the Civil Rights Act of 1964 exempts employers with fewer than 15 employees, and the Fair Housing Act exempts owner-occupied dwellings with four or fewer units.

b) In what respects is the Civil Right Act of 1964 substantively different from laws that prohibit discrimination in employment or public accommodations on the basis of sexual orientation?

It would depend on the details of the laws. Various state and local employment laws covering sexual orientation have different definitions, scope, exemptions, and procedures for enforcement.

c) In Hurley v. Irish-American Gay, Lesbian and Bisexual Group, a unanimous Supreme Court declared that a Massachusetts gay right law was "well within the State's usual power to enact when a legislature has reason to believe that a given group is the target of discrimination." Do you agree with this conclusion?

Yes.

5) In Gay Rights Coalition v. Georgetown University, the D.C. Court of Appeals interpreted the local Human Rights Act to require a university to provide a student-run gay rights group with equal access to campus facilities and services. The court emphasized that the university did not have to grant official recognition to the group. You criticized the decision because it allegedly "forced" on the university the "acceptance of homosexuality of an alternative lifestyle."

a) I am struck by the similarities between the Georgetown case and the Supreme Court case Board of Regents of the University of Wisconsin v. Southworth. In Southworth, the Court rejected a First Amendment challenge brought by a state university student who objected on moral grounds to paying a student activities fee that funded, in part, a student group advocating for same-sex marriage. Do you agree with the Court's ruling in Southworth? Do you think that the mandatory activities fee upheld in Southworth forced the student respondent to accept homosexuality as an alternative lifestyle? Please explain your answer.

The *Southworth* case involved a public university, where students activity funds were distributed on a neutral basis. While I have not written specifically about the case, the holding in the case seems consistent with the holding of *Rosenberger v. University of Virginia*, which I have supported in my

scholarly writings. I have taken the position that the neutral distribution of benefits by a public entity, on the basis of objective criteria, does not impart any message of "endorsement" and does not invade the constitutional rights of the taxpayer.

b) You have actively supported the Equal Access Act, noting in your Senate testimony that the Act even allows gay students groups to access meeting facilities at public schools on equal terms with other organizations. Does the Equal Access to Act, as applied to gay student groups, force public schools or public school students to accept homosexuality as an alternative lifestyle?

Not in my opinion. As I have emphasized in my scholarly work, the evenhanded provision of facilities to groups without regard to the content of their speech is neutral.

c) According to your Senate questionnaire, one of your ten most important litigated cases was Rosenberger v. Rector and Visitors of the University of Virginia. In Rosenberger, you successfully represented a student-run religious publication that was seeking equal access to student activity funds administered by a state university. In your view, did the decision in Rosenberger force the religious views of the petitioners upon the university or on other students?

Not in my opinion. As I have emphasized in my scholarly work, the evenhanded provision of benefits to groups without regard to the content of their speech is neutral.

d) How do you distinguish the Georgetown case from Southworth, Rosenberger, and the principles behind the Equal Access Act?

Public entities may not discriminate against otherwise eligible groups on the basis of the groups' viewpoints. Georgetown is a private religious university, and is not required to be neutral about its own moral and religious teachings. While it extended certain facilities and services to all student groups, it reserved other benefits (including eligibility for funding) to those whose teachings are not inconsistent with Catholic doctrine. Georgetown made no claim that its exclusion of groups whose viewpoints are contrary to Catholic doctrine is "neutral": rather, its selective funding of student groups was part its own expression of its identity as a Catholic institution.

Follow-up Questions of Senator Edward M. Kennedy
to Professor Michael M. McConnell, Nominee to the 10th Circuit

Federalism

In your writings, you have expressed what seem to be conflicting views on the question of the power of Congress to pass laws affecting civil rights. One the one hand, you have criticized the Supreme Court for striking down the Religious Freedom Restoration Act, a statute intended to protect religious activities from government practices that burden the free exercise of religion. Yet, on the other hand, you have stated, using very strong language, that Congress lacked power to pass the Violence Against Women Act. *See Institutions and Interpretation: A Critique of* City of Boerne v. Flores, 111 HARV. L. REV. 153 (1997). You have called VAWA an "improper incursion by the federal government into the constitutional domain of state law," *Let the States Do it Not Washington*, WALL ST. JOURNAL (Mar. 29, 1999), at A.27, and have stated that the Supreme Court's decision striking down VAWA was "cause for celebration" that strengthened federalism. *First Things*, (Oct. 1, 2000). Similarly, you seem to approve of the Supreme Court's decision in *Kimel* that victims of age discrimination could not sue state agencies for damages. *See id.*

- **How do you square your position with respect to RFRA with your critique of VAWA? Can you provide us with some evidence to assure us that your views on federalism are not determined simply by your personal views on the importance of the underlying right at stake? For instance, do you have examples–other than with regard to *Boerne*–where you have criticized the Supreme Court's federalism cases?**

I do not believe it is inconsistent to hold that some federalism questions should be decided in favor of federal authority and some in favor of state authority. Our Constitution draws a balance, as John Marshall wrote: "The constitution has ... established that division of power which its framers, and the American people, believed to be most conducive to the public happiness and to public liberty. The equipoise thus established is as much disturbed by taking weights out of the scale containing the powers of the [federal] government, as by putting weights into it." Each case must be decided on its own merits. In my scholarly writings about RFRA, I have argued that Section Five of the Fourteenth Amendment gives Congress broad authority to interpret and enforce the civil rights guaranteed by Section One of that Amendment, including the Bill of Rights. In an op-ed article on VAWA, I have argued that the Supreme Court was correct to hold that Congress does not have the power to regulate acts that are neither economic nor interstate, in the absence of a showing of a substantial effect on interstate commerce.

My criticisms of the Court's narrow interpretation of congressional power under Section Five would apply to all cases in which that interpretation has been applied, including *Kimel*. In the

First Things article to which you refer, I criticized the dissenters in *Kimel* for their refusal to follow precedent, but I offered no defense of the majority opinion regarding the merits of that case as a matter of first principles. The precedent on which *Kimel* rested was *City of Boerne v. Flores*, a case that – as you have noted – I have criticized. To the extent that *Kimel* follows from the same interpretation of Section Five of the Fourteenth Amendment that I cricitized in *Boerne*, it is presumably subject to the same criticism. Nothing in my scholarly analysis of Congress's Section Five powers leaves any room for variation on the basis of one's "personal views on the importance of the underlying rights at stake." If I had been correct about Section Five – and the Supreme Court has repeatedly held to the contrary in *Kimel*, *Boerne*, and other recent decisions – Congress would be entitled to significantly greater authority than the Supreme Court has recognized, to enforce more expansive interpretations of civil rights than the Supreme Court has recognized – whether I would agree with those particular applications or not. A principal theme of my scholarship has been that structural questions in constitutional law -- including federalism, separation of powers, and so forth – must be analyzed consistently, without regard to the political cast of any particular case.

I hasten to add that with respect to all of these cases, there are reasonable scholarly opinions on both sides. While I have tried to contribute to the discussion as a scholar, if confirmed as a judge my role will be to apply the Supreme Court's precedents faithfully and dispassionately to cases that come before me. I will strive to adhere to that role.

You have attacked VAWA as a "redundant and symbolic statute which only complicates the problem of crime" and have stated that the "much of the 'evidence'" accumulated by Congress in support of VAWA " is so false and distorted that it could serve as n update to How to Lie with Statistics." *Lies, Damned, Lies, and the "Evidence" for the Violence Against Women Act*, SALT LAKE TRIBUNE (Jun. 4 2000), at AA4.

In connection with VAWA, however, Congress made findings based on extensive studies documenting gender-based discrimination in States' prosecution of domestic violence and sexual assault. Thirty-eight state attorneys general submitted that "the current system for dealing with violence against women is inadequate" and that "the problem of violence against women is a national one, requiring federal attention, federal leadership and federal funds." In addition, Congress considered 21 state task force reports that documented systemic state barriers to women who try to bring criminal and civil cases against their assailants.

What about this evidence, and other evidence in the record, was so "false and distorted" that it amounted to "lies"? What additional evidence would you require to make the civil remedy constitutional?

In the op-ed article to which you refer, I commented only on the evidence put forth to show that there is a sufficient connection between violence against women and the national economy to justify federal action under the Commerce Clause – not on the evidence pertaining to the efficacy of state efforts to protect against domestic violence, which pertained to the Section Five issue. For an act of Congress to be constitutional under the Commerce Clause, where it regulates non-economic activities and has no jurisdictional element to limit applications on a case-by-case basis, there must be a showing of a substantial effect on interstate commerce. As I stated in my op-ed, "the question must be whether the challenge[d] statute has targeted a class or category of activities that affect commerce in some way that distinguishes them from activities not regulated."

As to my criticisms of the policy of the bill, they are not relevant to my potential performance as a judge, because, if confirmed, I will faithfully interpret and enforce laws passed by Congress regardless of my personal views.

In the Salt Lake Tribune article, you criticized VAWA as beyond Congress's power under the Commerce Clause. Your article did not mention that VAWA was also enacted pursuant to Congress's power under Section 5 of the Commerce Clause.

Why did neither your Salt Lake Tribune piece nor your Wall Street Journal article discuss VAWA's civil remedy as an exercise of Congress's Section 5 power?

I chose to discuss the Commerce Clause issue in the case because that was the primary focus of the litigation, and in a brief op-ed it is not possible to address all issues.

Under the view of Congress's Section5 power that you have advanced in your Harvard Law Review Critique of *Boerne*, does Congress have the power under Section 5 to address gender-motivated violence? What, in your view, would be required to make VAWA's civil remedy a constitutional exercise of Congress's Section 5 power?

Under the view of Congress's Section Five power that I have expressed in my scholarly writings, Congress has the authority to address all matters covered by Section 1 of the Fourteenth Amendment, which would include state or local governmental denial of protection of the laws with respect to gender-motivated violence. The portion of VAWA addressed by the Supreme Court was directed not at state or local law enforcement, but at private acts. The scope of Congress's Section Five authority with respect to private acts was addressed over a century ago in the *Civil Rights Cases*, on which the Supreme Court relied in *Morrison*. This portion of the Court's opinion thus rested in part on "the force of *stare decisis*." 529 U.S. at 622. In connection with the *Civil Rights Cases*, I have suggested that Congress could have cured the constitutional defect by requiring the plaintiff "to allege and prove that state law did not provide equal legal redress to black and white patrons." 81 Va. L. Rev. at 1091 n. 724. A similar provision might well obviate the constitutional problem identified by the Court in *Morrison*.

In 1998, you wrote that the Supreme Court's "recent federalism decisions", although "controversial politically," are jurisprudentially "unexceptional," because they serve "constitutional principles that can be traced to the constitutional text and history." McConnell, *The Asymmetricality of Constitutional Discourse*, XL NOMOS 300, 304 (1998).

Please explain specifically which of the Court's federalism decisions you were referring to in this passage and how each one "serves" the specific "constitutional principles" to which you were referring.

The principal recent Supreme Court federalism decisions as of 1998, to which I was referring, were *New York v. United States* (1992), *United States v. Lopez* (1995), and *Printz v. United States* (1997). *Lopez* made clear that Congress may not regulate intrastate, noneconomic activity under the Commerce Clause in the absence of a jurisdictional element in the statute limiting application to cases involving interstate commerce or a showing of a substantial effect on interstate commerce. *New York* and *Printz* established that, under the Commerce Clause, Congress may not "commandeer" state legislative or executive officials to make or enforce federal law. I did not intend, by this general comment, to include *Boerne* and its progeny, which I criticized at length in my 1997 *Harvard Law Review* article on that decision.

Racial Discrimination in Educaton

You indicated in testimony at the hearing (p.131-2) that you disagreed with the Supreme Court ruling in Bob Jones University v. United States, 461 U.S. 574 (1983), that the IRS could properly revoke the charitable tax exemption of a private university that was committing racial discrimination by banning interracial dating among its students, and of private religious schools that refused admission of black children. The IRS rule was "[b]ased on the 'national policy to discourage racial discrimination in education,'" and provided that "a [private] school not having a racially nondiscriminatory policy as to students is not 'charitable' within the common laws concepts" reflected in the pertinent provisions of the Internal Revenue Code. 461 U.S. at 579 (emphasis added) (quoting IRS Revenue Ruling 71-447).

All nine Justices (including then-Justice Rehnquist who dissented on other grounds) found that it was not a violation of the Free Exercise clause to deny tax-exempt status to religious schools that practice racial discrimination. Yet, you have called Bob Jones an "egregious" example of an infringement of religious freedom.

Why do you believe that the Bob Jones' decision was "egregious"? What specifically about the Court's holding in that case was "egregious"?

I applied the adjective "egregious" to a long list of Supreme Court decisions under the Free Exercise Clause, involving a wide variety of applications. I attempted to make clear that my objection to all of those decisions was that the Court failed to give serious attention to the First Amendment aspect of the problem. This does not mean that I object to constitutionally proper regulation of the underlying subject, and certainly not that I have any support for Bob Jones University's practice, which I have described as "racist" and "abhorrent." Often, free exercise cases – and civil liberties cases more generally – involve the rights of persons and groups whose values we abhor.

In concluding that the decision was "egregious," what value do you place on the government's interest in eradicating racial discrimination in education? Why, in your view should a religious school's Free Exercise Claim outweigh the compelling governmental interest in eliminating race discrimination?

Enforcement of the laws against racial discrimination in education is among the most compelling of all governmental interests. Thus, it is well settled that Title VI of the Civil Rights Act of 1964 prohibits racial discrimination of all forms by recipients of federal financial assistance, and that the Civil Rights Act of 1866, §1, codified at 42 U.S.C. 1981, prohibits racial discrimination in the making or enforcement of contracts, whether the institution receives federal funding or not. Both of these statutes have been justified by the compelling interest in eradicating racial discrimination, and both have properly been applied with respect to religious as well as secular schools.

The difficulty in the *Bob Jones* case was that Bob Jones University is not a recipient of federal financial assistance, and it was not alleged that Bob Jones's behavioral rule against interracial dating violated Section 1981. Thus, neither Title VI nor Section 1981 applied. Tax exemptions have never been treated as federal financial assistance within the meaning of the civil rights laws. If they were, the tax exempt status of Orthodox Jewish synagogues, which segregate men from women, and of the Roman Catholic Church, which ordains only male priests, would be threatened (to name just two examples). Moreover, the section of the Internal Revenue Code at issue in *Bob Jones* contained no congressional directives regarding when, if ever, a religious or charitable organization would lose its tax exempt status on account of internal discriminatory rules. The matter was left to the discretion of the Internal Revenue Service under a broad standard of "public policy." Thus, while I condemned the racist practices of Bob Jones University as "abhorrent," as a legal scholar I expressed concern about the limits of the principle and the impact on other tax exempt organizations. This is a concern shared by many others, including many mainstream religious groups which participated as *amici* in the litigation. As Justice Powell wrote in his concurring opinion, "I am troubled by the broader implications of the Court's opinion with respect to the authority of the Internal Revenue Service." 461 U.S. at 606.

Affirmative Action for Women

I am concerned about your criticism of *Johnson v. Transportation Agency, Santa Clara County, Ca.*, 480 U.S. 616 (1987). In that case, the Supreme Court ruled 6-3 that a voluntary affirmative action plan taking gender into account in filling positions in "traditionally segregated" job categories where women had been "egregiously underrepresented" complied with Title VII of the 1964 Civil Rights Act. *Id.* at 631, 638. The Court carefully noted that the plan was consistent with Title VII and past decisions approving voluntary affirmative action, did not involve quotas, and did not improperly harm male employees. *Id.* at 628-638. Nevertheless, you criticized the decision as an example of "[j]udicial disregard for legislative intent" and as signifying "the Court's approval of employment quotas on the basis of race and sex." McConnell, *The Counter-Revolution in Legal Thought*, POLICY REVIEW 18, 21 (Summer 1987).

> **In light of the Court's clear explanation that the case did not involve "quotas," why did you characterize *Johnson* as approving of "quotas"? Please explain in detail the basis for your criticism of *Johnson*.**

That Title VII permits employers voluntarily to engage in affirmative action is now well settled both by Supreme Court precedent and by subsequent Acts of Congress. If confirmed as a judge, I will enforce that law. In academic writing some 15 years ago, I criticized *Johnson v. Transportation Agency* on the ground that its interpretation of Title VII was contrary to the statutory language and the stated purposes of Congress. In support of that view, I quoted Justice John Paul Stevens's concurrence, in which he said that the majority's interpretation "is at odds with my understanding of the actual intent of the authors of the legislation," as well as with the Court's early interpretations of the law. *Johnson v. Transportation Agency*, 480 U.S. at 643-44 (Stevens, J., concurring). The context of the article was not employment discrimination policy, but adherence to statutory language and congressional purpose. As to the word "quota," I used it in its informal sense, and nothing in my legal argument hinged on the terminology.

Gay Rights

Professor McConnell, your position with respect to legislation to protect gay and lesbian employees from workplace discrimination is not entirely clear. You have said in the past that such protection should not be "part of the general civil rights laws, which cover forms of discrimination widely recognized in our society as reprehensible." In a 1996 radio interview, you similarly said that government should not ban this type of discrimination because it is merely a "moral judgment" about homosexuality. Yet in your testimony before the Committee you stated that you support such legislation, so long as it does "not force people who have conscientious moral views on the other side to be stigmatized as bigots." You seem to have two arguments against legislation of this type. First, that sexual orientation discrimination should not be prohibited because it is not widely recognized as wrong, and second, that moral objections to homosexuality outweigh the interest of gays and lesbians to equal treatment.

- **Do you agree that even if certain people have a sincere religious conviction against associating with members of other races, it is still appropriate for government to prohibit that form of discrimination?**

- **On what do you base your conclusion that an individual ro group's moral objection to inclusion of certain members of society outweighs the interests of the minority group seeking inclusion?**

- **How does your position that religious or moral views outweigh the rights of minorities (whether they be racial, sexual orientation, or otherwise) to be fully included in society affect your Fifth Amendment analysis of legislation of this type?**

Allow me to respond to these related questions in a single answer. First, it is necessary to distinguish policy views from constitutional law. Like many Americans, my views on laws covering discrimination on the basis of sexual orientation have been evolving. In a radio interview in 1996, I expressed reservations about proposed legislation at that time. In more recent scholarly writings, I have supported certain efforts to protect gays and lesbians against unjust discrimination, and have suggested ways in which this objective could be achieved without provoking a direct conflict with those who hold moral objections to homosexual conduct. I have suggested that while the underlying moral question is controversial, there is potentially greater consensus for the view that employers should not impose their own moral views on their workers. As I have written, "One does not have to think homosexuality is moral to believe that employers have no business interfering in the private lives of their employees." "What Would It Mean To Have a 'First Amendment' For Sexual Orientation," at 254.

On the constitutional question, extension of employment discrimination laws to cover sexual orientation would be constitutional with the same exceptions that already are recognized for other bases of discrimination. Religious objections have never been recognized as a basis for exemption on the part of secular employers, but exemptions have generally been recognized within religious organizations. This is not a special rule for sexual orientation, but applies to other civil rights statues as well. For example, the Civil Rights Restoration Act of 1987, which applies to race, sex, and other forms of discrimination, contains an exemption for religious organizations "if the application of [this section] would not be consistent with the religious tenets of such organization." 20 U.S.C. §1681(a)(3).

Arguments similar to yours were raised in opposition to the anti-discrimination provisions in Title VII of the 1964 Civil Rights Act. Similar arguments were made against the integration of the United States Armed Forces. Indeed, these arguments appear to have been correct in their factual premise, in that the prevalent view in the armed forces was very much hostile to integration. As one Army historian put it, "resisting the pressure for

change was a solid bloc of officials in the services which held out for the retention of traditional policies of racial exclusion or segregation . . . Professed loyalty to military tradition was all too often a cloak for prejudice, *and prejudice, of course, was prevalent in all the services just as it was in American society* . . . If these arguments appear to have overlooked the real causes of the services' wartime racial problems and ignored some of the logical implications of Truman's equal treatment and opportunity order, *they were nevertheless in the mainstream of American military thought, ardently supported, and widely proclaimed.*"

- **Given the fact that large portions of the population objected strenuously to the passage of the Civil Rights Act, the integration of the armed forces, and other efforts to eliminate de jure discrimination, does your "wide recognition" requirement mean that the federal government was wrong to take those steps? Why not?**

No. The passage of the Civil Rights Act, the integration of the armed forces, and other efforts to eliminate de jure discrimination were among the most important steps this nation has taken toward a just society. There is no requirement of "wide recognition" for enactment of laws.

- **How do you square your "wide recognition" requirement with the traditional role of the federal government, and the federal courts in particular, as protectors of minority interests against the majority?**

There is no such "wide recognition" requirement in the law. My statement in a radio interview that "the general civil rights laws ... cover forms of discrimination widely recognized in our society as reprehensible" was not intended to suggest that laws covering less widely recognized matters are not legitimate. It is for Congress to consider the degree of popular support for legislation under consideration. Whether laws address "widely recognized" injustices, or not, is irrelevant to legal interpretation or enforcement.

Reproductive Rights

Professor McConnell, your views about Roe v. Wade and a woman's right to choose are clear. In the past you have said:

1. **"The reasoning of Roe v. Wade is an embarrassment to those who take constitutional law seriously . . ."**

2. **Not "text, history, constitutional tradition, democratic enactments, nor precedent played any serious role" in the Supreme Court's decision in Roe v. Wade.**

3. **To correct "this gross misinterpretation of the Constitution . . . requires**

> **conforming fundamental constitutional principle to a fundamental moral truth – that abortion is the unwarranted taking of an innocent human life."**

Professor McConnell, I recognize that academics have – and rightly so – the freedom to explore complicated issues and write provocatively on those issues. What troubles me is that you also appear to believe that judges can bring their personal views into the courtroom. In the *Fordham Law Review*, you wrote,

> **All of the various constraints on judicial discretion can be understood as means of tempering judicial arrogance by forcing judges to confront, and take into account, the opinions of others – whether they be the Framers of the Constitution (text and original understanding), the representatives of the people (the presumption of constitutionality), the decentralized contributors to longstanding practice (tradition), or judges in earlier cases (precedent). In hard cases, these sources of wisdom conflict, and sometimes judges may have no choice but to allow their own convictions and moral intuitions to guide the selection of which course to follow. Precedent sometimes conflicts with original understanding, longstanding practice sometimes conflicts with text, and deference to legislators may be in tension with tradition (consider modern incursions on parental rights).**
>
> **Professor McConnell, given your views on abortion and your views expressed in the *Fordham Law Review*, how can you assure this Committee that you will follow Roe and Casey?**

In the paragraph from the *Fordham Law Review*, I was addressing "hard cases," where sources of law conflict. The question of abortion in American constitutional law is now thoroughly settled, and if confirmed, I will respect and enforce the law, without regard to any personal or academic views. My writings have consistently taken the position that judicial decisions must be constrained, so as to reduce to the greatest extent possible the influence of the judge's own personal views. I am deeply committed to that understanding of the judicial role.

Professor McConnell, on the 25th anniversary of Roe v. Wade, you wrote an op/ed for the *Wall Street Journal* entitled, "*Roe v. Wade* at 25: Still Illegitimate." In the article you are critical of the Roe Court because it failed to resolve the difficult issue of when life begins. You go on to write,

> **It is true, of course, that people honestly disagree about the question of when life begins. But divergence of opinion is not ordinarily a reason to take a decision away from the people and their elected representatives. One of the functions of democratic government is to provide a forum for debating and ultimately resolving controversial issues. Judges cannot properly strike down the acts of the political branches that do not clearly violate the Constitution. If no one knows when life begins, the courts have no basis for saying the legislature's answer is wrong. To be**

sure abortion is an explosive issue, with noisy and self-righteous advocates on both sides. But the Supreme Court made it far more so by eliminating the possibility of reasoned legislative deliberation and prudent compromise.

Professor McConnell, whether a person is pro-choice or anti-choice, the facts are clear: the Congress and state legislatures are actively debating and passing legislation affecting a woman's right to choose. In 2000, state legislatures passed 72 bills and resolutions pertaining to reproductive rights issues – 45 of those measures limited a woman's right to choose – and Congress debates and votes on similar measures. In addition, your state of Utah passed a resolution urging Congress to send the states a constitutional amendment overturning Roe v. Wade.

Given these facts, please explain your view that Roe v. Wade eliminated the possibility of "reasoned legislative deliberation and prudent compromise" on this important issue?

Roe v. Wade established that the Constitution overrides legislative judgments inconsistent with the woman's right to choose, and thus removed the core of the subject from political deliberation and compromise.

Professor McConnell, do you believe that if Roe v. Wade had been decided differently and the Supreme Court had not articulated a constitutional right to choose, the debate would be any less vigorous?

To know what might have happened if history had been different is beyond the expertise of a law professor, and certainly beyond the jurisdiction of a potential federal judge. But I am inclined to agree with Justice Ruth Bader Ginsburg when she said that Roe "appears to have provoked, not resolved, conflict."

Professor McConnell, in your *University of Chicago Law Review* article entitled, "How Not to Promote Serious Deliberation About Abortion," you say that there are areas of "common ground" that should be supported by pro-choice and anti-choice advocates. In the article, you write that one area of common ground is the establishment of cut-off dates for abortion. You argue that those on both sides of the issue should consider prohibiting abortion after the 14th day of pregnancy, or at some point between the 40th and 71st day of pregnancy, or between the 8th and 10th week of pregnancy.

How is granting legal protection to a 14-day old embryo consistent with the decisions of the Supreme Court protecting the fundamental holding of Roe v. Wade? Do you believe that banning abortion after 10 weeks would be constitutional under Roe? Would such a ban create an "undue burden" under Casey?

Granting protection to a 14-day old embryo would not be consistent with *Roe*, nor would banning

abortion after 10 weeks. A "ban" on abortions prior to the third trimester, and even within the third trimester if it would endanger the health of the mother, would be unconstitutional under *Casey*. In the article, I did not suggest otherwise.

Most women are unaware that they are pregnant during the first two weeks of their pregnancy, and many women – particularly those who aren't trying to become pregnant – aren't aware that they are pregnant until they approach the 6th to 8th week. Although you articulate these potential cut-off dates as an area of "common ground," isn't your proposal another form of a ban on abortion?

My scholarly writings have been critical of the recognition of abortion rights, but the Supreme Court has affirmed and reaffirmed the fundamental holdings of *Roe* and *Casey*. Whatever my personal views, I will faithfully enforce the law.

FACE Act

Professor McConnell, at your hearing, you were asked about your writings and statements regarding the Freedom of Access to Clinic Entrances Act. When Senator Schumer first asked you about this issue, you testified that you now believe the FACE Act is constitutional because the Committee "cured the constitutional defects I identified." I later asked you to clarify your response to Senator Schumer because you have argued that the FACE Act violates the First Amendment.

I noted that the two main constitutional defects that you identified in the FACE Act in your 1993 testimony and your 1994 law review article have not been corrected. First, you argued that the FACE Act imposes a content-based restriction on speech. In other words, you claimed that the FACE act violates the First Amendment because it deals with reproductive health facilities, but not nuclear power plants or research clinics involved in animal experimentation. Second, you argued that the statute is unconstitutional because it uses "constitutionally overbroad" terms, such as "intimidates" and "interferes with." These so-called "defects" have not been corrected. The FACE Act still addresses only reproductive health facilities. It still contains the terms "intimidates" and "interferes with."

In response to my question, you said,

> **But my memory – and I do think this is right – is that, in fact, the Senate did address those defects, that the bill was amended to add new and narrower definitions of the terms "physical obstruction," "intimidate," and "interfere with," and that the Act also was amended to deal with the content discrimination problem by adding an amendment offered by Senator Hatch which included within the prohibitions of the bill not just abortion protests, but also protests that were disturbing worship services at churches and**

synagogues, thus eliminating the argument that this was a bill which addressed only the protest activities of one particular – directed at one particular subject.

Professor McConnell, your 1994 article, "The Doubtful Constitutionality of the Clinic Access Bill," includes a postscript that articulates your position on the constitutionality of the FACE statute after the Hatch amendment and other amendments were added in the Senate. In that postscript, you continue to argue that the definitions of misconduct in the law are "constitutionally problematic" and that Senator Hatch's religious liberty amendment "does not cure the original constitutional problem but arguably broadens it." You conclude the postscript by writing, "In sum, despite some improvements, we continue to believe that the Freedom of Access to Clinic Entrances Bill is of highly doubtful constitutionality."

Given your writings and your testimony at the hearing, please clarify your views on the constitutionality of the FACE statute.

In the postcript, after noting that the bill's definition of terms was "unquestionably much improved over the earlier version," Professor Paulsen and I wrote:

> Second, S. 636 has been changed in several ways that bear on the question of whether the bill selectively targets pro-life expressive activity. The bill as passed by the Senate (but not the House version) contains a noteworthy addition that broadens the bill to more than just anti-abortion protests. The Senate adopted a "religious liberty amendment" proposed by Senator Hatch, the effect of which is to extend the bill's prohibitions and punishments to unlawful protest activities that impair religious exercise or prevent access to places of worship, on the same terms as those prohibitions and punishments apply to unlawful protest activity at abortion clinics. This is an important move in the direction of content-neutrality, as the bill no longer targets *only* pro-life protest. Without this broadening amendment, the bill would very likely not survive First Amendment scrutiny. It is therefore crucial that this provision not be deleted in conference. 1 Va. J. of Soc. Pol. & Law, at 287.

In our testimony, Professor Paulsen and I attempted to provide useful guidance to the Committee regarding ways in which the proposed bill conflicted with current legal precedent, and it is gratifying that the Committee responded to our criticisms by making significant amendments. In addition, however, Professor Paulsen and I made some broader points about what we called "doubtful constitutionality" – making clear that these points were not addressed to whether the bill, if enacted, would be upheld in court but rather were addressed to Congress. We testified:

> The judiciary is commendably reluctant to attribute to Congress the intention to use its power to favor one side in a political struggle, and inclined to defer to Congress in a close case. Thus, this part of our testimony should not be interpreted as a prediction about what

the courts will do; neither we nor anyone else can be sure about that. Instead, it is a brief to the first constitutional authority that must consider this issue, the Congress itself, whose obligation to enforce the First Amendment is as clear as that of the courts and whose ability to discern the purposes and effects of legislation is free of the necessities of deference to a coordinate branch.

In your 1997 article, "Breaking the Law, Bending the Law," you wrote that abortion protestors acquitted by Judge John Sprizzo, "should have been charged with tresspassing on private property, and given the same punishment that is meted out to others who commit that offense in that jurisdiction with comparable damage. I'd guess a fifty-dollar fine would be about right."

You also wrote about the FACE statute, "The penalties are so harsh, the terms so vague, and the coverage so sweeping that the statute frightens off lawful as well as unlawful protest. That presumably was its unstated purpose." When I asked you about this statement, you responded by noting that I offered an amendment which cut the penalties in half and you assumed that I "must have at some level agreed with the criticism that the penalties were too harsh."

Professor McConnell, as the Senate sponsor of the FACE Act, I fully supported the penalties in the legislation as originally drafted, but compromise was necessary to ensure that the bill would become law. You, on the other hand, appear to have concerns about the penalties before *and* after they were reduced. Do you believe that women in the United States would have meaningful access to reproductive health services if every protestor who obstructed their entry to clinics only had to pay a fifty-dollar fine? What makes you think that a fifty-dollar fine would be an appropriate penalty for one person's obstruction of another person's fundamental constitutional right?

The authority to set penalties for violation of federal law is vested in Congress. On the issue of sanctions under the FACE Act, Congress has now spoken. If confirmed as a judge, I will uphold and enforce the laws as written by Congress, and my personal policy views about the severity of sanctions will not affect my judgments. My comment about the fifty dollar fine was made in connection with one particular case of peaceful protest, to which the penalty provisions of the FACE Act did not apply, because prosecution was for violation of a court order. In that particular case, there was a judicial finding that the protest had been "minimally obstructive." As I indicated in my testimony, gradations of punishment would be appropriate for repeated offenses.

In your 1993 testimony and 1994 law review article, you also wrote that there is a "constitutional right to protest against abortion – forcefully and face-to-face if necessary." It is well established that the First Amendment does not protect speech that is directed to

inciting imminent lawless action – much less conduct that involves lawless force itself.

> **Do you disagree with this principle? What would the constitutional basis be for a right to engage in "forceful, face-to-face" protest? Can you identify any Supreme Court cases that have recognized a right to "forceful" protest?**

The scope of the constitutional right to protest against abortion is the same as the scope of freedom of speech with respect to any other issue. This includes the right in public forums to speak directly to other citizens and to distribute leaflets. By "forceful," I was referring to the power of speech (as in, "she delivered a forceful address") and did not intend to suggest that protesters have the right to use or threaten force. In my writings, I have unequivocally condemned the use of violence or force in protests of any kind.

You have written when it comes to deciding issues with complete neutrality, "all judges fall short of the judicial ideal. Some are biased . . . most have trouble transcending the interests and opinions of their class."

> **Do you think there is a chance that your deeply held opinions on abortion affected your First Amendment analysis? If so, how can you assure the Committee that you will "transcend" your personal views if you are confirmed as a judge?**

I can say only that to the very best of my ability, if confirmed as a judge, I will decide all cases according to the law, putting aside my personal views.

> **If you are confirmed and the Court of Appeals for the Tenth Circuit is asked to rule on the constitutionality of the FACE Act, would you recuse yourself?**

On this and all matters involving recusal, I will fully comply with the Code of Judicial Conduct.

Follow-up Questions of Senator Edward M. Kennedy
to Professor Michael McConnell, Nominee to the 10th Circuit

Gay Rights

1. In your recent response to Senator Durbin's written questions, you state that *Boy Scouts of America v. Dale* held that only private noncommercial expressive associations could claim that inclusion of an individual would be detrimental to their ability to advocate in favor of their viewpoint. You further state that this is a "very limited category of cases." In fact you argued in that case that all sorts of groups have a very broad right to exclude individuals if that person's presence would interfere with the group's message. Moreover, relying in part on *Huxley*, you contend that a group need not have articulated the message in the past. Its members need not agree on the message, and indeed it need not even be clear that the group actually maintains the message. All the group needs to do to avoid the strictures of anti-discrimination legislation, apparently, is claim the message in litigation. This is because, as you contend, regardless of the fact that the content of the message is exactly the grounds cited for excluding an individual, "it is not the role of government to decide what a private organization's message is."

In effect, you have argued that a group with no prior articulation of a particular message, with a multitude of conflicting views on many subjects, and with little or no history of action in furtherance of the message at issue, may safely claim a prerogative to exclude an individual it says undermines that message. Although the Supreme Court ultimately ruled in favor of the Boy Scouts on a more limited expressive association claim than the one you espoused in your briefs, do you believe that the current state of the law supports the arguments you put forward in your briefs in *Dale*? What are the boundaries of this position?

The brief that I co-authored as counsel in *Boy Scouts of America v. Dale* presented a range of theories for the Court's consideration. The current state of the law is set not by the arguments in briefs but by the decision of the Supreme Court. As I indicated in my prior answer to Senator Durbin, the Supreme Court's decision applies, by its terms, to private, noncommercial expressive associations where "the forced inclusion of an unwanted person" in the group "affects in a significant way the group's ability to advocate public or private viewpoints." *Dale*, 530 U.S. at 648.

Federalism

2. In your answer to my question about your approach to questions of federalism, you seem to suggest that you did <u>not</u> approve of the Supreme Court's decision in *Kimel* as this would be inconsistent with your criticism of the Court's narrow view of Congress's Section 5 power in *Boerne*. You also stated that your article in <u>First Things</u> merely chided the dissenters for their "refusal to follow precedent."

As I read your article in <u>First Things</u>, however, you appear to approve of *Kimel*. You

call the 2000 term in which *Kimel* was decided a "cause for celebration" (except as to two opinions which you describe). You criticize the four dissenters who did not join the majority in cases like *Kimel* for their "extremist rhetoric." And you disapprove of Justice Stevens' dissent in *Kimel* in which he criticizes the *Kimel* majority decision-- as well as prior Section 5 decisions like *Boerne*-- for being "profoundly mistaken and . . . fundamentally inconsistent with the Framer's conception of our constitution." In a context of an article in which you freely express your approval or disapproval of a range of opinions, it is difficult to read this as approval.

I understand that there may be "reasonable scholarly opinions on both sides" of the debate about the scope of Congressional power under Section 5 and the Commerce Clause. What I wanted you to explain for me, however, is what seemed to be your dissonant critiques of the Court's federalism opinions. In your response, you distinguish your critique of *Boerne* from your approval of *Morrison* on the ground that your critique of VAWA concerned Congress's Commerce Clause power. But even were I to accept that explanation as to *Morrison*, I would still like to know how you reconcile your approval of *Kimel* with your criticism of *Boerne*. In that vein, please answer:

How do you square your approval of *Kimel*, which adopted a narrow view of Congress's Section 5 power, with your critique of *Boerne*?

As I attempted to explain in my answer to your previous question on this subject, I have not expressed, nor did I intend to express, any approval of *Kimel* as a matter of first principles. *Kimel*'s interpretation of Section Five rests on the precedent of *Boerne*, which I have criticized in academic writings. In those writings, I have taken the position that Congress's authority to enact civil rights legislation under Section Five is broader than the Supreme Court has accepted. That remains my view, as an academic matter. Thus, there is no discrepancy between my views on *Boerne* and *Kimel*. If confirmed as a judge, I would faithfully apply applicable precedents, whether I agree with them or not.

Are there instances–other than *Boerne*–in which you have criticized the Court for its "narrow interpretation of congressional power under Section 5" ? If so, please provide examples.

The Court's narrow interpretations of the Section Five power, to which I referred, occurred after *Boerne*, and rested on the precedent of *Boerne*. To that extent, therefore, they are subject to the same academic criticism that I offered of *Boerne*. I have not written on the subject since my 1997 *Harvard Law Review* article on Section Five.

Bob Jones

3. I asked you why you considered *Bob Jones* to be an "egregious" violation of religious liberty. You said that you thought while *Bob Jones'* racist practices were "abhorrent", *Bob Jones* was a "difficult" case because it involved a tax-exemption, not direct federal financial

assistance.

Is the Court's failure to comprehend the distinction between a subsidy and a grant for these purposes why you stated that the *Bob Jones'* decision was "egregious" and represented the failure of the Court to "intervene to protect religious freedom from the heavy hand of government"? First Things (Oct. 1997, at 32). And, why did you choose to use such strong terms given the compelling nature of the government's interest in combating racial discrimination?

In 1990, you wrote that for a religious school to prohibit interracial dating has "direct effects that are purely internal to the religious group." *Free Exercise Revisionism and the* Smith *Opinion*, 57 U. CHI. L. REV. 1109, 1146 (1990). Again, in 1993, you listed *Bob Jones* as one of a number of decisions in which a church's stand against "popular interests" (such as race discrimination) was "rebuffed by the Supreme Court." 1993 B.Y.U. L.REV. 163, 176.

As I stated at the hearing, as someone who has sponsored legislation to protect religious minorities, I share some of your concerns about the Court's resolution of Free Exercise claims. I am just interested in understanding better how your balance Free Exercise claims with other compelling interests, because it seems in your analysis, free exercise claims must always prevail.

While now you make the distinction between a subsidy and a grant, in these two articles–as in the First Things piece– your complaint with *Bob Jones* seems to be that the Court gave insufficient weight to unpopular views or religious beliefs when balanced with other interests. Thus, my question remains: Why, in your view should a religious school's Free Exercise Claim outweigh the compelling governmental interest in eliminating race discrimination?

In my academic writings, I have discussed *Bob Jones* only as one of a number of examples of problems with the Supreme Court's free exercise jurisprudence. In my answers to your previous questions, I have attempted to explain some of those problems. The difficulty in that case was not with the general principle that the government has a compelling interest in eliminating racial discrimination, which is settled and which I have not questioned, but with the uncertain scope of application of antidiscrimination laws in the specific context of tax exemptions.

To address your broader question regarding free exercise jurisprudence, it is far from the case that free exercise claims must "always prevail." Indeed, as I have pointed out in my academic writings, free exercise claims did not usually prevail even before the Court abandoned the compelling interest test in *Smith*. My academic writings have suggested that free exercise claims should receive more careful attention, and greater protection, than the Supreme Court has often given them. Congress has expressed a similar view in a series of statutes, including the Religious Freedom Restoration Act, the Native American Free Exercise of Religion Act, and the Religious Land Use and Institutionalized Persons Act. If confirmed as a judge, I would comply with all applicable precedents of the Supreme

Court, and with the intentions of Congress.

Civil Rights

4. Thank you for your answer about Johnson. I have a question about an additional employment discrimination case. In its unanimous decision in Griggs v. Duke Power Co., 401 U.S. 424 (1971), the Supreme Court recognized that employment practices that have a disparate impact in excluding minorities or women are illegal under Title VII, unless they are justified as promoting a business necessity. The importance of the Griggs principle in combating employment discrimination has been widely recognized on a bipartisan basis, including by Congress in reaffirming Griggs in enacting the Civil Rights Act of 1991.

Yet according to an article you wrote, the disparate impact standard is the "underlying problem" in employment discrimination law. McConnell, "Affirmative Action After Teal," AEI Journal on Government and Society 38 (March/April, 1983) at 43. You suggested that Griggs was inconsistent with Congress' intent in Title VII and was "the first decision to abandon fairness of process." You wrote that it "left employers to choose between two unpalatable alternatives — either to engage in race-conscious hiring, or to lose their discretion over the establishment of job qualifications." Id. at 43-44.

In light of what you wrote about Griggs, please state specifically: (a) the basis for your belief that Griggs was inconsistent with Congress' intent in enacting Title VII; (b) the basis for your belief that Griggs abandoned fairness and forced employers to choose between what you described as "two unpalatable alternatives"; and (c) whether you still believe Griggs is wrong and why.

Griggs v. Duke Power Co. has indeed been recognized, on a bipartisan basis, for its important contribution to combating employment discrimination. As I noted in the article – 20 years ago – any weakness in its grounding in the original language or intention of the Civil Rights Act of 1964 was vitiated by amendments in 1972 "effectively ratifying the full sweep of *Griggs* and incorporating it into law." That would be even clearer today, for as you point out, *Griggs* was expressly reaffirmed by Congress in 1991. Beyond that, my comments about the *Griggs* decision, read in context, were part of an analysis of the ironies of *Connecticut v. Teal* (1982), in which the Brennan wing of the Court made it more difficult for employers to engage in affirmative action, while the Rehnquist wing went the other way. *Griggs* was a "problem" only in the sense that the conceptual ambiguities in *Griggs* framed the issue for both sides in *Teal*. My characterization of *Griggs* as "abandoning fairness of process" meant only that the decision permitted plaintiffs to challenge employment action on the basis of statistical disparities ("disparate impact") without requiring them to allege any unfairness in the way they were treated ("disparate treatment"). I fully accept *Griggs* as a statement of the law, applaud its beneficial consequences for racial justice, and pledge to apply it – and other binding Supreme Court precedents – if confirmed as a judge.

In a 1990 article in the University of Chicago law review, you criticized the Supreme Court's decision in *Employment Division v. Smith* (1990), in part for its failure to realize that the anti-drug law at issue in *Smith* had a disproportionate impact on practioners of the Native American Church. 1999 U. CHI. L. REV. at 1140. Nevertheless, you distinguished race-neutral laws, agreeing with the Supreme Court that laws that are race-neutral should not trigger strict scrutiny. I am interested in why you find this distinction compelling: Do you believe that the "ideal of racial nondiscrimination" *id.* at 1139, might also be furthered by rooting out laws that cause a significant racially disproportionate impact and that lack a legitimate business justification, as Congress chose to do in the context of Title VII?

The comparison I drew in the article was between formal neutrality under the Free Exercise Clause and formal neutrality under the Equal Protection Clause, as that Clause has been interpreted by the Supreme Court in *Washington v. Davis* and subsequent decisions. I suggested, contrary to Justice Scalia's analysis in his opinion in *Smith*, that liberty interests and equality rights need not be interpreted in a parallel fashion. As you point out, Congress has applied "disparate impact" analysis to racial discrimination issues in a wide variety of contexts, including Title VII. My comments on *Smith* did not relate to that issue.

Written Questions for Michael McConnell from Senator Patrick Leahy

1. **At your hearing, during our discussion about a federal constitutional right of privacy, you stated that you have, "no hesitation that there are many rights of privacy." Could you detail for me exactly what those many rights of privacy are and where in the Constitution or statute you believe they are to be found?**

The First Amendment contains rights of privacy connected to speech, expression, association, and thought. I explain the connection between the right of "privacy" and the freedom of religion in my article at 104 Harv. L. Rev. at 994-96. The Third Amendment protects privacy in the home. The Fourth Amendment protects privacy in one's "persons, houses, papers, and effects ... against unreasonable searches and seizures." The Fifth Amendment protects the privacy of one's mind by prohibiting compelled confession. In addition, the courts have recognized that the Constitution limits the government's authority to interfere with basic decisions about family and parenthood and bodily integrity. While I, along with other scholars, have argued that such rights are best grounded in the Privileges or Immunities Clause of the Fourteenth Amendment (1997 Utah L. Rev. at 691-98), in recent years the Supreme Court has treated substantive due process under the Fifth and Fourteenth Amendments as the source of these rights. I would, of course, follow that course if I am confirmed as a Court of Appeals judge.

2. **In answers to questions from several Senators about an article you wrote, "Breaking the Law, Bending the Law," you insisted that, "the substance of that article . . . was to criticize that judge for failing to follow the law. It was not to praise him." Now that you have had time to go back and think about what you wrote, would you still have us believe that your intention was purely to criticize Judge Sprizzo for disregarding the law, or would you like to supplement your testimony?**

My overall intention in that article was to use that case to discuss some of the broader issues of punishment of nonviolent civil disobedience. I attempted to make clear in the text of the article that I disagree with Judge's Sprizzo's espousal of "judicial nullification," that his decision was "not lawful," that protesters may not "violate court orders with impunity," and that "it would be utterly unacceptable to allow such violations only, but whenever, the judge happened to agree with the violator." I also criticized the prosecution's suggested penalty of six months' imprisonment for a single act of nonviolent protest that the court found to be "minimally obstructive." As I indicated during my testimony, in response to questions from Senator Schumer, in cases of repeated violations there appropriately may be a gradation of sanctions – an aspect I did not take sufficiently into account in the article.

3. **At your hearing, during our discussion on the importance of judges following the law, you stated that, "there have been times when the federal judiciary has overstepped its legitimate grounds as a co-equal branch of Government." Could you detail for me which times you believe that has happened? Do you**

consider the Supreme Court's decisions in *College Savings Band v. Florida Prepaid Postsecondary Education Expense Board, Kimel v Florida Board of Regents, Board of Trustees v. Garrett, U.S. v. Lopez,* and *U.S. v. Morrison* to be among those times?

Two of the cases I have criticized as going beyond the Court's legitimate authority are *Dred Scott v. Sandford*, in which the Court held that Congress lacked the power to exclude slavery from the territories, and *City of Boerne v. Flores*, in which the Court held that Congress lacked the power to enforce Fourteenth Amendment rights beyond the Court's own definition of those rights. While I have not written about the Section Five power since *Boerne*, *Florida Prepaid*, *Kimel*, and *Garrett* are the progeny of *Boerne*, and to the extent they rest on the same reasoning may be subject to the same criticism. As to recent Commerce Clause cases, I have stressed that the power of Congress over economic matters and interstate matters is broad, but where Congress uses the Commerce power to regulate matters that are neither interstate nor economic, there must be a showing of some substantial effect on interstate commerce. Of course, whether or not I agree with any of these decisions, they are binding on the Courts of Appeals.

4. **At your hearing you spoke about enumerated and unenumerated rights in the Constitution. Are there any unenumerated rights in the Constitution, as yet unarticulated by the Supreme Court, that you believe can or should be identified in the future?**

For almost a century, the Supreme Court has recognized some constitutional rights encompassed within the term "liberty" in the Fifth and Fourteenth Amendments that are not otherwise mentioned in the constitutional text. The right to travel and the right to send a child to a nonpublic school were among the first to be so recognized; the most recent is the right of a parent to determine who may exercise visitation rights (at least with reference to a state law giving state courts sweeping authority to countermand parental decisions of this sort). Presumably, there will be more such cases in the future – likely with regard to issues that none of us could ever predict.

5. **At your hearing you spoke about view of the second Justice Harlan, who you said enforced the right to privacy in *Griswold* because, "he made a judgment that that was something that the American people had come to." What if a judge or justice is faced with deciding a legal issue where the American people have not come to any agreement? What is he or she to do then?**

Justice Harlan put it far better than I. His precise words were:

> Due process has not been reduced to any formula; its content cannot be determined by reference to any code. The best that can be said is that through the course of this Court's decisions it has represented the balance with our Nation, built upon postulates of respect for the liberty of the individual, has struck between that liberty and the demands of organized society. If the supplying of content to this Constitutional concept has of necessity been a rational process, it certainly has not been one where judges have felt free to roam where unguided

speculation might take them. The balance of which I speak is the balance struck by this country, having regard to what history teaches are the traditions from which it developed as well as the traditions from which it broke.

Poe v. Ullman, 367 U.S. at 542. If the American people "have not come to any agreement," and if the issue is not controlled by constitutional text, history, practice, or precedent, the implication of this approach is that the courts should not displace the judgment of Congress or the legislatures.

6. At your hearing, after describing your view of Justice Harlan's methodology for identifying new unenumerated Constitutional rights by discerning whether or not the American people have come to a judgment on a matter, you agreed that you would, "embrace Justice Harlan's views as an appropriate guideline for a Court of Appeals judge." Do you believe circuit court judges should be articulating new unenumerated Constitutional rights using such methodology?

Lower court judges are required to decide cases in accordance with Supreme Court precedent. In the unusual case of a novel claim governed by no existing precedent, lower court judges must apply the interpretive methodology set forth by the Supreme Court. In recent cases, such as *Washington v. Glucksberg*, the Court has enunciated a methodology for adjudicating claims of unenumerated rights that, as I have explained at 1997 Utah L. Rev. at 698-700, is based on that originally articulated by Justice Harlan. Lower courts in addressing such questions should therefore follow that methodology.

7. At your hearing Senator Durbin mentioned that you had written that the Senate has a responsibility to see if a judicial nominee's opinions, "fall within the legitimate range of opinion about the Constitution." Can you identify for me some current opinions about the Constitution as articulated by legal scholars that you believe fall outside of that legitimate range?

I do not wish to criticize the work of any legal scholars *as scholars*. There is no reason to demand, or expect, scholarly work to fall within any particular range of "legitimate" views. But there are legal scholarly views that – if adopted by a judge or propounded by a judicial nominee as an appropriate basis for judging – would meet that description. Scholarly articles that would substitute the writers' own views in the place of established law may well help to stimulate academic discussion, but they fall outside the legitimate range of legal analysis for a judge. A few examples from recent scholarly work that would not be a legitimate basis for legal analysis by a judge might include: advocating race-based jury nullification with the express "goal" of "subversion of American criminal justice," advocating a return to the economic substantive due process jurisprudence of *Lochner v. New York*, or arguing that the Fourteenth Amendment was not properly ratified.

8. In answer to some of Senator Durbin's questions, you discussed the case of *Reynolds v. United States*, where you seemed to be saying that the law prohibiting polygamy was unconstitutional because it violated the free exercise rights of those whose sincere religious beliefs include multiple partners sanctioned by religion. I am interested in the distinctions among different criminal laws, neutrally applied, to a variety of kinds of criminal behavior that some might call the free exercise of their sincerely held religious beliefs. You suggest that the laws against polygamy may be unconstitutional. What about laws against murder? What if it is the sincerely held belief of a religion that all Jewish people must be murdered? Would the inhibition of their free exercise cause the laws against murder to be unconstitutional? If not, what is the distinction?

Laws against murder are certainly constitutional. The distinction is that one person's exercise of a constitutional right – be it free exercise of religion, freedom of speech, rights to contract or use their own property – is bounded by the rights of others. As James Madison put the point: free exercise should prevail "where it does not trespass on private rights or the public peace."

9. If you response to the question above is that the answer depends on the outcome of an analysis of whether or not the state has a compelling interest in preventing the behavior that has been criminalized, would that also be true of civil laws of neutral application that burden the free exercise of religion?

Yes. Of course, under the Supreme Court's free exercise doctrine, set forth in *Employment Division v. Smith*, neutral laws of general applicability are no longer subject to the compelling interest test.

10. **On the *Bob Jones University* case, you have commented on it quite pointedly in a few publications. In 1997, in an essay in First Things, you referred to the case as one of, "a few egregious examples," of the Supreme Court deciding against religious claimants. In "The Religion Clauses of the First Amendment: Where is the Supreme Court Heading?" you assert that:**

> **The free exercise clause, properly interpreted, prohibits the government from forcing churches to conform to prevailing political norms, whether it is the Jim Crow laws that were forced on Christian colleges like Berea in Kentucky in the last century, or acceptance of homosexuality as an alternative lifestyle, as is forced on Georgetown University in our day. Churches should be allowed to follow their own lights in matters of doctrine and organization, lest their vital role as counters to governmental power be sacrificed. This means that church teachings must on occasion be tolerated even when they are abhorrent, like the**

racial doctrines of a Bob Jones University. Liberty is not limited to things that matter little.

And in "Separation or Accommodation? The Church-State Debate," you cite the Bob Jones case as an example of a mistaken interpretation of the Establishment and Free Exercise Clauses of the First Amendment.

How do you reconcile those statements, clearly critical of the Supreme Court's ruling in the *Bob Jones* case, with your testimony that you, "think that when Congress passes restrictions on the receipt of benefits, that . . . I have no problem with the general proposition that antidiscrimination laws can be among them?"

In the article entitled "The Religion Clauses of the First Amendment: Where Is the Supreme Court Heading?," I used the racist doctrines of Bob Jones as an example of an "abhorrent" teaching that must be "tolerated" under the First Amendment. In my testimony, I addressed whether Congress may impose "restrictions on the receipt of benefits." There is a fundamental distinction between funding issues and prohibition issues, as the Court's decision in *National Endowment for the Arts v. Finley* illustrates. The Supreme Court did not hold that Bob Jones's teachings regarding interracial dating – however abhorrent – may be forbidden by law. By the same token, there is no doubt that Congress may withhold funding from recipients that engage in unlawful racial discrimination.

What made the Supreme Court's legal analysis in *Bob Jones University v. United States* difficult is the in-between status of tax exemptions. Tax exempt status is not generally regarded as "financial assistance" for purposes of the antidiscrimination laws. If it were, the tax exempt status of Orthodox Jewish synagogues might be threatened on account of their practice of segregating men from women and the tax exempt status of the Roman Catholic Church might be threatened for its practice of ordaining only male priests – to mention just two examples. I have attempted to make clear in my writing that I consider the racist practices of Bob Jones University detestable, but as a legal scholar am concerned about the limits of the principle and the impact on other tax exempt organizations.

10. According to the view you expressed in the above-cited writings, Bob Jones University could continue to take federal funds and prohibit inter-racial dating. If the *Bob Jones* case had been decided the way you wanted, what would there be to prevent private colleges receiving federal funds or a tax exemption to exclude non-Whites altogether?

The question in *Bob Jones* pertained to tax exempt status, not the receipt of federal funds. No matter how that case was decided, it is unlawful for any school to exclude non-whites, and unlawful for any school that receives federal funds to engage in racial discrimination of any kind. Recipients of federal financial assistance are barred (and properly so) from all forms of racial discrimination by Title VI of the Civil Rights Act of 1964. Bob Jones

University is not a recipient of federal funds, and thus the case did not involve that principle. Under the Civil Rights Act of 1866, §1, codified at 42 U.S.C. §1981, all racial discrimination in the making and enforcement of private contracts is forbidden, even if the institution receives no federal funds. It is well established that, under Section 1981, a private school may not exclude non-whites.

11. Is enforcing civil rights laws, whether through Congressionally-passed statute or agency-issued regulations, a compelling enough state interest in your view to overcome a free exercise claim? If not, what would be an example of a sufficiently compelling state interest?

Eradication of racial discrimination is one of the most compelling of all governmental interests. Under the Supreme Court's free exercise doctrine, set forth in *Employment Division v. Smith*, however, neutral laws of general applicability are no longer subject to the compelling interest test. Under pre-*Smith* precedents, in any particular case, the courts evaluated not only the strength of the governmental interest but the fit between that interest and the application to the facts of the case. For example, national security is certainly a compelling governmental interest. But not everything done in the name of national security will automatically override First Amendment rights.

13. **You contributed an essay to a book called Constitutional Stupidities, Constitutional Tragedies, where you were asked to, "identify the feature of the Constitution which is most likely to produce 'tragedy,' but which, as a conscientious interpreter of the document, we are compelled to endorse and support." You wrote that your nomination for such a feature was one, "that allows five members of the United States Supreme Court to declare acts of the representative institutions of our government unconstitutional." You continued by saying that, "the principles of *Marbury* and *Brown* do not justify the judiciary in taking upon itself important public questions, about which virtuous and intelligent people are divided, and to which the Constitution, as defined by text, history, practice, and precedent, provides no answer. Not only is this illegitimate, but it can lead, and has led on more than one occasion, to injustice, blood, and death."**
Can you explain in some more detail why you think the concept of judicial review is wrong?

I think, on the contrary, that the concept of judicial review is *right* – in terms of the constitutional text, the history, and the institutional considerations. I so stated in the article (see page 205), and have never written otherwise. But even correct principles, like judicial review, can produce bad consequences. I used the word "tragedy" in its literary meaning, referring to a character with qualities of greatness that lead to disaster. My analogy in this essay was to Shakespeare's *MacBeth* – hence the melodramatic reference to "injustice, blood, and death."

14. In answer to a question from Senator Kennedy about discrimination against gays and lesbians, you said that you have "condemned" bigotry and violence

against them, and, "talked about legal doctrines relevant to it." Could you briefly describe what you have said about the legal doctrines relevant to condemning bigotry and violence against gays and lesbians?

In *"What Would It Mean To Have A 'First Amendment' For Sexual Orientation?,"* in the section entitled "equal protection of the laws" (page 240), I wrote:

> An almost equally obvious implication of a "free exercise" principle for sexual orientation would be to require the state to protect individuals of all sexual orientations from private violence, without discrimination, and to provide "recourse to the courts if there is not equal protection of heterosexuals and homosexuals in law enforcement." Indeed, I think this is the case even under current constitutional law .... In light of evidence of increasing levels of anti-gay violence, even homicide, this is far from a trivial matter. Private violence and threats of violence probably are more responsible than any aspect of public policy for the second-class status most homosexuals perceive in our society. Homosexuals should be able to appear together openly in public places without the fear of being assaulted.

15. You also noted that, with respect to laws preventing discrimination against homosexuals, "[t]here are also . . . conscientious moral views of many people," that must be taken into account. That was the excuse that many people gave in response to the civil rights movement in the sixties, that people in favor of de jure segregation on the basis of race had strong "moral" views. How do you distinguish between the two situations? Is it on that basis, that some people have strong "moral" views, that you do not support legislation prohibiting discrimination against homosexuals in hiring and employment?

All individuals should be treated equally under the law. While the belief that homosexual conduct is immoral is espoused by many in our society, I have argued for a "live and let live" policy that protects the rights of all by separating the moral issue from the discrimination issue. I have publicly supported legislation prohibiting discrimination against homosexuals in hiring and employment. See Salt Lake Tribune, Nov. 22, 1998, which I have provided to the Committee. As I have written, "[o]ne does not have to think that homosexuality is moral to believe that employers have no business interfering in the private lives of their employees." (*"What Would It Mean To Have A 'First Amendment' For Sexual Orientation?,"* at 254.)

16. In an article you wrote commenting on some writings of Professor Ronald Dworkin, you were critical of his reliance on the concept of judicial precedent, saying he "inflates" its "proper authority." You say that, "the argument that precedent must always be extended is self-contradictory, because longstanding precedent itself supports the legitimacy of refusing to carry precedents to the

broadest conception of their logic. Sometimes precedents are extended. Sometimes, upon reflection in light of a new case, precedents are narrowed or reinterpreted in a different way. Sometimes precedents are overruled. All of these ways of dealing with precedent are both common and legitimate. All can be 'principled.' If always extending precedents to broader and broader situations is the practice of the 'party of principle,' there has never been a principled judge, and a principled judge would be a fool." If what you say about precedent and the way courts use it is true, how are litigants, indeed all citizens, to know when to rely on precedent and when not to? What coherent theory governs the use of precedent?

The legal doctrine of precedent – or "stare decisis" – is that courts must adhere to the holdings of previous cases (although, in extraordinary cases, like *Brown v. Bd. of Education* or *Agostini v. Felton*, a court may sometimes overrule its own prior precedent, an option lower courts do not have with respect to precedents set by higher courts). In other words, like cases must be treated alike. It does not mean that a court must extend every precedent to the broadest conception of its logic. In subsequent cases, courts must examine the new factual situation in light of the earlier decision, in light of other values, interests, and (sometimes competing) legal principles that may be implicated, and in light of experience with the old rule, to determine what course to take. Indeed, one of the advantages of our common law system of adjudication is precisely that it moves one step at a time.

17. You have advocated abandoning the Supreme Court's test in Lemon v. Kurtzman in favor of of a test that would protect against government induced uniformity of religion. You wrote in the University of Chicago Law Review that, "[w]hen scrutinizing a law or governmental practice under the Religion Clauses, the courts should ask the following question: Is the purpose or probable effect to increase religious uniformity, either by inhibiting religious practice . . . or by forcing or inducing a contrary religious practice. . . without sufficient justification?" 59 U. Chi. L. Rev. 115, 169.

What would you consider sufficient justification be to allow the government to increase religious uniformity or force or induce a contrary religious practice? The way you have stated the test, it appears there is room for such justification.

Lemon v. Kurtzman is binding precedent, and if I am confirmed as a judge, I will have no hesitation in applying it. I have argued as a scholar, including in the paragraph you have cited, that the government's actions should have the least possible effect on religion – whether "positive" or "negative" – consistent with achievement of the government's legitimate purposes. My point in the quoted passage is that increasing religious uniformity it not itself a legitimate purpose. Religious pluralism is an important constitutional value. But, as the Supreme Court has repeatedly held – and as common sense would dictate – there will be times when the state's interest in regulating certain behavior will override private individuals' interests in exercising their religion.

18. Your test for what is a violation of the Establishment Clause is a much narrower one than has been used by the Supreme Court up to now, and it seems to discount the coercive effect that government endorsement of religion can often have to those outside of the mainstream religious belief, the "message to nonadherents" about which Justice O'Connor wrote in *Lynch v. Donnelly*. What do you say to those who do not adhere to the dominant religion, or who choose not to adhere to any religion, in defense of your Establishment Clause views?

My critique of Justice O'Connor's "endorsement test," which I set forth at 59 U.Chi. L. Rev. at 147-57, is not based on any lack of concern or respect for minority religions. Indeed, one of my criticisms is that:

> [Under the endorsement test], [m]essages affirming mainstream religion (and especially 'nonsectarian' theism) are likely to be familiar and to seem inconsequential. As Justice O'Connor has interpreted her approach, if a practice is 'longstanding' and 'nonsectarian,' it is unlikely to 'convey a message of endorsement of particular religious beliefs.' In our culture, most 'longstanding' symbols are those associated with Protestant Christianity, and those most likely to be perceived as 'nonsectarian' are symbols associated with liberal Protestantism, symbols common to the Jewish and Christian faiths, or symbols incorporating vague references to an unidentified deity.

I have made similar criticisms of Justice Scalia's interpretation of the Free Exercise Clause, which "places at a relative disadvantage those religious practices that are not widely engaged in." 57 U. Chi. L. Rev. at 1130-32. In my capacity as an attorney, I have devoted substantial effort – much of it *pro bono* – to defending the interests of members of minority religions, including Hare Krishnas, Jehovah's Witnesses, Christian Scientists, Eckankar (a so-called "new age" religion), Orthodox and other Jewish groups, black Pentecostals, and Seventh-day Adventists. I have testified against a school prayer amendment and in favor of the Native American Free Exercise of Religion Act. The answer to anyone who does not adhere to the dominant religion, or to any religion, is that my interpretation of the First Amendment in my scholarly writings attempts to protect the liberty of all.

RESPONSE OF WILLIAM J. MARTINI
TO QUESTIONS FROM CHAIRMAN LEAHY

1. **In the past few years, the issue of the proper role between federal government and the states has been hotly debated. The Supreme Court has struck down a number of federal statutes, most notably several designed to protect the civil rights of Americans, as beyond Congress's power under Section 5 of the Fourteenth Amendment, for example, Flores v. City of Boerne, 117 S. Ct. 2157 (1997), Kimel v Florida Board of Regents, 120 S. Ct. 631 (2000), and Board of Trustees v. Garrett, 19 S. Ct. 2240 (1999). The Supreme Court has also recently struck down statutes as being outside the authority granted to Congress by the Commerce Clause, such as in the case of U.S. v. Lopez, 115 S. Ct. 1624 (1995) or U.S. v. Morrison, 120 S. Ct. 1740 (2000). The Court has struck down other federal statutes as being a violation of the 10th Amendment or the 11th Amendment under the Court's expansive view of state's rights. These cases have been described as creating new power for state governments, as federal authority is being diminished.**

a. **What is your view of these developments? Do they constitute "judicial activism"?**

1.(a) Whether the recent decisions of the U.S. Supreme Court constitute "judicial activism" is the subject of legitimate debate by reasonable people. That is not, however, a luxury afforded a U.S. District Court judge who must interpret the law based on legal precedents, not make laws based on personal beliefs. Should I be fortunate enough to be confirmed, I would be bound by legal precedent and will apply relevant precedent to the cases that come before me.

Having had the opportunity to serve as a member of Congress, I can appreciate the energy, insight and deliberation that is necessary to enact legislation. I am acutely aware that foremost in the legislative process is a full evaluation of the constitutionality of any bill being proposed. Perhaps more importantly, members of Congress are elected by the citizenry to represent their interests in the working of the federal government. Accordingly, legislative acts of Congress should be accompanied by a presumption of constitutionality. Federal district court judges

applying congressional acts to particular factual circumstances must be bound by prior legal precedent and the doctrine of *stare decisis* and not consider personal belief, philosophy or orientation toward a particular social policy. The district court judge must interpret the laws enacted by Congress with the aforesaid analysis and presumption of constitutionality.

b. What is your understanding of the scope of congressional power under Article I of the Constitution, in particular, the Commerce Clause, and under Section 5 of the Fourteenth Amendment?

(b) Under Article I of the Constitution (and, in particular, the Commerce Clause) and Section 5 of the Fourteenth Amendment, Congress enjoys wide latitude in enacting legislation. Consequently, affirmative acts of Congress should be presumed constitutional.

Article I of the Constitution attributes to Congress specific delineated powers. The right to regulate commerce is a specifically delegated power of Congress. Thus, laws enacted thereunder should be vested with a presumption of constitutionality. A district court must weigh them accordingly when applying the facts and circumstances of a given case to judicial precedents. The doctrine of *stare decisis* strongly counsels the federal judiciary not to disturb the essential principles already in place regarding Congress' power to regulate transactions of a commercial nature.

Similarly, Congress must have wide latitude in enacting remedial legislation under Section 5 of the Fourteenth Amendment. Since Section 5 of the Fourteenth Amendment is an affirmative grant of power to Congress, it is for Congress in the first instance to "determine whether and what legislation is needed to secure the guarantees of the Fourteenth Amendment, and its

conclusions are entitled to much deference." Kimel v. Florida Board of Regents, 528 U.S. 62, 80-81 (2000). The judiciary should invalidate a congressional enactment only upon a plain showing that Congress has exceeded its constitutional bounds.

Should I be confirmed as a U.S. District Court judge, I would be bound by the legal precedents of the Supreme Court and U.S. Court of Appeals for the Third Circuit in considering such matters.

2. Please explain the role of the federal judiciary in protecting individual rights guaranteed by the Constitution or federal statutes.

2. Simply stated, the federal judiciary plays a special and vital role in protecting individual rights against unconstitutional legislative or executive action. The procedural safeguards afforded to the federal judiciary by Article III of the Constitution were not only designed to protect the judiciary as an institution, but perhaps more importantly, were established to protect litigants with "unpopular or minority causes or litigants who belong to despised or suspect classes." Palmore v. United States, 411 U.S. 389, 412 (1973)(Douglas, J., dissenting). Accordingly, the federal judiciary properly serves as the guarantor of individual liberty, based on the legal precedents applicable to the situation, and its primary responsibility is to protect individual rights that are guaranteed by the Constitution and federal statutes from unlawful intrusion or oppression.

SUBMISSIONS FOR THE RECORD

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BYLINE: By Albert W. Alschuler. Albert W. Alschuler is a law professor at the University of Chicago.

BODY:
Today **Michael McConnell** is scheduled to appear before the **Senate Judiciary Committee,** some 16 months after President Bush nominated him to be a judge of the 10th U.S. Circuit Court of Appeals. That the appointment of this leading lawyer and scholar has languished so long is a disgrace.

Questions in the Senate today are likely to focus on McConnell's characterization of Roe vs. Wade as "an embarrassment to those who take constitutional law seriously." As a supporter of reproductive freedom, pleased to have taken a small role in preparing Sarah Weddington for her oral argument on behalf of the plaintiff in Roe almost 30 years ago, I agree with McConnell, a professor at the University of Utah and a former University of Chicago law professor, about the quality of the court's opinion. So does virtually every constitutional scholar who has written on the subject. Just ask pre-eminent pro-choice scholar Laurence Tribe, feminist legal theorist Catherine MacKinnon, or Supreme Court Justice Ruth Bader Ginsburg.

To be sure, McConnell has criticized the ruling in Roe as well as the quality of the court's opinion. That is the main thing his opponents--who do not dispute his extraordinary qualifications--have against him. The opponents insist that the Senate should consider a nominee's views as well as his qualifications, and so it should. Nevertheless, over the course of our history, we have had a stronger judiciary when the Senate has allowed presidents to pick judges within broad limits.

The opponents characterize McConnell's views as "outside the mainstream." That is an insult to everyone with religious or other objections to abortion. Would McConnell's opponents ask the Senate to block the appointment of every Catholic who accepts his or her church's teachings on abortion, not only to the Supreme Court (where the nominee might vote to overrule Roe vs. Wade), but also to every lower federal court? And to reject the nominee regardless of his or her clear willingness to follow the law? Do they want the rule for all U.S. judges to be, "No Catholics need apply"?

The issue is not whether the Senate can properly take account of a nominee's views. It is whether people who care strongly about one issue should be allowed to block the confirmation of a nominee with differing views. When the champions of single-issue politics hold an able nominee hostage, they sow the seeds for retaliation. They penalize and discourage the forthright exchange of views in scholarly and other publications. They threaten to give us a judiciary of judges without convictions.

The long-term consequences may not matter to people who care strongly about an issue and believe they have the votes today. Their preference may be to take the bird in the hand. That is their view of citizenship. Agree with me on my very important issue, or goodbye. It's

the American way.

For a moment, the horror of Sept. 11 gave us hope of transcending this sort of partisanship, but perhaps this moment has passed.

Michael McConnell is stunningly well-qualified for the federal judiciary. More than 300 of his colleagues at law schools throughout America--Democrats and Republicans, liberals and conservatives--have praised his "path-breaking and influential" scholarly work and his "abiding commitment to fairness and the rule of law." If the publications praised by McConnell's colleagues for their wisdom and fairness block his confirmation, I fear for the confirmation process and the courts.

GRAPHIC: PHOTOPHOTO: **Michael McConnell.**

LOAD-DATE: September 18, 2002

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WE LIKE MIKE:
An Open Letter To Senator Patrick Leahy In Support Of Judicial Nominee Michael Mcconnell
By AKHIL REED AMAR AND VIKRAM DAVID AMAR

Friday, Feb. 08, 2002

To: Senator Patrick Leahy, Chair, Senate Judiciary Committee

Dear Senator Leahy,

We write this open letter in strong support of Professor Michael McConnell, who has been nominated by President Bush to sit on the U.S. Court of Appeals for the Tenth Circuit.

By way of introduction, we are registered Democrats who voted for Al Gore and Joe Lieberman. We have not hesitated to publicly oppose the Bush Administration where we think its policies endanger constitutional liberty. In a previous column, we sharply criticized Attorney General Ashcroft for issuing a constitutionally troubling eavesdropping regulation. In that column, we directed our readers to your website, which raised similar questions about this regulation. (We have also worked with your staff on a variety of other post 9-11 issues.) This week, we have filed a pro bono amicus brief in the Supreme Court opposing an intrusive and ill-justified high school drug-testing policy in Tecumseh, Oklahoma; the Bush Administration has filed an amicus brief on the other side.

But on the subject of the McConnell nomination, we applaud the Bush Administration. Here is an issue where thoughtful Democrats and Republicans, liberals and conservatives, should come together.

A Uniter, Not a Divider

We begin with a few observations about Michael McConnell, the man. Character counts, and nowhere does it matter more than for judicial appointments for life. We know McConnell well, and admire him. He is soft-spoken, modest, and generous towards others, both personally and intellectually. These qualities are all the more striking because McConnell is a truly gifted legal scholar. (Brilliance and humility do not often coincide, especially in the legal academy.) McConnell is a man of moderation, balance, and judgment. In short, he has an ideal "judicial temperament."

We are hardly alone in this assessment. In early July, over 300 law professors sent you a letter "enthusiastically" endorsing McConnell's nomination. This letter included many of McConnell's past and current colleagues-men and women who have seen him up close over many years. Its signatories included the past and present deans of many distinguished law schools, including Yale, Harvard, Chicago, Stanford, Michigan, and Cal-Berkeley.

Perhaps most strikingly, the list was genuinely bipartisan and cross-sectional, featuring dozens of leading "liberal" as well as "conservative" scholars, including Al Alschuler, Jack Balkin, Randy Barnett, Robert W. Bennett, Lillian BeVier, Vince Blasi, Steve Calabresi, Evan Caminker, Stephen Carter, Ron Cass, Jesse Choper, Bob Clark, Michael Dorf, John Hart Ely, Richard Epstein, Sam Estreicher, Dan Farber, Charles Fried, John Garvey, Mary Ann Glendon, Carole Goldberg, Kent Greenawalt, Sam Issacharoff, Elena Kagan, Yale Kamisar, Doug Kmiec, Anthony Kronman, Doug Laycock, Jeff Lehman, Lawrence Lessig, Sanford Levinson, Saul Levmore, Dan Lowenstein, Cal Massey, Tracey Meares, Robert Nagel, Mike Paulsen, Scot Powe, H. Jefferson Powell, David Shapiro, Suzanna Sherry, Ann-Marie Slaughter, Kate Stith, David Strauss, Peter Strauss, Bill Stuntz, Cass Sunstein, and Jeremy Waldron, to name just a few.

Rarely do law professors-by nature a contentious lot, rewarded for strong opinions-come to such universal consensus. It is hard to imagine many other things that the above-named professors (to say nothing of the broader list of 300) could all agree on.

A Legal Eagle

Competence counts alongside character; and here too McConnell is off the charts. After clerking for Judge J. Skelly Wright and Justice William Brennan, McConnell has gone on to be a leading public servant, private lawyer, and legal academic. In an earlier column, we argued that courts should bring together lawyers with varied legal backgrounds and pre-judicial careers. McConnell brings this desired balance together in a single person, who has excelled at very different legal jobs, and who has synthesized the distinctive virtues of each.

McConnell is a scholar's scholar AND a lawyer's lawyer. Each side of his resume is dazzling, but what is most remarkable is that a single person has excelled at both. (Only Larry Tribe, Walter Dellinger and a few others may claim comparable achievements both as a constitutional scholar AND as a constitutional practitioner.)

As a scholar, McConnell has published over fifty law review articles, many of which appeared in leading law reviews and are now considered classics. As a practitioner, he has served in various high-level governmental positions and has practiced law on his own. All told, he has argued eleven cases before the U.S. Supreme Court.

Being an outstanding scholar has made McConnell a better lawyer, and being an outstanding lawyer has made him a better scholar. To overstate: great scholars sometimes lack judgment, and good lawyers sometimes lack ideas. But McConnell sees both the big picture and the details; he has both vision and prudence. In his scholarship and his briefs, he has deftly woven legal tapestries respectful both of constitutional text and of the sometimes competing considerations of tradition, precedent, and established practice.

We give McConnell special credit for the way he has pursued private practice. He has taken on many pro bono cases, rather than simply selling himself to the highest bidder. He has worked well in partnership with other lawyers on his cases, who praise his collegiality. Collegiality is a special requirement for appellate judges, who do their work in panels; and the lack of it is sometimes a weakness of pure academics, who do most of their work alone.

The Vision Thing

As we have explained in an earlier column, Senators may properly and openly consider nominees' overall legal philosophies and likely judicial rulings. Given McConnell's scholarly writings and practice experience, we highlight two areas that will likely be of particular interest in his hearings.

McConnell is perhaps America's pre-eminent scholar of religious liberty. Although we do not agree with everything he has written on the subject, we find his general views carefully argued and normatively congenial.

A couple of media pieces have misstated McConnell's general views, so it's useful to set the record straight. McConnell generally champions the idea of governmental "neutrality"-government ordinarily should not favor any specific religion or religion generally; but neither should government single out religion for unique disfavor and disadvantage. Government shouldn't discriminate *against* religion. For example, if a veteran can use his GI loan to help finance his education at a nonreligious college, he should likewise be allowed to use the loan at Notre Dame or BYU-otherwise, the government is discriminating against religion.

This is a generally attractive vision, and it has real bite from a civil libertarian perspective, connecting the religion clauses to the Constitution's grand theme of equal citizenship. McConnell opposed state-sponsored graduation prayers at public school commencements even before the Supreme Court struck down this practice, 6-3, in the 1992 case of *Lee v. Weisman*. McConnell has likewise publicly endorsed the result of the more recent *Santa Fe Independent School District v. Doe* case, which invalidated (by a similar 6-3 vote) government-sponsored prayer at high school football games. In both situations, government flunked the neutrality/equality test.

McConnell has also championed the idea that courts should treat congressional statutes with

deference, and should not lightly strike them down. This is a principled position of judicial restraint, and it stands in stark contrast to more virulent forms of conservative ideology now prominent in federal courts generally and in the Supreme Court in particular.

In the almost eighty years between the Founding and Reconstruction, the Supreme Court invalidated acts of Congress on only two occasions, *Marbury v. Madison* in 1803 and *Dred Scott v. Sanford* in 1857. By the mid 1920s, this number had risen to about fifty-less than one case a year. Overall, the Warren Court invalidated acts of Congress in about twenty cases over a sixteen year span. By contrast, the Rehnquist Court in the last six years alone has struck down congressional laws (most of them constitutionally sound laws, in our view) in almost 30 cases-far more than in any prior six-year period.

This is a trend that should disturb Congress-and the confirmation process is one place for Congress to begin to fight back for its rightful place in the Constitution's scheme-co-ordinate with courts rather than below them.

One of the worst trends on the current Supreme Court has been its willingness to invalidate Congressional civil rights laws enacted pursuant to congressional power under the Reconstruction Amendments, from the Religious Freedom Restoration Act to the Violence Against Women Act and the Americans With Disabilities Act. McConnell has been a leading critic of this trend toward judicial imperialism. Put differently, McConnell has been a principled champion of Congress's right to implement its broad vision of civil rights even when Congress seeks to protect rights more generously than the Supreme Court has chosen to do on its own.

If Not McConnell, Who?

McConnell's nomination to the Tenth Circuit draws additional support from the fact that he is strongly supported by his home-state Senators, one of whom, Orrin Hatch, is the ranking member and former chair of the Judiciary Committee. Indeed, McConnell is supported by virtually all the Senators from the entire circuit. And if the Senate is to play anything close to an equal role with the president in the appointments game, it is important-and consistent with Senate traditions of courtesy and deference-for the Senate as a whole to pay particular respect to the views of Senators with a special stake in a given nomination.

We realize that in the mid 1990s, when the political situation was reversed-a Democratic President confronting a Republican Senate-some of President Clinton's judicial nominees were obliged to wait far too long to be confirmed. In particular, we were saddened that our friend Willy Fletcher, then a Professor at Cal-Berkeley, waited several years before finally winning confirmation to the Ninth Circuit. We strongly supported Fletcher then-for many of the same reasons we support McConnell now. Both are outstanding scholars with superb judicial temperaments.

It may be tempting to play tit for tat-Republicans stalled Fletcher so now Democrats obstruct McConnell. But we urge our fellow Democrats to resist this temptation.

At some point, someone needs to take a huge step away from an endless cycle of reprisal that works to the long-term disadvantage of both parties, and of the country. We were thus heartened to read your recent comments in the Congressional Record promising to hold hearings soon on McConnell's nomination.

But perhaps it's naive to think that moderate payback can be eliminated altogether from the appointments game. So here is a realpolitik point: President Bush is nominating and probably will continue to nominate several other judicial candidates who deserve very close scrutiny. Some of these candidates may have less prominent paper trails than McConnell. But many are likely inferior to McConnell in almost every way-less smart, less open, less humble, less lawyerly, less respectful of Congress, less knowledgeable about the Constitution. If there must be payback, please pick on someone else.

We like Mike-as does virtually everyone who knows him well-and we think that if you give him a chance, you will, too.

Akhil Reed Amar and Vikram David Amar are brothers who write about law. Akhil graduated from Yale College and Yale Law

Statement of U.S. Senator Barbara Boxer on the Nomination of Jeffrey S. White
September 18, 2002

Mr. Chairman, Senator Hatch and members of the Committee, I am pleased today to support the nomination of Jeffrey White for the U.S. District Court for the Northern District of California. Mr. White is highly regarded by those familiar with his work and is exceptionally well qualified for this position.

Mr. White received his law degree from the State University of New York, Buffalo, graduating first in his class, magna cum laude. Following law school, Mr. White went to work for the U.S. Justice Department, serving eight years as a federal prosecutor, where he prosecuted violations of federal labor racketeering laws and a variety of different criminal statutes as well as investigating and prosecuting public officials during service in the Public Integrity section of DOJ. During his public service Mr. White was named outstanding Assistant U.S. Attorney in both 1974 and 1976.

The trial experience Mr. White gained with the Justice Department equipped him well for a career in private practice. In 1978 he joined the firm of Orrick, Herrington and Sutcliffe in San Francisco where he has continued to practice to this day. As a litigation partner Mr. White has extensive complex litigation experience in a variety of areas including employment, contracts, fraud, SEC investigations, antitrust and other areas. He has tried more than 300 jury trials in his career.

In addition to his law practice, Mr. White has written numerous articles on litigation issues and served as a panelist and instructor for the Practicing Law Institute. He has also taught Civil Trial Advocacy for more than 20 years at the University of California, Berkeley's Boalt Hall School of Law, receiving the Roscoe Pound Foundation Award for Excellence in Teaching Trial Advocacy.

Mr. Chairman, the bipartisan committee that recommend Jeffery White for this position enthusiastically found him to be exceptionally well qualified. He is the type of person who would be able to take his seat on the bench and feel instantly "at home." Those who appear in his court will have the feeling that only comes from appearing before a judge whose intellect can encompass the most difficult issues and whose courtroom experience equips him well to fairly and efficiently handle any situation that arises. I strongly support Jeffrey White's appointment and urge your swift consideration.

NOTRE DAME LAW SCHOOL
NOTRE DAME, INDIANA 46556

September 17, 2002

Senator Patrick Leahy
Chair, Senate Judiciary Committee

Dear Senator Leahy,

Michael McConnell is this generation's greatest champion of religious freedom. In all his church-state writings, and in all his appellate work, McConnell has pursued two goals: the greatest possible liberty for individual thought and action, consistent with the minimum demands of the state, and protection of individual believers against discrimination just because of what they believe. McConnell has practiced what he preaches. His causes and clients range from Santeria animal sacrificers to Jehovah's Witnesses to evangelical Christians to Roman Catholics. McConnell is a credit to his Supreme Court mentor, William Brennan.

Americans United for Separation of Church and State nevertheless revile McConnell as a jack-boot facist. He is, according to AU executive director Barry Lynn, "relentless[ly] hostile to individual rights", an "extrem[ist]" involved with groups "seeking a radical abandonment of individual rights". What's worse, it seems, is that McConnell is "a conservative Christian who's willing to use the force of government to impose his viewpoint". As AU and Barry Lynn see the world, there is a redundancy in that last sentence.

AU and Barry Lynn urge you and the members of the Judiciary Committee to reject Michael McConnell. You should instead reject AU and Barry Lynn. They have made the McConnell nomination a referendum on religious intolerance. That it is. It is time – well past time – to blow the whistle on Barry Lynn and his band of bigots. A vote to confirm Michael McConnell would do precisely that.

I write with special urgency as a Roman Catholic law professor, who served from 1995 until 2001 as President of the Fellowship of Catholic Scholars. For the truth is that AU was conceived, born, and grew to maturity as a viciously anti-Catholic organization. AU – then called *Protestants and Other Americans United for the Separation of Church and State* – was "shocked" into existence, one of its Presidents wrote, by the Catholic Church's alleged determination to dismantle the First Amendment. For years AU decried the so-called "hidden wealth" of the Church. A respected political scientist described AU's style as "uncompromisingly militant". Erstwhile separationist allies abandoned partnerships with AU due, in large part, to its

strident no-Popery rhetoric.

In recent years AU has expanded its enemies list beyond the millions of Americans who hold the Catholic faith. No longer styling itself *Protestant*, AU is now just an unscrupulous, rabid secularist interest group. This may be progress, of a sorry sort. Michael McConnell, as a matter of fact, is not Catholic. AU indicts *him* as a "conservative Christian". AU denounces *him* for membership in the Christian Legal Society, a non-denominational, mostly Protestant, association of lawyers, students, and professors.

AU nonetheless retains a special commitment to Catholic bashing. AU has opposed, in season and out, all assistance to Catholic schools. The mainstay of its opposition has been the false claim that Catholic schools are, always and everywhere, "pervasively sectarian". This calumny was invented in the 1971 *Lemon* case. It means that Catholic educators do not care about the freedom and the reasoning of students. It means that Catholic educators – uniquely – aim instead to foist the faith upon unwitting, hapless pupils, to indoctrinate them rather than to teach them, to *make* them Catholic, come what may.

"Pervasively sectarian" is a gross, unconstitutional stereotype. Justice Clarence Thomas, writing for the plurality in *Mitchell v. Helms* (2000), denounced it fittingly: possessed of "a shameful pedigree", this "doctrine, born of bigotry, should be buried now".

Senator Leahy, fortune – and AU's conspicuous opposition to Michael McConnell – has favored your Committee with an opportunity to cast a decisive vote against religious bigotry. America's religious communities look forward to your confirmation of their champion.

Respectfully,

Gerard V. Bradley

Gerard V. Bradley
Professor of Law
University of Notre Dame

Cc: Senator Orrin Hatch

Senator Dianne Feinstein
Tom Oscherwitz (Draft #1)

Introductory Statement for Jeffrey White
Judicial Nominations Hearing
September 18, 2002

I am pleased to introduce Jeffrey White, a nominee to be a District Court Judge for the Northern District of California.

Mr. White is the **fourth nominee** to come before the Committee from California's bipartisan screening process, which Senator Boxer and I have set up with the White House.

Like the other nominees who have appeared before the Judiciary Committee, Mr. White received a unanimous **6-0 recommendation** from the screening committee in California.

Mr. White is joined by a tremendous number of family members and friends at today's hearing - **by my count 20 people**. While I will leave it Mr. White to introduce all of them, I would take special note of the following family members in attendance.

- His wife **Jane;**
- His sons **Eric and Josh;**
- His father, **Michael White**, and his step-mother, **Thelma White;**
- His mother-in-law, **Ruth Stabbe**, and father-in-law, **Arthur Stabbe**; and
- His sister, **Leslie Parrino.**

Mr. White's nomination today is a special source of family pride, because he was the first in his family to become a lawyer, and **he paid his own way through both college and law school.**

Mr. White comes before the Committee with extraordinary litigation experience — combining 20 years work as a top corporate litigator, eight years as a Federal prosecutor, and over twenty years teaching trial advocacy.

He has served as a partner at the national law firm of Orrick, Herrington & Sutcliffe since 1980, and has chaired the firm's litigation department since 1985.

His practice has focused on high-stakes employment trials and disputes involving contracts, fraud, white-collar crime, SEC investigations, antitrust, environmental, and construction issues.

Prior to joining Orrick, Mr. White worked for two years as a trial attorney for the United States Department of Justice Public Integrity Section. He also served for six years as an Assistant U.S. Attorney in the U.S. Attorney's Office for the District of Maryland.

On two separate occasions, he was designated "**outstanding Assistant U.S. Attorney**" at the District of Maryland office.

Since 1980, Mr. White has taught civil trial Advocacy at the University of California at Berkeley, Boalt Hall School of Law.

Mr. White received the 1994 Roscoe Pound Foundation Award for Excellence in teaching Trial Advocacy. He also actively participates in a program with a local high school where he teaches students about the jury system.

When evaluating a nominee, I think its important to consider the views of his peers who have had the opportunity to watch the nominee perform on a daily basis.

Barbara Caulfield, former district judge in the Northern District of California , said of White that he is "*a brilliant attorney with excellent trial experience, both as a public attorney and a private attorney. His judgment is excellent.*"

Ronald Malone of the prominent San Francisco firm of Shartsis, Friese and Ginsburg, describes Mr. White as an attorney "*with unimpeachable integrity who be an absolutely stellar addition to our District Court bench.*"

David Callaway, an Assistant U.S. Attorney in the Northern District of California, says that Mr. White has "*consistently impressed [him] with his knowledge skill, and professionalism. Although he is a vigorous advocate for his clients, he is unfailingly gracious, respectful, and congenial. His integrity, furthermore, is beyond reproach."*

I would also note that a substantial **majority of American Bar Association's Screening Committee found Mr. White "Qualified," while a minority found him "Well-Qualified."**

I would like a moment to thank Chairman Leahy for scheduling a prompt hearing for this nominee.

He was nominated on July 25, 2002, his American Bar Association evaluation was received on September 3, 2002, and he is now receiving a hearing just two weeks later.

In summary, I strongly support Mr. White nomination to the District Court, and urge the Committee to confirm him expeditiously.

Thank you , Mr. Chairman.

NEWS RELEASE

ORRIN HATCH

United States Senator for Utah

September 18, 2002 Contact: Margarita Tapia, 202/224-5225

Statement of Senator Orrin G. Hatch
Ranking Republican Member
Before the United States Senate Committee on the Judiciary

Hearing on the Nomination of

Michael W. McConnell to be a Circuit Judge on the United States Court of Appeals for the Tenth Circuit

Thank you, Mr. Chairman. Before we begin, I want to thank Senator you personally for scheduling this hearing. Given that Professor McConnell is nominated to fill a Utah vacancy on the Tenth Circuit, I appreciate your holding this hearing, and I want you to know that.

Of course, I get in trouble every time I am nice to you in public. I get a flood of letters from conservatives telling me I should not make friends with powerful Democrats. Well, it is tough to teach an old dog new tricks.

Mr. Chairman, I am proud to be here today to introduce, and to reiterate my strongest support for, Professor McConnell, who enjoys support from lots of powerful people, Republican and Democrat, conservative and liberal, and men and women – notably including well-known law professors Laurence Tribe, Cass Sunstein, Akhil Amar and Walter Dellinger, who are certainly no strangers to this Committee or its Members.

Professor McConnell, in my opinion, can not be pegged as an ideologue in any sense of the word. He is an honest man. He calls it as he sees it, and is beholden to no one or no group. He has taken scholarly positions and has brilliantly argued on issues that, at times, have been opposed by conservatives and, at times, opposed by liberals. As the Committee knows well, Professor McConnell has: publicly opposed impeachment of President Clinton, testified against a school prayer amendment; represented, without charge, some left-of-the-center groups such as People for the American Way and Americans United for the Separation of Church and State; and has been described by Supreme Court Justice Antonin Scalia as "the most prominent scholarly critic" of Scalia's approach to the Free Exercise clause. He is also a brave man. He has criticized my Constitutional amendment on the flag.

He has taken these positions, and has earned the broadest respect of his peers, liberal and conservative, not to make friends, not to agree with any agenda, but to be honest intellectually. Few people will disagree that he is truly one of the most humble legal geniuses of our time.

Mr. Chairman and Members of the Committee, it is my high honor and privilege to introduce to you Professor Michael McConnell, a Utahn and a scholar of the highest talent, the most profound integrity and supremely judicial temperament.

Professor McConnell holds the prestigious Presidential Professorship at the University of Utah College of Law, in Salt Lake City. He began his legal career at the University of Chicago Law School, where he graduated at the top of his class. Thereafter he served as a law clerk for two of the leading liberal jurists of the 20th century: Supreme Court Justice William J. Brennan, Jr. and D.C. Court of Appeals Judge J. Skelly Wright. I would like to acknowledge the presence here today of Judge Wright's widow, Helen, and her husband John Pickering. It is an honor to have you both here.

After completing those clerkships, Professor McConnell became Assistant General Counsel of OMB and then served as Assistant to the Solicitor General. He then joined the faculty of the University of Chicago Law School, where he was awarded tenure and later the prestigious William B. Graham Professorship.

Professor McConnell is an able and experienced appellate lawyer. He has argued eleven cases before the United States Supreme Court – and won nine of them. One of his presentations to the Supreme Court was named by the Los Angeles Daily Journal the "best oral argument"of the year. His clients include a wide range of entities, from Fortune 500 companies such as NBC and Ameritech, to organizations such as the United States Catholic Conference, to municipal authorities including the New York Metropolitan Transit Authority, as well as many individuals.

This combination of intelligence, skill and experience was very likely the reason that the American Bar Association rated Professor McConnell unanimously "well qualified" – its highest possible rating.

I could go on about Professor McConnell's outstanding record of achievement and his unsurpassed reputation, but so can so many friends of this Committee like Professors Sunstein, Tribe, Delinger or Kmiec.

Mr. Chairman, about the only opposition to Professor McConnell's nomination has come from the inside-the-Beltway advocacy groups. I must say, what I find striking is the stark difference between the evaluation provided to this Committee by his academic peers who know him best, and that done by those Washington interest groups.

In my view, Professor McConnell's excellence in scholarship, honesty in intellect, his defense of liberty, contribution to legal thought and precise understanding of the role of a judge show why he is one of the best nominees this Committee has evaluated in a long time.

In reviewing Professor McConnell's full record, one area of scholarship stood out for me: his contributions in protecting our Freedom of Religion. This is one that is important to me, and I know, from working on the Religious Freedom Restoration Act and the Religious Liberty Protection Act, all members of this Committee cherish dearly. As you know, Professor McConnell is widely regarded as modern America's most persuasive advocate for the idea that our government should ensure every citizen's right to worship – or not worship –in his or her

preferred manner. Through his scholarship and advocacy in court, he has stood up for the rights of all religious people – including members of some politically out-of-favor faiths – to worship free of government restriction or intrusion.

Many Americans believe that the freedom to exercise their own religion is the most profound and important idea on which this country and our government were founded. Many Americans feel so secure in this freedom that they have not personally felt the forces that were eroding it, or the tremendous success Professor McConnell's efforts have achieved in repairing that damage.

Before Professor McConnell began his prodigious scholarship in the area of the First Amendment's religion clauses, the idea was taking root that the government must disfavor religion in its policies. That is, judges and scholars believed that all groups must be treated equally except religions, which must be excluded entirely from any government program or policy.

Professor McConnell's scholarship served as a dramatic wake-up call. He researched the Founders' writings and presented with illuminating clarity that the point of free exercise is for government to remain neutral as between religions, and neutral as between religions and non-religions, and it must accommodate religious activity where feasible. He demonstrated there was no basis in the founding for the view that our government must be anti-religion. The persuasiveness of his writing reawakened American legal scholars and judges to the Founders' view that the First Amendment's purpose is to protect religion from government, not the other way around. His work has helped reinvigorate the healthy and dynamic pluralism of religion that has allowed all faiths to flourish in this most religiously tolerant nation in human history.

McConnell's views defy political pigeonholing. On questions of Free Exercise of Religion, he has generally sided with the so-called liberal wing of the Court, arguing for vigorous protection for the rights of religious minorities. In fact, as I said earlier, in one opinion, Supreme Court Justice Antonin Scalia described McConnell as "the most prominent scholarly critic" of Scalia's more limited view of Free Exercise rights.

On questions of Establishment of Religion, McConnell's view that religious perspectives should be given equal but not favored treatment in the public sphere has led him to testify against a school prayer amendment, while supporting the rights of religious citizens and groups to receive access to public resources on an equal basis.

Mr. Chairman, just as the pluralism of religious diversity has profoundly enriched the spiritual life of our country, so has the strong tradition of academic freedom and exchange of ideas allowed an astonishing creative explosion of ideas and achievement in America that has benefitted the people of the United States and around the world. Our First Amendment and our intellectual property laws strive to protect, stimulate and widely disseminate such thought and exchange.

Few people in modern America have contributed more to their area of expertise, and thus proven the value of academic freedom, than Professor McConnell. He has written over 50 articles in professional journals and books. He has delivered hundreds of lectures and penned

many op-ed pieces. He has contributed an immeasurable amount to the discourse of legal ideas. As Professor Laurence Tribe has written to this Committee, "McConnell is among the nation's most distinguished constitutional scholars and a fine teacher." Tribe further explained that he and McConnell "share a commitment to principled legal interpretation and to a broadly civil libertarian constitutional framework." Mr. Chairman, I ask that Professor Tribe's letter be included in the record.

The significance of Professor McConnell's contributions to the legal profession in part explains why 304 professors – ranging from conservative to liberal – have signed a single letter urging this Committee to confirm McConnell's nomination. When was the last time that 304 professors agreed on anything? I ask consent that this letter also be included in the record.

Professor McConnell's peers consider him one of the nation's foremost constitutional scholars and appellate advocates and as a person with a reputation for open-minded fairness. In addition to the professors I mentioned earlier, Professors Charles Fried, Akhil Amar, Larry Lessig, Sanford Levinson, Douglas Laycock, and Dean John Sexton have been among those who have praised McConnell's integrity, ability and fair-minded approach to legal issues. Mr. Chairman, I ask consent to include these letters in the record.

Over the years, many on both sides of the aisle have discussed the impact of this Committee's evaluation process on those who have added the most to the public discourse of legal ideas.

I think we should praise and encourage the prolific exchange of honest, and principled scholarly writing, assuming such scholars know the proper role of a judge, to interpret the law as written and to follow precedent – and I should say to leave the innovative scholarship at home once confirmed to the bench. However, if one was criticized for past scholarship and academic publishing, even where they fully understand the limited role of a judge, we would find ourselves in the unfortunate situation of having bright young people either stop writing or give up any hope of serving in the judiciary.

Mr. Chairman, as you know, one of the Senate's most important roles in exercising advice and consent on judicial nominees is to make sure that they are free from any bias – whether political, religious, personal or otherwise – that would endanger their ability to follow the law as written by the legislature and interpreted by higher courts. No one wants a judge who plays legislator from the bench. We want and expect judges who know their limited role and who will uphold the law regardless of their personal views.

On the issue of past academic exchange and the nominee's understanding of the proper role of a judge, it is important for me to address Professor McConnell's writings on abortion. In reviewing his record, I found the most important thing he has written on this topic is that U.S. Supreme Court precedent setting forth the basic abortion right is settled and secure. Indeed, he believes that lower court judges have a clear duty to follow and apply that case law, and he will do just that if confirmed.

Beyond that, Professor McConnell's scholarship on the subject defies standard stereotypes. His writings have focused on two questions. First is the methodology or legitimacy

of the Court's reasoning in Roe v. Wade. Like many constitutional scholars – including prominent supporters of abortion rights such as Justice Ruth Bader Ginsberg – Professor McConnell has written that the Court in Roe overstepped the bounds of proper judicial decision making and has argued that, when facing other issues of policy disagreement, the courts should not substitute their judgment for that of the legislatures.

The second area he has addressed is the possibility of middle-ground approaches to abortion that would find support even from many people who support abortion rights as a general matter – dealing with such issues such as counseling and support for troubled pregnant women. He has been critical of the extremes on both sides of the questions surrounding abortion.

Professor McConnell has also written in defense of the free-speech rights of abortion protestors.

The fact is Professor McConnell's writings show that he is indeed committed to the ideas of stare decisis and controlling legal precedent. He knows full well the role of a judge – to interpret the laws as written and interpreted by higher courts and to leave the politics to the people.

You don't have to take my word for it, . . . although I would hope you will give it great weight. Professor Cass Sunstein has told this Committee that McConnell is "the furthest thing from an idealogue." I ask that Professor Sunstein's letter be in included in the record as well. Professor McConnell's nomination also has been praised by a number of former Clinton administration officials, including Solicitor General Walter Dellinger, Deputy White House Counsel William Marshall, Domestic Policy Advisors Bill Galston and Elena Kagan, and Associate Attorney General John Schmidt.

Listen to part of a letter I received from the Legal Director of the ACLU chapter in Utah. He wrote – in his personal capacity – to endorse Professor McConnell "enthusiastically and without qualification," saying that "there can be no doubt that [lawyers who appear before him] will receive a fair and impartial hearing, thoughtful scrutiny and careful consideration toward a decision that will be based solely on the merits and not on any predetermined ideological or political agenda."

So, Mr. Chairman, these are the reasons why I am thanking you for holding this hearing and why I strongly believe that Professor McConnell is one of the very best people nominated to a judgeship. He is a defender of American freedom.

I am very much looking forward to hearing from Professor McConnell today, and to working with this Committee to obtain the Committee's positive recommendation to the full Senate and to the full Senate's confirmation.

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September 10, 2002

Hon. Patrick J. Leahy
Chairman, U.S. Senate Committee on the Judiciary
433 Russell Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy:

I am writing in strong support of Michael McConnell's nomination to the United States Court of Appeals for the Tenth Circuit.

I have known Michael since 1991, when I joined the faculty of the University of Chicago Law School. For several years, we spoke almost daily about law. In all that time, I never knew Michael to be anything other than thoughtful, open-minded, and even-handed in his approach to legal questions. There is no part of Michael that is activist or extremist. He is one of the most fair and scrupulous individuals I have ever encountered. I do not believe he ever would bend the law to get to a political result. I disagree with Michael on some important matters, as I am sure you and other members of the Judiciary Committee do. But I am confident that as a judge, he would handle each and every case, regardless of the legal issue at stake, with the qualities of honesty, integrity, and fidelity to law that all his academic colleagues recognize in him.

As you may recall, I was once myself a nominee to the appellate bench. At that time, Michael exerted himself mightily to persuade th n-Chairman Hatch to grant me a hearing. He thought that the treatment that the Judiciary Committee gave to many of President Clinton's nominees was wrong. And he acted on that conviction, declining to join in the obstruction, but instead doing his best, regardless of political affiliation, for the people whom he thought would bring credit to the federal bench. I believe that approach says a great deal about the kind of judge Michael would make if you honor him with confirmation.

I admire greatly the job you have done as Chairman of the Judiciary Committee. I hope you can give Michael a hearing and vote to confirm him. I am confident you would not regret the decision.

Very truly yours,

E Kagan

Elena Kagan

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The Judiciary Committee as Political Killer

By DOUGLAS W. KMIEC

While the nation has been properly focused on the war on terrorism, the Senate Judiciary Committee has continued its all-out offensive against President Bush's judicial nominees. The tactical strategy of the Democratic committee majority, led by Sen. Patrick J. Leahy (D-Vt.), is multi-headed, ranging from not giving the president's candidates a hearing at all to waiting a year or more to do so, or, in its most aggressive form, to rejecting nominees by committee—literally, substituting the 10-member Democratic committee majority for the deliberations of the full Senate.

This week, the nomination of Michael McConnell, one of the nation's most capable constitutional scholars, will be before the committee. The professor has had a distinguished career, representing the United States in the solicitor general's office, serving in the executive branch and teaching at the University of Chicago and the University of Utah.

It is not an overstatement to say that McConnell's arguments before the U.S. Supreme Court have reestablished the principle that discrimination against citizens on the basis of religion should have no resonance in either constitutional law or practice.

Had the system been working as the framers envisaged, McConnell would have been approved by unanimous consent months ago. More than 300 law deans and professors across the ideological spectrum have written in his behalf, characterizing his work as, for example, the product of "care, thoroughness and fairness to opposing viewpoints." Yet, despite his scholarly record and ideal judicial temperament, McConnell's nomination has been languishing for more than a year.

Now with the hearing imminent, McConnell's nomination is being targeted for defeat by the usual single-issue pressure groups.

McConnell's thoughtful academic commentary is being ripped from context and reduced to mean and virtually meaningless caricature. Such well-funded political campaigns are the regrettable, but inevitable, corollary of the Senate distorting its constitutional duty into one of political compatibility rather than professional capability.

The Senate's role in advice and consent is to discern integrity and competence, not to condition appointment upon a judge changing his judicial philosophy to one that coincides with the dominant perspectives on the committee. Both political parties have forgotten this precept over time. Consequently, there is now a wholesale disregard of the relationship between an independent judiciary and the rule of law.

Fueling this disregard is the Judiciary Committee's more recent usurpation of the advice and-consent authority that by rights belongs to the full Senate. The founders intended the whole body to act to get the benefit of representation and deliberation. This has been our historical practice with very few exceptions. No Supreme Court nominee has ever been formally rejected in the Judiciary Committee alone, and all but four federal appellate nominees have been brought to the Senate floor as well.

More than 10% of the seats on the federal bench are vacant. The Administrative Office of U.S. Courts has categorized 32 of these vacancies as emergencies because of the backlog they are causing to case dockets. The American Bar Assn. has decried the protracted delays. Political litmus tests have no place before the Senate Judiciary Committee. Under our Constitution, it is expected that the president nominates judges. The Senate's power of advice and consent is not about undoing those choices.

Rather, as Alexander Hamilton explained in the Federalist Papers, "the necessity of [the whole Senate's] concurrence would have a powerful, though, in general a silent operation." Since the president would know that his choices could be rejected, it "would tend greatly to prevent the appointment of unfit characters."

There is nothing unfit about McConnell. Unless soon righted, however, the fitness of the confirmation process remains very much in doubt.

Douglas W. Kmiec is dean of the Catholic University School of Law and a senior policy fellow at Pepperdine University.

Hon. Orrin G. Hatch
Ranking Minority Member, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Hatch:

We enthusiastically support the nomination of Michael W. McConnell to be a judge of the United States Court of Appeals for the Tenth Circuit.

McConnell is one of America's most distinguished constitutional law scholars and one of its most distinguished lawyers. He has published more than fifty scholarly articles in the nation's leading law reviews and has argued eleven cases before the United States Supreme Court. He is currently Presidential Professor at the University of Utah College of Law and was formerly a professor for twelve years at the University of Chicago Law School. He was a law clerk to Judge J. Skelly Wright of the United States Court of Appeals for the D.C. Circuit and to Justice William J. Brennan, Jr. of the United States Supreme Court. He served as Assistant General Counsel of the Office of Management and Budget and as Assistant Solicitor General.

McConnell's scholarly work has been path-breaking and influential. It also has been characterized by care, thoroughness, and fairness to opposing viewpoints. Both in person and in his writings, McConnell exhibits respect, gentleness, concern, rigor, integrity, a willingness to listen and to consider, and an abiding commitment to fairness and the rule of law. He provides a model of the wisdom, intelligence, temperament, craftsmanship, and personal qualities that can make a judge outstanding.

Many of the signers of this letter are Democrats who did not vote for the President who nominated Professor McConnell. Some of us have disagreed with McConnell on constitutional issues and undoubtedly will disagree with him again. All of us, however, hope that the Senate will confirm Professor McConnell without greater delay than is necessary to fulfill its important Constitutional responsibilities. In our view, Michael McConnell is a nominee of exceptional merit whose confirmation warrants bipartisan support.

We list our institutional affiliations for purposes of identification only.

Sincerely yours,

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Forging Ideological Compromise

By Douglas Laycock

AUSTIN, Tex.

The Senate Judiciary Committee begins hearings today on the nomination of Michael McConnell to a seat on the United States Court of Appeals. His opponents disagree with him on substantive legal issues, especially funding for religious schools. The McConnell hearing follows the acrimonious rejection of another nominee to the federal appeals court, Justice Priscilla Owen of the Texas Supreme Court, and a political battle looms over the pending nomination of Miguel Estrada, a lawyer in Washington.

Republicans say that Mr. McConnell is a highly talented lawyer of good character, which is certainly true, and that this is the only question that should legitimately concern the Senate, which is not true. The central issue in this and other nominations is the nominees' views on the Constitution, federal law and the role of the federal courts. Presidents of both parties have tried to rule questions on these views out of bounds, and the Senate has often been timorous about its right to ask. But such questions should be the heart of the process.

The nominations of Mr. McConnell, Ms. Owen and Mr. Estrada are contemporary illustrations of an old debate. As far back as 1801, lame-duck Federalists tried to pack the federal courts with loyalists appointed for life. Current controversies over abortion, school vouchers and federalism show that politicians still care what judicial nominees think.

When the president and the Senate disagree about important constitutional issues, confirmation battles are inevitable. But if senators doubt their authority to debate a nominee's legal views openly, or are reluctant to do so, we get guerrilla warfare: exaggerated or trumped-up ethics charges and stubborn refusals to consider nominations at all.

Presidents certainly consider the views of their judicial nominees, modestly in some administrations and intensely in others. It is essential to constitutional checks and balances that the Senate do the same. Judges are not like cabinet officers; they do not work for the president. Instead, they independently enforce the limits on governmental power — including the president's power.

The Senate is the principal constitutional safeguard against a president appointing judges who would undermine the Constitution rather than enforce it. Political judgments cannot be avoided, and both the president and the Senate must necessarily act on their own judgment about a judicial nominee's ideology.

When the president and the Senate disagree on constitutional interpretation, they have to meet somewhere in the middle or no judges will be appointed at all. In the current political climate, appropriate judicial appointments should be to the right of the Democrats on the Senate Judiciary Committee and to the left of the president, and certainly to the left of those elements in the Republican Party that care the most about remaking the judiciary. Confining nominees to the ideological range between the president and the Judiciary Committee would push the judiciary toward the center and exclude the extremes of both left and right. It would reduce the magnitude of periodic shifts in judicial views on constitutional issues and would reduce the number of judgeships left vacant while the president plays to his base and the Senate stalls.

> A strategy to end deadlocks over judicial nominees.

Identifying this range would require serious Senate debate. It might require the president to consult the leadership of the Senate Judiciary Committee before he makes a formal nomination, instead of simply consulting with senators from his own party about nominees from their states. It would require research and sometimes expert testimony to review nominees' records on all issues, not just those issues to which lobbying groups call attention. The goal would be not merely to reject a few genuine extremists, but to negotiate a reasonable compromise between the president's preferences and the Senate's.

Mr. McConnell is an easy case on these criteria. He is in favor of vouchers and against abortion, for example, but he would follow the law on these issues, and he is an independent thinker with moderate positions on many other issues. He has said the Supreme Court should have given Florida more time to conduct a proper recount, and he opposed the impeachment of former President Bill Clinton. Within the Republican spectrum, Mr. McConnell, who once served as a law clerk for the late Justice William Brennan of the United States Supreme Court, is plainly a moderate.

Splitting the difference between the president and the Senate would have an additional benefit: It would require parties to receive greater voter support before remaking the judiciary. If a party wants a mandate to fill the federal judiciary with its own hard-liners, it must win both the presidency and the Senate. Winning the presidency and losing the Senate is not a mandate to control two of the three branches of government.

Constitutional understandings change over time, and the selection of new judges is a principal means by which such changes find their way into our laws. But the Constitution gives the president and the Senate an equal voice in that process. Just as senators have their own understandings of the Constitution, so they must make their own judgments about the ideological commitments of the president's judicial nominees. □

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1. The One-Person, One Vote Decisions

The Charge: "McConnell opposes `one person, one vote'" -- People for the American Way.

The Truth: McConnell defended the Supreme court's decisions requiring legislative districts of reasonably equal size. What he criticized was the requirement of "precise mathematical equality," which has led to unconstrained gerrymandering and non-competitive districts.

What McConnell Actually Said About Unequal Apportionment: "Until the early 1960s, the federal courts played no role in legislative districting. By almost any measure of democratic legitimacy, however, the districting process was a disaster. . . .

This style of malapportionment in Tennessee and elsewhere gave rural and agrarian interests a lock on legislative power, despite their minority status. . . . Moreover, the urban and suburban majority had no peaceful political means for redressing the electoral balance. . . .

A districting scheme so malapportioned that a minority faction is in complete control, without regard to democratic sentiment, violates the basic norms of republican government. . . . Constitutional standards under the Republican Form of Government Clause are ill-developed, but surely a government is not `republican' if a minority faction maintains control, and the majority has no means of overturning it."

What McConnell Actually Said About Precise Mathematical Equality: "In order to bring districts as close to `precise mathematical equality' as possible, states must disregard preexisting political boundaries such as cities, townships, and counties. Adherence to these traditional boundaries was, historically, the principal constraint on creative districting, popularly known as `gerrymandering.' Once freed from these traditional constraints by the Supreme Court's `precise mathematical equality rule,' legislative line-drawers were able to draw maps to produce the results they desired, rending elections less a re`ection of popular opinion than of legislative craftsmanship. . . . The results? Protection for incumbents, a tendency toward homogenous -- and hence more partisan -- districts, racial and partisan gerrymandering, and ultimately, a widespread sense that elections do not matter."

The Citation: Michael W. McConnell, *The Redistricting Cases: Original Mistakes and Current Consequences*, 24 Harvard Journal of Law and Public Policy 103, 103-04 (2000).

2. Federalism

The Charge: McConnell "celebrates the current Supreme Court's series of 5-4 states' rights rulings, which have impaired the ability of Congress to protect the rights of ordinary Americans and threaten to dismantle many of the legal and social justice gains of the past 70 years." -- People for the American Way

The Truth: Far from celebrating these cases, McConnell has rejected the principle that underlies them. The Court has struck down laws to "protect the rights of ordinary Americans" principally under its theory that the Court has exclusive power to interpret constitutional rights and Congress has no power to interpret constitutional protections more broadly. This principle was first stated in *City of Boerne v. Flores*, 521 U.S. 507 (1997). McConnell wrote one of the most important of the many criticisms of the Court's new rule.

What McConnell Actually Said About Congressional Enforcement of Civil Liberties: "In *Boerne*, the Court erred in assuming that congressional interpretation of the Fourteenth Amendment is illegitimate. The historical record shows that the framers of the Amendment expected Congress, not the Court, to be the primary agent of its enforcement, and that Congress would not necessarily consider itself bound by Court precedents in executing that function. . . .

"Judicial interpretations of the Constitution are often influenced by institutional considerations, such as the principle of judicial restraint, that create 'slippage' between the Constitution as enforced and the Constitution itself. . . . But when Congress engages in constitutional interpretation under the enforcement power, it is not so constrained. The democratic values underlying the doctrine of judicial restraint do not apply to Congress. . . . Congress's decision to adopt a more robust, freedom-protective interpretation of the Free Exercise Clause did not 'alter' the Constitution or create 'new' rights. Rather, RFRA merely liberated the enforcement of free exercise rights from constraints derived from judicial restraint."

The Citation: Michael W. McConnell, *Institutions and Interpretations: A Critique of City of Boerne v. Flores*, 111 Harvard Law Review 153, 194-95 (1997).

3. School Prayer

The Charge: McConnell "has indicated his support for public school prayer." -- Americans United for Separation of Church and State. "McConnell's confirmation would threaten the right of students not to be made captive audiences to religious worship and promotion of religion in public schools." -- People for the American Way.

The Truth: McConnell supports the school prayer decisions and testified against a school prayer amendment. He has opposed prayer at public school graduations and football games.

What McConnell Actually Said About School Prayer: "[O]fficially sponsored and led prayer in public school classrooms would be impossible to maintain today in a way that would be either spiritually valuable or noncoercive. . . .

"I do not believe that officially sponsored, vocal classroom prayer can be administered without effectively coercing those in the minority. And that should not be permitted. . . ."

What McConnell Actually Said About Prayer at Graduation: "I would take pains to emphasize that the concept of coercion cannot, in itself, supply a standard for distinguishing between establishments and nonestablishments, and that it is vital to understand the concept of coercion broadly and realistically. For example, the Court is now being urged to adopt the coercion test in a case involvi g a public prayer at a junior high school graduation ceremony. I would have thought that gathering a captive audience is a classic example of coercion; participation is hardly voluntary if the cost of avoiding the prayer is to miss one's graduation. Equally seriously, it appears that the content of the prayer was subject to indirect government control, which is a species of coercion. For the Court to embrace the coercion test in this form would be a small step back toward permitting the government to indoctrinate children in the favored civil religion of nondenominational theism."

What McConnell Actually Said About Prayer at Football Games: "If officially sanctioned prayers at public events are unconstitutional, government bodies cannot evade constitutional limitations by clever stratagems. Nor do I have any serious disagreement with the Court's conclusions, based on this record, that the Santa Fe policy had the purpose and effect of perpetuating its prior practice of beginning football games with prayer. . . . [T]he Court's conclusions were more than reasonable.

More importantly, the Court's general approach to the Establishment Clause issue was correct."

The Citations: First quotation: Testimony of Michael McConnell, *Religious Freedom*, Hearing Before the Senate Judiciary Committee, Oct. 20, 1995 (1995 Westlaw 11095849).

Second quotation: Michael W. McConnell, *Religious Freedom at a Crossroads*, 59 University of Chicago Law Review 115, 158-59 (1992).

Third quotation: Michael W. McConnell, *State Action and the Supreme Court's Emerging Consensus on the Line Between Establishment and Private Religious Expression*, 28 Pepperdine Law Review 681, 709-10 (2001).

4. Government Religious Observances

The Charge: "McConnell criticized several recent Supreme Court rulings that upheld church-state separation, including *Lee v. Weisman* (1992), which prohibited government-sponsored prayer at school graduation ceremonies, and *County of Allegheny v. ACLU* (1989), which limited government endorsement of religious displays on public property. He said these decisions 'have nothing to do with freedom of religion. There is not a single person in these cases who has been hindered or discouraged by government action from following a religious practice or way of life.' (Jan.-Feb. 1993, *American Enterprise*). -- Americans United for Separation of Church and State.

The Truth: McConnell argued for the ban on school-sponsored prayer at graduation even before the case was decided. See page 3.

County of Allegheny is about municipal Christmas displays, which Americans United opposes. McConnell's criticism was that the Court should either have forbidden them or permitted them, but it should not have picked the awkward compromise it did.

In the passage quoted by Americans United, McConnell's point was not to criticize the decisions mentioned, but to criticize the Court's priorities in failing to protect private religious practices with the same rigor displayed in its cases on government sponsored religious practices.

What McConnell Actually Said About These Cases: Two sentences past where Americans United stopped quoting, McConnell said: "My point is not that *Lee v. Weisman* or any of these other cases was wrongly decided. But the Supreme Court and the news media are so preoccupied with the finer points of freedom from religion that far more important cases of genuine freedom of religion have been almost completely neglected." He then gave examples.

What McConnell Actually Said About Prayer at Graduation: See page 3.

What McConnell Actually Said About Government Christmas Displays: After accurately describing the facts of the cases, in which the Court struck down a nativity scene accompanied by greenery and poinsettias, but upheld one accompanied by "a Santa Clause house, reindeer, candy-striped poles, a Christmas tree, carolers, cut-out figures representing such characters as a clown, an elephant, and a teddy bear, hundreds of colored lights, a banner stating 'Season's Greetings,' and a talking wishing well":

"The Court appears to have arrived at the worst of all possible outcomes. It would be better to forbid the government to have religious symbols at all than to require that they be festooned with the trappings of modern American materialism. After all, no one's religion depends on whether the government displays the symbols of the Christian and Jewish holidays. But if there are to be religious symbols, they should be treated with respect. To allow them only under the conditions approved by the Court makes everyone the loser."

The Citations: On the two cases: Michael McConnell, *Freedom From Religion?*, American Enterprise 34, 36-37 (Jan.-Feb. 1993).

On Christmas displays: Michael W. McConnell, *Religious Freedom at a Crossroads*, 59 University of Chicago Law Review 115, 126-27 (1992).

5. Separation of Church and State

The Charge: "McConnell takes issue with Jefferson's metaphor of the `wall of separation' between church and state, calling it `misleading.'" -- People for the American Way. "McConnell has described church-state separation as never having been a `plausible or attractive conception of proper relations between government and religion in the modern activist state.'" Americans United for Separation of Church and State.

The Truth: This one is partly true, but badly out of context. McConnell supports much of what most people mean by separation, but he does believe the separation metaphor has misled the Court. The one real disagreement he has on this issue with Americans United and People for the American Way is that McConnell would let the government fund secular services (such as education, medical care, treatment for drug addiction, food and shelter for the poor and the homeless) from any service provider willing to provide the service, whether religious or secular. That has been the model through most of American history for higher education, medical care, and most social services. For elementary and secondary education, we have had a different model, one that sharply limited public funds to religious schools. This is a serious disagreement. But it does not mean that McConnell generally wants to unite church and state.

What McConnell Actually Said About the Separation Metaphor: "Separation has never been a plausible or attractive conception of proper relations between government and religion in the modern activist state. [Americans United quote ends here.] To be sure, some aspects of what can be called `separation' are essential, and essentially uncontroversial. The government should not control the institutions of the church; nor should churches have any institutional role, as such, in government. No citizen is entitled to special privileges on account of membership in a favored denomination; nor may there may special disabilities for anyone else. Moreover, the original conception of separation -- that government be strictly limited so as not to invade the province of religion -- remains the best means of preserving religious freedom. Government protects religious freedom best by leaving religiously sensitive matters to the private sphere. But in many areas of life, religion and government both necessarily play a role Indeed, with the growth of the modern welfare-regulatory state, the occasions for overlap increase exponentially, as governments regulate and subsidize activities previously private and often religious. In these many areas of overlap, the idea of `separation between church and state is [Americans United quote starts up again here] either meaningless, or (worse) is a prescription for secularization of areas of life that are properly pluralistic. [Americans United quote ends again here] That is why principles such as neutrality (with respect to government subsidies) and accommodation (with respect to government regulation) have come to replace `separation' in most areas of constitutional conflict."

The Citation: Michael W. McConnell, *Five Reasons to Reject the Claim that Religious Arguments Should be Excluded from Democratic Deliberation*, 1999 Utah Law Review 639, 640-41.

6. Legislative Chaplains

The Charge: No specific charge here. But McConnell's opinion on legislative chaplains is another clear counter-example to the general charges that he wants government to impose religion on people.

The Truth: In *Marsh v. Chambers*, 463 U.S. 783 (1983), the Supreme Court upheld legislative chaplains, basically because the First Congress had them. McConnell sharply criticized this decision.

What McConnell Said About Legislative Chaplains: "*Marsh v. Chambers* represents original intent subverting the principle of the rule of law. Unless we can articulate some principle that explains why legislative chaplains might not violate the establishment clause, and demonstrate that that principle continues to be applicable today, we cannot uphold a practice that so clearly violates fundamental principles we recognize under the clause. . . .

The Supreme Court offered no theory whatsoever in *Marsh v. Chambers* . . . So far as one can tell from the Court's opinion, there is simply an exception from the establishment clause for legislative chaplains. It is as if the first amendment read, 'Congress shall pass no law respecting an establishment of religion, other than a legislative chaplaincy.' . . . Indeed, it can be said that *Marsh v. Chambers* does not interpret the Constitution at all."

The Citation: Michael W. McConnell, *On Reading the Constitution*, 73 Cornell Law Review 359, 362-63 (1988).

7. Generalized Charges of Extremism

The Charge: "McConnell has a long record of extremism on a broad range of individual rights issues. . . . McConnell starts to make Bork look moderate. This man wants to gut the constitutional protections that Americans count on." -- Barry Lynn, Americans United for Separation of Church and State.

The Truth: This is the most absurd charge of all. McConnell has a long record of positions and activities in support of a broad range of civil liberties, activities that unmistakably mark him as intellectually honest and independent and as a moderate among the range of possible Republican nominees. In addition to the examples above, here are some more:

Bush v. Gore: McConnell has written that in *Bush v. Gore*, the Supreme Court should have given Florida more time to finish a proper recount. "Having rested the decision on the standardless character of the recount ordered by the state court, the logical outcome was to remand under proper constitutional standards." Michael W. McConnell, *Two-and-a-Half Cheers for Bush v. Gore*, 68 University of Chicago Law Review 657, 674 (2001).

Impeachment: McConnell publicly opposed the impeachment of President Clinton. "Those who feel the Constitution requires the House to impeach the president are misguided, according to Michael McConnell, a prominent University of Utah constitutional law professor who sent an anti-impeachment letter Saturday to House Judiciary Chairman Henry Hyde . . .

"'The inviolability of elections may be the most important constitutional principle that we have,' McConnell wrote. 'The best test of whether presidential misconduct rises to the level of impeachment is whether members of his own party are willing to join in the motion.'" John Heilprin, *Rep. Hansen Urging Support for Impeachment*, Salt Lake Tribune (Dec. 16, 1998) (1998 Westlaw 21662101).

Free Speech: McConnell vigorously supports free speech rights, whether or not he agrees with the speaker. "I think the free-speech principle used to be fairly robust. And I consider the high point of this the flag burning cases, where very solid majorities of the Court, including some of the most conservative Justices, voted -- correctly, in my view -- that laws against flag burning are unconstitutional. I consider this to be kind of a high point where people across the spectrum were able to agree upon a way of analyzing free-speech claims. And they would stick to those principles without regard to the political complexion of the case." *Professor Michael W. McConnell's Response*, 29 Pepperdine Law Review 747, 747 (2001).

McConnell co-chairs the Emergency Committee to Defend the First Amendment, with ACLU leader Norman Dorsen.

Representing Black Democrats: McConnell successfully represented the first black mayor of Chicago, Harold Washington, (for free), in his political and legal battle with mostly white and more conservative opponents on the Board of Alderman. *Roti v. Washington*, 500 N.E.2d 463 (Ill. App. 1986).

Human Rights Litigation: McConnell represented three former Democratic Attorneys General (for free) in *McNary v. Haitian Centers Council*, a high profile challenging an order of the first President Bush authorizing deportation of certain aliens who faced persecution in their home countries.

Legal Aid for the Poor: McConnell served on the Board of the Austin Christian Law Center, now the Austin neighborhood branch of Chicago Legal Aid, and chaired its Finance Committee.

U.S. SENATOR PATRICK LEAHY

CONTACT: David Carle, 202-224-3693 VERMONT

OPENING STATEMENT OF SENATOR PATRICK LEAHY,
CHAIRMAN, SENATE JUDICIARY COMMITTEE

HEARING FOR MICHAEL MCCONNELL TO BE A UNITED STATES CIRCUIT JUDGE
ON THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT
ALIA LUDLUM TO BE A UNITED STATES DISTRICT COURT JUDGE
FOR THE WESTERN DISTRICT OF TEXAS
KENT JORDAN TO BE A UNITED STATES DISTRICT COURT JUDGE
FOR THE DISTRICT OF DELAWARE
WILLIAM MARTINI TO BE A UNITED STATES DISTRICT COURT JUDGE
FOR THE DISTRICT OF NEW JERSEY
THOMAS PHILLIPS TO BE A UNITED STATES DISTRICT COURT JUDGE
FOR THE EASTERN DISTRICT OF TENNESSEE
JEFFREY WHITE TO BE A UNITED STATES DISTRICT COURT JUDGE
FOR THE NORTHERN DISTRICT OF CALIFORNIA

September 18, 2002

Today we hold our 24th hearing for judicial nominees since the change in majority in the summer of 2001, as the Committee considers six more judicial nominees. This will bring to 90 the number of judicial nominees for whom the Committee has held hearings in the last 14 months. Professor McConnell is the 19th Court of Appeals nominee for whom we have held a hearing in that time.

This is the fourth hearing on a judicial nominee sponsored by my friend Senator Hatch, the third hearing for a nominee to the Court of Appeals for the Tenth Circuit, and the second hearing for a Utah nominee. This is also the first hearing for Professor McConnell and each of the others here today who have been nominated for lifetime appointments to the federal bench.

The fact is that we have held more hearings for more judicial nominees and more hearings for circuit court nominees than in any 14-month period of the six and one-half years in which Republicans last controlled the Committee. Under Democratic leadership, this committee has voted on more judicial nominees – 82 -- and on more circuit court nominees – 17 -- than in any 14-month period of the six and one-half years of Republican control.

The Senate has already confirmed 77 of the judicial nominations of President George W. Bush. We have confirmed more of President Bush's nominees in 14 months than were

confirmed in the last 30 months that a Republican majority controlled the Senate. We have done more in half the time. We have also already confirmed more of President Bush's judicial nominations since July 2001 than were confirmed in the first two full years of the term of his father, President George H.W. Bush.

We have achieved what we said we would by treating President Bush's nominees more fairly and more expeditiously than President Clinton's nominees were treated. By many measures, the Committee has achieved almost twice as much these last 14 months as our predecessors averaged per year during their years in control.

In the six and one-half year period of Republican control, before the change in majority last summer, vacancies on the Courts of Appeals more than doubled from 16 to 33 and overall vacancies rose from 65 to 110, with more than forty additional vacancies occurring since then. We have reversed those trends. Since the change in majority, through setting and holding to a regular schedule and through hard work, we have been able to outpace attrition and reduce vacancies overall and on the circuit courts.

Today the Committee proceeds with a hearing on the nomination of Professor McConnell to the United States Court of Appeals for the Tenth Circuit, Alia Ludlum to the Western District of Texas, Kent Jordan to the District of Delaware, William Martini to the District of New Jersey, Thomas Phillips to the Eastern District of Tennessee, and Jeffrey White to the Northern District of California. I welcome the nominees, their families and their friends, and all those interested in these important matters.

Professor McConnell is a popular and provocative law professor at the University of Utah Law School. As a scholar, an advocate, and an activist, Professor McConnell has advanced controversial positions. He will be given the opportunity today to clarify whether his writings will inform his judicial decision-making, whether as a judge he will uphold the constitutional right to privacy, and whether as a judge he would seek to weaken the wall separating church and state in our jurisprudence.

I hope that the Democratic members on this committee are not subjected to unfair criticism based on our religious affiliations – as unfortunately happened in the past -- for asking questions on important constitutional issues. The responsibility to advise and consent on the President's nominees is one that I take seriously and that this Committee takes seriously. In asking questions, Senators are working conscientiously to fulfill their constitutional responsibilities.

Ultimately the question each Senator on this Committee will be asking himself or herself as we proceed is whether these judicial nominees meet their standards for lifetime appointments to the federal courts. We look forward to hearing from the nominees.

In spite of the treatment by the former Republican majority of so many moderate judicial nominees of the previous President, I have made a variety of efforts to accommodate a number of Republican Senators, including the Republican Leader, this committee's ranking member, and at least four other Republican members of this committee, in

scheduling a number of nominees for hearings during the past 14 months. I have also been mindful of the need to make progress in filling the many vacancies that we inherited on the federal bench when the Senate majority shifted.

We proceed today, as I said that we would, with a hearing on Professor McConnell. In addition, as I indicated that I would, I will be noticing another confirmation hearing for next Thursday for another controversial nominee, Miguel Estrada.

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Senator Patrick Leahy
United States Senate
Committee on the Judiciary
433 Russell Senate Office Building
Washington, DC 20510

Dear Senator Leahy:

I am writing about Michael McConnell, President Bush's nominee for the United States Court of Appeals for the Tenth Circuit. As you know, I believe that the federal judiciary now reflects the undue influence of right-wing activists, and that it is extremely important for the Senate to play a large role as a check on the President's choices. Nonetheless, I believe that McConnell should be confirmed.

I know McConnell well. He was a colleague of mine at Chicago for a number of years. In that time, I learned two things. First, McConnell is a person of exceptional ability. He is one of the best legal minds I have ever encountered. Second, McConnell combines strong convictions not only with an ability to respect opposing views but also with the capacity to listen carefully, and on occasion to change his mind. (In this way he is very different from another former colleague of mine, Antonin Scalia, who is able to listen, but who has some real rigidity.) McConnell's nature is genuinely judicious. On issues ranging from free speech to affirmative action to sex equality to abortion, he is genuinely willing to think, and to go where the best arguments take him.

Under current circumstances, intellectual ability, standing by itself, does not seem to me enough to justify confirmation. The Senate is not restricted to consideration of competence. But intellectual ability is surely a strong virtue. The crucial fact about McConnell is that he is no ideologue. He is very different, for example, from Robert Bork and Justices Scalia and Thomas, all of whom have ideological tendencies. I can't be certain, but my strong hunch is that McConnell would be a strong defender of Congress' constitutional prerogatives, as reflected in his outstanding defense of the Religious Freedom Restoration Act. Those of us who are most concerned about judicial hubris in the name of the Constitution do not have much to fear from McConnell. I also believe, though here too I cannot be certain, that McConnell would not be a part of the alarming federal judicial attack on affirmative action -- an attack that seems to me a form of judicial fiat without constitutional basis. This is the sort of thing that (I think) McConnell would tend to avoid.

Or consider, as a brief, useful illustration of his character and temperament, McConnell's judicious words on Bush v. Gore: "I believe the Court deserves two-and-a-half cheers for its

performance. But the half-cheer it forfeited, by failing to produce a bipartisan consensus on the remand issue, continues to cast long shadows both on the Court and on the Bush presidency." And more dramatically: "I think the decision to halt the recount was incorrect as a matter of law (though the question is closer than the Court's critics like to think). But perhaps more important even than law, in this case of high constitutional moment, was the questionable judicial statesmanship of this part of the ruling." I also believe that in the midst of the impeachment controversy, McConnell wrote a superb letter to Congressman Hyde, strongly arguing that the absence of a bipartisan consensus in favor of impeachment made impeachment the wrong course to follow.

Of course the question of Roe v. Wade looms in the background. I believe that McConnell thinks that the decison was wrong when decided. But I know that he would faithfully follow the law as it now stands. Certainly for a court of appeals nomination, it would be extremely peculiar to say that a belief in the initial correctness of Roe v. Wade is a precondition for confirmation. Many lawyers, on the left as well as the right, question Roe v. Wade. Open-minded, nonideological nominees should not be rejected for that reason.

I could go on and on about McConnell, but I think I'll end here, with a simple notation that his work on religious liberty is extremely distinguished, has altered academic thinking in fundamental ways, and reflects, above all, respect for America's tradition of religious pluralism. I hope that the Senate will take an extremely aggressive role in ensuring that President Bush does not populate the bench with right-wing ideologues. I also hope that the Senate will confirm McConnell, an exceptionally distinguished nominee, and the furthest thing from an ideologue. I would be happy to answer any questions that you might have.

Best wishes to you.

Sincerely,

Cass R. Sunstein

THE WALL STREET JOURNAL. OPINION TUESDAY, SEPTEMBER 17, 2002

A Conservative Nominee Liberals Should Love

By Cass R. Sunstein

Of all President Bush's federal appeals court nominees, the most distinguished is Michael W. McConnell, a professor at the University of Utah Law School. Tomorrow, the Senate Judiciary Committee is scheduled to hold a hearing on his nomination. His confirmation would send an important signal to President Bush, to Senate Republicans, and to the nation as a whole.

Mr. McConnell has an exemplary record. After clerking for Justice William Brennan on the Supreme Court, he worked for the U.S. solicitor general. For many years he taught at the University of Chicago Law School, where he established himself as one of the leading constitutional scholars in the nation. At the University of Utah, he has continued to produce first-rate scholarship, while also serving as a lawyer in many important cases before the Supreme Court. Mr. McConnell qualifies, simultaneously, as one of the nation's top law professors and one of its top lawyers—superb preparation for the federal bench.

Mr. McConnell is unmistakably conservative, and some of his views are controversial. But he is far from an ideologue. He publicly opposed the impeachment of President Clinton. He criticized the Supreme Court's decision to end the Florida recount in *Bush v. Gore*. While a strong defender of the rights of religious believers, Mr. McConnell testified against a constitutional amendment that would allow official prayer in school. Acting pro bono, Mr. McConnell represented three former Democratic attorneys general in opposing an order of President George H.W. Bush, authorizing deportation of certain aliens facing persecution in their home countries.

Best of all, Mr. McConnell has shown little enthusiasm for right-wing judicial activism. In the last decade, conservative courts, including the Supreme Court, have shown far too little respect for Congress, striking down, among many other laws, the Religious Freedom Restoration Act and, as applied to state governments, the Age Discrimination Act and the Americans With Disabilities Act. In a superb essay in the Harvard Law Review, Mr. McConnell argued for judicial restraint, and argued, as many liberals have, that Congress has broad power to prohibit violations of civil rights and civil liberties.

In short, Mr. McConnell is an open-minded and judicious thinker. It should be no surprise that his nomination has been supported by more than 300 law professors, including many prominent liberals, such as Yale's Akhil Amar and Columbia's Jeremy Waldron.

Mr. McConnell has been criticized for his disagreement with *Roe v. Wade*, the decision establishing women's constitutional right to choose abortion. But standing all by itself, disagreement with *Roe* should not be a disqualification for the federal bench. Many people, of all political stripes, are uncomfortable with *Roe* as a matter of constitutional law. In any case Mr. McConnell is firmly committed to the law, and he would be a judge on a lower court, bound by Supreme Court decisions recognizing women's right to choose. The most important point is that Mr. McConnell's overall record demonstrates that his skepticism about *Roe* is part of a complex and thoughtful mixture of views, which do not follow any orthodoxy.

Michael W. McConnell

More than anyone else, Mr. McConnell has argued that the Constitution requires "neutrality" toward religion—no special favors, but no special burdens either. Mr. McConnell's neutrality argument, carefully grounded in American history, builds on the simple insight that the government may provide police and fire protection to churches and synagogues, no less than to grocery stores and corporate offices. In Mr. McConnell's view, the same argument supports neutrality toward education, so long as the state is treating religious schools no better than secular ones. Reasonable people have argued that his neutrality principle does not adequately separate church and state. But no reasonable person thinks that his defense of the neutrality principle disqualifies him from the federal bench.

The importance of the McConnell hearing goes well beyond Michael McConnell himself. The Democrats on the Senate Judiciary Committee insist that they have a responsibility to consider a nominee's ideology. They are entirely right. So long as President Bush considers a nominee's "ideology," or likely approach to the law, the Judiciary Committee should consider it too. In any case President Bush has no mandate to remake the federal judiciary in his preferred image. And in an era in which federal courts are striking down many acts of Congress, the Senate is entitled to protect itself, by ensuring that nominees have respect for the prerogatives of the legislative branch of government.

But many Senate Democrats have insisted that they are not applying any litmus tests. They have expressed their willingness to confirm conservatives who are not ideologues or, in Sen. Chuck Schumer's words, "way out of the mainstream." They have argued that their goal is to ensure a degree of diversity on the federal courts. By confirming his most distinguished conservative nominee, the Senate can send a strong signal to President Bush, showing its willingness to accommodate rather than to obstruct. A degree of accommodation from the Senate Democrats should produce some accommodation, and perhaps a measure of compromise, from the White House as well. Both sides need to find ways to reduce the acrimony that has too often characterized the confirmation process in the last decade. Confirming Mr. McConnell would be an excellent place to start.

Mr. Sunstein, a professor at the University of Chicago Law School, is author of "Risk and Reason," due out this month from Cambridge University Press.

ROBERT G. TORRICELLI
NEW JERSEY

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STATEMENT OF SENATOR ROBERT TORRICELLI
on the NOMINATION of WILLIAM J. MARTINI
FOR U.S. DISTRICT COURT, DISTRICT OF NEW JERSEY
September 18, 2002

Thank you Mr. Chairman and members of the Committee for holding this hearing to consider the nomination of Bill Martini for the District Court in New Jersey. I am certain that after reviewing his qualifications and hearing from Mr. Martini, you will be as confidant as I am that he will be a credit to the Court.

George Washington once said, "The Administration of Justice is the firmest pillar of government." Those words are never far from my mind when I review the qualifications of a judicial nominee because long after we all leave the Senate, those who sit on the Judiciary will continue to impact public policy and the lives of other Americans. I am confidant that Bill Martini is well-suited to such great responsibility.

His career has been distinguished by a solid record of public service. From his days in law school to his service in the House of Representatives and his current legal practice, he has demonstrated that he is an accomplished attorney who has made a commitment to improving the quality of justice in our society. I have no doubt he will bring these same qualities to the District Court.

When you speak with those who have had the opportunity to work with Bill Martini throughout this distinguished career, they universally praise his character and commitment to the law and public service. I believe we will be fortunate to have someone with Bill Martini's skills and diverse background on the federal bench in New Jersey.

That being said, I want to thank you again Mr. Chairman for holding this hearing. Senator Corzine and I look forward to working with you to see that this and the four other open District Court seats in New Jersey are filled as quickly as possible. The individuals nominated for these seats are each distinguished in their own right and together they represent the best of New Jersey's legal community as well as the geographic and gender diversity of the State.

Mr. Chairman, I hope that Senator Corzine and I will be back before you in the near future to present these other nominees. Thank you.

PRINTED ON RECYCLED PAPER

Larry Tribe

From: Laurence H. Tribe [larry@tribelaw.com]
Sent: Friday, June 22, 2001 1:29 PM
To: 'senator_leahy@leahy.senate.gov'
Subject: Michael McConnell's nomination to the 10th Circuit

Importance: High

The Honorable Patrick Leahy
United States Senate
Washington D.C.

Dear Pat:

I am writing about the nomination of Michael W. McConnell to be a judge on the Tenth Circuit Court of Appeals. Assuming that President Bush comes forward with a group of circuit court nominees that is sufficiently balanced ideologically and otherwise, Professor McConnell would certainly deserve to be confirmed.

McConnell is among the nation's most distinguished constitutional scholars and a fine teacher and appellate advocate. You are of course familiar with his impressive resume, and I won't burden you with my own further recitation of his credentials. As a person, Michael is exemplary, exhibiting openness to opposing views and a gentleness with others that commend him as someone likely to display an ideal judicial temperament. Many of his views on constitutional issues differ strongly from my own, but I have never thought that agreement with me on all such issues should be a prerequisite for my support in a context like this.

When I learned of Michael's impending nomination, I wrote to congratulate him and to tell him that, despite our differences, some going to results and others to interpretive method, I believed that we share a commitment to principled legal interpretation and to a broadly civil libertarian constitutional framework. I continue to think that is the case. I think Michael and I also share the view that there is room for a considerable degree of pluralism in the enterprise of constitutional interpretation, a view that seems to have been missing, and distressingly so, from recent Supreme Court decisions invalidating key portions of numerous statutes enacted to enforce civil rights under Section 5 of the Fourteenth Amendment. I have been particularly heartened to read some of what McConnell has written in criticizing a number of those decisions, particularly City of Boerne v. Flores, the case in which the Supreme Court struck down the Religious Freedom Restoration Act.

Speaking of religion, McConnell has been accused of championing a radically anti-separationist view of the Establishment Clause of the First Amendment. I am familiar with McConnell's work in that area and, while I do not agree with all of it, I agree with much of it, and I certainly do not consider myself an opponent of the separation of church and state. The truth appears to be that McConnell would tend to align himself with the views of those justices who stress neutrality as the cardinal government requirement in dealing with religion rather than with the views of those who stress the avoidance of aid, however indirect, to religious institutions and practices. While I think McConnell sometimes goes too far in that direction, there is plenty of room for disagreement, and I have no hesitation in recommending him even with this concern in mind.

THE WALL STREET JOURNAL. OPINION WEDNESDAY, SEPTEMBER 18, 2002

The Chairman's Eight No's

Fresh from the mugging of Priscilla Owen, Democrats on the Senate Judiciary Committee turn today to Michael McConnell, another of President Bush's nominees for the appeals bench.

It's barely possibly that Professor McConnell, who has the public support of many liberal colleagues in the academy, will have an easier time of it than did Judge Owen and Charles Pickering Sr., who both went down in committee. Defeat in committee is extremely rare; most Senators understand that the Constitution's advise-and-consent clause means the full Senate ought to be allowed to vote on Presidential nominees.

Most Senators also understand that the Constitution gives the President the authority to appoint judges and executive branch officials of his choosing. For that reason, as the nearby table shows, it's also extremely rare for a Judiciary Committee Chairman to vote against nominees in the first two years of any Presidency, even when the Chairman, like current Chairman Patrick Leahy, is of the opposite party.

This information was compiled by a dogged Capitol Hill denizen who spent a few days recently researching the voting history of Judiciary Committee chairmen over the past 100 years. With eight "no" votes, Senator Leahy is the easy winner. Second place goes to Senator James Eastland of Mississippi with five anti-civil rights votes in the late 1950s. Senator Leahy keeps saying he's just conducting business as usual. As the history of the past 100 years proves, that's factually untrue. This isn't advise and consent; it's devise and obstruct.

Leahy Leads the Pack

Number of 'No' votes by Senate Judiciary Committee Chairmen in the first two years of a Presidency of one party and a Chairman of the opposite party.

Year	Congress	President	Chairman	'No' votes
00-02	107th	G. Bush (R)	Patrick Leahy (D)	8*
95-96	104th	Clinton (D)	Orrin Hatch (R)	0
89-90	101st	Bush (R)	Joseph Biden (D)	3
87-88	100th	Reagan (R)	Edward Kennedy (D)	2
79-80	96th	Carter (D)	Edward Kennedy (D)	0
73-74	93rd	Nixon (R)	James Eastland (D)	1
69-70	91st	Nixon (R)	Edward Kennedy (D)	0
57-58	85th	Eisenhower (R)	James Eastland (D)	5
55-56	84th	Eisenhower (R)	James Eastland (D)	0
47-48	80th	Truman (D)	Alexander Wiley (R)	0
19-20	66th	Wilson (D)	Knute Nelson (R)	0

Appeals court nominees Priscilla Owen, Charles Pickering Sr. and D. Brooks Smith; District Court nominee Paul Cassell; Drug Czar John Walters; Attorney General John Ashcroft, Assistant General Charles James; and Solicitor General Ted Olson.

NOMINATION OF MIGUEL ESTRADA, NOMINEE TO BE CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT; STANLEY CHESLER, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY; DANIEL HOVLAND, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NORTH DAKOTA; JAMES KINKEADE, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF TEXAS; LINDA READE, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF IOWA; AND FREDA WOLFSON, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY

THURSDAY, SEPTEMBER 26, 2002

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

The Committee met, pursuant to notice, at 10:06 a.m., in Room 106, Dirksen Senate Office Building, Hon. Charles E. Schumer, presiding.

Present: Senators Schumer, Leahy, Kennedy, Kohl, Feinstein, Feingold, Durbin, Edwards, Hatch, Grassley, Specter, Kyl, Sessions, Brownback, and McConnell.

Senator SCHUMER. Ladies and gentlemen, the hearing will come to order, and I want to welcome everybody to today's hearing.

What we are going to do today is begin with introductions by the home State Senators of the nominees from their States. Then we will proceed to opening remarks by myself and Senator Hatch, and then we will move to questioning of the nominees.

So, with that, let me first call on Senator Warner of Virginia.

Senator WARNER. Mr. Chairman and Senator Hatch and members of the committee, I thank you very much. I am going to defer to my colleague, Senator Allen, to lead off, and then I will do a few wrap-up remarks. Senator Allen has worked very closely with this nominee and spoke yesterday on the subject, and out of deference to you, I will let you lead off.

Senator ALLEN. Okay.

Senator SCHUMER. Thank you, Senator Warner. We very much appreciate your being here.

Now we will hear from Senator Allen.

PRESENTATION OF MIGUEL ESTRADA, NOMINEE TO BE CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT BY HON. GEORGE ALLEN, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator ALLEN. Thank you, Mr. Chairman.

Mr. Chairman, Senator Hatch, Senator Grassley, Senator Kyl, Senator Brownback, and other members of the committee, it is a pleasure to join with my colleague Senator Warner in presenting and introducing to the Judiciary Committee Miguel Estrada. You all have had this nomination and have looked at his record of his many years, and you have had 16 months, and you know about his experience as a U.S. Attorney arguing cases before the United States Supreme Court, his work in the Solicitor General's Office.

Miguel Estrada, Mr. Chairman and members of the committee, is truly a man of great character. He is the embodiment of everything we talk about about opportunity and the American dream. He is an example of a young man who came to this country and perfected his knowledge and expression in the English language, obtained a good education. He worked hard. He persevered and advanced in his professional career.

You also see in Miguel Estrada a man who, fortunately for us, lives now in Virginia with his wife, Laury, who is here, in green; his mother, Clara Castaneda, who lives in Ohio, once having lived in New York at one time; and his sister, Maria, is also with him.

The other thing that I know that you will care about is his judicial philosophy, and I have found him to have the proper judicial philosophy, understanding the role of a judge to interpret the law based upon the case and the facts in evidence, and in this case an appellate court reviewing the case file, as well as the importance of precedent and protecting the United States Constitution.

He has been reviewed by many groups, and you have seen, whether it is—the U.S. Chamber of Commerce, the Hispanic Chamber of Commerce have reviewed him, they endorse him. The Hispanic National Bar Association and also the ABA has given Miguel Estrada their very highest possible rating.

There are four vacancies, I would remind the committee, on the D.C. Court of Appeals. There are certain courts and circuits that are very important. The D.C. Court of Appeals, though, is one that handles and is the primary forum for determining the legality of Federal regulations that control vast aspects of American life. There are four vacancies on that court. The Chief Justice last year was talking about out of the 12 slots, four vacancies was certainly harming their ability to expeditiously handle appeals. And so it is very important that you move as promptly as possible.

I would say, Mr. Chairman and members of the Judiciary Committee, in addition to all the sterling legal qualifications, education, and other matters, judicial philosophy, which are important for all judges, there is another aspect of Miguel Estrada that matters a lot to many people in this country, and those are Hispanic Americans, whether they are from Cuba or Puerto Rico or Mexico, Cen-

tral America or South America. And he is a role model. This is a prestigious, important position. And in his life story, many people can get inspiration. I am inspired and I think all members of this committee will be inspired, as are many Americans.

And so I know that you will closely examine him, ask him questions as appropriate, and I hope, though, that when you are through with that that we all have an opportunity obviously to vote on the Senate floor on this outstanding candidate. And I will say on behalf of my Latino constituents in Virginia to this august committee, "Adelante con Miguel Estrada."

Thank you very much.

Senator SCHUMER. Thank you very much, Senator Allen.

Now we will go to Senator Warner.

PRESENTATION OF MIGUEL ESTRADA, NOMINEE TO BE CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT BY HON. JOHN W. WARNER, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator WARNER. Mr. Chairman, I will put my statement in the record, but I would like to just share a few words with this committee.

I visited yesterday briefly on another matter with Chairman Leahy. We enjoy a very warm and cordial friendship in the United States Senate. Senator Leahy jokingly says that Virginia is his second State because he has had his home there for many years. But I said to him, as I look over this nomination—and interviewed with Senator Allen this nominee very carefully—I said this is an extraordinary example of achievement on the American scene. And certainly everything that my colleague and I and others have seen indicates that he is eminently qualified, extraordinarily well qualified. And in my 24 years here in the Senate, Senator Hatch and I have shared this conversation many times. We understand judicial nominations and the politics that rock it back and forth from time to time. But I say that the public is sometimes confused about the cases, but this case is so absolutely clear on its face.

Now, it will become a test case, a litmus test of the fairness of the process. So if the committee will accept me with humility, having been here many years and having watched many nominations, I would just like to make that observation. And I am confident this committee under the chairmanship of Senator Leahy, yourself, and my long-time friend Senator Hatch and other colleagues, that this will be an exemplary performance by this committee as it goes through this nomination by the President of the United States.

I started my modestly legal career as a law clerk to Judge E. Barrett Prettyman, a Federal judge on the D.C. Circuit, and then had the opportunity one night to slip in a little bill to name the courthouse after him. So I feel very strongly about the D.C. circuit court and take a special interest in the nominees for this court. I thank the Committee for allowing me to share these few words with them here this morning.

Senator SCHUMER. Well, thank you, Senator Warner. And as you know, I have enormous respect for you, as does every other member of this committee, and we thank you for your words.

Senator WARNER. I thank the Chair.

[The prepared statement of Senator Warner appears as a submission for the record.]

Senator SCHUMER. We are going to proceed in the seniority order of those from the home State nominees, so we will next go to Senator Grassley, who is here as a member of this committee.

Senator NICKLES. Mr. Chairman?

Senator SCHUMER. The Senator from Oklahoma?

Senator NICKLES. You are not going to call on us to make a very brief comment?

Senator SCHUMER. I would be happy to, but we are going to stick to the order you came here as non-home State nominees, and you are here, and we will give you the courtesy, but I want to call the home State nominees first.

Senator NICKLES. I would just ask consent if you would put my statement in the record.

Senator SCHUMER. Sure. Without objection, Senator Nickles' statement will be read into the record.

Senator SCHUMER. Do you want to do the same, Senator Domenici?

Senator DOMENICI. Yes, I ask to do the same.

Senator SCHUMER. Thank you very much.

Senator Grassley?

PRESENTATION OF LINDA READE, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF IOWA BY HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. I have the pleasure of introducing a distinguished Iowan nominated by the President to be a district judge for the Northern District of Iowa. Judge Reade is an extremely well-qualified candidate for the Federal bench, and I am proud to be here to support her nomination and introduce her to all of my colleagues on this committee. Judge Reade has the full support of both her Senators from Iowa.

Today, Judge Reade's sister, Renee Gibson, and her husband, Robin, as well as Judge Reade's niece, Anne Gibson, are here to lend their support. They are rightly very proud of Judge Reade's many and significant legal accomplishments.

Judge Reade initially studied to be a biologist while she was working at Drake University. Upon graduation, she became an administrator at Drake University. During that time, she earned a master's degree in higher education administration from Iowa State University and soon joined the Drake Law School as assistant to the dean. That experience led Judge Reade to study law. She started in the evening program, at Drake Law School, and eventually earned her juris doctor degree with honors.

At law school, Judge Reade was a managing editor of the Law Review. She also was awarded Order of the Coif and named Outstanding Drake Law School Graduate by the Iowa Bar.

After law school, Judge Reade practiced private civil law with the law firm of Rosenberg and Margulies in Des Moines where she was first an associate, then a partner. Her clients included small businesses, major corporations, private individuals, and her practice ranged from tax matters to contract cases to criminal defense work.

During her work as a private attorney, Judge Reade found time to stay involved in her community, serving on the board of the Iowa State Bar Review School and the Des Moines League of Women Voters.

In 1986, she joined the U.S. Department of Justice, Assistant U.S. Attorney. Her first year was spent litigating bankruptcy cases, but eventually she became a criminal prosecutor. In just a few years, Judge Reade became a chief of that office's Criminal Division. As Assistant U.S. Attorney, Judge Reade prosecuted numerous cases, a majority before a jury.

So Judge Reade's career as a lawyer involved all types of law and gave her a rich experience of the legal system. In 1993, Governor Terry Branstad appointed Judge Reade to the district court bench in Polk County. Since then, she has presided over hundreds of criminal and civil cases and rarely has been reversed on appeal. Judge Reade has presided over her courtroom with dignity and fairness and has brought honor to the bench. Moreover, she is highly respected by peers.

Notwithstanding her judicial duties, Judge Reade has remained very committed to her community. She routinely teaches and speaks at local and State bar association meetings and has served on various bar boards of directors. She teaches trial advocacy at law school. Judge Reade makes a point of giving back to her legal community.

There can be little question of Judge Keade's qualifications because she is highly qualified for this post. The ABA unanimously has rated her "well qualified." She has a strong legal record, remarkable public service. She is supported by her community and her peers. She has the intelligence, experience, judicial temperament, and commitment to the law that make her a tremendous addition to the Federal bench in my State.

So it is with great respect and admiration that I recommend Judge Linda Ray Reade to the Judiciary Committee and hope for favorable consideration.

Senator SCHUMER. Thank you very much, Senator Grassley.

Now we will proceed to Senator Harkin for the same nominee.

PRESENTATION OF LINDA READE, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF IOWA BY HON. TOM HARKIN, A U.S. SENATOR FROM THE STATE OF IOWA

Senator HARKIN. Thank you very much, Mr. Chairman, for holding this hearing, and I am pleased to be here with my Iowa colleague to introduce and give my support to Linda Reade, who has been nominated to the U.S. District Court for the Northern District of Iowa. I needn't go through her lengthy resume, as Senator Grassley has just done. She obviously has a long history in the law, but the fact that she is a Cyclone graduate is enough for me.

She has a strong judicial background, as Senator Grassley said, serving as a Polk County district court judge since 1993. I just repeat this for emphasis' sake. She helped establish the first adult drug court in the State, and that is very meaningful. They are doing great work. She was an Assistant U.S. Attorney from 1986 to 1993, before that in private practice for 6 years; and as Senator

Grassley said, she still teaches trial advocacy at the Drake Law School.

So, again, I just wanted to be here to lend my support. She is eminently well qualified, well respected, both in the legal community and outside the legal community. And, again, I want to thank you for holding this hearing on her nomination and urge that this committee move rapidly to confirm her and get her to the Senate floor so that she can ascend to the bench as soon as possible.

Thank you very much.

Senator SCHUMER. Thank you very much, Senator Harkin.

As I said, we are proceeding in seniority order of home State nominees first, so we are next up to Senator Gramm.

PRESENTATION OF JAMES EDGAR KINKEADE, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF TEXAS BY HON. PHIL GRAMM, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator GRAMM. Well, Mr. Chairman, thank you. I know you all are busy, and I will be brief.

Ed Kinkeade is a judge in my State, has been a judge for over 20 years. He is a graduate of Baylor, went to law school there, got his master's in law at the University of Virginia. He has been involved in every facet of the judiciary in my State, a leader in many efforts. He is a trustee of the Baylor Health Care System, which is one of the great medical systems in the world.

He is committed to his community. He is well known, he is well respected, and I want to urge this committee to approve his nomination and send it to the floor for confirmation.

Senator SCHUMER. Thank you, Senator Gramm.

Now we will go to Senator Hutchison. Senator Conrad had hoped to be here for his nominee. He can't and his statement will be read into the record, as will any statements in support of the nominees.

Senator Hutchison, you may proceed.

PRESENTATION OF JAMES EDGAR KINKEADE, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF TEXAS BY HON. KAY BAILEY HUTCHISON, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator HUTCHISON. Thank you very much, Senator. I really appreciate this opportunity. Senator Gramm has talked about some of Judge Kinkeade's qualifications. I just want to say that he has a long background in being a judge. He started as a county criminal court judge in 1981. He then became a district judge, and in 1988, he was appointed to the Fifth District Court of Appeals in Dallas. So he has been on the bench for a long time. He has a record and that is why he has been nominated, because his record is good.

In addition, I would just add that he has really been a participant in the community, which I think says a lot when someone is sitting on the bench and also volunteers in so many activities. He has been on the board of trustees of the Volunteer Center of Dallas County, the Downtown Dallas YMCA, the Baylor Health Care System, which Senator Gramm mentioned, and the Dallas Mayor's Blue Ribbon Task Force on Alcoholism.

While he was president of the Volunteer Center of Dallas County, he helped to introduce a high-tech system to assist local nonprofit agencies in quickly detecting abusers of children and the elderly. It has been a very effective system in Dallas County, and we so appreciate that he would go to great lengths to try to help people who are abusing our children and elderly.

He also has been an adjunct law professor while sitting on the bench, teaching at Texas Wesleyan University's School of Law.

So I think you can see that he is a high-energy person, a person who is committed to his community, who has a record on the bench, and it is a very good record, and I highly recommend him for confirmation.

Thank you, Senator.

Senator SCHUMER. Thank you, Senator Hutchison. We appreciate your being here.

Now we will hear from Senator Corzine for his nominee.

PRESENTATION OF STANLEY CHESLER AND FREDA WOLFSON, NOMINEES TO BE DISTRICT JUDGES FOR THE DISTRICT OF NEW JERSEY BY HON. JON CORZINE, A U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator CORZINE. Thank you, Mr. Chairman and members of the committee, Ranking Member Hatch. It is my pleasure to be here today to introduce Stanley Chesler and Freda Wolfson, nominees for the U.S. District Court for the District of New Jersey.

Senator Torricelli, who unfortunately couldn't be here today, joins me in offering strong support for both of their nominations, and I ask unanimous consent that a statement from Senator Torricelli be submitted for the record.

[The prepared statement of Senator Torricelli appears as a submission for the record.]

Senator CORZINE. Mr. Chairman, let me begin by saying that I am very proud to speak about these two nominees who currently serve as magistrate judges in New Jersey. They are distinguished jurists and truly represent the best that New Jersey's legal community has to offer.

Stanley Chesler brings a variety of experiences that will inform his service on the bench. The last 15 years he served as a magistrate judge in Newark where he is well known for his legal acumen, particularly his fairness and his judicial temperament.

Before that, he had a distinguished and varied career in criminal law, began as an assistant district attorney in the Bronx—and the senior Senator from New York probably knows where that is—and then joined the Justice Department's New Jersey Organized Crime Strike Force, eventually rising to become the deputy chief. Finally, before being appointed magistrate, he served as an Assistant U.S. Attorney in Newark.

Judge Chesler's contributions have not been limited to the courtroom. When I interviewed him earlier this year, I was truly impressed to learn that while he attended law school at night, he taught in Brooklyn elementary schools for 5 years. And he still graduated number one in his class at St. John's.

Freda Wolfson is another respected magistrate, sitting in Trenton. She is a lifelong resident of New Jersey. She was born in Vine-

land and has a distinguished legal career that has prepared her well to serve as district judge. After attending Rutgers—which, for Senator Torricelli, is all that needs to be on one's qualifications—for both her undergraduate and law degree, she worked for 6 years at two law firms, handling primarily commercial litigation. Then at the ripe old age of 31, she was appointed a United States Magistrate. Such early recognition of her ability was truly a testament to her tremendous legal talents.

Judge Wolfson was subsequently reappointed and has distinguished herself also as a fair and hard-working judge who is known for her superior legal ability, good judgment, and well-reasoned opinions.

I also want to note that Judge Wolfson is a first-generation American, born to two Holocaust survivors from Poland, a fact which I know has contributed to her strong sense of fairness, character, and appreciation of the American way of life.

Mr. Chairman, I want to note for the record that I am particularly pleased that Judges Chesler and Wolfson are part of an extremely distinguished group of nominees for the U.S. District Court in New Jersey. As I mentioned last week when the committee heard the testimony on the nomination of William Martini, New Jersey currently has an unprecedented five openings in the court. Senator Torricelli and I have worked cooperatively—and I stress that—with the White House to arrive at a group of five nominees, two more who will be coming before the committee shortly, who are distinguished in their own right. Together they represent the best of New Jersey's legal community, a cross-section of tremendous diversity of experiences and background that truly reflects our great State.

Mr. Chairman, I am pleased that after today the committee will have heard from three of these distinguished nominees, and I hope that we will have the opportunity to present the other two very shortly. I am confident you will be impressed with them as well.

The families of Mr. Chesler and Ms. Wolfson are with us today. They are terrific nominees, extremely able and respected lawyers, and I am pleased to support their nominations.

Thank you for your consideration.

Senator SCHUMER. Thank you, Senator Corzine.

Now we will go to Senator Dorgan. As I had mentioned, Senator Conrad had hoped to be here but was pulled away, and his statement is in the record. Now we will proceed with Senator Dorgan.

PRESENTATION OF DANIEL HOVLAND, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NORTH DAKOTA BY HON. BYRON DORGAN, A U.S. SENATOR FROM THE STATE OF NORTH DAKOTA

Senator DORGAN. Mr. Chairman, thank you very much, and members of the committee. Let me, on behalf of Senator Conrad and myself, say that while there may be some controversy about Federal judgeships that we read about and hear about from time to time, there is none with respect to this judgeship. We have worked with the White House, and the nomination they have sent to the Congress is one that Senator Conrad and I wholeheartedly support. We think the nomination of Daniel Hovland of Bismarck,

North Dakota, is an excellent nomination. He has the skills, the quality, the temperament to be an outstanding Federal judge.

He is here today with his wife, Kristen. They have three children who are not here but they are home in North Dakota: Brandon, Mark, and Lexi.

I want to just say a word about Daniel Hovland, and without going into great detail, I know that my colleague Senator Corzine talked about how high someone ranked in their high school class. In our region of the country, it is easy to do that because the classes are so small that we rank very high. I was in the top five of mine, but there were only ten.

[Laughter.]

Senator DORGAN. I have not queried Dan Hovland where he ranked in his class, but I want to tell you that he is one of the best and brightest in our State, and the submission of his name to assume this judgeship I think is a significant step forward for the judiciary. He is a prominent, well-respected attorney in Bismarck, North Dakota. He has developed a reputation for very thoughtful legal analysis. He has been an experienced mediator, handled hundreds of mediations and arbitrations. He is an active member of the community. I won't go through all of that, but he is one of those people who all of us are proud to say have stepped forward to serve their country.

John Adams, in writing to Abigail, asked plaintively in some of his letters, "Where will the leadership come from for our country? Who will step forward?" Where will the leadership come from? And from the hills and valleys and mountains and prairies, talented and good men and women step forward to become leaders. In this case in the judiciary, Dan Hovland stepped forward, and he is someone I am proud to say will serve this country very, very well.

Let me put the rest of my introduction in the record—I spoke to the committee chairman just moments ago on the Senate floor, Senator Leahy. Because this judgeship has been open for some while I hope very much that we can move a nomination of this type relatively quickly. He is non-controversial, someone that we are all going to be proud of, someone that we worked with the White House to get up nominated. And when we fill this judgeship with Daniel Hovland, I think we will have made a significant step forward for our country and for our country's judiciary.

Mr. Chairman, thank you for allowing me to be here to speak, and, again, I speak on behalf of myself and my colleague Senator Conrad, who echoes my thoughts about Daniel Hovland.,

Senator SCHUMER. Thank you, Senator Dorgan.

I guess with that we are finished with the members testifying, and so, with that, let me invite Mr. Estrada, Mr. Miguel Estrada forward.

I would like to tell the district court nominees that we won't get to them until this afternoon. So they are welcome to stay, but if you wish to leave and come back at 2:15, you will not miss your place. I know you have all waited long and hard to get here, and so don't worry if you want to spend some time in Washington with your family and be back at 2:15. That is just fine.

Chairman LEAHY. And, Mr. Chairman, if I might, I have a statement to place in the record.

Senator SCHUMER. Without objection, it will be placed.

[The prepared statement of Senator Leahy appears as a submission for the record.]

STATEMENT OF HON. CHARLES E. SCHUMER, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator SCHUMER. Okay. First, you may sit down, Mr. Estrada. We will swear you in after Senator Hatch and I do our opening statements. Thank you for being here.

Today we take up the nomination of Miguel Estrada to the D.C. Circuit. It is no understatement to say that this is the single most important confirmation hearing this committee has conducted or will conduct this year, and there have been many hearings. The D.C. Circuit is often called "the Nation's second highest court" and with good reason. More judges have been nominated and confirmed to the Supreme Court from the D.C. Circuit than from any other court in the land.

The D.C. circuit is where Presidents look when they need someone to step in and fill an important hole in the lineup. It is sort of like a bullpen court—having given us three of our current Supreme Court Justices, Justices Scalia, Thomas, and Ginsburg; not to mention others like Robert Bork, Ken Starr, and Abner Mikva.

The court to which Mr. Estrada has been nominated doesn't just take cases brought by the residents of Washington, D.C. It handles the vast majority of challenges to actions taken by Federal agencies. Congress has given plaintiffs the power to choose the D.C. Circuit, and, in fact, in some cases we force them to go to the D.C. circuit, because we have decided for better or for worse—I think better—that when it comes to these administrative decisions, one court should decide what the law is for the whole Nation.

The judges on the D.C. Circuit review the decisions by the agencies that write and enforce the rules that determine how much "reform" there will be in campaign finance reform. They determine how clean water has to be for it to be safe for our families to drink. They establish the rights workers have when they are negotiating with corporate powers. The D.C. Circuit opinions frequently cover dense and inaccessible material, but certainly not always. And the decisions coming from that court go to the heart of what makes our Government tick.

The D.C. Circuit is important because its decisions determine how these Federal agencies go about doing their jobs. And in doing so, it directly impacts the daily lives of all Americans more than any other court in the country, with the exception of the Supreme Court. If anyone thinks this court's docket isn't chock-full of cases with national ramifications, they should check the record. Let me give you some examples.

When it comes to communications, the court plays a big role. It has exclusive jurisdiction over appeals from FCC decisions. That is a pretty big chunk of law with massive impact on American consumers.

Just a few years ago, the circuit upheld the constitutionality of the Telecommunications Act of 1996, guaranteeing more competition in the local and long-distance markets, which in turn guaranteed better and cheaper phone service for all of us.

When it comes to privacy, this court plays a big role. earlier this year, the court was called upon to assess the FTC's power to protect consumer privacy when it comes to the private personal information credit reporting agencies may make public. When it comes to the environment, the court plays a big role.

When Congress passed the Clean Air Act in 1970, we gave the EPA the authority to set clean air standards—the power to determine how much smog and pollution is too much. In 1997, having reviewed literally thousands of studies, it toughened standards for smog and soot. The EPA's actions were going to improve air quality but cost businesses money. Industry groups appealed the EPA's decision, and a majority Republican panel on the D.C. Circuit reversed the EPA's ruling. In doing so, the court relied on an arcane and long-dead concept known as the "non-delegation doctrine." It was a striking moment of judicial activism that was pro-business, anti-environment, and, in the opinion of many, highly political. While that decision ultimately was reversed by a unanimous Supreme Court, most other significant decisions of the D.C. Circuit have been allowed to stand without review.

With the Supreme Court taking fewer and fewer cases each year, the judges on the D.C. Circuit have the last word on so many important issues that affect Americans' lives. And perhaps more than any other court, the D.C. Circuit votes break down on ideological lines with amazing frequency. Several recent studies have proven the point.

Let me give you one example. Professor Cass Sunstein from Chicago, a professor who is respected by members of both sides—he recently advocated the judgeship nomination of Mr. McConnell—has put together some pretty striking numbers that he will be publishing soon, but he has allowed us to give everyone a sneak peek at today. When you look, say, at the environmental cases where industry is challenging pro-environmental rulings, you get some pretty clear results. When they are all–Republican panels, industry is approved 80 percent of the time; when they are all–Democratic panels, 20 percent of the time; and it is in between when there are two to one on either side. If every judge were simply reading the law, following the law, you would not get this kind of disparity. But we know—it is obvious; we don't like to admit it, but it is true—that ideology plays a role in this court.

Throughout the 1990s, conservative judges had a strong majority on this court, and in case after case during the recent Republican domination of the circuit, simply because there were many years of Republican Presidencies, the D.C. Circuit has second-guessed the judgment of Federal agencies and struck down fuel economy standards, wetlands protection, and pro-worker rulings by the NLRB. The D.C. Circuit became the court of first resort for corporations that wanted to get relief from Government actions they objected to.

Now, for the first time in a long time, there is balance on the D.C. Circuit: four Republican judges, four Democrats. That doesn't mean each case is always decided right down the middle, but there is balance. Some of us believe that this all-important court should be kept in balance—not move too far left, not move too far right. Judicial nominees, we know, have world views they bring with them to the bench. They come to these positions of power with

predilections, with leanings, with biases. Those biases influence the way they look at the law and at the facts of the cases coming before them. It is natural. And I am not saying there is anything nefarious or even wrong about this. It is just the way we all know how things are.

I wrote an op-ed piece in the New York Times a year ago suggesting we do away with "gotcha" politics and game-playing on this issue and that we be honest about our concerns. I published a report last week showing that the vast majority of the time that Democrats vote against the judicial nominee, it is a Republican nominee. And the vast majority of the time Republicans vote against a judicial nominee, it is a Democratic nominee.

Big shock, huh? But it is proof positive that ideology matters. If it didn't, if all we were looking at is legal excellence and judicial temperament, the votes against the nominees would be spread all over the place. Democrats would vote against an equal number of Democratic and Republican nominees, and the same with Republicans. That is not what happens, and we know that. Now, I have taken a lot of flack for saying this over and over again, but I think we have already proven the point.

Every single Senator on this side of the aisle has voted for conservative nominees. A lot of our friends are begging us to slow down. We are not going to slow down. Senator Leahy has done an admirable job of bringing nominees to the bench, as today's hearing shows. But we are also not going to speed things up and not give fair review to everybody, important review, important not just to the nominee, although that is important, but to the American people. We are going to take the time we need to review the records of all the nominees the President sends up here.

Conservative but non-ideological nominees, like Reena Raggi who last week was unanimously confirmed to the Second Circuit in near record time, will go through this committee with the greatest of ease. But those for whom red flags are raised will wait until we have done our due diligence. We owe the country, we own the Constitution nothing less.

Ideology is not the only factor in determining how we vote, or most of us would have voted against just about every one of the judges who came forward. But for most of us, whether we want to admit it or not, it is a factor, and that is how it should be. And anyone who thinks it is okay for the President to consider ideology but not okay for the Senate is using double-think.

The White House is saying that they want to nominate conservatives in the mold of Scalia and Thomas. The President has said that. It is hard to believe that at least some of their nominees don't have a pretty strong agenda. Ideology is obviously being considered by the White House. When the White House starts nominating equal numbers of liberals and conservatives, equal numbers of Republicans and Democrats, that is when the Senate should ignore nominees' ideologies.

We had a hearing on Tuesday where Fred Fielding—a brilliant lawyer who served President Reagan well as counsel—testified. In his written testimony, he said that the administration never considered ideology when deciding who to nominate to the bench. So I asked him if he could name five liberals that President Reagan

nominated. After all, if he wasn't considering ideology, just temperament and legal excellence, you would get balance. His response was, "I certainly hope not. I hope we didn't nominate a single liberal nominee." I asked him to name one. He couldn't.

Of course that is true. I appreciate his candor. It proves that ideology plays a role when the President selects judges. I am befuddled by those who say the Senate shouldn't consider ideology when the President obviously does. It just doesn't make sense. So let's stop hurling invective and just be straight with each other.

Since we know that this is such an important court and since we know that ideology matters, whether we admit it or not, it is essential that this committee conduct a thorough and exhaustive examination of judicial nominees. Again, we would be derelict in our duty to the Constitution and our constituents if we did anything less.

We should demand that we hear more from nominees than the usual promises to follow the law as written. It is not enough to say, "I will follow the law, Senator," and expect us to just accept that. We need to be convinced that the nominees aren't far out of the mainstream. We need to be convinced that nominees will help maintain balance—not imbalance—on the courts.

A decade ago, our present President's father sent the Senate the nomination of Clarence Thomas. I wasn't in the Senate then, but I watched those hearings, and I have talked to a lot of my current colleagues who were here at that time. Clarence Thomas came before this distinguished committee and basically said he had no views on many important constitutional issues of the day. He said that he had never even discussed *Roe* v. *Wade* when he was in law school or since. But the minute Justice Thomas got to the Court, he was doctrinaire. Whether you agreed with him or not, he obviously had deeply held views that he shielded from the committee.

It wasn't a confirmation conversion. It was a confirmation subversion. And there is still a lot of simmering blood up here about that. We should do everything we can to prevent that from happening again.

We had a very good hearing last week on a very conservative nominee. Professor Michael McConnell has been nominated to the Tenth Circuit. He came before this committee and openly discussed his views—some of which I very much disagree with. But I will say this: He was candid with us about his beliefs, he engaged in honest discussion with us about his viewpoints, and he showed himself to be more of an iconoclast than an ideologue. I haven't made up my mind as to how I will vote on Professor McConnell, but by answering our questions, he put himself in a much better position, in my book.

The nominee before us today stands in contrast to Professor McConnell and to most other circuit court nominees for whom we have held hearings these past 14 months. Not his fault, but we know very little about who he is and what he thinks and how he arrives at his positions. There have been red flags raised by some who know him, but we don't know so far whether there is merit to those red flags or not. There is some support for him in the community and some opposition. We need to understand why.

As you know, a former supervisor of yours, Mr. Estrada, in the Office of Solicitor General has stated you were too much of an ideologue and do not have the temperament to merit confirmation. And you will be given the full opportunity to address those arguments.

Now, this committee has asked for the memos you wrote while you served in the Solicitor General's office. Everyone I have spoken with believes such memoranda will be useful in assessing how you approach the law. The role of the SG's office is to determine what positions the United States should take on important constitutional questions. The attorneys in that office engage in quintessentially judge-like behavior. So the memoranda will be illuminating.

There is ample historical precedent for the production of such memos. DOJ has routinely turned them over during the confirmation process. It was done for judicial nominees Bork, Rehnquist, and Easterbrook. They have been turned over for executive branch nominees Benjamin Civiletti and Bradford Reynolds.

And earlier this year, this White House—a White House more protective of executive privilege than any White House since the Nixon administration, I might note—turned over memoranda written by Jeffrey Holmstead, a nominee to a high post at the EPA. Mr. Holmstead's memoranda were from his years of service in the White House counsel's office, a more political and legally privileged post than the one you held when you were in the Department of Justice in the office charged with protecting and defending the Constitution.

I, for one, would think you would want the memoranda to be released so you could more ably defend your record. I know you haven't been blocking their release, but today you will have a chance to urge DOJ to make the record more complete by releasing the documents. I hope you will do so because from what I know thus far, I would have to say that I would be reluctant to support moving your nomination until we see those memoranda.

There is a lot we do not know about Miguel Estrada. Hopefully, we will take some meaningful steps today towards filling in the gaps in the record. Mr. Estrada, you are going to have a chance today to answer many of the questions regarding your views.

Some believe that once the President nominates a candidate, the burden falls on the Senate to prove why he shouldn't be confirmed. I believe the burden is on the nominee, especially when it comes to a lifetime seat on the Nation's second-highest court to prove why he should be nominated or she should be nominated. Just as the nominees to the Supreme Court are subject to higher scrutiny, nominees to this unique and powerful circuit merit close and careful review. Our job is not just to rubber-stamp. Our job is to advise and to decide whether to consent.

Today's testimony will help us decide how to exercise our constitutional powers in this process, and we all look very much forward to hearing your testimony today.

Thank you.

Senator Hatch?

STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Senator HATCH. Thank you, Mr. Chairman. I have to say that your remarks are some of the most creative and remarkable bits of analysis of the constitutional rules that I have ever heard. By your analysis, it means that President Clinton, every time he appointed—when he appointed Justice Ginsburg, he should have then appointed somebody in the nature of Justice Scalia, or at least more conservative, in order to have balance. I suspect the Second Circuit Court of Appeals should have every judge for the next 4 or 5 years be a conservative to make up for the liberal balance on the court. Or on the Ninth Circuit Court of Appeals where 23 judges, I think 17 of them have been appointed by Democrats, and almost all, to a person, very liberal. I think 13 of those or 14 of those were appointed by none other than President Clinton and confirmed by this committee.

All I can say is that the balance is in the eye of the beholder. That is why we have Presidents. That is why occasionally there are Democrat Presidents who naturally are going to appoint more liberal nominees to the various courts in this country, and that is why we have Republican Presidents who I think by nature will appoint more moderate to conservative people to the courts, not necessarily all Republicans or not necessarily in the case of the Democrat Presidents all Democrats—but, by and large, mostly. That is just the nature of our process.

The key here is: Is the person competent? Is the person worthy? Is the person a person who understands the role of judging is not make the laws but to interpret the laws?

It seems to me balance is in the eye of the beholder. That is why the constitutional system provides for a President to make these nominations. Unless we have a very good reason for rejecting a nominee, that nominee ought to be approved. And over the last 20-plus years, I have only rejected one. And to be honest with you, I don't feel good about that one, but I had to because the two home State Senators were opposed to the person, and we have always more—I think all of us have followed that rule.

Now, there is no question that every Senator around here can consider ideology if they want to. But if we want to be fair to the President, to the process, if we want to be fair to the nominees, then we should consider their qualifications. And the fact that a person might be liberal is no good reason for rejecting that nominee. Or the fact that a person may be conservative is no good reason for rejecting that nominee, just because we ourselves have our own biases and prejudices.

I would like to get rid of the biases and prejudices and realize that the process here is trying to get the best judges we can, and, by and large, conservative and liberal judges work well together.

In that regard, what is important to know about the D.C. Circuit that has been brought up here—and it is a very important circuit. I think it is the most important circuit in the country. And I think the distinguished Senator did a very good description of that circuit. But what is important to know about the D.C. Circuit is that very often the judges agree on hard and politically charged questions.

For example, recent cases unanimously decided by panels consisting of both Democratic and Republican appointed judges include the widely followed, closely watched Microsoft case, the contentious case of Mary Francis Berry on the Civil Rights Commission, and the Freedom of Access to Abortion Clinics Act which the court unanimously upheld. The court's agreement on these important cases demonstrates that ideology, in fact, really doesn't matter.

As a matter of fact, I felt that the distinguished Senator—and I have a lot of respect for him as a friend and as a Senator, but I think his analysis was very creative in almost every way.

I would have to say I was amused by Senator Schumer's report. We took a closer look. We find those studies that he quoted to be based on a very small sample of cases, mostly environmental cases. Also, only certain time periods were used, and others were excluded.

Now, we all know how to play the numbers game, but the real fact of the matter is, in all cases counted over a 3-year period, 97 percent of them were decided unanimously by Democrats and Republicans joining together on the committee.

So, again, it is nice to talk about ideology. The real issue here is Miguel Estrada. Is he competent to serve on this court? Does he have the qualifications? Well, the American Bar Association certainly thinks so unanimously, gave him the highest rating that they could possibly give.

Let me first of all say that I am grateful for you chairing this hearing, Mr. Chairman, for Miguel Angel Estrada who is nominated for the D.C. Circuit Court of Appeals.

There are many people who have been waiting for this event and many more people who are watching today for the first time as we display our American institutions and the value we give to the independence of our judiciary. The fact that this hearing comes near the beginning of Hispanic Heritage Month is surely not lost on all my colleagues on this committee. I am hopeful that this committee will join me in seeking that the confirmation of the highly qualified lawyer before us today will occur before Hispanic Heritage Month is over.

As a very special matter, I would like to welcome to this hearing the Honorable Mario Conahuati, the Ambassador of Honduras to the United States, who is with us today. I believe he is right back there. Mr. Ambassador, please stand up. We are delighted to have you here.

[Applause.]

Senator HATCH. We are delighted to have you here and honored to have you with us.

I would also like to welcome leaders of the many Hispanic communities and organizations in the United States who are here to express support for this nomination as well as the Senators from Virginia, the members of the Republican Senate leadership, and my good friend Senator Domenici of New Mexico, who I think has worked tirelessly on behalf of Hispanics and the Hispanic community.

Mr. Chairman, I would like to make a general comment on the context of judicial confirmations in which this hearing is being held. For over a year, we have had a very troubling debate over

issues that we thought our Founding Fathers had settled long ago with our Constitution. I am heartened to read the scores of editorials all around this country that have addressed the notion of injecting ideology into the judicial confirmation process, because this notion has been near universally rejected—except, of course, for a handful of professors and well-paid lobbyists, some of whom are in the back of the room, and a few diehards.

I have already made some comments regarding my views on efforts to inject ideology into this nomination at the hearing this committee held 2 days ago, which I thought should have been labeled "contra Estrada." So in the interest of time, I will not go into them now. I will put my expanded remarks in the record.

Senator SCHUMER. Without objection.

Senator HATCH. Now, it seems to me that the only way to make sense of the advice and consent rule that our Constitution's Framers envisions for the Senate is to begin with the assumption that the President's constitutional power to nominate should be given a fair amount of deference and that we should defeat nominees only where problems of character or inability to follow the law are evident.

In other words, the question of ideology in judicial confirmations is answered by the American people and the Constitution when the President is constitutionally elected. As Alexander Hamilton recorded for us, the Senate's task of advice and consent is to advise and to query on the judiciousness and character of nominees, not to challenge, by our naked power, the people's will in electing who shall nominate.

To do otherwise, it seems to me, is to risk making the Federal courts an extension of this political body. This would threaten one of the cornerstones of this country's unique success—an independent judiciary. And I believe the independent judiciary has saved the Constitution through the years and this country in many respects.

We must accept that the balance in the judiciary will change over time as Presidents change, but much more slowly. For the Senate to do otherwise is to ignore the Constitution's electoral process and to usurp the will of the American people. To attempt to bring balance to courts in any other way is to circumvent the Constitution yet again, without a single vote of support being cast by the American people.

Now, these are not just my views. This is our Anglo–American judicial tradition. It is reflected in everything that marks a good judge, not the least of which is Canon 5 of the Code of Judicial Conduct of the American Bar Association that expressly forbids nominees to judicial duty from making "pledges or promises of conduct in office [or] statements that commit or appear to commit the nominee with respect to cases, controversies, or issues that are likely to come before the courts." I should expect that no Senator on this committee would invite a nominee to breach this code of ethics, and it worries me that we come so close from time to time.

Now, I am glad to welcome today Miguel Estrada. I would like to speak a little on why Miguel Estrada is here before us today, beyond the obvious fact that the President nominated him. Miguel

Estrada is here today because he deserves to be here under any standard that any disinterested person could devise.

We have all read about his impressive credentials. Mr. Estrada graduated from Columbia University magna cum laude and as a Phi Beta Kappa. He went on to Harvard Law School where he graduated again magna cum laude and after serving as editor of the Harvard Law Review. He went on to clerk for the Second Circuit Court of Appeals in New York, and then he was chosen to clerk for Associate Justice of the United Supreme Court Anthony Kennedy.

Mr. Estrada later served as Assistant U.S. Attorney and Deputy Chief of the Appellate Section in the U.S. Attorney's Office for the Southern District of New York. Then between 1992 until 1997, Mr. Estrada returned to Washington to work for the Clinton administration as Assistant to the Solicitor general in the Department of Justice.

Now, with regard to that, it is highly unusual, even though there may be some precedent in the past, but highly unusual to ask attorneys for opinions that they gave and writings that they made while in the Solicitor's office. That would put a chill across honest thinking, it seems to me, like never before. And keep in mind he served the administrations he served, and I presume that many of the briefs that were written, the opinions that were given, were consistent with the administration that he served.

Mr. Estrada has argued 15 cases before the United States Supreme Court and is today one of America's leading appellate advocates. And he has won most of them.

It is evident that Miguel Estrada is here today for no other reason than this: he is qualified for the position for which President Bush has nominated him. I know it. And after today's hearing, so will the American people know it.

But notwithstanding all of Mr. Estrada's hard work and unanimous rating of highly qualified by the American Bar Association, he has been subjected, so far, to the pinata confirmation process with which we have become all too familiar this year. The extreme left-wing Washington groups go after judicial nominees like kids after a pinata. They beat it and beat it until they hope something comes out that they can then chew and distort.

In the case of Mr. Estrada, the ritual has been slightly different. They have been unable to find anything they can chew on and spit out at us, so they now say that we simply do not know enough about Mr. Estrada to confirm him. Well, it is not that we do not know enough. We know as much about him as we have known about any nominee. Their complaint is that we know all there is and the usual character destroyers haven't found anything to distort.

But surely we should not expect to hear it suggested today that Mr. Estrada does not have enough judicial experience. Only three of the 18 Democrat appointed judges on the D.C. Circuit Court had any prior judicial experience before their nominations. These include Ruth Bader Ginsburg and Abner Mikva. Likewise, judicial luminaries such as Louis Brandeis and Byron White had no judicial experience before being nominated to the Supreme Court. And Thurgood Marshall, the first African American on the Supreme

Court, had no judicial experience before he was nominated to the Second Circuit. You could go on and on about that.

I would like to address another aspect of Mr. Estrada's background. I know Miguel Estrada, and I know how proud he is in ways that he is unable to express about being the first Hispanic nominee to the D.C. Circuit Court of Appeals. So I will express it. This is a matter of pride for him for he same reason that it is for any of us, not just because Mr. Estrada is a symbol for Hispanics in America, but because Miguel Estrada's story is the best example of the American dream of all immigrants. He and I are proud because we love this great country and the future it continues to promise to young immigrants.

In fact, I have never seen any Hispanic nominee whose nomination has so resonated with the Latino community. Let me just give you an illustration. In this newspaper, the Washington Hispanic, there is Miguel on this side between Lieutenant Governor Townsend and Secretary of State Colin Powell.

Miguel was born in Tegucigalpa, Honduras. He was so bright at an early age that he was enrolled at a Jesuit school at the age of 5. He was raised in a middle-class family. At age 17, he came to live with his mother who had immigrated to New York knowing very little English. Today he sits before the Senate of the United States waiting to be confirmed to one of the greatest courts in this land.

I am embarrassed, therefore, by the new lows that some have gone to attack Mr. Estrada. Detractors have suggested that because he has been successful and has had the privilege of a fine education, he is somehow less than a full-blooded Hispanic.

Even more offensive, it seems to me, are the code words that some of his detractors use about him—code words which perpetuate terrible stereotypes about Latinos—used in effect to diminish Miguel Estrada's great accomplishments and the respect he has from colleagues of all political persuasions.

As chairman and founder 13 years ago of the nonpartisan Republican Hispanic Task Force—which, despite the name, is made up of both Republicans and Democratic members—I have tried to achieve greater inclusion of Hispanics in the Federal Government.

And I am concerned by the obstacles they face. One new obstacle Hispanics face today is this: liberals in this town fear that there could be role models for Hispanics that might be conservative, that would not kowtow to the liberal line. That is despite the fact that the polls show that the great majority of Hispanics are conservative, but surely the advancement of an entire people cannot be dependent on one party being in power.

This past week, I met with a number of leaders of Hispanic organizations from all across this country. I asked them what they thought about the subtle prejudices that Mr. Estrada is facing and they agree. Perhaps they are more offended even than I could ever be.

The Hispanic experience, in fact, sheds new light on this debate that we have been having about ideology in judicial confirmations. Many new Hispanic Americans have left countries without independent judiciaries. And they are all too familiar with countries

with political parties that claim cradle-to-grave rights over their allegiances and futures.

I have a special affinity for Hispanics and for the potential of Latin culture in influencing the future of this country. Polls show that Latinos are among the hardest working Americans. That is because like many immigrant cultures in this country, Hispanics often have two and sometimes three jobs. Surveys show they have strong family values and a real attachment to their faith traditions, that they value education as the vehicle to success for their children.

In short, they have reinvigorated the American dream, and I expect that they will bring new understandings of our nationhood that some of us might not fully see with tired eyes.

I would ask unanimous consent that the balance of my remarks be placed in the record.

Senator SCHUMER. Without objection.

[The prepared statement of Senator Hatch appears as a submission for the record.]

Senator HATCH. Could I say one more thing?

Senator SCHUMER. Please.

Senator HATCH. I am sorry that I have gone so long, but these are important issues, and I feel very deeply about them.

Senator SCHUMER. Take as long as you wish, Senator.

Senator HATCH. My colleague, Mr. Chairman, Senator Schumer, specifically mentioned the allegations that Paul Bender has recently leveled against Mr. Estrada. Now, I have to say Mr. Bender supervised Mr. Estrada at the Clinton Solicitor General's office, and I want to caution my Democratic colleagues that, before they rely too heavily on Mr. Bender to make their case against Mr. Estrada, there are many reasons why Mr. Bender's allegations lack credibility.

First of all, Mr. Bender is an extremist by even the most liberal standards as his 30-year history of hostility to Federal efforts to regulate pornography illustrates.

From 1968 to 1970, Mr. Bender served as the chief counsel to the President's Commission on Obscenity and Pornography.

As such, Mr. Bender was the architect of the Commission's report, which recommended the abolishment of all Federal, State, and local laws interfering with the rights of adults to obtain and view any type of pornography, including hard-core pornography.

The report was so controversial that in 1970, the Senate votes 60–5 for a resolution rejecting it, with nine additional Senators announcing that if they had been present, they would have supported the—I think that was 90. It has got to be more than 60–5. They would have supported the resolution. No current Member of the Senate supported Mr. Bender's views.

One Democratic Senator noted during the debate on the resolution that "the Congress might just as well have asked the pornographers to write the report, although I doubt that even they would have had the temerity and effrontery to make the ludicrous recommendations that were made by the Commission."

Then, in 1977, Mr. Bender testified before this committee against tough anti-child pornography laws in a hearing entitled "Protection of Children Against Sexual Exploitation."

In his testimony, he rejected the notion that Congress could prohibit child pornography in order to protect children from harm because "the conclusion that child pornography causes child abuse involves too much speculation in view of the social situation as we know it, and the fact that it seems that most kids who act in these films probably are doing these acts aside from the films anyway..."

Then again, in 1993, Mr. Bender advanced his agenda on pornography while serving as Principal Deputy Solicitor General, forcing President Clinton and the United States Congress, including nine of my ten Democratic colleagues on this committee, to publicly reject his views.

Now, Mr. Bender's opportunity came in the form of the case of United States v. Knox.

Mr. Bender approved a brief in that case that sought to overturn the conviction of a repeat child pornographer and known pedophile.

His brief represented a reversal of the first Bush administration's policy of liberally interpreting the Child Protection Act to define as child pornography any materials which showed clothed but suggestively posed young children.

In response, on November 3, 1993, the United States Senate voted 100–0 for a resolution condemning Mr. Bender's position in the case. The House passed a similar resolution by a vote of 425–3.

Mr. Bender's brief prompted President Clinton to write Attorney General Reno that the Justice Department's new interpretation of the Child Protection Act left the child pornography law too narrow and emphasized that he wanted "the broadest possible protections against child pornography and exploitation."

Each of my Democratic colleagues on this committee who were Members of Congress at the time voted for either the Senate or House resolutions rejecting Mr. Bender's views. Yet, they inexplicably seemed to put full faith—lock, stock, and barrel—or some have—in his opinion of Mr. Estrada.

In addition to Mr. Bender's extreme views, his public statements criticizing Mr. Estrada lack credibility when they are compared to his contemporaneous statements praising Mr. Estrada's work as the Assistant Solicitor General.

At the request of the committee, Mr. Estrada provided copies of his annual performance evaluations during this tenure at the Solicitor General's office.

The evaluations show that during each year that Mr. Estrada worked at the Solicitor General's office, he received the highest possible rating of "outstanding" in every job performance Congress.

The rating official who prepared and signed the performance reviews for 1994 to 1996 was none other than Mr. Bender.

Let me read a few excerpts from the evaluations that Mr. Bender signed. They say that Mr. Estrada, "states the operative facts and applicable law completely and persuasively, with record citations, and in conformance with court and office rules, and with concern for fairness, clarity, simplicity, and conciseness"; "is extremely knowledgeable of resource materials and uses them expertly; acting independently, goes directly to point of the matter and gives reliable, accurate, responsive information in communicating position to others"; "all dealings, oral, and written, with the courts, clients,

and others are conducted in a diplomatic, cooperative, and candid manner"; "all briefs, motions or memoranda reviewed consistently reflect no policies at variance with departmental or governmental policies, or fails to discuss and analyze relevant authorities"; "is constantly sought for advice and counsel. Inspires co-workers by example."

Now, these comments unmask Mr. Bender's more recent statements, made after Mr. Estrada's nomination, for whatever they are: a politically motivated effort to smear Mr. Estrada and hurt his chances for confirmation.

The performance evaluations also confirm what other Clinton administration lawyers and virtually every other lawyer who knows Mr. Estrada have said about him: that he is a brilliant attorney who will make a fine Federal judge.

Ron Klain, former chief of staff to Vice President Gore, and top Democrat counsel here on this committee, praised Mr. Estrada, saying that he would be able to "faithfully follow the law."

Former Solicitor General Drew Days opined of Mr. Estrada, "I think he is a superb lawyer."

Another Clinton-era Solicitor General—and I have great respect for all of these men—Seth Waxman called Mr. Estrada an "exceptionally well-qualified appellate advocate.'"

Randolph Moss, former Chief of the Justice Department's Office of Legal Counsel, wrote the committee "to express my strong support for the nomination of Miguel Estrada...Although I am Democrat and Miguel and I do not see eye-to-eye on every issue, I hold Miguel in the highest regard, and I urge the committee to give favorable consideration to his nomination."

And Robert Litt, Deputy Assistant Attorney General in the Clinton Justice Department, said, "Miguel has an absolutely brilliant mind. He is a superb analytical lawyer and he's an outstanding oral advocate."

Now, with all of this glowing support from former high-ranking, well-respected Clinton administration lawyers, you have to wonder why there has been some of the criticism that has been leveled at Mr. Estrada, and you really have to wonder why anybody—anybody—would choose to listen instead to the incredible criticisms of Mr. Bender, a liberal extremist whose out-of-the-mainstream views have been twice condemned by the whole United States Senate.

Thank you, Mr. Chairman. That is all I have to say.

Senator SCHUMER. Thank you, Senator Hatch.

Now we will proceed with the nomination. We are going to administer the oath to you, Mr. Estrada. So will you please stand to be sworn? 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. ESTRADA. I do.

Senator SCHUMER. Thank you. You may be seated.

Before we proceed with questions, I would like to give you the opportunity, Mr. Estrada, to introduce your family, who I had the privilege of meeting, and make any statement that you wish.

STATEMENT OF MIGUEL ESTRADA, OF VIRGINIA, NOMINEE TO BE CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT

Mr. ESTRADA. Thank you, Senator Schumer, for having me here this morning. I also wish to thank our Chief Executive for giving me the opportunity to come before you.

I do not have a statement, but I would like to take just a few seconds to point out some members of my family who are here: my wife, Laury, who is a Government lawyer here in town.

My mother, Clara Castaneda, whom you met earlier, was until very recently, as she told you, one of your constituents. She recently retired from her job as a bank examiner in the State of New York and now lives in Columbus, Ohio.

My sister is a pediatric intensive care doctor at Children's Hospital in Ohio. She is here as well.

There are a couple of other family members who could not be here today. My mother-in-law, Ruby Gordon, she is probably watching us on television in Birmingham, Alabama. And my late father's sister, my Aunt Gloria, my uncle, her husband, William Spiker; and my three cousins, William, Edward and Marilyn, could not be here today. And I assure you, Senator, I did not pick my family based on the membership of the committee. They are in San Francisco.

And that is all I have. Thank you.

Senator SCHUMER. Well, thank you, Mr. Estrada, and I met your family. They are a lovely group. In fact, I could that the apple didn't fall far from the tree in terms of sharpness of mind. When I was introduced to your mother, she said, "Well, I hope you will repay the favor." And I said, "Well, please?" She said, "Well, I voted for you."

[Laughter.]

Senator SCHUMER. So thank you all, Estrada family, for being here, and now we will proceed with questions. We will allow each member 10 minutes for questions. We will do the usual Democrat–Republican, go back and forth. And then we will have a second round if the members so wish. Thank you.

Okay. Mr. Estrada, as I mentioned in my opening remarks, you served for years in the Office of the Solicitor General. Your record in that office has been called into question by your former supervisor there. My colleague Orrin Hatch both quoted favorably and unfavorably about Mr. Bender. But he is not the issue. He has said that you are too much of an ideologue and temperamentally unfit to merit confirmation to the seat.

Now, the real way to get to the bottom of this is not listen to Mr. Bender or go past his record. He may be right. He may be wrong. I don't know the man. I have no idea. But it is to examine your record in the Solicitor General's office, which is probably the best detail we would have of what you did, at least in the public sector.

As you know, the Department of Justice has declined to release the memoranda you wrote while serving in that office, claiming a privilege that, at least in my opinion, doesn't really exist.

I understand you haven't opposed the release of these memoranda. Will you commit today to writing to Attorney General Ashcroft and urge him to turn over those documents so we can

work towards resolving any of these allegations and get a fuller view of your record, which, as you know, is very important to me?

Mr. ESTRADA. Thank you, Senator, for the question. You are right that I have not opposed the release of those records. I have been a lawyer in practice for many years now, and I would like the world to know that I am exceptionally proud of every piece of legal work I have done in my life. If it were up to me as a private citizen, I would be more than proud to have you look at everything that I have done for the Government or for a private client.

I do recognize that there are certain interests that have been asserted in this case that go beyond my own personal interest, and those are the institutional interests of the Justice Department, and that those interests have been seconded, as it were, by men—and, unfortunately, only men—who have held the job of Solicitor General in both administrations going back to President Kennedy.

I am more than happy to write to the Attorney General and convey your request, and I am certain that he knows that I am very proud of my work. And as I say, if it were entirely up to me, I would more than happily have the world see——

Senator SCHUMER. What I am asking you to do, sir, is not convey my request. I have made that request already. As you know, shyness is not one of the qualities at the top of the list when it comes to me. And so I would ask you to make that request, and it might help us get those records and expedite this hearing.

I hope you will do that. I don't see why not. As you know, other Solicitors General, other people who worked in the Solicitors General's office—I mentioned the names of Rehnquist and Bork and Judge Easterbrook—have had those documents revealed. It hasn't done damage to the Constitution. It hasn't done damage to the way the executive branch functions. And as a judge, I assume that you would want all of the facts before making a ruling. I think we should have the same right.

So why wouldn't you just make a request to them and ask that those records be released? They may not acceded to it. They may. But then at least this committee would be satisfied that you have done everything to try and get us those records.

Mr. ESTRADA. I understand your point of view, Senator Schumer. I have been a practicing lawyer for all these years, and one of the things I have come to learn is that a practicing lawyer such as I am ought not to put his own interests ahead of the stated interests of his client. I do not think it would be appropriate for me to do more than to convey your request to my former client because they have a publicly stated view that is not in accord with what I would be urging them to do. And as I said, as much as I would dearly love to have the entire world see every aspect of my work for which I am proud, I do not think that I am in a position to, in my own personal capacity——

Senator SCHUMER. I would say to your, sir, in all due respect, you are no longer anybody's lawyer. When you are here to be nominated to the independent branch of the judiciary, you should be making, in my judgment at least, this decision on your own. I understand your loyalty to the Solicitor General's office and you are no longer working there. It would seem to me that as an independent nominee, which you clearly are, with an exemplary record, as

my colleague Orrin Hatch has gone over, that you no longer have to play the role as lawyer but, rather, as nominee, you are playing the role you are, nominee for judge. And to me, at least, it is not satisfying that says, well, I have to still defend my old client there.

Would you think about that? Because I think it would be a shame if we couldn't get that evidence. Would you think about——

Mr. ESTRADA. Certainly. I mean, I will think—I have thought about it, and I will think about it some more, Senator Schumer. Let me say that I would like to think that my life in the law is an open book and that there are tons and tons and reams of stuff out there that can speak to the committee about the sort of thinker that I am and the sort of lawyer that I have been. Obviously, as I said, I have been in practice or have been a lawyer since 1986. I have had people on the other side of the table. I have had co-counsel. I have appeared in front of numerous judges, including all the Justices of the Supreme Court. I am aware that as part of its process of review, the American Bar Association undertook to conduct a survey of those who have been my colleagues and those who have been my opponents and of judges and Justices before whom I have appeared. And they found a record from which——

Senator SCHUMER. Sir, your record in terms of legal excellence I don't dispute. I doubt any member of this committee does. But we have lots of other things, as I mentioned in my opening statement, we want to know. When you represent clients, you are representing clients, and you have done a very good job of that. The closest we have to seeing how you might be as a judge was when you represented the Government in the Solicitor General's office and made arguments to your superiors, to the Solicitor General about what position the United States Government would take.

In all due respect, at least to me, knowing that you are a good lawyer and seeing that you are a good lawyer is not enough. And knowing that you have a record as a lawyer that I could examine is not enough because there are cases—you have said it in some of the interviews that you didn't agree with the view, but you were representing a client. But you are no longer representing a client. You are on your own now as a very, very intelligent, accomplished person, and I would again urge you to think about making that request for us.

Let me move on to the next question here.

I assume that you have read published reports that said that you attempted to block liberal applicants from clerking for your former boss, Justice Anthony Kennedy. I am sure you could understand why that would trouble people. If you are trying to preclude Justice Kennedy from hearing all sides argued in his chamber, it would suggest an ideological agenda when it comes to the courts. So I want to ask you a simple yes-or-no question.

Have you ever told anyone that you do not believe that any person should clerk for Justice Kennedy because that person is too liberal, not conservative enough, because that person did not have the appropriate ideology, politics, or judicial philosophy, or because you were concerned that person would influence Justice Kennedy to take positions you did not want him taking?

Let me repeat the question because it is an important one, at least to some of us.

Have you ever told anyone that you don't believe that any person should clerk for Justice Kennedy because that person is too liberal, not conservative enough, because that person did not have the appropriate ideology, politics, or judicial philosophy, or because you were concerned that person would influence Justice Kennedy to take positions you did not want him to be taking? Can you give us a yes or no to that, please?

Mr. ESTRADA. Senator Schumer, I have taken a cab up to Capitol Hill and sat in Justice Kennedy's office to make sure he hired people that I knew to be liberal.

Senator SCHUMER. But I am asking you yes or no in terms of the question I asked.

Mr. ESTRADA. I don't believe I have. [shaking his head no.]

Senator SCHUMER. The answer is no. Thank you.

Well, I have 17 seconds left, and you will give longer than 17 seconds to my answer. I am going to go to Orrin Hatch. I have more questions, which we will go to in the second round.

Senator HATCH. Well, thank you, Mr. Chairman. Again, I should comment on the request for internal Justice Department memoranda.

As Senator Schumer mentioned in his opening statement, committee Democrats have requested that the Department of Justice turn over attorney work product, specifically appeals, certiorari, and amicus memoranda that Mr. Estrada wrote as a career attorney in the Office of the Solicitor General of the United States of America.

Now, I heard my friend from New York, much to my surprise, say that everyone he has spoken to believes that these memoranda would be helpful. My friend must not have seen the letter written by——

Senator SCHUMER. Excuse me. I didn't say "everyone." I said "many people," I think.

Senator HATCH. Many, okay. Well, let me say that many believe that. But he must not have seen the letter from the Solicitors General, all seven living former Solicitors General wrote to the committee expressing their concern about this request and defending the need to keep such documents confidential. The letter was signed by Democrats Seth Waxman, Walter Dellinger, and Drew Days, three excellent Solicitors General, as well as by Republicans Ken Starr, Charles Fried, Robert Bork, and Archibald Cox, all of whom have excellent credentials.

The letter notes that when each of the Solicitors General make important decisions regarding whether to seek Supreme Court review of adverse appellate decisions and whether to participate as amicus curiae in other high-profile cases, they "relied on frank, honest, and thorough advice from their staff attorneys like Mr. Estrada."

The letter explains that the open exchange of ideas which must occur in such a context "simply cannot take place if attorneys have reason to fear that their private recommendations are not private at all but vulnerable to public disclosure."

Their letter, these seven former Solicitors General, Democrat and Republican, concludes that, "Any attempt to intrude into the office's highly privileged deliberations would come at a cost of the So-

licitor General's ability to defend vigorously the United States litigation interests, a cost that also would be borne by Congress itself."

Now, Mr. Chairman, I would like to submit a copy of this letter for the record at this point, if I can.

Senator SCHUMER. Without objection.

Senator HATCH. Now, the former Solicitors General aren't the only ones who are disturbed by my Democrat colleagues' efforts to obtain privileged Justice Department memoranda. The editorial boards of two prominent newspapers have also criticized the attempt to obtain these records. On May 28th of this year, the Washington Post editorialized that the request "for an attorney's work product would be unthinkable if the work had been done for a private client. The legal advice by a line attorney for the Federal Government is not fair game either."

According to the Post, "Particularly in a lead Government office such as that of the Solicitor General, lawyers need to speak freely without worrying that the positions they are advocating today will be used against them if they ever get nominated to some other position."

On May 24th of this year, the Wall Street Journal also criticized this request by my colleagues and, interestingly enough, noted its curious timing. "On April 15th, the Legal Times newspaper reported that a leader of the anti–Estrada liberal coalition was considering launching an effort to obtain internal memos that Estrada wrote while at the Solicitor General's office."

A month later, on May 15th, Mr. Estrada received a letter seeking those internal memos by this committee.

Once again, to me it becomes painfully clear that the liberal interest groups may very well be the ones controlling the actions and agenda of this committee. It is starting to really worry me.

The Journal continued to voice its criticism in a subsequent editorial, which appeared on June 11th, calling the request "outrageous" and nothing that the true goal was "to delay, to try to put off the day when Mr. Estrada takes a seat on the D.C. Circuit Court of Appeals from which President Bush could promote him to become the first Hispanic American on the U.S. Supreme Court."

Now, Mr. Chairman, I would like to submit copies of these editorials for the record.

Senator SCHUMER. Without objection.

Senator HATCH. I am aware, as some of my colleagues have pointed out, that the New York Times took a different view from the Washington Post and the Wall Street Journal by supporting the Democrats' effort to obtain Mr. Estrada's internal memoranda during his tenure at the Solicitor General's office. But the Times fails completely to even acknowledge that all seven living Solicitors General oppose this request. And since the Times appears to have failed to take this important factor into account in formulating its position, I am inclined to disregard its view on the issue altogether.

Now, I have to admit I didn't agree with them, anyway, but anybody would——

[Laughter.]

Senator SCHUMER. You rarely do.

Senator HATCH. No, that is not true. I have been finding especially the Washington Post lately has been writing some pretty

good editorials on the judgeship situation and the United States Senate.

Now, contrary to the claims of one of my Democratic colleagues, the Department of Justice has never, to my knowledge, disclosed such sensitive information as the memoranda detailing the appeal, certiorari, and amicus recommendations and legal opinions of a career-level assistant to the Solicitor General in the context of a judicial nomination. During Robert Bork's Supreme Court confirmation hearings, the Department did turn over some memoranda Bork wrote while serving as Solicitor General, but to my knowledge, none of these memos contained the sort of deliberative materials requested of Mr. Estrada.

The Bork materials included memos containing Bork's opinions on such subjects as the constitutionality of the pocket veto and on President Nixon's assertions of executive privilege and his views of the Office of Special Prosecutor. None of the memos, to my knowledge, contained information regarding internal deliberations of career attorneys on appeal decisions or legal opinions in connection with the appeal decisions.

Moreover, the Bork documents reflected information transmitted between a political appointee, the Solicitor General, and political advisers to the President, not the advice of a career Department of Justice attorney to his superiors. There is a big difference. The bottom line is that my friends are seeking privileged material. Their attempts have been criticized by all seven living former Solicitors General and by two major newspapers, and perhaps more that I am unaware of. But more fundamental is the fact that Mr. Estrada does not object to turning over these memoranda. He has nothing to hide. It is the Department of Justice that has an institutional interest in refusing to comply with my Democrat colleagues' request. And I, for one, understand and agree with the Department's position. But the Department's recalcitrance in this dispute should neither be imputed to nor held against Mr. Estrada.

Now, to be honest with you, if I was Solicitor General, I would be outraged by that request. And I think the seven Solicitors General were not happy with that request, to say the least. That is why they took the time to write the letter, which is an embarrassing letter to this committee, at the very least.

Mr. Estrada, when you were at the Solicitor General's Office, you had a lot of issues come before you that you had to give your honest opinion on, and others who are continuing long after you are going through the same experience. At any time did you place your own personal ideological opinions over that of what the law really was or you believe should be?

Mr. ESTRADA. No, Senator, never. The job of being a lawyer in that office, as you point out, is difficult and complex, and it entails consideration of a large number of factors including how a particular ruling going one way or the other might affect the interest of this agency or that other agency. And sometimes you have to marshal those interests for the Solicitor General for his consideration, and a full understanding of where all of the Government Departments may be with respect to an issue that is in the Supreme Court, for example. That sometimes may mean saying statements about the legal views of one agency, which if it became public,

would hurt the litigating situation of that agency. And that is probably the type of consideration that has impelled the former Solicitors General to take that view. I haven't spoken to them, but I am not worried in the least that anybody could detect any bias or lack of skill in my legal work.

I do recall having made some pretty ruthless assessments of the legal views of some agencies which I'm sad to say sometimes were vindicated in the courts later, and I would not think that those agencies, as a general matter, would want that—those types of work product papers out in the public domain.

Senator HATCH. Thank you, sir. My time is up.

Thanks, Mr. Chairman.

Senator SCHUMER. And I am just going to take the liberty of adding to the record. I have to point out that my friend, Senator Hatch's claim that memos from career DOJ attorneys reflecting the deliberative roles have not been turned—deliberative process have not been turned over to Congress is not true, and I would just like to submit, just for example, some of those exact memos from Judge Frank Easterbrook, now a Seventh Circuit Judge, exactly the kind of memos we are looking for for Mr. Estrada that were turned over. And I would ask unanimous consent to submit these for the record.

Senator Leahy.

Chairman LEAHY. Thank you, Mr. Chairman. I also have a statement that I would ask to be included in the record.

Senator SCHUMER. Without objection.

Chairman LEAHY. I will not go into the unfortunate character attack made against Mr. Paul Bender, a man I have never met, do not know, but I would hope that this would not deter people either for or against any nominee, you or anybody else, that they would not hesitate to send information and their views to this Committee, and would not fear that they are just going to have their character shredded on C–SPAN if they do. I think it is beneath this Committee when that happens.

I would refer, before there has been so much said about the Waxman letter. It is an interesting letter because these former Solicitors General, and I am sure you noted this, Mr. Estrada, they cited no legal citation, no authority whatsoever in their letter. It simply says as a policy matter that memos written to the Solicitor General should be kept confidential. Now, I agree that the interest in candor is a significant one, but it is not an absolute interest such as the interest of the Senate in addressing allegations made about somebody who is going to—is up for confirmation, not to a short-term position but to a lifetime position. In fact, one of the people in that letter, Former Solicitor General Robert Bork, knows full well that memos to the Solicitor General have been disclosed without any damage to the Department. When he was nominated to the Supreme Court, the Senate Judiciary Committee requested and was provided with written memoranda, written by him, or to him when he worked in the Solicitor General's Office. That did not chill subsequent members of the Justice Department from providing candid opinion. We are talking about something from the 1980s.

Memoranda to and from the Solicitor General's Office and also the Office of Legal Counsel were provided to the Senate during the consideration of Judge Stephen Trott, who was confirmed to the

Ninth Circuit, as well as Chief Justice Rehnquist, when he was confirmed as Chief Justice. Also William Bradford Reynolds, the former head of the Civil Rights Division in the Reagan Administration, who was nominated to the position of Associate Attorney General.

And then the suggestion that there is a attorney/client privilege, I mean that is so farfetched that it almost seems a shame to waste time talking about it. I think Senator Fred Thompson made it very clear. He said in case after case the courts have concluded that allowing attorney/client privilege be used against Congress would be an impediment to Congress, and says well settled the invocation of attorney/client privilege is not binding on Congress. As another senior member of the United States Senate said, the attorney/client privilege exists as only a narrow exception to broad rules of disclosure. No statute or Senate or House rule applies the attorney/client privilege to Congress. In fact, both the Senate and the House have explicitly refused to formally include the privilege in their rules. That senior member of the Senate was Orrin Hatch of Utah, as a matter of fact. I just happened to mention that one.

The Congressional Research Service says it is not binding on the Congress. Professor Ronald Rotunda has declared that it does not. And the person who normally does the partisan political statements for the Department of Justice, Mr. Viet Dinh, said that a Government lawyer's employer is not a single person, but the United States of America. He said both the United States of America and the Government obviously include the United States Senate, and of course, the Seventh, Eighth and District of Columbia Circuits have agreed to that. I mention that for whatever it is worth, and also to clear it up.

As a grandson of immigrants, and the wife was the daughter of immigrants, I know that no matter where you come from, a family takes pride in the success of their children, and I am sure your family does you, and they have a great deal to be proud of in your accomplishments. You have got a successful law career in a prominent corporate law firm that is the firm of President Reagan's first Attorney General, William French Smith, President Bush's current Solicitor General, Theodore Olson. You joined the office of the Solicitor General of the United States and worked for Kenneth Starr. Supreme Court Justice Scalia is a friend of yours. You worked on the legal team with Mr. Olson that secured the United States Supreme Court's intervention in the presidential election in 2000 on behalf of then Governor Bush. You showed your brilliance as a lawyer there. So I congratulate you on these. You are in a high-powered law firm. You have a lot going for you.

The White House keeps talking about that you came from great poverty, arrived in this country not speaking any English. I know you and I talked about that, and you pointed out it was a little bit different than the story the White House passes out. Your mother is a bank examiner, daughter of an educator. Father is a prominent lawyer. You attended private school; studied English before coming to the United States. In fact you were so good in that you earned a B in college-level English classes in your first full year of higher education here. We have a lot of people who were born in this country and English was their first language. If I judge from some of

the letters I get from college students, they could not earn a B. They would be darn lucky to make it through. And you seem to have followed your father's legacy in law school by assisting a banking law professor.

So I just wanted to make sure, have I pretty well described your background?

Mr. ESTRADA. I'm somewhat embarrassed to enter a little bit of a correction.

Chairman LEAHY. Oh, no, please do.

Mr. ESTRADA. It doesn't really put me in the best light and has always embarrassed me, but I did get a B- in my first English class, not a B. And——

Chairman LEAHY. Grade inflation has happened before around here, so, no we will not—everything else was okay though?

Mr. ESTRADA. You were probably right to point out that it was probably actually some sort of a C, but okay. I would not say my father was a prominent lawyer. He was a lawyer. My mom just retired as a bank examiner in New York, as I just told you. I went to a Catholic school, for which I think my father had to pay something like 10 or $20 a month. I have never known what it is to be poor, and I am very thankful to my parents for that. And I have never known what it is to be incredibly rich either, or even very rich, or rich.

I have been in public service for the great bulk of my life, as you know. I don't, as a person having come here, I don't keep a lot of money in hand. I have been very fortunate in all of the opportunities I've had in this country, and it's allowed me to rise to a standard of living in this country which I certainly would not have enjoyed in my home country. That's why I'm here. But I think in broad outline what you have said is right, and I take every day pride in the fact that I have been able to do these things, thanks to having come here, though it is true that I was fortunate enough in Honduras to have parents who gave me a good, honest, middle class upbringing.

Chairman LEAHY. And I think these are things to be proud of. My grandparents spoke virtually no English, and I think they were proud their grandson went on, not to make a lot of money, but to have a life of public service. I see the look of pride on your family behind you, and I am sure they feel that way. I just wanted to make sure that we got—I wanted you to have a chance to give your background because I did not want that to become a political issue because of the somewhat different one the White House gave. I think yours is more accurate and more compelling.

We have heard that you have many strongly-held beliefs. You are a zealous advocate. And that is great. You know, lawyers who win cases are not the ones who are on the one hand this, on the other hand that. They are zealous. But you also have to make sure that if you are going to enforce laws, that your personal views do not take over the law. Senator Thurmond has every single nominee I have ever heard him speak to, Republican or Democrat, has spoken to that effect.

What would you say is the most important attribute of a judge, and do you possess that?

Mr. ESTRADA. The most important quality for a job—for a judge, in my view, Senator Leahy, is to have an appropriate process for decision making. That entails having an open mind. It entails listening to the parties, reading their briefs, going back behind those briefs and doing all of the legwork needed to ascertain who is right in his or her claims as to what the law says and what the facts are. In a Court of Appeals Court, where judges sit in panels of three, it is important to engage in deliberation and give ear to the views of colleagues who may have come to different conclusions, and in some, to be committed to judging as a process that is intended to give us the right answer, not to a result.

And I can give you my level best solemn assurance that I firmly think I do have those qualities, or else I would not have accepted the nomination.

Chairman LEAHY. Does that include the temperament of a judge?

Mr. ESTRADA. Yes, that includes the temperament of a judge. I think, to borrow somewhat from the American Bar Association, a temperament of a judge includes whether the individual, whether he or she is impartial and open minded and unbiased, whether he is courteous yet firm, and whether he will give ear to people that come into his room, into his courtroom, who do not have—who come with a claim about which the judge may be at first skeptical.

Chairman LEAHY. Thank you, Mr. Chairman. I will have other questions, of course, for our next round.

Senator SCHUMER. We will have a second round. Thank you, Chairman Leahy.

Just two things. I want to—I was asked by Senator Hatch to please announce that Senator Kyl had to go to the Intelligence Committee, and he is going to try to come back. I would also want to just ask unanimous consent to put the letter of January 27th, 2000 from the U.S. Department of Justice Office of Legislative Affairs in the record, which states the current Justice Department position, as I understand it, on giving up these documents, and they say, "Our experience indicates that the Justice Department can develop accommodations with congressional committees that satisfy their needs for information that may be contained in deliberative material while at the same time protecting the Department's interest in avoiding a chill on the candor of future deliberations." And I would like to add that to the record because I think it is not exactly on all fours with what was said before.

Let me call on Senator Grassley.

Senator GRASSLEY. Before I make some comment, I want to ask three very basic questions, and they kind of get at the foundation for the selection of judges. In general, Supreme Court precedents are binding on all lower Federal Courts, and Circuit Court precedents are binding on District Courts within a particular circuit. Are you committed to following the precedents of the higher courts faithfully and giving them full force and effect even if you disagree with such precedents?

Mr. ESTRADA. Absolutely, Senator.

Senator GRASSLEY. What would you do if you believe the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you nevertheless apply that decision or

would you use your own judgment of the merits, or the best judgment of the merits?

Mr. ESTRADA. My duty as a judge and my inclination as a person and as a lawyer of integrity would be to follow the orders of the higher court.

Senator GRASSLEY. And if there were no controlling precedent dispositively concluding an issue with which you were presented in your circuit, to what sources would you turn for persuasive authority?

Mr. ESTRADA. When facing a problem for which there is not a decisive answer from a higher court, my cardinal rule would be to seize aid from any place where I could get it. Depending on the nature of the problem, that would include related case law in other areas that higher courts had dealt with that had some insights to teach with respect to the problem at hand. It could include the history of the enactment, including in the case of a statute, legislative history. It could include the custom and practice under any predecessor statute or document. It could include the views of academics to the extent that they purport to analyze what the law is instead of prescribing what it should be. And in some, as Chief Justice Marshall once said, to attempt not to overlook anything from which aid might be derived.

STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. I thank you for those answers. I am not going to go into the statements that have been exchanged between my colleagues on Mr. Bender, but I do have—I do not know Mr. Bender, but I did work on an issue where he played a prominent role in in the previous administration, and that was dealing with the *Knox* case, and I guess since I sponsored a resolution that disapproved of the Clinton Administration's position on that *Knox* case, as that was heavily influenced by Mr. Bender's decision, and theresolution passed 100 to zero in the Senate. We did not want arguments in a case that would let a twice-convicted child pornographer free to continue his tendency to lure under-age girls into criminal relationships.

I think that when that sort of person comes out in opposition to you, that it ought to be pointed out, as it probably has already been pointed out in stronger ways than I will, that itself is reason to ignore to a considerable extent Mr. Bender's detraction of your qualifications to be on the Circuit Court of Appeals. And I fought very hard to get the resolution dealing with the *Knox* decision through the Senate, obviously I wanted a President and an Attorney General and a Solicitor General to fight hard to uphold legislation to protect children against predators. And in fact, we had a reversal of the administration's position in that case that had been highly influenced by Mr. Bender, who obviously has some extreme positions on child pornography.

So I will just leave it at that and suggest that our colleagues not take the opinions of Mr. Bender very seriously in his finding fault with Mr. Estrada's qualifications for being on the court. In fact, I would think just the opposite from news reports that are out. Mr Bender had very complimentary things to say about you while you

had a working relationship with him, and I would think, how do you get this dramatic change of opinion from Mr. Bender's opinion of you prior to your nomination to the Circuit Court and then a different opinion after your nomination to the D.C. Circuit Court of Appeals.

So I am glad that the President has nominated you. Obviously, I do not make a final decision until the record's clear, but I think with the ratings that you have had and how you have expressed yourself so far at this hearing, plus the reputation you have, that it is going to be hard for somebody to find reasons for voting against you.

Thank you.

Senator SCHUMER. Thank you, Senator Grassley.

Senator Kennedy.

Senator KENNEDY. Mr. Chairman, I want to congratulate the nominee. It is an enormous tribute, and you are to be congratulated, and we want to welcome your family. Thank you very much.

Mr. ESTRADA. Thank you, Senator.

STATEMENT OF HON. EDWARD M. KENNEDY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator KENNEDY. Just before questioning the nominee, Mr. Chairman, I want to just join with those that are rejecting these personal attacks of Mr. Bender. I do not know Mr. Bender. But Professor Bender graduated magna cum laude from Harvard Law School, Law Review, clerked for Judge Learned Hand, Court of Appeals. He was a clerk for Justice Felix Frankfurter in the Supreme Court. He has spent 24 years as a faculty member at the University of Pennsylvania Law School, and he was the Dean of the Law School. And he has also argued 20 cases on behalf of the United States before the Supreme Court.

Now, I think it is one thing to disapprove of those that are going to support the nominee and to question those that disagree, but to have the kind of personal attacks on Mr. Bender, I think demeans this Committee and demeans those who have made them.

Now, on the question of the release of the various materials—and I want to do this very quickly because I have questions of substance—did you ever talk with the Attorney General about the release of these personally? Did you ever say, "Look, I am all for—since I do not have a great deal of decision making, I have not published a great deal. I know there is going to be interest in my work, in the Solicitors General, and I want to see these released." Did you ever talk to him personally?

Mr. ESTRADA. No. I have only met General Ashcroft I believe once in my life, on the day when I was nominated.

Senator KENNEDY. So you have never made a personal request either of him, or did you say so to anybody in the White House?

Mr. ESTRADA. No.

Senator KENNEDY. So you have not, as a personal matter, made that request yourself, even though that you knew that there was going to be widespread interest in this and that the members of the Committee were going to ask for it?

Mr. ESTRADA. Promptly when I got the letter from Chairman Leahy I forwarded it to—I think it was to the White House Coun-

sel's Office, and may also have sent it on to the Solicitor General. No, actually, I didn't do that. Just the White House Counsel's Office.

Senator KENNEDY. And then they just gave you a reaction and that was it? You did not go back and say, "I can't understand how the Judiciary Committee, in its consideration, would want to know these kinds of questions. There are others, Bork, Rehnquist, Easterbrook, Civiletti, Brad Reynolds, all have done this in the past. In the sense of openness, I would like the Committee to have these kinds of documents as well?"

Mr. ESTRADA. No, Senator, I did not.

Senator KENNEDY. But you are going to do that now?

Mr. ESTRADA. I have told Senator Schumer that I will think about doing that now.

Senator KENNEDY. Well, you better think about it. Is that your answer, you are just going to think about it?

Mr. ESTRADA. Well, Senator——

Senator KENNEDY. You cannot just—that is your answer? We will go on to another question if that is what your answer is going to be, you are just going to think about it.

Senator HATCH. Do you care to add anything else to it?

Senator KENNEDY. Now, Mr.——

Senator HATCH. Well, if he does, let the witness answer.

Senator KENNEDY. I want to ask, Mr. Estrada, as Senator Schumer pointed out, the D.C. Circuit Court of Appeals probably has a greater impact on the lives of people than any other court for the reasons that he had outlined, but I will just mention them again: makes the decisions about the protections of health care workers, their exposure to toxic chemicals. It does with regards to the labor laws, interpreting the protections of our labor laws for workers, whether these laws are going to apply to workers or whether there is going to be adequate compensation or fair compensation. It has a whole range of employment discrimination cases on race, on gender, on disability. It has important regulations that makes judgments about drinking water, the safety of drinking water, toxic sites, brown fields, again, environmental issues, about smog and soot. Now we have doubled the number of children that are dying from asthma every year now. It is one of the few children's diseases that is going up in terms of deaths. They make important decisions about smoke and soot in the air. The right to choose. The rights of gay men and lesbians, like Joseph Staffin, a midshipman at the U.S. Naval Academy, discharged because he told his classmates that he's gay. First Amendment rights on television. The Sentencing Commission. Equal protection and due process of the law.

Now, these affect many people that do not have great advocates, great lobbyists, great special interest here, but they look to this Court as being the Court really of last resort. Can you tell me why any of those groups that would be affected by these laws would feel that you would be fair to them, understand their problems, understand their needs, and that they, before you, could get the kind of fair shake by someone who could really understand the background of their experience?

Mr. ESTRADA. Certainly, Senator. I would ask those people to look at my record of public service and what I have done with my

life as a lawyer. As you may know, one of the things that I have done after leaving my years of public service both in the U.S. Attorney's Office and in the prosecutor, is to be an attorney in private practice. While in private practice I have done my share of work for free that I think benefits the community, including taking on the death row appeal of an inmate who had been sentenced to death, and whose case was accepted by the Supreme Court of the United States.

The reason I did that, and it took a significant part of my year a couple of years ago, is because I looked at the record after his then current lawyer came to me asking for help, and I said, "This isn't right. We got to do something about this." And I am the type of person who can look at what I think is an injustice and try to use my skills as an advocate to make sure that I make every effort to set it right. I did that in that case. I have done that in my life as a public servant. And I would continue to do that as a judge.

Senator KENNEDY. I would hope that we could have printed in the record the cases that you did handle. I believe there was another case as well. Am I right?

Mr. ESTRADA. There were other cases. There was a case for an inmate that I handled in New York, yes.

Senator KENNEDY. How many cases would you say roughly that you did pro bono?

Mr. ESTRADA. I have done cases in litigation I can think of right now of four. I haven't been in private practice for very long, and during my period of public service it was not lawful for me to take——

Senator KENNEDY. You could understand, could you, about how the concerns that people that would be affected by these, would wonder whether you would be able to understand their plight, do you think, or not?

Mr. ESTRADA. Well, certainly, Senator. I am a practicing lawyer. I walk—I walk into courtrooms pretty much all the time, and whether it is one of my firm's corporate clients or whether it is Tommy Strickler, the death row inmate, I always have a knot in my stomach about whether I'm going to do right by that client.

Senator KENNEDY. One of the areas that you have been very active in in the pro bono also was on the issues of challenging the various anti-loitering cases. One in particular comes to mind, and that is the position that you took with regard to the NAACP, an Annapolis anti-loitering case, in that case the NAACP, which is a premiere organization that has advocated for the social and political rights for African-Americans and other minorities for almost 100 years. They brought the challenge to the Annapolis ordinance because the ordinance was so broadly written that it interferred with their members ability to counsel teenagers involved with crime and drugs. It also interferred with their ability to conduct voter outreach and registration.

Now, you made the case before the court that the NAACP should not be granted standing to represent its members, these members, and as I look through the case I have difficulty in understanding why you would believe that the NAACP would not have standing in this kind of case, when it has been so extraordinary in terms of fighting for those that have been left out and been left behind. The

NAACP has been granted standing to represent their members in more cases than perhaps any single organization in the history of this country.

Mr. ESTRADA. The laws that were at issue in that case, Senator Kennedy, and in an earlier case, which is how I got involved in the issue, deal with the subject of street gangs that engage in—or may engage in some criminal activity. I got involved in the issue as a result of being asked by the City of Chicago, which had passed a similar ordinance dealing with street gangs. And I was called by somebody that worked for Mayor Daley, when they needed help in the Supreme Court in a case that was pending on the loitering issue.

I mention that because after doing my work in that case, I got called by the attorney for the city of Annapolis, which is the case to which you're making reference. They had a somewhat similar law to the one that had been an issue in the Supreme Court, not the same law, and they were already in litigation, as you mentioned, with the NAACP. By the time he called me, he had filed—this is the lawyer for the city—he had filed a motion for summary judgment, making the argument that you've outlined. And he had been met with the entrance into the case by a prominent Washington, D.C. law firm on the other side. He went to the state and local legal center and asked, who I can turn to to help? And they sent him to me because of the work I had in the Chicago case.

Following that I did the brief, and the point on the standing issue that you mentioned is that in both Chicago and in the Annapolis ordinance, you were dealing with types of laws that had been passed with significant substantial support from minority communities. And I've always thought that it was part of my duty as a lawyer to make sure that when people go to their elected representatives and ask for these types of laws to be passed, to make the appropriate arguments that a court might accept to uphold the judgment of the democratic people.

In the context of the NAACP that was irrelevant to the legal issue because one of the requirements, we argued for representational standing, was that the case that the organization wants to get into is germane to the goal of the organization, which in this case, as everybody knows, was to combat discrimination. And the basic point of the brief was that these were not racist laws. I take a back seat to no one in my abhorrence of race discrimination in law enforcement or anything else. But the basic point was that these were laws that were passed by the affected minority communities, to be sure, not with the unanimous support of minority communities, but that these were laws that had significant minority community support. And I thought that that was an argument that the court should consider in the context of this narrow legal doctrine that it was averting to.

Senator KENNEDY. Well, my time is up. It is my understanding that the elected officials opposed those laws, the elected officials in the communities opposed the laws, but the District Court effectively rejected your position. I ask the question because I want to be sure that you understand the implication of the argument you are making on the ability of ordinary working men and women, who don't have the resources to bring complex litigation on their

own. Representational standing has been such a critical tool in dealing with civil rights and discrimination issues. Using the tool of representational standing, people have been able to bring cases in the D.C. Circuit that affect the environment, civil rights, workers and consumers. Your arguments in this case suggest you'll fail to recognize the importante of allowing groups to bring cases on behalf of this area. To deny the NAACP standing in this case I find troublesome. I think, as I understand, that is one of the reasons that the—both MALDEF and the Puerto Rican Legal Defense Fund have concerns as well. I just wanted to raise that.

I understand my time is up, Mr. Chairman.

Senator SCHUMER. Thank you, Senator Kennedy.

Before I turn to Senator Sessions, Senator Brownback just wanted you to know and everyone to know that he had to go to the floor to co-manage the Homeland Security Bill and hopes to be back this afternoon.

Senator Sessions.

STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SESSIONS. Thank you, Mr. Chairman. I will submit a statement for the record.

And will just raise a couple of points at the beginning because I did participate with you yesterday on the hearing involving the D.C. Circuit, and previous hearings on the question of the appropriateness of considering ideology in selecting judges.

I believe that as we approach this, we ought not to change the ground rules. I know you have a chart there you referred to as prepared by Professor Cass Sunstein. I believe that was the professor that appeared before the Democratic Senators in retreat two years ago, and urged that the ground rules for judicial confirmations be changed. And since that time we have raised several issues, notably the issue that we should not consider a person's ideology or political views when considering a judge, and also that the burden is on the nominee. Both of those, as we have researched it carefully, are contrary to history and tradition of the Senate. It is no doubt that any member, Mr. Estrada, of this Committee, can use any standard they want. They are elected, as you know, and they can use any standard they want.

But we have to be careful that the standard we use can be applied across the board over a period of time, and it is a healthy standard for America. So I think those two issues are important and should not be adopted here.

I would note that Lloyd Cutler, who served as President Clinton's White House counsel, and a distinguished lawyer of many years service, has stated it would be a tragic development to include ideology, when, testifying before the Administrative Oversight Subcommittee. "It would be a tragic development if ideology became an increasingly important consideration in the future. If you make ideology an issue in the confirmation process, is to suggest that the legal process is and should be a political one."

Would you have any comment on that, Mr. Estrada? Do you see the legal process as a political thing or a legal matter?

Mr. ESTRADA. Senator Sessions, I am very firmly of the view that although we all have views on a number of subjects from A to Z, the first duty of a judge is to self-consciously put that aside and look at each case by starting withholding judgment with an open mind and listen to the parties. So I think that the job of a judge is to put all of that aside. And to the best of his human capacity, to give a judgment based solely on the argument's on the law.

Senator SESSIONS. I agree, and that is the strength of our rule of law in America, which I think has helped make this country free, independent and prosperous economically, and we must, must, must not politicize the rule of law. And I think some of the things that we are seeing in this Committee are steps in that direction. We have professors who believe that the law is merely a tool to oppress, that judges are tools of passions and that it is a myth to believe that we can follow and ascertain the law objectively. I reject that. And if we ever move away from that in this country I believe we will be endangering our system.

The Revesz study that was highlighted in Mr. Sunstein's numbers, also by the Chairman, should be taken with caution. Just looking at the Revesz study, it points out that there were some differences in Republican and Democratic judges. But look at the issues and how they deal with them. They looked only at environmental cases. They don't look at agriculture, Federal trade, or IRS cases. The study found no significant difference in Republican and Democratic voting patterns on statutory environmental cases, only regulatory cases where there is—where unelected bureaucrats are actually enforcing, fleshing out rules to enforce laws we made. They found no industry favoritism by Republican in 7 of the 10 time periods studied. They found no activist group favoritism by Democrats in procedural environmental cases in 4 of the 10 time frames studied. I think that study is greatly overstated, and I believe the ideal we should adhere to, that a judge, Republican or Democrat, personally liberal or personally conservative, should rule the same in every case. Is that not the basic ideal of America, based on the same law and facts?

Mr. ESTRADA. I think my basic idea of judging is to do it on the basis of law and to put aside whatever view I might have on the subject to the maximum extent possible, Senator.

Senator SESSIONS. You finished high in your class at Harvard, and were an editor of the Harvard Law Review. Being on the Law Review itself is a great honor of any graduate, one of the highest law honors a person can have. You served in the Solicitor General's Office, which many consider to be the greatest lawyer's job in the entire world, to represent the United States of America in court. Everyone selected there is selected on a most competitive basis. You have served one of the great law firms in America, doing the appellate litigation work, Gibson, Dunn & Crutcher, one of the great law firms in the world.

And you have been evaluated very, very carefully by the American Bar Association. As Mr. Fred Fielding said Tuesday, the ABA considers judicial temperament, and after a careful review of your record, they concluded unanimously that you have the gifts and graces to make an outstanding judge. They gave you the highest possible rating unanimously, well qualified.

I see nothing in your record that would indicate otherwise. Your testimony has been wonderful here today. It reflects thoughtfulness, a gentleness. You are patient with some of the questions you have received. You have demonstrated the kind of temperament that I think would make a great judge. You head the appellate section of Gibson, Dunn & Crutcher. People do not hire you in that section unless they believe you can do good work.

So I just am most impressed. I believe you are an outstanding nominee.

Let's talk a little bit briefly more about the internal memorandums in the Department of Justice. You have just raised, in your original comments, the critical point, those memorandum, when a lawyer does work for a client and produces product for that client, who owns the product; is it the lawyer or the client?

Mr. ESTRADA. In my understanding, as a general matter it is the client, Senator.

Senator SESSIONS. And when you give internal advice to a client and memoranda to a client, that is the client's duty to either reveal it or not reveal it, and you would have to have permission from that client.

Mr. ESTRADA. That is usually the case.

Senator SESSIONS. And as a lawyer—well, maybe it is the criminal investigation or something, but if it is a lawyer's duty here to carry out their responsibilities effectively, it is also, in my view, very nearly improper to ask them to give up something that you have no right to ask them to give up. I think that is appropriate to say. You have no objection to their releasing it, but if this Committee wants those documents, they have to ask the Department of Justice. And I think it is very significant that all of those former Solicitor Generals, including every single living Solicitor General, has opposed releasing those documents, as a matter of policy. So I believe you have nothing to be ashamed of there, and I think this is making a mountain out of a molehill. It is an attempt to suggest there is something to hide when we have an important legal policy at stake.

And I know the questions get asked, well, what do you think these groups might say? Maybe they cannot see you to be objective. After groups have been stirred up or certain liberal activist groups attack a nominee, and then members of the Committee then turn and ask the nominee, "Well, they have said these things that you have refuted," and the nominee is often knocked down totally as being inaccurate. But then they say, "Well, we cannot confirm you because somebody might think you cannot be fair." And I think that is an unfair thing to the nominee.

Mr. Estrada, if you are confirmed to this position—and I hope that you will be—how do you see the rule of law, and will you tell us, regardless of whether you agree with it or not, that you will follow binding precedent?

Mr. ESTRADA. I will follow binding case law in every case. and I don't even know that I can say whether I concur in the case or not without actually having gone through all the work of doing it from scratch. I may have a personal, moral, philosophical view on the subject matter, but I undertake to you that I would put all that aside and decide cases in accordance with binding case law, and

even in accordance with the case law that is not binding, but seems instructive on the area, without any influence whatsoever from any personal view I may have about the subject matter.

Senator SESSIONS. Thank you for your outstanding testimony. I believe that if confirmed you will be one of the greatest judges on that court, and I do believe that if you are not confirmed, it will be because this Committee has changed the ground rules for confirming judges, and that would be a tragic thing.

Senator SCHUMER. Senator Kohl.

Senator KOHL. Mr. Estrada. When we decide to support or oppose a nominee, we of course need to have an idea of their public approach——

Senator SCHUMER. Excuse me, Senator. I am sorry. We said we would break at 12:30, but in courtesy to Senator Feinstein who has been waiting here for a while, we will do Senator Kohl, Senator McConnell, Senator Feinstein. But anyone else who comes in will have to wait until 2 o'clock when we resume, if that is okay with everybody.

Thank you. Sorry to interrupt, Senator.

Senator KOHL. When we decide whether to support or oppose a nominee we need to have an idea about their approach to the law, of course, and we need to determine what kind of a judge they might be. Some of us here, in fact many of us, vote for almost all of the nominees for a Federal bench. I personally have voted for 99 percent of the nominees that have come before this Committee.

In all of those cases I felt that I knew what we were getting when we voted. There was some record or some writings that gave me an idea about how the nominee might perform as a judge. We do not have, as you know, much of a public record or written record of you. You have opinions, of course, on many issue I am sure, but we do not hardly know what any of them might be. And some of us might have a tough time supporting your nomination when we know so little.

With that in mind, I would like to know your thoughts on some of the following issues. Mr. Estrada, what do you think of the Supreme Court's efforts to curtail Congress's power, which began with the *Lopez* case back in 1995, Gun–Free School Zones Law?

Mr. ESTRADA. Yes, I know the case, Senator. As you may know, I the was in the Government at the time and I argued a companion case to *Lopez* that was pending at the same time, and in which I took the view that the United States was urging, in the *Lopez* case and in my case, for a very expansive view of the power of Congress to pass statutes under the Commerce Clause and have them be upheld by the Court. Although my case, which was the companion case to *Lopez* was a win for the Government on a very narrow theory, the Court did reject the broad theory that I was urging on the Court on behalf of the Government. And even though I worked very hard in that case to come up with every conceivable argument for why the power of Congress would be as vast as the mind can see, and told the Court so at oral argument, I understand that I lost that issue in that case as an advocate, and I will be constrained to follow the *Lopez* case.

Lopez has given us guidance on when it is appropriate for the Court to exercise the Commerce power. It is binding law, and I would follow it.

Senator KOHL. In light of growing evidence that a substantial number of innocent people have been sentenced to the death penalty, does that provide support in your mind for the two Federal District Court Judges who have recently struck down the death penalty as unconstitutional?

Mr. ESTRADA. I am not—I am not familiar with the cases, Senator, but I think it would not be appropriate for me to offer a view on how these types of issues, which are currently coming in front of the Court and may come before me as a judge, if I am fortunate enough to be confirmed, should be resolved.

Senator KOHL. What is the Government's role in balancing protection of the environment against protecting private property rights?

Mr. ESTRADA. There are—as you know, Senator, there is a wealth of case law on that subject matter. Generally, Congress has passed a number of statutes that try to safeguard the environment, things like the Clean Air Act, NEPA, any number of other statutes that are enforced sometimes by the EPA, for example, and as a general matter, I think all judges would have to greet those statutes when they come to court with a strong presumption of constitutionality. There are claims in the courts that sometimes in a particular case, those statutes, like some other statutes, may be used to transgress the Constitution. And I know that here are people who may claim that there may be takings or arguments of that nature.

Obviously, one would have to look carefully at the case law from the Supreme Court under the Just Compensation Clause of the Fifth Amendment, but I don't know that I can tell you in the abstract how those cases should come out other than to say that I recognize that as a general matter the enactments of Congress in this area as in any other, come to the courts with a strong presumption of constitutionality.

Senator KOHL. All right. In the past few years, Mr. Estrada, there has been a growth in the use of the so-called protective orders in product liability cases. We saw this, for example, in the recent settlements arising from the Bridgestone–Firestone lawsuits. Critics argue that these protective orders oftentimes prevent the public from learning about the health and safety hazards in the products that are involved.

So let me ask you, should a judge be required, and to what extent should a judge be required to balance the public's right to know against the litigant's right to privacy, when the information sought should be sealed—that could be sealed and could keep secret a public health and safety hazard? How strongly do you feel about the public's right to know in these cases?

Mr. ESTRADA. Senator, there is a long line of authority in the D.C. Circuit, as it happens, dealing with public access in cases that are usually brought to gain access to Government records by news organizations, and those cases, as I recall—I haven't looked at them in some time—do recognize a common-law right of access to

public records, which must be balanced against the interest of the governmental actor that is asserting a need for confidentiality.

I am not aware of any case, though there may be some, that have dealt with this issue in the context that you've outlined, but I would hesitate to say more than that, because I don't know how likely is it that that—that the very issue that you've just outlined would come before me in the D.C. Circuit if I were fortunate enough to be confirmed.

Senator KOHL. One last question. With all due respect to your answer, I am trying to know more about you, and I am not sure I am.

Mr. ESTRADA. I'm trying to help me.

Senator KOHL. What did you say, you are sorry you cannot help me?

Mr. ESTRADA. No. I said I am trying my best to help you, Senator.

Senator KOHL. All right. Last question, sir. In their letter, the Puerto Rican Legal Defense and Education Fund criticized you for making, and I quote, "several inappropriately judgmental and immature comments about" their organization. They also called you, quote, "contentious, confrontational, aggressive and even offensive." Unquote. Why do you think they said these things about you? What happened at that meeting that would lead this organization to make such a strong statement? And what statements were you referring to when you said "bone-headed?"

[Laughter.]

Senator KOHL. Or can you not answer that either?

Mr. ESTRADA. All right. I am happy to answer all of your questions, Senator.

The fund, as you may know, pretty much almost right after I was nominated, sent a letter to Chairman Leahy, saying some fairly unflattering things about my candidacy for this office. The letter asked for a meeting with me, which I was delighted to give them, because I think of myself as a fair-minded person, who is very concerned that there is anybody out there who may think that I am biased or that I have any other character trait, that would make me less of a person. So I was very concerned that these people, whom I had not met, had already sent this letter. I told them that I would meet with them. And I did meet with them I think in April this year. I was happy to clear for them an entire day of my calendar.

As it happens, there were three of them. They took about 3–1/2 hours, and we had what I thought at the time was by and large a cordial conversation. It was clear to me at the time that one of the individuals in the meeting was very frustrated by what I thought was my inability to give very expansive views in certain areas of law that are of interest to the Fund. And he was also clear at the meeting that he was very concerned that he would not—that this meeting was not enabling him to ascertain how I might vote on a case, which I thought was what I had to do in my conversations with anybody.

Ultimately, during the conversation, which, as I say, by and large was pretty cordial, he expressed the view—actually, a series of three related views, which went something like this: number

one, you, Mr. Estrada, were nominated solely because you are Hispanic; number two, that makes it fair game for us to look into whether you are really Hispanic; and, number three, we, having been involved in Hispanic Bar activities for, lo, these many years, are in a position to learn that you are not sufficiently Hispanic. To which my response was—and I felt that very strongly—to point out that the comments were offensive, and deeply so, and bone-headed. And they're still offensive.

Senator KOHL. And bone-headed. Thank you. I think you have done very well. I appreciate your comments.

Senator SCHUMER. Senator McConnell?

STATEMENT OF HON. MITCH MCCONNELL, A U.S. SENATOR FROM THE STATE OF KENTUKY

Senator MCCONNELL. Thank you, Mr. Chairman.

Well, Mr. Estrada, I want to congratulate you on your nomination. Your story is truly inspiring, and being the proud husband of a lady who has done rather well in the United States, coming to this country at age 8 and not speaking English, your nomination reminds me of what I think about frequently when I am around the Secretary of Labor, that this is a great country. So I congratulate you on your nomination.

I think the President has made a number of truly outstanding nominations. Yours is quite possibly the best. And I hope you will be speedily confirmed after some delay that your nomination has encountered here over the last year and a half.

I really have no questions, but I do want to make a statement. One of the dilemmas of being the least senior member of the committee is you have to wait around for a while.

My friends on the other side have said they want mainstream judges. I think that you, Mr. Estrada, fit this category quite nicely. As others have said, you received the ABA's highest rating, unanimously "well qualified." As part of its rating, the ABA considers judicial temperament. You donated over 400 hours pro bono defending an individual in a capital case. You have received glowing letters of recommendation from prominent Democrats, including the former Solicitor General under President Clinton, Walter Dellinger, and former chief of staff to Vice President Gore.

But mainstream, of course, is a relative term. At this point it is clear that what many of us on this side of the aisle think is mainstream is quite different from what some of our friends on the other side think is mainstream. I thought Priscilla Owen, for example, was in the mainstream. She was rated, as you were, unanimously "well qualified" by the ABA. She was endorsed by the past 16 State bar presidents, both Democrats and Republicans. She was twice elected to statewide judicial office, the last time receiving 84 percent of the vote.

Yet my colleagues on the other side of the aisle killed her nomination because of her interpretation of a Texas law saying minor girls cannot freely get abortions behind their parents' backs. On this subject, well over 80 percent of Americans agreed with Justice Owen. So I was astounded that our friends on the other side would conclude that she was not in the "mainstream."

So I thought the best way to determine who in my colleagues' view is in the mainstream is to look at decisions of some of the 377 Clinton judges whom my colleagues strenuously supported and argued were "in the mainstream."

For example, one of the class of 1984, Judge Shira Scheindlin recently in a case regarding a terrorist witness, Federal agents did their job by detaining a material witness to the attacks of 9/11, a Jordanian named Osama Awadallah. Osama Awadallah knew two of the 9/11 hijackers and met with at least one of them 40 times. His name was found in a car parked at Dulles Airport by one of the hijackers of the American Airlines Flight 77. Photos of his better-known namesake, Osama bin Laden, were found in Osama Awadallah's apartment.

Under the law, a material witness may be detained if he has relevant information and is a flight risk. DOJ thought that Osama Awadallah met these two tests. It didn't seem to me like they were going out on much of a limb there. While detained, Awadallah was indicted for perjury.

Judge Scheindlin of the Clinton class of 1994 dismissed the perjury charges and released Mr. Awadallah on the street. Her reason? She ruled that the convening of a Federal grand jury investigating a crime was not a criminal proceeding and, therefore, it was unconstitutional to detain Mr. Awadallah.

This was quite a surprise to prosecutors who, for 30 years, had used the material witness law in the context of grand jury proceedings for everyone from mobsters to mass murderer Timothy McVeigh. So much for following well-settled law.

If you want to read a good article about this, I would recommend the Wall Street Journal's editorial from June 4th entitled "Osama's Favorite Judge." It concludes by saying, "Mr. Awadallah is out on bail. We wonder how he's spending his time."

Another judge that I expect it was considered by the other side to be in the mainstream, Judge Jed Rakoff, one of Judge Scheindlin's colleagues, from the Clinton class of 1995, has ruled that the Federal death penalty in all applications—in all applications—is unconstitutional. Some of our colleagues share this position, but that position is at odds with the views of a majority of Americans. It is also very clear a failure to follow Supreme Court precedent. Indeed, Judge Rakoff's ruling was so brazenly violative of the precedent that even the Washington Post, which is against the death penalty as a policy matter, came out against his decision as "gross judicial activism."

In an editorial entitled "Right Answer, Wrong Branch," the Post noted that the Fifth Amendment specifically contemplates capital punishment three separate times. It then noted that the Supreme Court has been clear that it regards the death penalty as constitutional. The high Court has, in fact, rejected far stronger argument against capital punishment.

Individual district judges may not like this jurisprudence, the Post went on, but it is not their place to find ways around. The arguments Judge Rakoff makes should rather be embraced and acted upon in the legislative arena. The death penalty must be abolished, but not because judges beat a false confession out of the Fifth Amendment.

I also note another editorial from the Wall Street Journal entitled "Run for Office, Judge." With respect to Judge Rakoff's moderation and fidelity to precedent, the Journal says, "It hardly advances the highly charged debate on capital punishment to have a Federal judge allude to Members of Congress who support capital punishment as 'murderers.' If Judge Rakoff wants to vote against the death penalty, he ought to resign from the bench and run for Congress or the State legislature, where the Founders thought such debates belonged."

On Tuesday, another Clinton judge, William Sessions of Vermont, appointed by the previous President in 1995, issued a similar ruling. The rulings of Judges Rakoff and Sessions would prevent the application of the death penalty against mass murderers like Timothy McVeigh and Osama bin Laden.

As an aside, I note that the Second Circuit, which reviews the rulings of Judges Scheindlin, Rakoff, and Sessions has a 2:1 ratio of Democratic judges to Republican judges. So for my colleagues who are so concerned about a party having a single-seat advantage on the D.C. Circuit, I assume they recognize the need for commonsense conservatives to balance out the Second Circuit.

Another Clinton appointee in 1994, Judge Henry McKay, had an interesting theory about a constitutional right to transsexual therapy. When Professor Tribe appeared before this committee, he implied that a conservative's view of the Eighth Amendment proscription against cruel and unusual punishment was confined to protecting against the lopping off of hands and arms. Well, Judge McKay of the Tenth Circuit has held that it is far broader than that. Specifically, a transsexual inmate, Josephine Brown, brought a 1983 action against the State of Colorado alleging that by not providing female estrogen therapy, Colorado had, in fact, punished her and that its punishment was of such cruel and unusual nature as to be violative of the Eighth Amendment to the Constitution.

Now, as Judge Henry noted in his opinion, the Tenth Circuit, along with a majority of courts, had held that it was not an Eighth Amendment violation to deny an inmate estrogen. The law of the circuit did not, however, stop Judge Henry, although the complaint had three times specified that it was the denial of estrogen that was the gravamen of the complaint. Judge Henry and two Carter appointees rewrote the complaint and reinstated it. So much for judicial restraint and following precedent.

Various Ninth Circuit appointees, finding the right to long-distance procreation for prisoners, and my friends on the other side believe very strongly in a living and breathing Constitution and that the rule of law should not be confined to the mere words of the document and the Framers' intent.

I was truly surprised, however, to read what a panel of the Ninth Circuit had tried to breath into the Constitution. A three-time felon, William Gerber, is serving a life sentence for, among other things, making terrorist threats. Unhappy with how prison life was interfering with his social life, Mr. Gerber alleged that he had a constitutional right to procreate via artificial insemination.

A California District judge rejected Mr. Gerber's claim. A split decision of the Ninth Circuit, though, reversed. Judge Stephen Reinhardt joined President Johnson's appointee Myron Bright, and

they concluded that, yes, the Framers had intended for the right to procreate to survive incarceration.

In dissent, Judge Barry Silverman, a Clinton appointee, who was recommended by Senator Kyl, wrote that this is a seminal case in more ways than one because the majority simply does not accept the fact that there are certain downsides to being confined in prison. One of them is the interference with normal family life. Judge Silverman noted that while the Constitution protects against forced sterilization, that hardly establishes a constitutional right to procreate from prison via FedEx.

I am getting notes here that I have one minute remaining, and I won't take any more than one minute.

The Ninth Circuit en banc reversed this decision, but only barely, and it did so against the wishes of Clinton appointees Tashima, Hawkins, Paez, and Berzon, who dissented.

The point I am trying to make, Mr. Chairman, is mainstream is a very, very subjective determination that each of us is trying to make here, and what many on the other side might consider mainstream, most Americans consider completely out of bounds. And so the best way to judge a nominee such as the nominee we have before us is on the basis of the qualifications, unanimously "well qualified" by the ABA, supported by Democrats and Republicans, not a shred of evidence of any reason not to confirm this nomination. And so I hope Mr. Estrada will be rapidly confirmed to a position to which he is uniquely qualified.

Thank you, Mr. Chairman.

Senator SCHUMER. Thank you, Senator McConnell. I bet you wish that we had spent a little more time learning the records of Judge Rakoff and some of the others before we nominated them.

Senator MCCONNELL. Actually, if I might respond, I voted for most of these judges. I felt the President should be given great latitude. After all, he had won the election, and it seems to me that is an appropriate latitude to be given to the nominees of President Bush.

Senator SCHUMER. You did vote against 12 of President Clinton's nominees. I don't know if it was temperament, ideology, or what. And the only other thing I would mention is that I have supported, and I think this Congress, two of President Bush's nominees on the Second Circuit, including recently Reena Raggi, who is a conservative.

We will now go to Senator Feinstein.

Senator FEINSTEIN. Thank you very much, Mr. Chairman. I don't want to respond to the distinguished Senator from Kentucky, but I have a hard time figuring out how a judge confirmed in 1984 relates to Mr. Estrada today.

But, Mr. Estrada, I would like to thank you for spending some time with me yesterday. I found it very, very helpful, and I wanted to concentrate in two areas. I come from a State that is bigger than 21 States plus the District of Columbia put together, so there are a lot of people, and I kind of pride myself, at least, on knowing where there is a majority of opinion. And there is a substantial majority of opinion, I believe, that surrounds a woman's right to choose and surrounds the right to privacy.

We had a chance to talk a little bit about this yesterday, but I would like to ask your view with respect to a fundamental case, and that is the 1973 case of *Roe* v. *Wade* when the Supreme Court held that the Constitution's right to privacy encompassed a woman's right to choose to have an abortion and that Government regulations that burdened her exercise of that right were subject to judicial scrutiny.

Do you believe that the Constitution encompasses a right to privacy?

Mr. ESTRADA. The Supreme Court has so held, and I have no view of any nature whatsoever whether it be legal, philosophical, moral, or any other type of view that would keep me from applying that case law faithfully.

Senator FEINSTEIN. Do you believe that Roe was correctly decided?

Mr. ESTRADA. I have—my view of the judicial function, Senator Feinstein, does not allow me to answer that question. I have a personal view on the subject of abortion, as I think you know, and—but I have not done what I think the judicial function would require me to do in order to ascertain whether the Court got it right as an original matter. I haven't listened to parties. I haven't come to an actual case or controversy with an open mind. I haven't gone back and run down everything that they have cited. And the reason I haven't done any of those things is that I view our system of law as one in which both me as an advocate and possibly, if I am confirmed as a judge, have a job of building on the wall that is already there and not to call it into question. I have had no particular reason to go back and look at whether it was right or wrong as a matter of law as I would if I were a judge that was hearing the case for the first time. It is there. It is the law as it has subsequently refined by the *Casey* case. And I will follow it.

Senator FEINSTEIN. So you believe it is settled law?

Mr. ESTRADA. I believe so.

Senator FEINSTEIN. Thank you very much.

I wanted for a moment to touch on the response you made to Senator Schumer's question. As he was answering the question, I happened to be reading an article in the Nation magazine, and I want to just be sure, because you answered his question about whether you screened clerks for Justice Kennedy and prevented him from hiring any liberal clerk. You said the answer to that was no. I would like to read you a brief couple sentences and see if the "no" applies to this.

"Perhaps the most damaging evidence against Estrada comes from two lawyers he interviewed for Supreme Court clerkships. Both were unwilling to be identified for fear of reprisal. The first told me, and I quote, 'Since I knew Miguel, I went to him to help me get a Supreme Court clerkship. I knew he was screening candidates for Justice Kennedy. And Miguel told me, "No way, you're way too liberal." I felt he was definitely submitting me to an ideological litmus test, and I am a moderate Democrat. When I asked him why I was being ruled out even without an interview, Miguel told me his job was to prevent liberal clerks from being hired. He told me he was screening out liberals because a liberal clerk had influenced Justice Kennedy to side with the majority and write a

pro-gay-rights decision in a case known as *Romer* v. *Evans*, which struck down a Colorado statute that discriminated against gays and lesbians.'"

Did this happen?

Mr. ESTRADA. Senator, let me—maybe I should explain what it is that I do from time to time for Justice Kennedy. Justice Kennedy picks his own clerks. As other judges and Justices, he will sometimes ask for help by former clerks with the interviewing of some candidates.

I have been asked to do that from time to time. I do not do it every year. I haven't done it for 2 or 3 years now, and sometimes I will get a file. It is in the nature of my role in the process that I could not do that which is alleged in the excerpt that you read since I don't have control over the pool of candidates.

Senator FEINSTEIN. So your answer is that this is false?

Mr. ESTRADA. As far as I know, unless it is a very bad joke that I've forgotten, the answer is no. As I started telling Senator Schumer, I know that I don't do that. I know that Justice Kennedy has other people who help him, including my former co-worker Harry Littman, who was a U.S. Attorney in Pennsylvania who was appointed by former President Clinton, and who is a Democrat. I know that that is not what Justice Kennedy does. And I know that I personally, as I started to say to Senator Schumer, have from time to time, even though my role is simply to take people that he sends me to interview and give him my comments for his consideration, from time to time I have met an exceptionally bright lawyer who I think warrants his attention and whose application otherwise may not have come to his attention. And I think I have probably put the effort of interjecting myself into this process in that fashion twice in my life. One of them was for a young woman who I knew for a fact was a Democrat and who is currently working for Senator Leahy. And I thought very highly of her, and I spent a lot of my time telling Justice Kennedy of what a high view I had of her talents and why he should hire her.

Senator FEINSTEIN. No, I just wanted to ask that question because since you answered Senator Schumer's question no, I wanted to corroborate that this incident was a false incident, and you have effectively said to me it was a false——

Mr. ESTRADA. Yes, I mean——

Senator FEINSTEIN. It did not happen.

Mr. ESTRADA. As you read it, Senator Feinstein, the only thing that I could think is that it has—that if I said anything remotely on that subject that is anywhere near—within the same solar system even, it could only have been a joke. It was not—it is not what I do for Justice Kennedy.

Senator FEINSTEIN. Right, right. I understand.

Now, your case is a little different because you have been a very strong advocate in the sense as a U.S. Attorney, you have represented private clients. I don't really judge from the representation of a private client your personal philosophy necessarily, but I can make a judgment as to whether you are a competent attorney. And you certainly are that and certainly have the potential even, I think, of brilliance. I think that is is clearly there. And I happen

to believe it is desirable to have brilliant people, if we can, as Federal judges.

You know, many people have looked back and seen people who were advocates become judges and really change, really become wise, prudent, temperate. They have seen people do things. Certainly Earl Warren led the Court. He was a Republican Governor of my State. He led the Court in a unanimous decision that segregation was unconstitutional. And I think he is well respected for that historically, well respected for his fairness.

You do not have a judicial record, so for me, I can't make a judgment of whether you would follow the law or not. So I have got to kind of try in different areas.

I was interested in your answer to Senator Kohl's case with respect to the *Lopez* case. The *Lopez* case struck down a law regulating guns near schools based on the argument that Congress had overstepped its bounds. And for many of us, this question might be appropriate in judging you.

To what extent do you believe that Congress can regulate in the area of dangerous firearms, particularly when those weapons travel in interstate commerce, when they affect commerce and tourism, and when they have such a devastating impact on the children of this country?

Mr. ESTRADA. Senator, as I recall, I haven't looked into the area of guns and commerce since the *Lopez* case. I do recall that there is still another case, a pre–*Lopez* case that, as I sit here and I try to think about, I am pretty certain was not called into any question by the court in *Lopez* itself, a case by the name of, I think, *Scarborough* v. *United States*, where the court ruled that if a statute passed by Congress in the area of gun control—and I think in that case it was the Gun Control Act of 1968—has a jurisdictional element that attaches to the crime, that that is all right under the Commerce Clause. As I recall the *Scarborough* case, what the court ruled is that if the Government were to prove that the firearm had at any time in its lifetime been in interstate commerce, even if that had nothing to do with the crime at issue, that that would be an adequate basis for the exercise of Congress' power.

I haven't looked at the case law, and I suppose if I had something that I had to rule on, I would have to. But my best recollection, as I sit now, is that the court left standing the *Scarborough* rule and that that's still good law that I would, of course, follow.

Senator FEINSTEIN. Thank you very much. My time is up.

Senator SCHUMER. Thank you, Senator.

Thank you, Mr. Estrada. It has been a—we have been here close to 3 hours, and we are going to take a one-hour break for lunch, and we are going to resume at 2:00.

Mr. ESTRADA. Thank you, Senator.

Senator SCHUMER. Thank you.

[Whereupon, at 1:01 p.m., the committee recessed, to reconvene at 2:00 p.m., this same day.]

AFTERNOON SESSION [2:14 p.m.]

Senator SCHUMER. Ladies and gentlemen, the hearing will come to order.

Actually, since Senator Feinstein was the last questioner, we are really up to a Republican. But as you can see, they have no questions to ask you, Mr. Estrada.

Mr. ESTRADA. Senator Schumer, in relation to the last question that Senator Feinstein did ask me, there is something else I want to say about it, if I could.

Senator SCHUMER. Please.

Mr. ESTRADA. This goes to the question that you asked me, and as I——

Senator SCHUMER. Which question? Let's just be——

Mr. ESTRADA. Both your question and her question in relation to the hiring of clerks for Justice Kennedy and what my role is.

Senator SCHUMER. Yes.

Mr. ESTRADA. And I realized as I was trying to drink my Coke that as she read a statement from a magazine which contained an implicit—I guess I will call it an assumption that I should have challenged out of deference and respect for Justice Kennedy.

Justice Kennedy is one of my mentors, and I have a great deal of personal affection for him. I would not want anybody to think that this man, who is at the pinnacle of his legal life, is a dupe who can be sort of moved one way or another by 22-year-olds. When I was his law clerk, I knew him as a man who knew his own mind, and when I have some role in talking to possible law clerk candidates for him, my view is to look for somebody who will work well with him and who will do his bidding after he comes to his own judgment.

And I mention that last point because I also——

Senator SCHUMER. I don't think anything you said before when you answered explicitly to me and then the same way to Senator Feinstein contradicted that in any way. You are welcome to make the record clear.

Mr. ESTRADA. Right. But I also want to make clear that, as I thought about that and that premise, there is a set of circumstances in which I would consider somebody's ideology, if you want to call it that, in trying to interview somebody for Justice Kennedy, whether on the left or on the right. And that is to say, if I thought that there was somebody who had views that were so strongly held on any subject, whether, you know, the person thinks that there ought not to be the death penalty or whether the person thinks that the income tax ought not to be constitutional or anything, if I think that the person has some extreme view that he will not be willing to set aside in the service of Justice Kennedy, I would make sure that Justice Kennedy would know that. And I guess it is possible for somebody to think that he was turned down in a sense on the basis of his politics. But that would not be the case. It would be on the basis of a judgment that whatever class of politics he might have, he would not be willing to put him aside in the service of the Justice.

Senator SCHUMER. Well, okay. That is understood. That is not the question I had asked you, as you know.

Mr. ESTRADA. Right. But as I thought about the number of times that I—that you asked your question, I wanted to make sure that I was not understood as saying that I have not taken the ideology of somebody into account, because from time to time I do interview

somebody who's 22 or 23 who has some very strongly felt views about how the world ought to run, and if those views are based on a political world view, whether it be left or right, that he would not be willing to put aside in the service of Justice Kennedy, I would consider that as a very strong point for why the Justice ought not hire——

Senator SCHUMER. Let me just repeat the question, though. Have you ever told anyone—I want to ask it again—that you would not—I am going to read you the exact question I asked you this morning. Have you ever told anyone that you do not believe any person should clerk for Justice Kennedy because that person is too liberal, not conservative enough, because they didn't have the appropriate ideology, politics, or judicial philosophy, or because you were concerned that person would influence Justice Kennedy to take positions you did not want him taking?

Now, you answered that unequivocally no to me earlier this morning. Has that answer changed?

Mr. ESTRADA. No, it has not.

Senator SCHUMER. Okay.

Mr. ESTRADA. If we understand that the explanation that I just gave does apply to it.

Senator SCHUMER. But you would still say no to that specific question, whatever you added later.

Mr. ESTRADA. Subject to the caveat that if I have concluded that somebody has strongly held views of the left or of the right that would make him unsuitable as a law clerk for Justice Kennedy because he would not then follow the Justice's wishes and instructions, it is possible, I suppose, that I could have said that that was the reason——

Senator SCHUMER. No, wait. I am getting a little confused now.

Mr. ESTRADA. I just want to make sure that I understand the question.

Senator SCHUMER. The question is pretty clear. It is the same exact question I asked this morning. Have you ever told anyone that you do not believe any person should clerk for Justice Kennedy because that person is too liberal, not conservative enough, because that person did not have the appropriate ideology, politics, or judicial philosophy, or because you were concerned that person would influence Justice Kennedy to take positions you did not want him taking? That is a yes-or-no question. That is not speculative about your recommendation.

Mr. ESTRADA. Well, and my answer is I have taken into account the ideological leanings of a potential law clerk only when it appears to me—and this is something that I don't have a final say on, but I do tell Justice Kennedy—that this person has a strongly held view on a subject that he would not be willing to put aside in the service of the Justice.

I mean, sometimes—this is why I am concerned about understanding what the question is exactly.

Senator SCHUMER. The question is very clear.

Mr. ESTRADA. And I'm hoping that it——

Senator SCHUMER. The question is not what your thought process is. Sir, you are as good a lawyer as I am, probably much better. The question did not ask your thought process. The question did

not ask did you recommend or not recommend people. It said—and I will give you one more chance if you want to retract your answer this morning, which you twice today did not, this afternoon did not, and you brought this subject up, I didn't, this afternoon.

Have you ever told anyone that you do not believe any person should clerk for Justice Kennedy because that person is too liberal, not conservative enough, because that person did not have the appropriate ideology, politics, or judicial philosophy, or because you were concerned that person would influence Justice Kennedy to take positions you did not want him taking? Yes or no.

Mr. ESTRADA. I am concerned, Senator, about the compound—the compound aspect of the question.

Senator SCHUMER. It is "or." It is "or." It would be any of those.

Mr. ESTRADA. All right. Now that you have drawn that to my attention, it is possible that interviewing a candidate—I can't think of any now, but it is possible that I may have come to the conclusion that the person's ideology was so strongly engaged in what he thought as a lawyer that he would not be able to follow the instructions in the chambers as set forth by Justice Kennedy.

Senator SCHUMER. How many times did you do that?

Mr. ESTRADA. I cannot think of any single example now.

Senator SCHUMER. You cannot.

Mr. ESTRADA. But it is one of the aspects that I would explore in trying to find whether the law clerk candidate was suitable for Justice Kennedy. I can't—I don't have a number in my head as to the number of candidates whom I've interviewed over the years. I cannot think of an example right now.

Senator SCHUMER. Okay.

Mr. ESTRADA. But as I listened to the list of categories separated by the "or," it occurred to me that I had not sufficiently focused on whether I had told somebody that it was because of ideology. And I can think of a circumstance in which I might.

Senator SCHUMER. Ideology, or it is so far over that they wouldn't obey the opinions? Now you are saying two different things again.

Mr. ESTRADA. I thought I was saying the same thing, Senator Schumer. I'm sorry. I was saying if I made a judgment that the person had a strongly held ideological view of subject "x" that he would not recognize his appropriate role as a law clerk following the instructions of Justice Kennedy and to help him get his work done, if I thought that that was the case, and if the reason was his ideology, I mean, I would think that I would have told Justice Kennedy for a person. It is possible that I may have told somebody else since when he—this is actually the area of my concern. I speak to Justice Kennedy about these issues. Obviously, I tell him my impressions of what I think of the candidates. If the impression is this person has a deeply committed view that the death penalty never should be applied and Justice Kennedy is the circuit Justice for a death circuit, all of the States in the circuit for which he is a circuit Justice have the death penalty, as I recall. This is somebody who would not be a very useful law clerk for Justice Kennedy.

It is possible in talking to the Justice—I don't recall all of my conversations with him—that I would have said this person is an ideological opponent of the death penalty. And, therefore, if you take that as an example, i.e., my conclusion that the person would

not follow the instruction of the Justice, I would have said what your question said. It is possible as well that in talking with some of the former law clerks who do this for Justice Kennedy who are, as I pointed out earlier, both Democrats and Republicans, that I would have said something of that nature.

So that as I parse through the wording of the question, it occurs to me that without the qualifier, I can't give you an unqualified answer. I mean, I can tell you and assure you that I do not view it as my job, and I think it would be insulting to the Justice, to try to find law clerks of a particular political persuasion because that is not what I try to do to him. I'm trying to help him, not to hinder him.

Senator SCHUMER. Okay. Senator Feingold has to go. I want to come back to this in a little bit.

Senator FEINGOLD. Thank you, Mr. Chairman. And welcome to the committee, Mr. Estrada.

Between August 1992 and December 1995, the police in Chicago arrested more than 42,000 people and issued more than 89,000 dispersal orders pursuant to an anti-loitering statute, ostensibly targeted at gang members. The statute was challenged and was found to be unconstitutional in both the Illinois Supreme Court and again in the United States Supreme Court.

You filed an amicus brief on behalf of a number of groups in support of the statute, and you argued in favor of it on the radio. I happen to believe that the United States Supreme Court got it right when it struck down the statute for being unconstitutionally vague.

As the Court noted, under the statute, even if a gang member and his father are loitering near Wrigley Field to see Sammy Sosa leaving the ballpark, if the purpose of the father and son is not apparent to an onlooking police officer, the officer shall order them to disperse and perhaps even arrest them.

The breadth of the ordinance that you defended troubles me as it allowed the police almost unfettered discretion that could be used to literally pick on people an officer might not like.

What is your response to the concern that was expressed about the effect of this kind of ordinance on the spirit of the community? In arresting over 42,000 people in 3 years, didn't the police teach the youth of the community that sitting in a park while dreaming of the future or chatting on a street corner with a friend might get them arrested and locked up with a criminal record?

Mr. ESTRADA. Senator, we're talking about the ordinance that was passed by the city of Chicago in 1992, and as you know, that was passed—that was an ordinance that had a great deal of community support in the city and the support of Mayor Daley.

Before the case got to the Supreme Court, it had been, as you mentioned, in the State courts of the State of Illinois, and one of the key rulings in the case was made not by the U.S. Supreme Court but by the Supreme Court of Illinois which interpreted the language in the ordinance very—very broadly.

Part of the argument that I was trying to persuade the Court to accept was the proposition that the Illinois Supreme Court read the "no apparent purpose" section of the ordinance a little bit too broadly in the sense that if you read it as a common-sense fashion,

it was clear that what the City Council meant was for no apparent purpose other than to engage in gang activities. And that was the view of the ordinance that was also taken by the Solicitor General's office in the Clinton administration, which filed a brief on the same side I did, and I think by 31 States of the Union.

When the case got to the Supreme Court because of the limited power of the Supreme Court of the United States, the majority of the Court felt bound to accept the construction of the statute as tendered by the highest court of the State and, therefore, read it, read that language without the common-sense qualification.

There was no opinion for the Court on the controlling points, on the Supreme Court of the United States. The decisive votes were cast by Justices O'Connor and Steve Breyer, and they wrote separately in an opinion to point out that the outcome of the case turned on the construction given by the State courts to that language and that the language could have been more narrowly construed and probably would have been okay.

Senator FEINGOLD. Well, let me just comment. When I read that there were over 42,000 arrests for loitering, I did become concerned that the statute might be working too well, and the Supreme Court of Illinois said, "The ordinance provides such ambiguous definitions of its elements that it does not discourage arbitrary, discriminatory enforcement." So obviously I am troubled by your defense of the statute, but I heard your answer.

Let me ask a different kind of question about this. The vast majority of law enforcement officers put their lives on the line every day to protect all of us, and, of course, they discharge their duties honorably. But we also know that in some cases there are officers who do not. We have all heard about the beating of Rodney King in California, the racial profiling of the New Jersey State troopers, and the abuse of Abner Louima in New York. We sometimes forget these are not the only incidents of misconduct.

Last year, the Department of Justice Civl Rights Division Criminal Section received over 10,000 complaints, most of them concerning law enforcement misconduct that resulted in about 2,500 FBI investigations. So I was a little surprised to learn that during your appearance on the radio show "Justice Talking" in 1999, you stated the following, "There is no question in my mind that the country has changed quite a great deal in the last 30 or 40 years and that we have somewhat fewer worries now about interracial interactions between members of white PD and minority members of the public."

Do you really believe that racial profiling and racially motivated law enforcement misconduct are no longer problems in this country today?

Mr. ESTRADA. No, I do not. I am—I will once again emphasize—inalterably opposed to any sort of race discrimination in law enforcement, Senator, whether it's called racial profiling or anything else. The comment that you make, as you point out, was in the context of pointing out that these were laws that had been put on the books with significant support from minority communities, people that felt that the presence of a visibly lawless element of gang members dealing drugs and engaging in other types of similar ac-

tivity was something that ought to be addressed by the City Council.

I know full well that we have real problems with discrimination in our day and age, but I also know that as I was a young child growing up in a foreign country, there were clips that the local TV station had to illustrate what the racial situation was in the United States. And for some reason, they always chose to pick those sad days where you had the law enforcement officers with fire hoses and dogs coming after the members of minority communities. And I know that that is in the recent past, and I think we have to go much farther. But I think thinking about that and thinking about where we are now and how far we have come, I couldn't help but point out in that radio broadcast that as many problems as we may have now, we have sure come a long way. And when we have people of all racial backgrounds telling their elected representatives that gangs are a problem and that they don't feel safe in the streets, there ought to be lawyers who are willing to go into court and make sure that all of the appropriate, ethically reasonable legal arguments that could be said in defense of the popular judgment are tendered to the court.

Senator FEINGOLD. I appreciate your observation. I have got to tell you, though, that based on what my constituents have told me, I am not at all sure that African Americans and Hispanic Americans in my State feel as comfortable today as they might have 30 years ago with law enforcement. I suppose it could depend on the part of the country, but the issue of racial profiling I think is very much on the minds of many people in our country, and I know that your comments about having fewer worries must mean that you still take that into account, because I think it is a severe problem that frankly needs legislative attention as well as the enforcement of current law.

When you appeared on "Justice Talking," you were debating the validity of the law with Harvey Grossman, who also happened to live in one of the Chicago neighborhoods affected by the law. You said, "One of the things that we do as a society by reason of being a democracy is that we vote on what we think is a good idea, see if it works, and if it doesn't, then we scrap it. But what we do not do is take the person that lost all of his arguments in the debate and try to bring the courts to trump on his side."

I would like you to explain that comment. I believe that the President of the United States and this Congress have a very important function. I also believe that our Constitution ensures that just because Congress passes a law that the President then signs, it does not mean that opponents of that law cannot bring a challenge in court if they believe they have a valid argument. I just passed a law where that is happening every day. In fact, one of the primary roles of the court system is to protect, as Alexis de Tocqueville once said, against the tyranny of the majority.

Correct me if I am wrong, but didn't the opponents of this law merely carry out their civic duty in challenges the statute in court? Do you believe the court should be open to individuals who believe their rights are being violated by Government action?

Mr. ESTRADA. Absolutely, Senator. And the statement that you quoted I think does reflect what I think is an appropriate balance,

whether the body that has passed the law is a city council or whether it is this Congress. If I am sitting as a judge, if I am fortunate enough to be confirmed, I have to take into account, when the challenge comes into the courtroom, the proposition that laws come to courts with a presumption of constitutionality.

Senator FEINGOLD. But then why did you feel in this case that the thousands of people who were arrested and the National Black Police Association and the Hispanic Law Enforcement Association were wrong to use the courts to challenge the constitutionality of the statute?

Mr. ESTRADA. The point I was making, Senator Feingold, is that I thought that many of the arguments being urged for the proposition that we ought not to have this ordinance were more of a legislative character than of a judicial character, which is not to say that they were not good arguments or that they were not arguments that reasonable people could make. But in the context of a debate in the radio where we were not arguing the case in court, many of the arguments being made were perfectly reasonable things for people to say, but were the sort of things that are usually given to legislative bodies and not to courts.

I, of course, adhere to the view that anybody who thinks that his rights have been violated, whether under a Constitution or a statute, has a legal right to go into court and every expectation of finding a judge who will take his claim seriously.

Senator FEINGOLD. Thank you, Mr. Estrada.

Thank you, Mr. Chairman.

Senator SCHUMER. Thank you.

Before we go to the next witness, since you had opened this up again, Mr. Estrada, I want to clarify this, because I am unclear and this was in reference to a question you had that I had asked you. I am going to read you the passage from the Nation magazine. Please listen carefully and I will read any part you want again.

It said, "Perhaps the most damaging evidence against Estrada comes from two lawyers he interviewed for Supreme Court clerkships. Both were unwilling to be identified by name for fear of reprisals. The first told me, 'Since I knew Miguel, I went to him to help me get a Supreme Court clerkship. I knew he was screening candidates for Justice Kennedy. And Miguel told me, "No way, you're way too liberal." I felt he was definitely submitting me to an ideological litmus test, and I am a moderate Democrat. When I asked him why I was being ruled out without even an interview, Miguel told me his job was to prevent liberal clerks from being hired. He told me he was screening out liberals because a liberal clerk had influenced Justice Kennedy to side with the majority and write a pro-gay-rights decision in a case known as *Romer* v. *Evans*, which struck down a Colorado statute that discriminated against gays and lesbians.'"

Which parts of that statement are false? All of it? You said all of it earlier today.

Mr. ESTRADA. I don't have any reason to think that any part of it is true, Senator. But what I am saying is I don't know any of the circumstances of what the actual interview was and what people take away from it, and what they think they recall is not necessarily what I thought actually happened.

My concern is I am certain that I have never used an ideological test to screen anybody for Justice Kennedy.

Senator SCHUMER. Then you couldn't have said, "No, you're way too liberal," right?

Mr. ESTRADA. Unless I knew the person through an interview or some other interaction and I knew that he had an ideological commitment to some issue——

Senator SCHUMER. Well, wait a second——

Mr. ESTRADA.—that would make him an unsuitable law clerk.

Senator SCHUMER. This morning, I asked you a question about that. You denied it unequivocally. Senator Feinstein went over it 2 hours later, read you this very passage, and you denied it unequivocally. Are you changing your answer now? Did you say, yes or no, to this clerk, "No way, you're way too liberal"? You have denied that twice.

Mr. ESTRADA. Senator, I am certain that I never said that anybody.

Senator SCHUMER. Thank you.

Mr. ESTRADA. But I will not—but I have to tell you that it is possible that I said to somebody, including Justice Kennedy, Mr. "X" has an ideological view of this area of the law and, therefore, he would be unsuitable.

Senator SCHUMER. That is not the question I—I didn't ask you what you said to Justice Kennedy. You did not also say—you didn't tell this interviewee that you didn't like liberals—you didn't like it that a liberal clerk influenced Justice Kennedy to side with the majority and write a pro-gay-rights decision in *Romer* v. *Evans*?

Mr. ESTRADA. Senator, I am certain that I don't know who was working for Justice Kennedy when Justice Kennedy had that case in front of him——

Senator SCHUMER. I didn't ask you that question, sir. I asked you if you said—you are a very accomplished man. You know the question I have asked. I said to you, Did you say to this clerk—did you talk to him that you didn't like the fact that a liberal clerk had influenced Justice Kennedy to side with the majority and write a pro-gay-rights decision in a case known as *Romer* v. *Evans*? Yes or no. This does not take a peroration. This takes a yes or no answer if you are being truthful with this committee.

Mr. ESTRADA. The best I can tell you——

Senator HATCH. Now, wait a minute. Mr. Chairman——

Senator SCHUMER. Please let him answer.

Senator HATCH. Wait a minute, Mr. Chairman——

Senator SCHUMER. This question was brought up earlier today——

Senator HATCH. I understand, but let me——

Senator SCHUMER.—and Mr. Estrada had suggested that he wanted to speak about it again. I want to clarify that, and then you can come back as soon as I am finished clarifying.

Senator Kennedy. Let's let the witness answer.

Senator SCHUMER. I asked a yes or no question.

Senator HATCH. That is not a yes or no question.

Senator SCHUMER. Yes, it is.

Senator HATCH. That is the problem. It is a very unfair question. First of all——

Senator KENNEDY. Let the witness answer.

Senator HATCH.—the person isn't know. He is anonymous. Now, we have a rule in this committee that we have always abided by. Senator Biden was one of the chief enforcers of it. I agree with it. You don't confront a person with anonymous statements that are from one side of a person's mouth that he doesn't seem to recall——

Senator SCHUMER. He answered——

Senator HATCH.—and take advantage of him that way. I think it is wrong.

Senator SCHUMER. Let me say that this morning when asked this question, Mr. Estrada didn't say, "I don't know the person," didn't say, "I am not sure." He said no.

I am asking again—okay? Did you say to this—any clerk—it doesn't matter who it is——

Senator HATCH. This anonymous person.

Senator SCHUMER. That is correct. It is written in an article here. Maybe the article is wrong. But I think this committee——

Senator HATCH. The point is maybe the characterization——

Senator SCHUMER. My friend——

Senator KENNEDY. Let him answer the question.

Senator SCHUMER. I think the committee is entitled to an answer.

Senator HATCH. Let's be fair about it.

Senator SCHUMER. We are——

Senator HATCH. Let's not just take advantage of an unsolicited, I think improperly—improper question about an unknown person——

Senator SCHUMER. Okay. Well, the record——

Senator HATCH.—that we have never done before in this committee.

Senator SCHUMER. We have done it——

Senator HATCH. If you have got a person, have him come out and say what he has to say, then we will find out what he did or didn't say to him.

Senator SCHUMER. Let me repeat my question.

Did you say to any law clerk that you were upset because a liberal clerk had influenced Justice Kennedy to side with the majority and write a pro-gay-rights decision in a case known as *Romer* v. *Evans*?

Mr. ESTRADA. Senator Schumer, what I've been trying to say is that I don't know every conversation I had with every human being in my life. And the statement that you're reading comes from a magazine that says that this is a person that I interviewed who I don't—you know, I have no idea who this person could be. I don't know what the circumstances could be. And as I said to Senator Feinstein this morning, conceivably I could have said something like that in the nature of a joke. And in answer to your question, I already—I don't know the circumstances. And I'm——

Senator SCHUMER. Are you retracting your answer this morning that you said no?

Mr. ESTRADA. I said to Senator Feinstein, as I recall, Senator Schumer——

Senator SCHUMER. No, to me in my question. I asked you a general question but related to that, and you said no.

Mr. ESTRADA. And that is part of what I brought up, and as I said earlier today, after you highlighted the disjunctives in your question, including telling any person who is a living person whether I had considered the issue of ideology, I would have to change my answer. Frankly, I have not focused on the disjunctives in your question because, as I explained to you, it is sometimes appropriate for me to advise the Justice that somebody has an ideological view of the law that would make him a bad law clerk.

With respect to the Nation excerpt that you just quoted, I think the first time I heard it this morning was when Senator Feinstein read it to me. And my best and only answer to that is it is not the type of thing I would say seriously. And I have no reason to think I ever said it to anybody. But I don't know the circumstances because it is a statement that I said to somebody at an unknown time in an unknown place, when I don't know who the person is that I said something, and I just don't have that sort of memory.

Senator SCHUMER. Well, but in all due respect, sir, twice when asked right on point this morning, you said no, and I think we have some credibility problems here.

Mr. ESTRADA. Well, if I did that——

Senator HATCH. Come on.

Senator SCHUMER. I am going to call on Senator Edwards.

Senator HATCH. Gee whiz.

Senator SCHUMER. Senator Edwards?

Senator EDWARDS. If you want to give Senator Hatch a chance——

Senator SCHUMER. Oh, did you want to—go ahead, Senator.

Senator HATCH. I do, but I am going to defer to Senator Edwards. But I just—well, if you would just yield to me for this one statement.

Senator SCHUMER. Please.

Senator HATCH. You know, this is really offensive. In all honesty, he is being very badly treated by this committee. And I think he is one of the few who has ever come before the committee who has had this type of treatment. Now, I get back to Senator Biden's comment, and here is what he said. He said, "It is my hope and expectation that a thorough hearing, continued investigation and hearing can be completed and that we will not—my expectation, we will vote on Tuesday night at 6 o'clock." This is all a quote. "But let me conclude by suggesting once again, the nominee has the right to be confronted by his accuser. So any accusation against any nominee before any committee which I chair that is not able to be made public to the nominee will not be known to the Senate unless the individual wishes to do it all by themselves. Then it's known to the nominee. This is not a star chamber."

Now, I think, you know, there is a question of fairness here, and to say there is a question of credibility because he doesn't know who in the world you are talking about—he has probably talked to hundreds of people, and you don't know how a person has characterized the meeting from their perspective, and I think it is very unfair to expect him to confront somebody that isn't known. And that has always been the rule of this committee, as far as I know.

It wasn't just Senator Biden speaking there. We have all tried to abide by that rule.

Now, I will be glad to ask some questions after Senator Edwards.

Senator SCHUMER. Yes, I would simply say that I think the question was completely in bounds. It was not a surprise question. It was in a published magazine article. And——

Senator HATCH. So what?

Senator SCHUMER. And I think it is a fair question because the whole issue we are discussing here is—one of the issues we are discussing are the views of the nominee, how much ideology matters. He has said now that he would recommend to Justice Kennedy that certain people's ideology kept them off limits.

Senator HATCH. When they are extreme.

Senator SCHUMER. Exactly.

Senator HATCH. That is what all of us would——

Senator SCHUMER. So it does matter——

Senator HATCH. We would follow that, every one of us.

Senator SCHUMER. And I think that it was—I think these questions are on point, particularly in light of the fact that the record is so—we don't have much of a record.

But let me go to Senator Edwards.

Senator EDWARDS. Thank you, Mr. Chairman.

Good afternoon, Mr. Estrada.

Mr. ESTRADA. Good afternoon, Senator.

Senator EDWARDS. I have a couple of areas I would like to ask you about. I think this general debate that you had in Chicago has been talked about some already, but let me use some language that you used. You said to the lawyer that you were debating that he should—and I think I am quoting you now correctly. Please correct me if I am wrong—that he should explain exactly what words in the Constitution as opposed to his own inclinations say that the city can't do this. I just want to take that quote for a minute and ask you about a couple of specific examples.

In 1963, as you well know, the United States Supreme Court unanimously said that Earl Gideon could not be—he was a poor, an indigent man, couldn't be sentenced to 5 years in jail unless he was offered a lawyer. Can you tell me, to use your language, exactly what words in the Constitution created that right for Earl Gideon.

Mr. ESTRADA. Yes, Senator. I think as the Court explained in the opinion, the Sixth Amendment gives the right in all criminal prosecutions to the accused to have the assistance of counsel.

Senator EDWARDS. But what words in the Constitution said that he was entitled to that right and to have it paid for by the Government, which I believe is what the decision said?

Mr. ESTRADA. Well, that's what the Court said in the *Gideon* case. It——

Senator EDWARDS. What words—I'm sorry. I didn't mean to interrupt.

Mr. ESTRADA. To have the assistance of counsel.

Senator EDWARDS. Right. What words in the Constitution created that right?

Mr. ESTRADA. The words I just quoted from the Sixth Amendment.

Senator EDWARDS. Okay. And to be paid for by the Government, where does that right come from?

Mr. ESTRADA. Well, the Court reasoned in the *Gideon* case that if you have the right to have the assistance of counsel and you cannot afford it on its own, since this is a Constitution that does give you the right, the government that is bound by that Constitution must make sure that you have the right that the Constitution gives you and, therefore, pay for that lawyer.

Senator EDWARDS. The language of the Constitution refers to the right to counsel, not to the right to have that counsel paid for by the Government, if I am not mistaken. Is that correct?

Mr. ESTRADA. I don't know that I can do justice to this issue which took several pages in the *Gideon* case. I frankly have always taken it as a given that that's the ruling in the *Gideon* case and have never, as an academic exercise, gone back and looked at all of the possible arguments or even any of the briefs in the case.

I take that as a given that the Court ruled that the Sixth Amendment does require governments to pay for counsel for indigent defendants, as I recognize that the Supreme Court has said in numerous occasions in the area of privacy and elsewhere that there are unenumerated rights in the Constitution. And I have no view of any sort, whether legal or personal, that would hinder me from applying those rulings by the Court. But I think the Court has been quite clear that there are unenumerated rights in the Constitution. In the main, the Court has recognized them as being inherent in the right of substantive due process and the Liberty Clause of the 14th Amendment.

Senator EDWARDS. The reason I ask you about that I understand that that has been the interpretation of the Supreme Court, but you used the specific language in your interaction during this debate that you asked your opponent to say exactly what words in the Constitution, and as I guess you well know, Mr. Estrada, in the *Gideon* case and *Miranda*, for example, another important United States Supreme Court decision, there are no exact words, to use your language, in the Constitution that says there is a right to remain silent, that there is a right—all the rights that are enumerated in *Miranda*. The same thing which you just made reference to would be true in the decision of *Roe* v. *Wade*, which created a constitutional—recognition of a constitutional right to a woman's right to choose.

Now, all those are cases where the exact language of the Constitution didn't create those rights. You would acknowledge that, I assume?

Mr. ESTRADA. Well, I mean, I don't know that I have gone back and looked at each of the examples that you cited, but I do acknowledge that at least it is true of the Roe line of cases and others, some of them similar and some others in other areas, that the Supreme Court has repeatedly recognized that there are unenumerated rights in the Constitution.

It is also the case that a judge who is engaged in the judicial function by coming to a case of this type must, of course, weigh the language of the Constitution. The Constitution is a fairly old document, and that is relevant to our purposes because we have some 535, if not 540, volumes of Supreme Court cases which, if they

haven't answered every question under the Constitution, they have certainly mapped out major areas and given those answers to many of the details.

And I would not want to have this question in the abstract without making clear that in my view, of course, I was not saying in this radio debate that the appropriate conduct for courts is to be guided solely by the bare text of the Constitution, because that is not the legal system that we have. I do recognize that if you are talking about the role of courts as opposed to people that go on NPR and have a debate on an issue of policy, courts are required to consider not only the text of the document but the 530-odd volumes of Supreme Court cases. There are lower court cases. There are contemporaneous and later documents. This is a whole host of interpretive aids, tenets of construction that they're on the answer, on the right answer to a case like *Gideon*. And so that's why I don't want to give the impression that I was giving a recipe for how courts might go about their business because that is not what I think.

Senator EDWARDS. Are you a strict constructionist?

Mr. ESTRADA. I am a fair constructionist, I think.

Senator EDWARDS. Do you consider yourself a strict constructionist?

Mr. ESTRADA. I consider myself a fair constructionist. I mean, that is to say, I don't think that it should be the goal of courts to be strict or lax. The goal of courts is to get it right. And that may be in some cases to interpret the text as it is written because other consideration of every element of help that there is to give the text meaning tells us that that is what the lawmaker intended. But it may be appropriate to give it a more general construction. I think we can have laws and constitutional text of both types. It is not necessarily the case in my mind that, for example, all parts of the Constitution are suitable for the same type of interpretive analysis.

Senator EDWARDS. Excuse me. I am sorry. I didn't mean to interrupt you.

Mr. ESTRADA. No, no.

Senator EDWARDS. Were you finished?

Mr. ESTRADA. The example I was going to give is, you know, the Constitution says, for example, that you must be 35 years old in order to be our Chief Executive. There is not a lot of hard study that has to go into figure out whether somebody is in compliance with the 35-year-old requirement. You can read it and say I am 40 and I can run.

There are areas of the Constitution that are more open-ended, and you adverted to one, like the substantive component of the due process clauses, where there are other methods of interpretation that are not quite so obvious that the Court has brought to bear to try to bring forth what the appropriate answer should be.

Senator EDWARDS. Let me ask the same question a little differently. The President gave a speech last night at a fundraiser where he referred specifically to your nomination, among others. And he said, "For a stronger America, we need good judges. We need people who will not write the law from the bench, but people who"—and I am quoting him now—"strictly interpret the Constitution."

Do you fall within the President's definition?

Mr. ESTRADA. I have not spoken to the President about this or any other subject. I don't know what he meant. If I had to take his text as a statute, I would want to know more about the circumstances in order to figure out whether I can answer your question.

Senator EDWARDS. You haven't been asked that question by anyone during the course of your nomination process?

Mr. ESTRADA. No. I was asked very few similar questions, and they generally had to do with how I go about generally interpreting the Constitution and statutes. And I gave the answer that I gave you a few minutes ago.

Let me ask you one last thing, and I know that I am running past my time, if I can, Mr. Chairman.

Senator SCHUMER. Please.

Senator EDWARDS. This is something also that you said earlier on a radio show, and I am quoting you now. You said, "One of the things we do as a society by reason of being a democracy is that we vote on what we think is a good idea, see if it works, and if it doesn't, then we scrap it." Then you said, "But what we do not do is take the person that lost all his arguments in the debate and try to bring the courts to trump on his side."

Now, I want to ask you about an example. Let's suppose a town said that—passed a referendum saying they were going to bar women from serving on juries, and a woman or women, a group of women wanted to challenge that law. Would that be a legitimate challenge in your judgment?

Mr. ESTRADA. Of course.

Senator EDWARDS. So you recognize that the court itself has an enormous responsibility in our Government, interpreting the law and enforcing the law and enforcing the Constitution?

Mr. ESTRADA. Absolutely.

Senator EDWARDS. So this language that you used before, what does it mean? "What we do not do is take the person that lost all of his arguments in the debate and try to bring the courts to trump on his side." Tell me what you meant by that.

Mr. ESTRADA. It means that we have a healthy debate in the legislature about the policy pros and cons and whether the law is a good idea. And the party that in the judgment of the majority has the better of the argument wins.

Now, that is a forum for the policy arguments. What we do not do is then take policy as opposed to legal arguments and run into court. In the example that you gave me, I can foresee what the obvious legal challenge would be. It would be a violation of equal protection. There is clearly a law that applies. That would be the basis for the challenge.

We were having, in the exchange that you cite, a radio debate on a city ordinance in which I thought part of what was being said was a policy argument as to was this a bad idea as opposed to why this ought to be declared unconstitutional by the Court. And in my mind, there is a very clear difference between the types of arguments that are suitable for a body like this and the types of arguments that are suitable for bodies like courts. Courts take the laws that have been passed by you and give you the benefit of under-

standing that you take the same oath that they do to uphold the Constitution. And, therefore, they take the laws with the presumption that they are constitutional.

It is the affirmative burden of the plaintiff to show that you have gone beyond your oath. If they come into court, then it is appropriate for courts to undertake to listen to the legal arguments, why it is that the legislator went beyond his role as a legislator and invaded the Constitution. But there are different types of arguments that play in different forums, and I was pointing out that for the policy you go to your fellow citizens, and for the legal arguments you go to the court.

Senator EDWARDS. My time is up. I would just point out that this was a law that you were debating that was ultimately held, I believe, unconstitutional by the Supreme Court.

Thank you, Mr. Chairman. I appreciate it. I appreciate the time.

Senator SCHUMER. Thank you, Senator Edwards.

And now we have had two Democrats go in a row. We are on our second round. Everyone has asked questions the first time, so I will defer to my friend and colleague, Senator Hatch.

Senator HATCH. Well, thank you, Mr. Chairman.

Now, let's get back to this anonymous, apparently, accusation in one of the most liberal magazines in the country. But you are supposed to, out of all the thousands of people you met, be able to conjure up who it is. And apparently this person is griping because they were either unsuitable for the Supreme Court clerkship job or for some reason or other didn't get it, and it appears to me that they hold it against you.

Now, assuming that it is even true, as I understand it, you are saying that, in interviewing potential clerks for Justice Kennedy, you didn't want people on either extreme.

Mr. ESTRADA. That's right.

Senator HATCH. You didn't want extremely left-wing people, and you didn't want extremely right-wing people.

Mr. ESTRADA. That's right. I want people who understand that their job is to help Justice Kennedy do what he wants and that they don't bring an independent point of view on how the Court should vote. They are doers and helpers for Justice Kennedy. He is the person who has gone through this process and sits on the Supreme Court. It is his judgment that is being voted on. I mean, he is the person who has the vote, not the law clerk.

Senator HATCH. Well, I read the one quote from Senator Biden. I will read another one in Lexis–Nexis. "Committee Chair Joseph Biden, according to his staff"—now, he was chairman of the committee at the time. "Committee Chairman Biden, according to his staff, felt strongly that he was not going to circulate some anonymous charge."

Now, Mr. Estrada, you have been asked by a number of Senators on the other side about your role in the selection of Supreme Court law clerks. Do you feel that you were fair in examining these people?

Mr. ESTRADA. Absolutely, Senator.

Senator HATCH. Did you look at their capabilities and whether or not they would be suitable for the Justice?

Mr. ESTRADA. That is the only thing that I looked at, Senator.

Senator HATCH. I presume the Justice talked to you about what type of people he would like to have work with him.

Mr. ESTRADA. That's correct.

Senator HATCH. What were the criteria basically, if you could just do it in 30 seconds or so?

Mr. ESTRADA. He wants the smartest people he can find that will do his bidding.

Senator HATCH. That would agree with him and do what he asks them to do, right?

Mr. ESTRADA. Right. Exactly.

Senator HATCH. Did he say, "I want conservatives" or "I want liberals"?

Mr. ESTRADA. No.

Senator HATCH. Did he say he wanted any kind of ideology?

Mr. ESTRADA. No.

Senator HATCH. Just the smartest people that he could find——

Mr. ESTRADA. That will do his bidding.

Senator HATCH. That would do his bidding, in other words, help him do his job on the Court the way he thinks it ought to be done.

Mr. ESTRADA. Right.

Senator HATCH. Right? That is what you mean by "bidding."

Mr. ESTRADA. Yes.

Senator HATCH. Now, I don't want you in a game of "gotcha" here with some anonymous set of sources. And I can tell you this: Even if they surfaced and somebody accused you of this, man, I would put great suspicion on their accusations because they didn't get the job. And so, undoubtedly, there is—assuming that the anonymous accusations were made, they didn't get the job and, naturally, they are griping about it. They weren't accepted. And the easiest target would be you.

So let me just say this: You have bipartisan support for your nomination from some of the top lawyers in the country, from top people who have served in the Government, both Democrats and Republicans. And I pointed out the bipartisan support for your nomination, and I noted—I think it is worth noting that you yourself seem to be blind to partisanship when offering your support to well-deserved colleagues. You already mentioned your support for a staffer of Senator Leahy to clerk for Justice Kennedy.

Mr. ESTRADA. Yes, I did, Senator, and, you know, as I said, my role usually is simply to talk to people who live in this area so that I can give my views to the Justice——

Senator HATCH. Did you ask that staffer whether that staffer was liberal or conservative?

Mr. ESTRADA. I knew she was liberal.

Senator HATCH. You knew she was liberal?

Mr. ESTRADA. Yes, I knew she was liberal. You know, she's—she is—actually, she is left of center. She is a moderate person.

Senator HATCH. I understand she is an extremely brilliant staffer, right?

Mr. ESTRADA. Excuse me?

Senator HATCH. She is an extremely brilliant staffer, right?

Mr. ESTRADA. Yes. She is——

Senator HATCH. And you recognized that.

Mr. ESTRADA. She is a brilliant lawyer.

Senator HATCH. And you recommended her even though she was Senator Leahy's staffer, a known Democrat and more liberal than you.

Mr. ESTRADA. She later came to work for Senator Leahy. At the time she was working with me in the Clinton Justice Department, and I worked with her while I was working in the Clinton Justice Department and tried to get her into Justice Kennedy.

Senator HATCH. Well, I remember——

Chairman LEAHY. If the Senator would yield just a moment, this is fascinating to me because I never knew nor had any way of knowing what her politics were or what her attitudes were, left, right, or center. Apparently you had a far tougher screening method than I did. So one of the reasons for coming to these hearings, now you are telling me things about my staff that I never knew, Mr. Estrada.

Senator HATCH. Isn't that amazing.

Chairman LEAHY. I give you credit for finding these things out.

Senator HATCH. Okay. I remember that you contacted me to voice your support for the nomination of Adalberto Jose Jordan, a Clinton nominee to the U.S. District Court for the Southern District of Florida.

Mr. ESTRADA. Yes, I did, Senator.

Senator HATCH. He was a colleague from your days clerking at the Supreme Court.

Mr. ESTRADA. Yes, he was.

Senator HATCH. Of whom you thought highly and who you thought should be confirmed, right?

Mr. ESTRADA. Yes, I did, Senator.

Senator HATCH. Mr. Jordan currently serves on that court with much distinction. You also indicated support for a wide variety of others to me that were more liberal than you that were Clinton nominees. So you have a record of bipartisanship.

I don't want you bullied by this committee, and you don't have to take it, as much as you are in a very tenuous, difficult position.

What I am saying, in closing, I want to point out that your actions are not actions of a right-wing ideologue. They show instead that you are a person who gives credit where credit exists and where it is due because it is the right thing to do, and not because of some hidden agenda that you might want to advance.

I would like to spend just a few minutes on a couple of other things that have been raised. I would like to ask you a few questions about the anti-gang loitering cases that you worked on that have been raised here. And although some have attempted to mischaracterize the statutes that were at the crux of these cases as racially discriminatory, my understanding is that the exact opposite is true, that these statutes were enacted to protect the quality of life of low-income minorities whose neighborhoods were too often devastated by drug violence. Is that right?

Mr. ESTRADA. That was my impression of them, Senator, and that was one of the reasons why I thought it was worthwhile to give my time for free——

Senator HATCH. That is what you were told, too, wasn't it?

Mr. ESTRADA. Exactly.

Senator HATCH. Okay. For example, according to a 1997 report issued by the Clinton Justice Department, gangs have "virtually overtaken certain neighborhoods, contributing to the economic and social decline of these areas and causing fear and lifestyle changes among law-abiding residents."

Another Reno-era Justice Department report concluded that, "From the small business owner who was literally crippled because he refuses to pay protection money to the neighborhood gang, to the families who are hostages within their homes, living in neighborhoods ruled by predatory, drug-trafficking gangs, the harmful impact of gang violence is both physically and psychologically debilitating."

Now, Mr. Estrada, you told us that you were involved in the *City of Chicago* v. *Morales* case at the request of the Chicago mayor.

Mr. ESTRADA. Well, the legal department——

Senator HATCH. Well, the department of the Chicago mayor, Mayor Daley, right?

Mr. ESTRADA. Of the city, yes. Yes.

Senator HATCH. Okay. Now, Mayor Daley, one of the primary proponents of the Chicago ordinance you defended—let me just read you a few quotes about the ordinance by Mayor Daley, whom the New York Times described as "the law's fiercest advocate." And those are quotes. I think these quotes will dispel any notion that the law was somehow intended to hurt rather than help minority residents of Chicago.

In November of last year, Mayor Daley defended his anti-loitering law in the Chicago Sun Times by arguing, "I tell you one thing. Those drug dealers and gang-bangers are terrorists, too." He has repeatedly explained that his anti-loitering law is designed to protect residents from gang activity. In June 1999, he explained, "It's the average person on a block. It's a senior citizen. It's an 8-year-old girl going to school or trying to get to the bus stop or someone trying to go to the store. They can't go there. The gangs and drug dealers own the corner, and that's what this is all about."

And, again, in January 2000, he said, "These aren't middle-class communities. These are poor communities. People want a right to survive. It's as simple as that."

I could go on and on. But, instead, Mr. Chairman, I would like to submit for the record a list of quotes by Mayor Daley in support of the anti-gang-loitering ordinances.

Chairman LEAHY. Without objection, so ordered.

Senator HATCH. Now, one thing I find ironic is that the persons who criticize the anti-gang-loitering statutes rarely live in the neighborhoods plagued by chronic gang activity.

Now, let me just see here. Although Senator Kennedy earlier made the point that community leaders objected to these ordinances, my understanding is that these ordinances were enacted in direct response to pleas by members of gang-infested communities. As Mayor Daley explained, "We held hearings all over the city to find out what community leaders wanted. Their message was very clear: Do whatever you have to do to satisfy the court, but get those gang-bangers and dope dealers off our corners."

Betty Meeks, head of the Southwest Austin Council on Chicago's West Side, lived in a neighborhood where gang members routinely

sold drugs on street corners and inundated passersby. According to Meeks, "If we don't use this law as a tool, how are we going to get these guys off the corner? What about the constitutional rights of my neighbors whose kids have to walk by that corner every day on their way to school?"

Another Chicago resident, 74-year-old Emmett Moore, saw his house sprayed with bullets during a gang turf war. Referring to the anti-gang-loitering law, he said, "The Constitution is supposed to protect my rights, too. What's a more basic right than feeling safe on my property or being able to walk in my street?"

The Annapolis ordinance was an even more explicit example of underprivileged minority residents taking the initiative to combat crime in their neighborhoods. Under the Annapolis ordinance, an area could be designated as a "drug/loitering-free zone" only if a neighborhood association or resident first submitted a petition to the City Council. Is that right?

Mr. ESTRADA. That's my recollection of it, Senator.

Senator HATCH. How did you get involved in the Annapolis case?

Mr. ESTRADA. Because of my work in the Chicago case, I got called by the county—sorry, excuse me, by the city, lawyer for the city of Annapolis. He had passed—his city has passed this drug/loitering ordinance. The city was sued in court. He tried to keep up with the litigation, but he didn't have a very large staff, and the NAACP, which brought the suit, as was pointed out earlier, had the help of a very large Washington law firm that had come in to do the other side of the case for free.

So he was feeling a bit outgunned, and he called somebody here in Washington by the name of the State and Local Legal Center, which tries to help States and localities with issues like that. And since they knew that I had done the brief for free in the Chicago case for the National League of Cities, he called—they gave him my name and he called me.

Senator HATCH. Now, Mr. Estrada, some critics have decried the Annapolis case because it challenged the NAACP's standing to bring action against the ordinance. But isn't it true that the decision to challenge the NAACP's standing was made by other lawyers before you ever even got involved in the case?

Mr. ESTRADA. That is right, Senator. By the time that I was asked to come into the case, what was left of the briefing was the reply brief. The argument had already been made in the opening brief, and, of course, it would be appropriate if the argument had any colorable basis for me to make any reasonable ethical argument that I could to support the argument that had already been made by the city lawyers in the opening papers.

As I explained, I think, to Senator Kennedy earlier, I thought that it was important as part of that standing argument that the fact that minority communities were strongly in favor of these ordinances—now, not all of them, of course, but many of them—that that fact ought to bear in the analysis of a claim where the claim was that these laws are intended to be discriminatory.

Senator HATCH. Okay. Now, I apologize to my colleagues, but I would like to finish this line of questions, and they have been kind enough to allow me.

Senator SCHUMER. Without objection.

Senator HATCH. Thank you, Mr. Chairman.

Chairman LEAHY. And I have no objection, but could you just give me some ballpark time so I——

Senator HATCH. I should be through in just a few minutes.

Now, Mr. Estrada, though your efforts to defend the constitutionality of these statutes were unsuccessful, you may have lost a battle, but I think you won the war, as they say. I am referring to the Supreme Court's decision in *Morales*. Although the Court held that the Chicago ordinance was unconstitutionally vague, Justices O'Connor and Breyer wrote a concurring opinion that gave municipalities a road map on how to enact constitutionally sufficient anti-loitering laws. Is that correct?

Mr. ESTRADA. That is right, Senator.

Senator HATCH. Under Mayor Daley's leadership—and I commend him for it, and I think everybody in those minority communities commend him for it. And I commend you for trying. Because, like I say, I think you won the war. Under Mayor Daley's leadership and following the O'Connor–Breyer road map, Chicago enacted a new ordinance in the year 2000. Is that right?

Mr. ESTRADA. That's right.

Senator HATCH. Now, has that ordinance been challenged in court along the same lines as the ordinance you defended?

Mr. ESTRADA. I have been advised by the city lawyer for the city of Chicago that that is the case, and I have also been advised that a ruling has been issued by the Court in that case upholding——

Senator HATCH. Upholding the ordinance.

Mr. ESTRADA.—the constitutionality of the ordinance.

Senator HATCH. Now, just one last little bit here because this needs to be put to bed. I don't want you mistreated here in this committee. The problem of inner-city gang violence is so pervasive that we have here in Congress recognized that, and we addressed it in 1994.

Mr. Estrada, are you familiar with 18 U.S.C. Section 521?

Mr. ESTRADA. Yes, I know the statute, Senator.

Senator HATCH. Can you tell us what that statute provides?

Mr. ESTRADA. Sure. It deals with the problem of gang membership by defining what gangs are and what types of activities they engage in, in a manner similar to what the city of Chicago had done, and it provides for enhanced prison sentences for the commission of crimes in association with gang activities.

Senator HATCH. They are mandated additional prison sentences, aren't they?

Now, I would like to note that eight of my Democratic colleagues on this committee who were Members of Congress in 1994 voted in favor of that statute. And I think that is important.

By the way, Mayor Daley—was he a Republican or Democrat?

Mr. ESTRADA. I have heard that he's a Democrat. I've never met him.

Senator HATCH. Well, I have heard that myself.

Thanks, Mr. Chairman.

Senator SCHUMER. Let the record stipulate that Mayor Daley is a Democrat.

[Laughter.]

Senator SCHUMER. Chairman Leahy?

Chairman LEAHY. Thank you.

Mr. Estrada, one of the things I have done, because I have been so impressed by it, is for 20 years or more I heard Senator Thurmond ask basically the same question of judicial nominees, and I have tried to make sure it is always asked of them. That refers to what kind of a temperament they would have in a courtroom. The judge, being really different than any other officer might be, can be basically the king, or more than that, can be the dictator, can do things a President can't get away with, somebody in elective office can't get away with. They have a life term, and they could make or break the career of lawyers or litigants or anybody else sometimes just by their attitude toward them. They could humiliate a lawyer if they are having a bad day. They could favor one over the other. And Senator Thurmond has pointed out over and over and over again how wrong that would be, and you would agree, I would assume, with Senator Thurmond and me on that point. Would you?

Mr. ESTRADA. Yes, I would.

Chairman LEAHY. Now, earlier I understand—and I had stepped out, but I saw part of this—Senator Kohl asked you about a meeting you had with the Puerto Rican Legal Defense Fund. Later they opposed your nomination. And then you have had meetings with the Congressional Hispanic Caucus, and following that, they opposed your confirmation. They suggested in a press conference, and I paraphrase, but they said you were reluctant to answer their questions, that you were rude and dismissive. They had their chance to make their statement. How would you respond?

Mr. ESTRADA. Senator——

Chairman LEAHY. I am trying to make sure you get equal time here.

Mr. ESTRADA. Yes, Senator, thank you. I think that there is nothing more important, or there are very few things that are more important to the job of a judge than having an appropriate temperament. And as a practicing lawyer, I have seen this firsthand. I've been in the trial courts in the Federal system. I have been in the appellate courts in the State and Federal system, and I have been in the Supreme Court numerous times. And I can represent to you that I have the scars to show the lessons I have learned about temperament, like I am sure many lawyers do who practice in our courts.

Chairman LEAHY. I have tried hundreds of cases. I know exactly what you mean.

Mr. ESTRADA. And I have taken those lessons to heart, and I understand the importance of having judges who will be attentive and courteous.

My meetings with both of the groups that you identified were, from my point of view, courteous and civil. Chairman Reyes from the Congressional Hispanic Caucus was a prince to me. He was—he and most of his colleagues had a very pleasant exchange with me.

I did get a letter from them last night letting me know that after our meeting with them, they have decided not to endorse my candidacy. As you pointed out, my reluctance to answer questions about the case law, coupled with the loitering cases that have been mentioned, are listed in their letter as the main issues.

It was—I tried very hard not to—not to say anything that could be construed as offensive in making clear that I could not answer questions that might come before the courts, and I believe I succeeded in doing that. I do know that there was at least one member of the Caucus at the meeting who was visibly upset that I wasn't willing to express views on how I might rule in cases that might come before me, and, in particular, with respect to the area of affirmative action. I did not think in good faith that I could respond to that type of specific questions, given the pendency of my candidacy. But I thought all of us on both sides conducted ourselves civilly and pleasantly. I was aware at the time that there was one or two members who were very unhappy with my inability to answer some of these very specific questions.

With respect to the Puerto Rican Legal Defense and Education Fund, I made myself available to them for an interview after they wrote to you calling me some unflattering things, and once again, I tried—and I believe succeeded—in having with all but—all of them a civil exchange that I thought was a pleasant one. There was one exchange that has been adverted to earlier today in the morning session in which the chairperson of the Puerto Rican Legal Defense and Education Fund made some statements which I already related to the committee and I would rather not repeat.

Chairman LEAHY. No, and I don't mean to have you have to repeat yourself on that, and you did—in fact, people who have written something critical about you, this is probably going to come as an extraordinary surprise, but people have written critical things about even members of this committee on both——

Mr. ESTRADA. I find that very hard to believe, Senator.

Chairman LEAHY. On both sides of the aisle. But have you ever felt that any Member of the Congress has ever discriminated against you?

Mr. ESTRADA. Have I ever felt? No.

Chairman LEAHY. And do you think any member up here would do that?

Mr. ESTRADA. I don't believe so, Senator. I don't know any of you as a person, but I am confident in the wisdom of your respective constituents, and I am the type of person that gives everybody the benefit of the doubt, and the benefit of assuming that unless it is affirmatively demonstrated, they act in good faith.

Chairman LEAHY. Now, Mr. Estrada, I read an article back a while ago regarding a low number of minority Supreme Court law clerks. Now, they are not under any law, any affirmative action law in the Supreme Court. You had talked about the statistics which show little representation by minorities. I am talking about the USA Today article by Tony Morrow. You said, "If there is some reason for underrepresentation, it would be something to look into. But I don't have any reason to think it's anything other than a reflection in society." The article, I think part of it was prompted because there had been four Hispanic clerks by the sitting Justices.

Without going into whether the Supreme Court should or not, on a more general legal issue, do you think there is a role for statistical evidence of discriminatory impact in establishing a pattern or practice of discrimination?

Mr. ESTRADA. I am not a specialist in this area of the law, Senator Leahy, but I am aware that there is a line of cases, beginning with the Supreme Court's decision in *Griggs*, that suggests that in appropriate cases that may be appropriate. But I am not a specialist in that area of the law. I mean, I do understand that there is a major area of law that deals with how you prove and try disparate impact cases.

Chairman LEAHY. Well, if you had a hiring or selection process that involved race or gender, could that pass—can you think of one that would pass the strict scrutiny test that was articulated, for example, in the *Adarand* case?

Mr. ESTRADA. I don't know that I should give out—that it would be appropriate for me, Mr. Chairman, to give out a hypothetical of something that would meet the *Adarand* case. As you know, the Supreme Court in the *Adarand* case stated as a general rule that the consideration of race is subject to strict scrutiny. That means that though it may be used in some cases, it has to be justified by a compelling state interest, and with respect to the particular context, there must be a fairly fact-bound individual assessment of the fit between the interest that is being asserted and the category being used.

That is just another way of saying that is a very fact-intensive analysis in the context of a specific program and in the context of the justifications that are being offered in support of the program. And I don't know that I can try to hypothesize one——

Chairman LEAHY. Well, let me ask you this: Is diversity a factor that an employer or a school could take into consideration?

Mr. ESTRADA. I am aware that there is a division in the courts of appeals with respect to the question. I do not recall whether the D.C. Circuit has spoken to that question. I am fairly certain it hasn't.

Chairman LEAHY. I am sorry. Somebody was speaking. I didn't hear the—you said you recall what?

Mr. ESTRADA. I'm aware that there is a circuit split and the courts of appeals are in disagreement as to the correct legal answer to the question that you just posed. I am fairly certain that the court for which I am being considered has not passed on the issue, though I am not really sure. But because this is a matter that is being actively litigated in the courts and may come before the court, if I am confirmed, I don't think it would be appropriate generally to answer that question, Senator.

Chairman LEAHY. Well, let me ask you a question—and I may just follow up questions on that. In the Supreme Court in 1996, in the *Romer* v. *Evans* case, said in effect that in Colorado a law that had the effect of discriminating against homosexuals and lesbians violated the Equal Protection Clause. Are you familiar with that case?

Mr. ESTRADA. I read it when it came out. I was in the SG's office at the time. I haven't read it for 4 or 5 years, I don't think. It was a while ago.

Chairman LEAHY. Do you recall whether you ever discussed it with anyone?

Mr. ESTRADA. I do not recall.

Chairman LEAHY. Do you recall whether you ever, in writing or otherwise, expressed views about that case and the manner in which it was decided?

Mr. ESTRADA. I do not recall, Senator.

Chairman LEAHY. What do you think about the case?

Mr. ESTRADA. I read it when it came out. I have a general impression of the general holding. As with other cases from the Supreme Court, as a practicing lawyer I usually take them to try to get to the bottom line and see what the rule of law is.

There was a time where I could parse through it after I read it. I know of no reason, whether in law or in my own private personal views, why I would not be able to apply the ruling of the court to like cases if they came before me.

Chairman LEAHY. Well, you would have to, I mean, any court of appeal would have to apply *Romer*—if they had a case on all fours, they would have to apply *Romer*.

Mr. ESTRADA. Absolutely. Absolutely.

Chairman LEAHY. We all agree with that.

Would you—and my time is up, so I should submit this in writing. Would you give me your views on—and, don't worry, we will remind you of this. I don't mean you have to—would you let me know what you think of the decision as it is in that case? What are your views of that case? Do you agree—would you have decided the same way? And realizing this is not a hypothetical because, I mean, you are bound by it today.

Mr. ESTRADA. Well, I understand that, Senator, and I think to that question, I ought to answer by pointing out to what my view is of judging. And as I said, I think, earlier, I think it is imperative that in judging, the person come to it was an appropriate process, and that entails withholding judgment, having an open mind, hearing from parties, and hearing from the briefs and doing all of the legwork to try to ascertain which of the two litigants or, if there are more, any of the litigants is right.

It would be impossible for me with respect to this case, not having been the judge in it, to tell you whether I would rule this or the other way because I simply have not engaged in the type of appropriate process that I think is essential to judging.

Chairman LEAHY. I will give you a chance to give me your views on the decision and, of course, you can always in your response say you don't want to, and I understand that. I will let you decide how to answer.

Mr. ESTRADA. Thank you, Senator. I think my answer to the best of my ability is I can't know because I was not a judge in the case. And the question as framed is inherently an unknowable for somebody in my position who has not sat through the case, listened to the arguments, conferred with the colleagues, and done all of the legwork of investigating every last clue that the briefs and the arguments offer up.

Not only that, but in the context of our Federal system of course, it is imperative for somebody who is a judge to respect what we call the case of controversy requirement, which is to say, cases are not abstract questions of law, they involve real people. And the color of the case, so to speak, or the tenor of it really does take on a very urgent character when you have to deal with the real person who

has all of the real arguments in front of you and is not an intellectual exercise as to what might be a good rule of law.

Chairman LEAHY. I will take that as being your answer, and I will save you the time of having to write another. Thank you. Thank you, Mr. Estrada. I appreciate you taking the time.

Senator SCHUMER. Senator Brownback?

STATEMENT OF HON. SAM BROWNBACK, A U.S. SENATOR FROM THE STATE OF KANSAS

Senator BROWNBACK. Thank you, Mr. Chairman.

Mr. Estrada, welcome to the committee, and welcome to your wife and to your mother. Delighted to have you here. Being at the end of the bench, most things have been covered, and I don't have any piercing line of questioning to go into.

I really am a great admirer of yours. I had a chance to meet with you privately. I am an admirer of your fortitude and your background and what you have gone through. I am an admirer of your resume: magna cum laude out of Harvard, Columbia, graduating near the top of your class. I think all those are a very impressive product that you produced through your life and a dedicated life that you have had to be able to help a number of other people out to see what you can do for their betterment and for the betterment of this country.

I am sorry that in this process now we seem to be more caught up on a set of ideological tests than qualifications, and that seems to be what is coming forward more and more.

I look through this pedigree and this background that you bring to the job, your unanimous highly qualified rating by ABA, your work for the Clinton Justice Department, your work for private law firms, your work for the Supreme Court, your work for a circuit court. That is an impeccable background and shows a great breadth of service that you have had as well. U.S. Attorney's Office, I believe, Southern District of New York, as well is in that. Your personal background that you bring to the job as well. That would seem to me to be the very type of person that we would want on the D.C. Circuit.

Mr. ESTRADA. Thank you, Senator.

Senator BROWNBACK. It would be all of that added together. The unanimous "well qualified" that you bring from the ABA, and they review for judicial temperament. I have read this before to people, but in their own investigation that you had to go through, the legal writings are examined of prospective nominees. They conduct personal interviews in the ABA background, confidential interviews regarding integrity, professional competence, judicial temperament of the prospective nominee. All that you have gone through, been through. I believe you have been waiting now for—for how long for a hearing?

Mr. ESTRADA. I was nominated on May 9, 2001, Senator.

Senator BROWNBACK. So we have been going now for a year and a few months in the process.

I add that all together and say here is an incredibly well-qualified, broad-based individual. I believe you would be the first Hispanic American on the D.C. Circuit from what I have seen, which is something, I think, that we should as well applaud with your

background and having that as a broadening force on the D.C. Circuit, the breadth of background that that would bring to the D.C. Circuit as well, which I think would be an important, laudable goal, to add that on top of the qualifiers. I think one has to be qualified for the bench, qualified in judicial temperament and breadth and ability and expertise. And you have got to get through that threshold, but then once you are through that, you add more on top of it the breadth and experience.

I think it is a very bad precedent we are moving towards here when you look at that breadth of qualification, that type of nominee, that type of personal background and fortitude that you bring, and then to see that, well, there are people that are just going to oppose this strictly based on ideological purposes. I think we are poorer for it.

I know people have gone through a number of different questions. On items you have written, your opinions are known. But the blockage here is on ideological purposes is why you haven't been brought up to date. And I think we are poorer for that.

I appreciate that you have been willing to put yourself through this process. I am hopeful that we are going to still be able to get you confirmed. I think that would be the right thing for this country and show a breadth of opinion on this dais that we could put somebody of your caliber and qualifications and background on the D.C. Circuit. I don't know that that is going to take place, and I think we as a country will be poorer for it.

So my point is to really thank you for being willing to put yourself forward through this and really dedicate your life for the betterment of yourself and others. That is a remarkable story of accomplishments that you have already had, and I hope we are going to be able to add on top of that a circuit court position as well. And it is certainly well deserved on your part.

Mr. ESTRADA. Thank you, Senator.

Senator BROWNBACK. Thank you, Mr. Chairman.

Senator SCHUMER. Senator Kennedy?

Senator KENNEDY. Well, it has been a long afternoon, a long day for you, Mr. Estrada, but we thank you very much for staying with us. I just have a few questions that I would like to get your attention on.

As I mentioned—and the record is very clear—the point that I was making earlier today about the NAACP and your challenging their right to reflect the local community which had been the NAACP in the case of Annapolis was involved in counseling youth as well as in various voter registrations, and they felt that they had a right to be able to challenge the statute, and you believed that they should not. And I was making the point that the NAACP works in a very significant and important way in representing minorities, others as well, in what we refer to as representational standing. And they have on issues of civil rights and discrimination and unemployment and many other issues, and they were attempting to do it here in representing the community because there was a division. No one is obviously justifying the gang and criminal activity. I think we can all dismiss that. We all dismiss that.

The fact is the vote in Chicago among black aldermen was clearly against the statute, and I put the names of those who voted on that in the record.

I want to really go beyond that. Rather than talking about the statute, I was talking about the NAACP and the time that you took to oppose their position of standing and representing the community, and you opposed it, and later their position was upheld in the courts.

But let me just move on to just one final area, and that is the issue that has been raised by a number of the organizations, the Council of La Raza, the AFL–CIO, the Southwest Registration Education Project, about the willingness of you to consider all sides and be fair-minded in consideration of cases that would be before you in the district court. I think we could use the word "temperament," if I could, in sort of characterizing it.

I mentioned earlier in the day the importance of the court and its impact on the lives of people is enormously important. I think it is important also that anyone who is going to be on the court, no matter their personal views as a judge, that they have the ability and the inclination to listen to and understand both sides of the argument.

Earlier this week in the Judiciary Committee hearing, chaired also by Senator Schumer, we had what I considered to be an excellent definition of how a judge should comport themselves, and it was done by former Judge Ab Mikva, and he told us that the kind of judges that we want on the D.C. Circuit reflect moderation. He used the words, "We want judges who can hear with both ears, have not decided the case before the hearing the evidence and can remain reasonable even when the juices are flowing all around."

And some have raised the question about whether you possess those key qualities of moderation, openness and fairness. You have been called "too much of an ideologue" to serve as a judge, and it has been said that you would have difficulty separating yourself from your personal ideological views. Some of your colleagues reportedly say that you "do not listen to other people." According to one group with whom you have met, you were not "even-tempered" or open, and you even said that their criticisms of you might be legally actionable. Those views were represented in the letters that I have here, which I will include in the record. I am not going to spend the time——

Senator SCHUMER. Without objection.

Senator KENNEDY. But I am interested in hearing from you how you would respond to those that have raised those issues about your temperament and how you would proceed.

Mr. ESTRADA. Well, Senator, let me start by giving you my best assurance that I am a person who listens with both ears and who will be able, if I am fortunate enough to be confirmed, to take the lessons of private practice, which, as I mentioned earlier to Senator Leahy, do involve going to courtrooms all over the country and getting a firsthand look at the importance of judicial temperament.

I am aware of some of the criticisms that you have read. I think I have spoken to a couple of them today. But I think I would like to emphasize that I have been in practice since—I have been a lawyer since 1986, and I have been fortunate enough to have met and

dealt with a broad range of people in my life, whether they are on the other side of the table or co-counsel or judges and justices before whom I have practiced.

Just 2 days ago, I got a copy of a letter that I understand has been sent to the committee sometime back. I just got it a couple of days ago, and the letter is from the head of the Legal Aid Office in the Southern District of New York. As you may know, I was a Federal prosecutor in that office, and the head of Legal Aid has written to the committee to point out how he and the members of his office, as my opponents in litigation, thought that I was a person of fairness and integrity with whom they could deal fairly, and he has endorsed my nomination on the basis of his own experience and that of his colleagues in the office when I was a prosecutor. And I think he has told you that I was tough but fair.

Some of my former colleagues in the Solicitor General's office who identify themselves with both parties have also written to the committee to emphasize their view that I am a person of integrity who will treat all litigants fairly. And so has one of my supervisors, a very important one, Seth Waxman, who was, as you may recall, President Clinton's second Solicitor General. He has also written to the committee, as have any number of other people who were political appointees of the Clinton administration under which I served for 4 years.

I am extremely pleased that they and I understood at the time that our business was to be fair and to get our jobs done and that we have managed to forge lasting friendships from that time period.

The last item I would mention, Senator, since I do think that this is about my extensive record in the law, is that there are all of those cases that I have handled. And as I think I mentioned earlier to you, when I see an injustice, I try to get involved. And when I see a community need, I try to get involved. And that may not be in the taste of everybody. I am certain that there are people in the world who don't think all that well of me for having taken a death penalty case, just as I am certain that there are people in the world who don't think all that well of me for having tried to help minority communities that passed these gang laws.

But to my mind, what should come clear, come through that record, is the level of care that I have taken over the years to make sure that I give back to the community and that I do so in a way that is fair, that advances the ball for our society, and it is my hope that when you look at the totality of the record, including those who have known me over the years, the judges before whom I have appeared who were interviewed by the ABA, and all of the rest of the record that you have in front of you, that you will conclude without hesitation that I am the type of person who listens with both ears and will be fair to all litigants.

Senator KENNEDY. Well, I thank you for your response, and if you have that letter—because I don't believe the committee has the letter from the Southern District. We would like you to submit it if you would.

Mr. ESTRADA. Yes.

Senator KENNEDY. I think when you were giving your answer about bringing the lessons from the private sector to this issue, I

think those are enormously important. We have some enormously gifted, talented advocates, some extraordinarily able and gifted attorneys, but individuals that don't necessarily make great judges, particularly in the circuit, as we mentioned, that are dealing with some of the neediest causes and issues that affect the individuals who have really been left out and left behind.

This is an attitude that I think is enormously important and significant, more so in terms of this position than, I think, in others. And I want to take the full opportunity to look at your record and what you have done and what does reflect it. I think all of us are impressed by your legal abilities. The real issue, I think, for myself is whether this translates itself in really being able to understand and being able to be fair and open-minded and considerate of the many individuals who don't have strong, effective, brilliant lawyers or special interests, and whose lives are going to be directly affected by the outcome of that circuit.

And we have seen, as others have pointed out, where the interests of those individuals increasingly are being left out and left behind. I am not going to take time to review those statistics or conclusions, but that is a factor. So this is an important quality.

I want to thank the Chair very much.

Senator SCHUMER. I thank you, Senator Kennedy.

We have a vote going on. I think about 7 minutes have gone into it, but Senator Sessions assures me that he only has a few questions, so we can probably get those in first. Then I have a few more, Senator Hatch, and then we will get on to the other nominees. But we will do those after—my final round of questions and Senator Hatch's will occur after the vote, but we will go to Senator Sessions right now.

Senator SESSIONS. Thank you, Mr. Chairman. I would just like to point out with regard to endorsements, Mr. Estrada does have a number of endorsements from Hispanic groups, including the League of United Latin American Citizens, the largest and oldest Latino organization in the country, and the Hispanic Bar Association. So you certainly do have support in the Hispanic community.

And with regard to your principled and correct position on judging cases that you haven't heard and are not a judge in, I would like to quote again from Lloyd Cutler, who was a counsel to President Clinton, White House counsel, who has been a student of the judiciary and served, I believe, on the Miller Commission which dealt with how to confirm judges. He, in 1985, wrote, "What the Senate ought not to do is determine through questioning a nominee's views on emerging issues of constitutional doctrine or issues likely to face the courts in the future. Why? Because these questions are really a signal to a nominee that he will become a judge only if he promises to be obsequious, to be a yes man to the powers that be."

Then he went on to note, "I think that when we ask prospective judges their views on an issue likely to arise in the future, we are locking those judges into a position. The constitutional prohibition on advisory opinions tells us that justice is achieved by well-informed, concrete decisions rather than hypothetical speculation."

Also, as you indicated, you haven't heard the arguments and read the briefs, so you should not be making those kind of com-

ments in advance. And Senator Schumer has admirably said we ought to get away from "gotcha" politics and "gotcha" hearings here, and I do think, Senator Schumer, that today we slipped a bit with pressing him on an unnamed source, a statement that he has not had, and demand answers that it would be difficult, I think, for him to give.

I notice in that article it quoted you as saying, "Estrada is like a Stealth missile with the nose cone coming right out of the right wing's deepest silo." Did you say that?

Senator SCHUMER. I guess so. I won't say I can't recall.

Senator SESSIONS. Okay, yes or no. So these hearings are—we are open, Senator Schumer is open, but we need to be open-minded. We need to be listening to you, not having our minds made up before we come.

And another thing that I noticed in these hearings that are troubling to me is the suggestion by Senator Kennedy that a lawyer's objecting to an entity's standing somehow reflects a hostile opinion of the group. Isn't it true, Mr. Estrada, just briefly, that a group to intervene and be a party to a lawsuit has to meet certain legal requirements of standing, and if you object to a person's or a group's standing, that does not mean you have any adverse opinion toward that group or person?

Mr. ESTRADA. That is right, Senator. I mean, I was—thank you for giving me the opportunity to say this, and I'm sorry Senator Kennedy has left. But obviously I have the highest respect for the history of the NAACP in this country breaking down racial barriers. That was not what was at issue in the case. It was simply whether in the particular case they were the appropriate litigant to be raising this challenge.

Senator SESSIONS. The law is clear that every group and every person can't intervene in every case in America, and I think you are perfectly correct in representing your client there.

And with the Legal Aid Society's letter, I would just note they wrote on September 16th—that is from Mr. Joy, the attorney in charge—"Miguel and I met while he was an Assistant United States Attorney in the Southern District of New York. We had a number of cases together where he represented the Government and I the defendants, including one case which went to trial and a number of others that were resolved by guilty pleas. In addition to myself, the other lawyers in my office dealt with him on cases of their own. We were all tremendously impressed with his intellect and extraordinary memory, and he clearly was one of the smartest attorneys in the office which prides itself in attracting the best and the brightest. Yet throughout, he was eminently practical in the judgments he made, and he had a down-to-earth approach to his cases. I found him to be fair and straightforward, a prosecutor who did not treat defendants unduly harshly."

And that is what the American Bar Association has found about you in talking to as many as 50 of your colleagues, judges, adversary attorneys, when they rated you unanimously "well qualified."

Mr. Chairman, this is an extraordinarily qualified nominee. I believe he definitely needs confirmation.

Senator SCHUMER. And on that temporary note, we are going to recess for hopefully no more than 10 minutes.

Mr. ESTRADA. Thank you, Senator.

Senator SCHUMER. The committee is in recess.

[Recess 3:58 p.m. to 4:17 p.m.]

Senator SCHUMER. I think we are ready to resume once and for all, and I want to thank Mr. Estrada. It has been a long day for being here, and I want to thank all the others. And we are going to get to you as quickly as we can.

Let me go to another bunch of questions here for our nominee. Now, in asking questions about judicial philosophy, I am mindful of the importance, as you have stressed, I think correctly, of not seeking a pre-commitment from any nominee regarding how he or she will rule in any case that may come before him or her on the bench.

That said, there is nothing absolutely wrong with your commenting on specific, already decided Supreme Court cases. I know of no one who feels that that is improper to do.

I am sure you regularly do so in private. Nearly every lawyer worth his salt in the country engages in that kind of debate and discussion. I do. We do on this committee. I have done it with most of my colleagues here and there. And when a big case comes down, it is only natural for us to talk about it in my office and other places. And I am sure that is the case for you, too, Mr. Estrada. You have friends who are former Solicitors General, law professors, partners in law firms. You clerked on the Supreme Court. We all know that you discuss Supreme Court opinions all the time. If you didn't, you probably wouldn't be qualified to serve on the D.C. Circuit.

So it is not really enough to say you haven't read all the briefs and listened to oral argument to give us your general views on cases, and I think you have something of an obligation to let the committee know.

So I want to ask you this, and my first one is a general one: Other than cases in which you were an advocate, please tell us what three cases from the last 40 years of Supreme Court jurisprudence you are most critical of, and just give me a couple of sentences as to why for each one.

Mr. ESTRADA. Senator, I think there are cases that I have been critical of that I can think of. I cannot say that I have made it my business to be in the business of being critical of the Supreme Court since my job generally entails getting the cases, figuring out what the rule of law is, and trying to make arguments for my clients on the basis of the rule as stated rather than to going back and trying to second-guess it.

I'm not even sure that I could think of three that I would be—that I would have a sort of an averse reaction to, if that's what you're getting at. But the reasons that I would even think of the cases in those terms would have to do with what the cases do for the administration of justice, whether they give enough guidance to lower courts and whether they fulfill, you know, the Court's job in ruling on the question at the time. It would be more of this is not really useful to me as a practitioner and probably won't be all that useful to the judges.

I don't really think, you know, I am—as a practicing lawyer, I think I'd be reluctant to say that I would be critical of the outcome because I've got to take it for what it is.

Senator SCHUMER. So with all of your legal background and your immersion in the legal world, you can't think of three or even one single case that the Supreme Court has decided that you disagree with?

Mr. ESTRADA. I don't know that I'm in a position to say that I disagree with any case that the Supreme Court has ruled on or that I think that the Court got it right, because I think, you know, as I explained earlier, I ought not to undertake to, in effect, hold the Court to task for the purpose of having gotten something wrong when I haven't been in their shoes in the sense of having had access to all of the materials, argument, research, and deliberation that they had.

I can read a case and it may seem to me when I read the case that this or the other one of the opinions is particularly well argued. And sometimes I have that sort of a reaction, fairly frequently. But I don't have the reaction of, oh, I think this is wrong.

Senator SCHUMER. You don't? Not to a single case in the last 40 years? I mean, I will tell you one for me. I think *Buckley* v. *Valeo* was an awful decision.

Mr. ESTRADA. Well, certainly——

Senator SCHUMER. I wish it had changed. Now, if I were to be nominated tomorrow by President Bush to sit on the court, I don't think saying that would disqualify me.

[Laughter.]

Senator SCHUMER. Now, you are a lot closer to that than me, that nomination, but, I mean, I find it hard to believe that you can't opine—Mr. Estrada, we are trying to find out how you think here, and——

Mr. ESTRADA. And I'm happy to deal with that question, Senator. I can tell you how I approach cases. But——

Senator SCHUMER. But I didn't ask that, because I'm not asking how you approach cases. That is a legitimate question and some have asked it like it. I want to know how you feel about cases, and you have said more broadly than any other witnesses I have come across, you have given us virtually no opinion on anything because it might come up in the future.

My reading of that ruling is different. If I were to ask you specific cases, that is fine. But asking you generally about views that might come before the court, we have had witness after witness tell us their views on things like that. Just look at last week, Mr. McConnell's testimony.

But now I am getting away from that, respecting disagreeing very much with and thinking the record is not very filled in here, but I am getting to older cases, cases that have already been argued, so you can't have that reason, and you can't tell us a one.

Mr. ESTRADA. But the problem is the same, Senator Schumer, because in taking Case A and looking at whether the Court got it right or whether I think they got it right, I have only the benefit of the opinions. I haven't seen the litigants. I haven't—the case is ruled on, but I don't get to see what didn't make it into the opinion.

Senator SCHUMER. Sir, in all due respect, I have not read the briefs of *Buckley* v. *Valeo*. I don't think that disqualifies me from having an opinion on the holdings of the case and its effect on America and its affect on law. I think it interpreted the First Amendment too broadly.

Mr. ESTRADA. Senator——

Senator SCHUMER. To say that the only time you can opine on a case is when you have read all the briefs strikes—well, it is an argument I have never heard before.

Mr. ESTRADA. The only time that I will feel comfortable in opining whether the Court got it right would be if I had done everything that the Court had to do in order to actually issue their ruling.

Senator SCHUMER. I didn't ask you if the Court got it right. I asked you cases that you, from your viewpoint, would disagree with.

Mr. ESTRADA. I mean, there are certainly cases——

Senator SCHUMER. I am not asking you for the quality of the legal reasoning. I am asking you, you have certain predispositions, we all do. No one is a tabula rasa. Let me just read you a quote. Judge Scalia, a friend of yours, Justice Scalia, "Indeed, even if it were possible to select judges who didn't have preconceived views on legal issues, it would hardly be desirable to do so."

You don't seem to have any.

Mr. ESTRADA. Well, actually, Senator, I have to say that I was trying to answer a different question when you said that. If you're asking whether I have views on issues of public concern that may be implicated in the cases that make it to the Court, of course, I do. I have all sorts of views. I have all sorts of views——

Senator SCHUMER. Well, tell me three cases you have disagreed with.

Mr. ESTRADA. I don't think in light of the position for which I am being considered, Senator Schumer, that I ought to say that because it would be a preconception, as Justice Scalia said in that opinion, and he went on to say that what's key about our system—this is the State election cases, as I recall—is that the first duty of the judge is to recognize that we all have them and then put them aside. And out of deference for the job for which I am being considered and for which I hope to be fortunate enough to be confirmed, the one thing that I do not want to do is to share personal views which to me have no bearing on how I would do my job as a judge.

Senator SCHUMER. Let me just—are you saying, though, you have never shared your opinion on any case where you haven't read the briefs and heard the arguments with others?

Mr. ESTRADA. If you're asking whether I have opinions about the public policy issues that are implicated in the case or the quality of the job that the Court did in writing the opinion, I have shared opinions like that——

Senator SCHUMER. So why don't you share them with us?

Mr. ESTRADA. Because they do fall within the area of preconceptions that Justice Scalia identified, which I would be loath to give out the impression it would have anything to do with my job as a judge if I were confirmed.

Senator SCHUMER. Well, of course, it will have things to do with your job as a judge. Everyone who has written on jurisprudence knows that. No one comes in as a tabula rasa. I have a quote from Justice Rehnquist somewhere around here which says the same thing. Chief Justice Rehnquist: "Since most Justices come to this bench no earlier than their middle years"—you are at the very beginning of your middle years—"it would be unusual if they had not by that time formulated at least some tentative notions that would influence them in their interpretation of sweeping clauses of the Constitution and their interaction with one another. It would be not merely unusual but extraordinary if they had not at least given opinions as to constitutional issues in their previous legal careers."

Now, you are still refusing to give us any.

Mr. ESTRADA. Yeah, I mean, I have read—not recently, but I have read Justice Rehnquist's opinion, I think it is the opinion in chambers in *Laird* v. *Tatum* that you are reading from.

Senator SCHUMER. I don't know where it is from.

Mr. ESTRADA. That was his opinion in chambers in *Laird* v. *Tatum*, which I think Justice Scalia then quoted in the case that you cited earlier. But all to the point that we all recognize that we have private views on many issues, and our job, if we get to be judges, is to make sure that people understand that they come before us so that we will give ear to the counter-arguments.

Senator SCHUMER. You just said an hour ago that when you were giving recommendations to Justice Kennedy about law clerks, you did look at their views. You must have asked them questions or heard something about it. And yet now you are saying—and that is for a law clerk. And now you are saying for a judge, a lifetime appointment, you won't share those views with the committee.

Mr. ESTRADA. Senator——

Senator SCHUMER. It seems to me a bit contradictory.

Mr. ESTRADA. The question that—the questions that I ask in doing my job for Justice Kennedy are intended to ascertain whether there are any strongly felt views that would keep that person from being a good law clerk to the Justice.

If the person tells me that they think we ought not to have the death penalty but that he or she is more than happy to work on a case from the Justice in which the outcome is that one of them will be upheld, I have no further job to do. I would never tell the Justice that that person, he or she, is an unsuitable law clerk.

I asked about these things solely for the purpose of gaining the person's assurance that he is a person who follows law. That is the assurance that I am here to give you today. Whatever my personal views on any issue may be, I will put them aside to the best of my ability and follow what the Supreme Court tells me is the governing legal framework.

Senator SCHUMER. Now, you have said that to us, but we are not sure that will happen. And unless you allow us to probe a little further as to how you think and what you do, we can't come—we can't judge whether that will actually happen or not.

Mr. ESTRADA. I am——

Senator SCHUMER. We don't know you, and the purpose of this hearing is to get to know you a little better. And in all due respect, you are not letting us do that hardly at all. I mean, you know, we

have had a lot of your wonderful history, which I commend you for. But that is not the only reason, at least in the opinion of many, if not most, to vote yes or somebody who is nominated for what at least I consider the second most important court in the land.

Mr. ESTRADA. I am happy to try to answer any question that I think I can appropriately answer, Senator Schumer, consistent with the nature of the job that I would undertake——

Senator SCHUMER. Let me just ask you one more question. There was only one issue that you did address, *Roe* v. *Wade*. Why were you willing to talk about that case when Senator, I believe it was, Feinstein asked but no other?

Mr. ESTRADA. I thought my answer to the question was that I would follow the case and that I take the holding of the case as stating what it holds, which is that there is a right, as the——

Senator SCHUMER. No, I thought you used the word "morally." I thought you—I don't remember. We could look at the record. But I didn't think you just said it was a holding of the case. You said it is settled law, and then you talked about some other normative words. I don't remember. We could get the record and look.

Mr. ESTRADA. And I was pretty—what I was pretty sure I had said, Senator, which is what I was about to repeat now, which is to say it is the holding of the case. I have no personal, moral, philosophical view or view of any other type that would keep me from following the holding of the case. I did not think I in any way implied what my view might be.

Senator SCHUMER. Okay. I think that is basically it for me. I am going to say something in conclusion, but I will first let Senator Hatch do what he has to do.

Senator HATCH. Well, thank you, Mr. Chairman. I earlier quoted from the Code of Ethics, and it is worth repeating. Canon 5 of the Code of Judicial Conduct of the American Bar Association expressly forbids—expressly forbids nominees to judicial duty from making "pledges or promises of conduct in office or statements that commit or appear to commit the nominee with respect to cases, controversies, or issues that are likely to come before the courts." Now, that is an important—I think you have answered these questions just right.

Now, your career has been marked by a commitment to equal justice for all people and everybody under the law. I think we have gotten to know you pretty well here today. Both in Government service and in private practice, you have sought to ensure that all citizens receive the law's fullest protections and benefits, whether they are death row inmates, abortion clinics targeted by violent protesters, or inner-city residents victimized by gang violence.

I would like to ask you specifically about your representation of Tommy David Strickler in his death row appeal before the Supreme Court. Can you tell us about that case and about how you got involved?

Mr. ESTRADA. Yes, Senator. I was sitting in my office at Gibson Dunn one afternoon and the phone rang, and there was—there were actually two or three people on the line in different parts of the country. One of them was an attorney from Richmond who had been handling the case until then. Her name is Barbara Hartung. Another one was an attorney who identified himself as being from

the NAACP Legal Defense Fund in New York. I think his name was David Kendall. And there was another lawyer who had been helping Ms. Hartung, I think in Florida. I think was—his last name was Olive.

And they told me that they had tried to get help in the representation in this case from a law professor at Georgetown Law School who had then just had a young child and she was not in a position of doing the case. I knew this faculty member from Georgetown because she and I had been U.S. Attorneys together, and she recommended me to Ms. Hartung as somebody who might be interested in this case, having worked with me in the Southern District of New York.

They called and I got told about the case and asked them to send me the papers or some of the papers so that I could see what the issues were. They did that, I think by overnight mail, and I looked through it and, frankly, as a practicing lawyer, was frankly horrified about what had happened in that case.

I told them that I would do the case for free. I wrote the briefs in the Supreme Court, the opening brief and the reply brief, with the help of Ms. Hartung, and got to know the record, argued the case in the Supreme Court, I believe, in 1999 and, unfortunately, lost.

It was one of those cases in which I as a litigant on that side had to win a large number of points to get to the end, and I won all but one. I mean, I had many of the things I had seen that were wrong with the case and the Court did agree were wrong with the case. But, unfortunately, there was final step that they said, well, that one you don't get, and the result was that we lost the entire case.

But there was a lot of merit in the case, I think, as the judgment of the Court did recognize, because they ruled for my side in the case in all but one of the issues.

Senator HATCH. You represented them for free. Do you remember approximately how many hours you spent on that case?

Mr. ESTRADA. Yes. I think I estimated between 4 and 500 hours on that case.

Senator HATCH. Let me just read a portion of the letter the committee received from your co-counsel in the case, Barbara Hartung. Ms. Hartung says that you, quote, "value highly the just and proper application of the law."

In this particular case, this man had abducted a young girl and murdered her.

Mr. ESTRADA. That was what the State claimed they had proved at trial.

Senator HATCH. Yes. She said that you, quote, "value highly the just and proper application of the law. Miguel's respect for the Constitution and the law makes plain why he took on Mr. Strickler's case which, at bottom, concerned the fundamental fairness of the capital trial and death sentence. I should note that Miguel and I have widely divergent political views and disagree strongly on important issues. However, I am confident that Miguel Estrada will be a distinguished, fair, and honest member of the federal appellate bench."

I would like to submit the whole letter for the record, if I can, Mr. Chairman.

Is that okay, to submit the whole letter for the record?

Senator SCHUMER. Without objection.

Senator HATCH. Now, let me just say that earlier Senator Kennedy asked about your fairness, your ability to consider all sides of an issue before making a determination.

I think some of the best testimony on your fairness comes from Ron Klain, who served this committee well on the majority side, on the Democrat side, and who served as chief of staff to former Vice President Al Gore.

Mr. Klain wrote in a letter to the committee, quote, "Miguel will rule justly toward all, without showing favor to any group or individual. The challenges he has overcome in his life have made him genuinely compassionate, genuinely concerned for others, genuinely devoted to helping those in need, and those without means and without advantage will get a fair hearing from Miguel Estrada," unquote.

As Mr. Klain explained in his letter, he has known Mr. Estrada since you were both in law school.

Mr. ESTRADA. That is right, Senator.

Senator HATCH. Now, in my opinion, it speaks volumes that those who know you the best are the ones who would vouch on the record through their words and actions on your fairness.

Now, I think that Senator Schumer is getting the point of my next line of questions, and that is this. I believe that your answers amply illustrate that even assuming that you are pro-life—and I have no idea or care whether you are—you will apply the law as articulated by the Supreme Court regardless of your personal views.

I would like to ask you about a case you argued in the Supreme Court on behalf of the Clinton administration, and that was *NOW* v. *Scheidler*. Can you just tell us about the background of that case?

Mr. ESTRADA. Yes, Senator. That was a case that came out of a litigation between Operation Rescue and some abortion clinics. I think it was in the Midwest, and Operation Rescue—I am sorry—the clinic sued Operation Rescue using a Federal statute called the Racketeer Influenced and Corrupt Organizations law.

They lost in the Seventh Circuit when the Seventh Circuit found that Operation Rescue, since it was not motivated by a desire to earn money, but was doing this for philosophical reasons, could not be reached under this law which is really intended to go after people that engage in violent conduct, in a pattern of violent conduct.

I worked on the case when I was in the Solicitor General's office. I wrote a brief arguing that this was a mis-reading of the statute because there was nothing, as I argued in the brief, that indicated that the economic purpose requirement was in the statute. I also argued the case. Solicitor General Drew Days sent me.

Senator HATCH. So you wrote the brief and you argued the case in the Supreme Court on behalf of NOW——

Mr. ESTRADA. That is correct.

Senator HATCH.—and against the pro-life protesters——

Mr. ESTRADA. That is right, Senator.

Senator HATCH.—who were accused of violence?

Mr. ESTRADA. That is right, Senator.

Senator HATCH. How did the Supreme Court rule?

Mr. ESTRADA. The Supreme Court ruled unanimously for the position that I advocated.

Senator HATCH. And they basically ruled that the RICO statute could be used to punish pro-life activists who protest in a violent fashion outside of abortion clinics?

Mr. ESTRADA. Yes, with respect to the issue then in front of the Court. I think the case has now been tried and is now back in front of the Supreme Court on a different issue, but——

Senator HATCH. Okay, but the Court held that RICO does not require pecuniary purpose by the defendant to maintain a cause of action, right?

Mr. ESTRADA. That was the issue in the case, yes.

Senator HATCH. Well, I would like to point out that NOW has hailed the Supreme Court's decision in *Scheidler* as quote, "our landmark lawsuit, in which a unanimous jury declared the defendant guilty of racketeering, and NOW won the first-ever nationwide injunction against anti-abortion extremists," unquote.

I would also like to point out that on the NOW website there is an article by Vera Haller, of Women's E News, that applauds your choice as a judicial nominee. The article notes that you supported anti-racketeering laws against abortion foes in the *Scheidler* case and observes that, quote, "His arguments were not ideological," unquote.

The article further notes that, quote, "His presence on the list of judicial nominees was seen by some as a sign that President Bush hoped to avoid contentious confirmation battles in the Senate."

Senator SCHUMER. Spoken by a left-wing interest group, stuff you don't like.

Senator HATCH. No. I like people who stand up for women's rights. And, Miguel, you have. After all, I have 3 daughters and 3 sons, and I have, I think, 12 or 13 granddaughters.

Now, let me just say this. On August 3 of 1995, we held a hearing for President Clinton's nominee, William Sessions. Mr. Sessions had served as Senator Leahy's campaign manager, so there was no doubt that many on the Republican side of this table disagreed with his political ideology.

We asked Mr. Sessions, "Are you committed to following Supreme Court precedent and the rulings for the Federal circuit court of appeals for your district faithfully, giving them full force and effect, even if you personally disagree with such precedent or ruling," unquote. He answered, "Yes, Mr. Chairman, I am."

Despite his record of partisan political activity, that answer was good enough, under the old standard where the Senate bore the burden of finding a strong reason to reject a nominee, and the Republican Senate confirmed him by a unanimous vote.

On June 16, 1999, I held a hearing for President Clinton's nominee Karen Schreier. Ms. Schreier had served as chairman of the South Dakota Democratic Party, and so there was no doubt that we on the Republican side disagreed with her political ideology.

I asked her at that time, "Are you committed to following the precedents of the higher courts faithfully and giving them full force

and effect, even if you personally disagree with such precedents?" She answered, "Yes, Mr. Chairman, I definitely am."

Now, despite Ms. Schreier's record of partisan political activity, that answer was good enough under the old standard where the Senate bore the burden of finding a strong reason to reject any nominee. The Republican Senate confirmed her by an overwhelming vote of 94 to 4.

On May 10, 2000, we held a hearing for President Clinton's nominee James Brady. Mr. Brady had served as a Vice Chair to the Democratic National Committee. Thus, again, there was no doubt that we on the Republican side disagreed with his political ideology.

Mr. Brady was asked this question: "If a U.S. district judge or a U.S. court of appeals judge concludes that a Supreme Court precedent is flatly contrary to the Constitution, are there any circumstances under which the judge may refuse to apply that precedent to the case before him," unquote. Mr. Brady answered, "No, there are no circumstances under which a United States district judge or a United States court of appeals judge may refuse to apply that precedent to the case before him."

Now, despite Mr. Brady's record of partisan political activity, that answer was good enough under the standard we used up until recently, the old standard, where the Senate bore the burden of finding a strong reason to reject a nominee and not just some frivolous reason that they call strong. The Republican Senate confirmed Mr. Brady by an overwhelming vote of 83 to 16.

These same questions were asked of President Clinton's district and circuit nominees alike. I never shifted the burden back to these nominees. My understanding is that Mr. Estrada has never, never headed a political campaign in his life either at the national or the State level. Instead, he has been a lawyer, and a distinguished one at that.

Imposing a double standard on Mr. Estrada has no basis in the original history of the Constitution and it is not what the Republican Senate did to President Clinton's nominees, even those who did have a record of partisan political activity. I could go on and on.

Now, to impose a double standard on Mr. Estrada, I think, would be shameful on the part of this committee and on the part of the Senate as a whole. Mr. Estrada should be treated no differently from the way partisan Democrat nominees, who said they would observe and follow faithfully the rule of law, were treated as they were brought before the committee by me as chairman, anyway, when we were in control, and I might add when Senator Biden was in control. We did not use the standard that some are suggesting we use now, now that Mr. Estrada is the nominee to the Circuit Court of Appeals for the District of Columbia.

Mr. Chairman, I think this has been a good hearing. I see a very excellent man before us. I see a man who is totally qualified for the Circuit Court of Appeals for the District of Columbia. I see a man who is devoted to the law, who is devoted to doing what is right, who will listen with both ears, who will be fair to all litigants, who is smart enough to understand what the law is, and who I believe is a man of great conviction, a man of great capacity, a man of

great ethical and moral standing and, there is no question in anybody's mind, a great lawyer.

So I hope that this committee will not delay his nomination any further, now that we are in the 16th month since you were nominated by the President. I hope that we can get this nominee in front of the committee, out of the committee, and voted upon on the floor before we finally recess. And I hope, Mr. Chairman, you will be of assistance in getting that done.

Thank you.

Senator SCHUMER. Thank you, Mr. Hatch, and thank you for your patience all day long. I am just going to be brief in my final statement and then we will get to the next witnesses.

First, and I don't like playing the game tit-for-tat, but Mr. Estrada is being treated much better than the last two nominees for the D.C. Circuit Court of Appeals, Mr. Snyder and Ms. Kagen, who waited 15 and 18 months, respectively, and never got a hearing. We have 12, so we still might have this vacancy, but if you want to talk about a double standard, let's look at that one.

Now, let me give you my view of the hearings. Mr. Estrada, I think you have shown that you are an excellent lawyer, and you have shown you have a great deal of patience, which I think is very important.

But I have to tell you this: I think many of us emerge from this hearing and we think we have more questions than answers. This hearing has raised more questions than you have answered. You will not answer anything about your views of prospective cases, going far beyond what the Canons of Ethics say. They talk about specific cases, not about general views on constitutional issues. And amazingly enough, you will not give your views of previous cases.

So the irony is the only cases you will talk about are the ones you have already litigated, because the only ones you will talk about are the ones where you have seen the brief. Well, we don't need those. We have those. That is part of the sparse record that we have.

So as I said, I think most of us emerge from this hearing with more questions at the end of the day than we had at the beginning of the day. I think that makes it more important than ever that we be able to see your record when you were in the Solicitor General's office, because otherwise the record is so sparse, and your unwillingness to answer anything about your views as to how you would be a judge, give us very, very little to go on other than your assurance, which we have received from witness after witness, that you will simply follow the law.

To me, that is not enough, and I hope that we can come to accommodation with the administration and get the records. I don't know what is in those Solicitor General records. They may vindicate you, they may not. They may be somewhere in between, but we really need much more a record than you have given us today when we are nominating somebody to the second highest court in the land.

I thank you for your patience. I thank your family for being here and you are free to go.

Mr. ESTRADA. Thank you, Senator.

[The biographical information of Mr. Estrada follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

   Miguel Angel Estrada Castañeda

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

   Residence: Alexandria, Virginia

   Office: Gibson, Dunn & Crutcher LLP
   1050 Connecticut Avenue, N.W.
   Washington, D.C. 20036

3. Date and place of birth:

   September 25, 1961
   Tegucigalpa, Honduras
   (became naturalized U.S. Citizen on 2/4/86)

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 Laury Lea Estrada (nee Gordon).
   Senior Trial Attorney
   U.S. Department of Justice
   Narcotic and Dangerous Drugs Section
   1400 New York Avenue, N.W.
   Washington, D.C. 20005

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

   State University of New York at Old Westbury, May 1979 to June 1980 (no degree)
   Columbia College, Sept. 1980 to June 1983; A.B. degree granted June 1983
   Harvard Law School, Sept. 1983 to June 1986; Juris Doctor degree granted on June 1986.

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 :

   Gibson, Dunn & Crutcher LLP
   Positions: Of Counsel attorney, July 1997-December 1999, and Partner, January 2000-present.

Office of the Solicitor General
United States Department of Justice
Position: Assistant to the Solicitor General, Sept. 1992 to July 1997.

Wachtell, Lipton, Rosen & Katz
Position: Associate, Sept. 1987-February 1988, February 1989-March 1990, and May 1992-September 1992.

United States Attorney's Office
Southern District of New York
Position: Assistant United States Attorney, March 1990 to May 1992.

United States Supreme Court
Position: Clerk to Hon. Anthony M. Kennedy, February 1988 to February 1989.

United States Court of Appeals for the Second Circuit
Position: Clerk to Hon. Amalya L. Kearse, August 1986 to July 1987.

Debevoise & Plimpton
Position: Summer Associate, Summer 1986.

Sullivan & Cromwell
Position: Summer Associate, Summer 1985

Rogers & Wells
Position: Summer Associate, Summer 1984

Harvard Law School
Position: Research Assistant to Professor Hal S. Scott, 1985-1986.

Boards:

1. Since June 2000, I have been a trustee of the Supreme Court Historical Society, an organization dedicated to expanding public awareness of the history of the Supreme Court of the United States.

2. Since 1998, I have been a member of the National Board of Directors of the Center for the Community Interest, an organization dedicated to improving the quality of life in public spaces.

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 never 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.

My college and law degrees were both awarded with high honors. I was elected to Phi Beta Kappa in college.

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.

a. Member, American Bar Association (1987-1993, 2001-present).

b. Barrister, Edward Bennett Williams White Collar Crime Inn of Court, Washington, D.C. (since 1998).

c. Barrister, Edward Coke Appellate Inn of Court, Washington, D.C. (since 2001).

d. Member, The Barristers, Washington, D.C. (since 1998).

e. Member, The Federalist Society (since 1993).

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 my knowledge, no organization of which I am a member is active in lobbying public bodies. In addition to the bar associations listed in response to question 9, I belong to the following organizations:

a. Member, Old Town Civic Association, Alexandria, Virginia.

b. Member, Old Town Walled Garden Club, Alexandria, Virginia.

c. Member, The Alexandria Association, Alexandria, Virginia

d. Member, Smithsonian Associates, Washington, D.C.

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 been admitted to practice in the courts of the State of New York (since July 1987) and the District of Columbia (since December 1998). There have been no lapses in my admission to those courts. In addition, I am a member in good standing of the bars of the following federal courts:

	Date of Admission
U.S. Court of Appeals, Second Circuit	3/25/91
U.S. District Court, Southern District of New York	5/26/92
U.S. District Court, Eastern District of New York	5/26/92
U.S. Supreme Court	7/17/92
U.S. Court of Appeals, Fifth Circuit	2/17/93
U.S. Court of Appeals, Ninth Circuit	11/10/97
U.S. District Court, Western District of New York	1/13/98
U.S. Court of Appeals, Third Circuit	3/13/98
U.S. Court of Appeals, Fourth Circuit	3/30/98
U.S. Court of Appeals, Eleventh Circuit	5/01/98
U.S. Court of Appeals, District of Columbia Circuit	5/07/98

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 not written books, articles or reports, save for a law review note I authored while I was a student at the Harvard Law School. That Note, *The Policies Behind Lending Limits*, may be found at 99 Harv. L. Rev. 430 (1985). I was a member of the editorial board of the Harvard Law Review—a student journal—from the Fall of 1984 to the Spring of 1986.

I have occasionally been asked to offer, and have given, comments on drafts of scholarly articles. Although I do not regard my role in the writing or publication of those articles as "editorial," the following published articles reflect author acknowledgments of my comments:

Donald J. Boudreaux & A.C. Pritchard, *Civil Forfeiture and the War on Drugs: Lessons from Economics and History*, 33 San Diego L. Rev. 79 (1996).

Debra Livingston, *Police, Community Caretaking, and the Fourth Amendment*, 1998 U. Chi. Legal. F. 261.

Robert A. Ragazzo, *Reconsidering the Artful Pleading Doctrine*, 44 Hastings L.J. 273 (1993).

Robert A. Ragazzo, *Transfer and Choice of Federal Law: The Appellate Model*, 93 Mich. L. Rev. 703 (1995).

Robert A. Ragazzo, *Unifying the Law of Hostile Takeovers: Bridging the Unocal/Revlon Gap*, 35 Ariz. L. Rev. 989 (1993).

Benjamin E. Rosenberg, *Criminal Acts and Sentencing Facts: Two Constitutional Limits on Criminal Sentencing*, 23 Seton Hall L. Rev. 459 (1993).

From time to time, I have been asked to speak on issues of federal appellate practice, which sometimes raise broader issues of legal policy, at continuing legal education seminars sponsored by bar organizations. For example, for the past several years I have been a participant in the appellate litigation seminar that the District of Columbia Bar organizes every October. For the past several years, I also participated as a panelist in appellate practice seminars organized by the National Association of Attorneys General. I also participated in a similar program sponsored by the New York Bar in New York City in 1999. In May 1999, I was a panelist at a conference organized by the United States Sentencing Commission and the Federal Bar Association; my panel's discussion addressed, among other things, constitutional issues raised by sentences imposed under the federal Sentencing Guidelines. I have not retained any notes reflecting my remarks as one of the panelists in such bar seminars, nor am I aware of the existence of any transcript of my remarks.

In the Spring of 1999, I participated in a debate organized by National Public Radio's *Justice Talking* on the public policy issues raised by a City of Chicago loitering ordinance, which was then under review by the Supreme Court of the United States. *See City of Chicago v. Morales*, 527 U.S. 41 (1997). I was asked to participate in that debate because I had authored an *amicus* brief in support of Chicago's position on behalf of the U.S. Conference of Mayors, the National League of Cities, and the National Governors' Association. My opponent in that debate was Harvey Grossman, the Legal Director of the American Civil Liberties Union of Illinois, who was counsel for the parties who sought to challenge the Chicago ordinance. The debate was broadcast in the Fall of 1999. A transcript is attached.

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

My last physical examination occurred on March 15, 2001. I am advised that I am in good health.

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 never held judicial office.

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 never held judicial office.

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 been a candidate for, or held, elective public office. I have served in the following appointive public offices:

Law Clerk to Hon. Amalya L. Kearse (Aug. 1986-July 1987)
United States Court of Appeals for the Second Circuit
Foley Square
40 Centre Street
New York, New York 10007

Law Clerk to the Honorable Anthony M. Kennedy (Feb. 1988-Feb. 1989).
United States Supreme Court
One First Street, N.E.
Washington, D.C. 20543

Assistant United States Attorney (Mar. 1990-May 1992)
United States Attorney's Office
Southern District of New York
One St. Andrew's Plaza
New York, New York 10007

Assistant to the Solicitor General (Sept. 1992-July 1997).
Office of the Solicitor General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

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;

From August 1986 until July 1987, I served as a law clerk to the Honorable Amalya L. Kearse, United States Court of Appeals for the Second Circuit. From February 1988 until February 1989, I served as a law clerk to the Honorable Anthony M. Kennedy, Associate Justice, United States Supreme Court.

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

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;

In addition to the clerkships identified above, I have been associated or employed by the following firms and agencies:

Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W., Suite 900
Washington, D.C. 20036
Of Counsel attorney, July 1997-December 1999, and Partner, January 2000-present.

Office of the Solicitor General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Assistant to the Solicitor General, Sept. 1992-July 1997.

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
Associate, Sept. 1987-February 1988, February 1989-March 1990, and May 1992-September 1992.

United States Attorney's Office
Southern District of New York
One St. Andrew's Plaza
New York, New York 10007
Assistant United States Attorney, March 1990 to May 1992.

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 a corporate lawyer, engaged primarily in transactional work, during the approximately two years I worked at Wachtell, Lipton, Rosen & Katz.

After leaving Wachtell, Lipton in March 1990, I became an Assistant United States Attorney, a job I held for over two years. As an Assistant United States Attorney, I represented the government in federal criminal trials (both jury and non-jury), bail and change-of-plea hearings, and in appeals before the United States Court of Appeals for the Second Circuit.

I left the U.S. Attorney's Office in May 1992 to join the Office of the Solicitor General, where my practice principally involved representing the U.S. government in cases before the United States Supreme Court. I also handled some cases in the regional courts of appeals, and gave advice to government agencies concerning whether adverse trial court rulings should be appealed to a regional court of appeals. Although most cases I personally argued before the Supreme Court involved criminal-law issues, a significant portion of my practice – *e.g.*,, advising other agencies on the advisability of appealing adverse decisions and opposing petitions for a writ of certiorari—raised a broad range of issues typical of civil litigation. I remained in the Office of the Solicitor General for approximately five years.

I left the Solicitor General's office to join the Washington, D.C. office of Gibson, Dunn & Crutcher in July 1997. My practice at Gibson, Dunn has primarily involved handling appellate matters, usually in civil cases, although I have also occasionally handled trial-court litigation.

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

During my nearly eight years in public service, my client was the United States of America. In private practice, my former clients have included, among others, major investment banks acting as advisors in mergers and acquisitions, health care providers defending against malpractice, ERISA and RICO allegations, corporations seeking to set aside excessive damage awards, individuals seeking to set aside criminal convictions, and a *qui tam* relator seeking to sue a State of the Union for fraud.

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.

Both as a government lawyer and as a lawyer in private practice, I have appeared in court frequently.

2. What percentage of these appearances was in: (a) federal courts; (b) state courts of record; (c) other courts?

The great majority of my court appearances (approximately 99%) occurred in federal court. I have rarely appeared in state courts.

3. What percentage of your litigation was: (a) civil; (b) criminal?

Approximately 70% of the litigation I personally handled was criminal. The remainder was civil.

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 ten cases to judgment while I was a federal prosecutor. I was chief counsel in four of those, and was sole counsel in the remainder.

5. What percentage of these trials was: (a) jury; (b) non-jury?

All but one of the cases (approximately 90%) were tried to a 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. ***In re Managed Care Litigation*, MDL No. 1334 (S.D. Fla., Moreno, J.).** I am counsel for Aetna, Inc. and its healthcare subsidiaries ("Aetna") in a series of putative nationwide class actions that have been filed throughout the United States against Aetna and most members of the managed care industry. The Judicial Panel on Multidistrict Litigation has consolidated those cases for coordinated pretrial proceedings in the United States District Court for the Southern District of Florida. The suits generally allege that cost-containment mechanisms used by Aetna and other managed care companies amount to violations of RICO, ERISA and various state laws—because they allegedly provide incentives for physicians to provide deficient medical care, and thus fraudulently reduce the value of the insurance coverage purchased by subscribers—and they seek billions of dollars in damages. I share with one of my partners the day-to-day supervision of this litigation on behalf of Aetna, which is the largest defendant. In that connection, I have been responsible for developing our client's legal strategy, preparing all briefs in the case, and arguing dispositive motions.

Opposing Counsel: Jerome Marcus, Berger & Montague, 1622 Locust Street, Philadelphia, PA 19103; Tel.: (215) 875-3013.

Co-counsel: **(1)** Richard J. Doren, Gibson , Dunn & Crutcher, 333 South Grand Avenue, Los Angeles, California 90071; Tel.: (213) 229-7038 (co-counsel for Aetna); **(2)** John D. Aldock, Shea & Gardner, 1800 Massachusetts Avenue, N.W., Suite 800, Washington, D.C. 20036; Tel.: (202) 828-2140 (counsel for Prudential); **(3)** Brian D.

Boyle, O'Melveny & Myers, LLP, 555 13th Street, N.W., Washington, D.C. 20004; Tel.: (202) 383-5263 (counsel for Humana); **(4)** Edward M. Crane, Skadden Arps Slate Meagher & Flom, LLP, 333 West Wacker, Suite 2100, Chicago, Illinois 60606; Tel.: (312) 407-0522 (counsel for Foundation Health Systems); **(5)** Robert Denham, Powell, Goldstein, Frazer & Murphy LLP, 191 Peachtree Street, N.E., 16th Floor, Atlanta, Georgia 30303; Tel.: (404) 572-6940 (counsel for Coventry); **(6)** William E. Grauer, Cooley Godward LLP, 4365 Executive Drive, Suite 1100, San Diego, California; Tel.: (858) 550-6050 (counsel for PacificCare); **(7)** John G. Harkins, Jr., Harkins Cunningham, 2800 One Commerce Square, 2005 Market Street, Philadelphia, Pennsylvania 19103; Tel.: (215) 851-6701 (counsel for CIGNA); and **(8)** Jeffrey S. Klein, Weil, Gotshal & Manges, 767 Fifth Avenue, New York, New York 10153; Tel.: (212) 310-8790 (counsel for United Healthcare)

I have also briefed numerous cases in the federal courts of appeals and in the Supreme Court of the United States, and I have personally argued 15 cases before the Supreme Court. Among the cases I have argued before that court are:

2. ***Strickler v. Greene*, 527 U.S. 263 (1999).** I represented the petitioner, a death row inmate, in a federal habeas challenge to his conviction and death sentence. The principal issue in the case was whether the prosecution violated the rule of *Brady v. Maryland*, 373 U.S. 83 (1963), by failing to disclose to defense counsel that a purported eyewitness to the crime had been repeatedly interviewed by the police and had made statements casting doubt on her in-court identification. I was the principal draftsman of the petitioner's merits briefs in the United States Supreme Court, and also argued the case before the Supreme Court. The Supreme Court ruled that the evidence was exculpatory under *Brady*, but that it was not sufficiently material to create a reasonable probability of acquittal.

Co-counsel: Barbara Hartung, 1001 East Main Street, Richmond, Virginia 23219; Tel.: (804) 649-1088.

Opposing counsel: Pamela A. Rumpz, Assistant Attorney General, Commonwealth of Virginia, 900 East Main Street, Richmond, Virginia 23219; Tel.: (804) 786-2071.

3. ***United States v. Gonzales*, 520 U.S. 1 (1997).** I represented the United States. The issue in the case was whether 18 U.S.C. § 924(c), which provides mandatory sentences for defendants who use firearms in connection with narcotics crimes or violent offenses, permits federal courts to impose a concurrent sentence when the defendant already is serving a state sentence. I was the draftsman of the certiorari petition and the petitioner's briefs on the merits, and also argued the case before the United States Supreme Court. The Supreme Court ruled that Section 924(c) requires that sentences under that provision must be consecutive to any other sentence that the defendant might be serving.

Opposing counsel: **(1)** Angela Arellanes, 320 Gold Avenue, S.W., Suite 1111, Albuquerque, New Mexico 87102; Tel.: (505) 247-2417, **(2)** Edward Bustamante, 610

Gold Street, S.W., Albuquerque, New Mexico 87102; Tel.: (505) 842-9093, and (3) Roberto Albertorio, One Civic Plaza, Room 4030, Albuquerque, New Mexico 87102; Tel.: (505) 924-3917.

4. ***Old Chief v. United States*, 519 U.S. 172 (1997).** I argued the case before the United States Supreme Court on behalf of the United States. The issue for the Court was whether a criminal defendant may ever prevent the government from introducing evidence of a fact relevant to the prosecution's case by stipulating to the existence of that fact. The Supreme Court ruled that a criminal defendant may, in some circumstances, keep the government from introducing evidence of the defendant's prior conviction if the defendant offers to stipulate before the jury that he is indeed a felon.

Opposing counsel: Daniel Donovan, Federal Defenders of Montana, 9 Third Street North, Great Falls, Montana 59403; Tel.: (406) 727-5328.

5. ***Montana v. Egelhoff*, 518 U.S. 37 (1996).** I represented the United States as *amicus curiae* in support of the position of the State of Montana. The issue in the case was whether the Due Process Clause of the Fourteenth Amendment invalidates state legislation that renders any evidence of involuntary intoxication irrelevant and inadmissible in a prosecution for intentional homicide. I was the draftsman of the United States' brief, and also presented argument before the United States Supreme Court in support of Montana's position. By a vote of 5 to 4, the Court upheld the constitutionality of the statute.

Co-counsel: Pamela P. Collins, Assistant Attorney General, Justice Building, 215 North Sanders, Helena, Montana 59620; Tel.: (406) 444-2026.

Opposing counsel: Ann C. German, P.O. Box 1530, Libby, Montana 59923; Tel.: (406) 293-4191.

6. ***Degen v. United States*, 517 U.S. 820 (1996).** I represented the United States. The petitioner had been indicted on federal narcotics violations and had fled to Switzerland to avoid prosecution. The issues for the Supreme Court were (i) whether federal courts possess inherent authority to forfeit property civilly, without a hearing, when the party claiming such property is a fugitive from United States justice, and (ii) whether such a forfeiture would violate the claimant's due process rights. I was the principal draftsman of the government's brief and also argued the case before the Supreme Court. The Court ruled that federal courts lack inherent authority to forfeit a fugitive's property.

Opposing counsel: Lawrence S. Robbins, Mayer, Brown & Platt, 2000 Pennsylvania Avenue, N.W. Washington, D.C. 20006; Tel.: (202) 463-2000.

7. ***Citizens Bank of Maryland v. Strumpf*, 516 U.S. 16 (1996).** I argued the case on behalf of the United States as *amicus curiae* in support of reversal. The issue in this case was whether the "automatic stay" provisions of the Bankruptcy Code, *see* 11 U.S.C. § 362, are violated when a creditor temporarily withholds payment of a debt that the creditor owes to the bankrupt debtor in order to protect the creditor's set-off rights.

The Supreme Court ruled that a creditor in such circumstances does not violate the Code's "automatic stay" provisions.

Co-counsel: Irving E. Walker, Miles & Stockbridge, P.C., 10 Light Street, Baltimore, Maryland 21202; Tel.: (410) 727-6464.

Opposing counsel: Roger Schlossberg, 134 West Washington Street, Hagerstown, Maryland 21740; Tel.: (301) 739-8610.

8. ***United States v. Robertson*, 514 U.S. 669 (1995).** I wrote all briefs and argued the case on behalf of the United States. The principal issues in this case were (i) whether the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.* reaches the full extent of conduct that Congress could conceivably regulate under the Commerce Clause of the U.S. Constitution, and (ii) whether the evidence in the case satisfied the statute's "interstate commerce" requirement. The Court ruled that the evidence submitted by the government—including evidence that the defendant shipped materials from California to Alaska—satisfied the statutory and constitutional requirements.

Opposing counsel (last known address and telephone number): Glenn Stewart Warren, 2442 Fourth Avenue, San Diego, California 92101; Tel.: (619) 232-6052.

9. ***United States v. Mezzanatto*, 513 U.S. 196 (1995).** I wrote the briefs and argued the case on behalf of the United States. In order to induce the prosecutor to engage in plea negotiations, the defendant in this case had agreed to waive the protections of Fed. R. Evid. 410, which ordinarily render all evidence of plea negotiations inadmissible in court. The defendant later changed his mind, and testified at trial to a story that was inconsistent with what he had told the prosecutor. In reliance on the defendant's agreement, the trial court permitted the prosecutor to impeach the defendant with his prior inconsistent statements. The U.S. Court of Appeals for the Ninth Circuit reversed, ruling that the rules of evidence—including Rule 410—may never be waived by agreement of the parties. The Supreme Court granted certiorari to review that conclusion, and, after briefing and argument, reversed the Ninth Circuit's ruling. The Supreme Court held that rules of evidence, like most rights conferred by statute, may be waived by agreement of the parties.

Opposing counsel: Mark R. Lippman, 8070 La Jolla Shores Drive, La Jolla, California 92037; Tel.: (858) 456-5840.

10. ***National Organization for Women, Inc. v. Scheidler*, 510 U.S. 249 (1994).** I wrote the briefs and argued the case on behalf of the United States as *amicus curiae* in support of petitioner. The issue in the case was whether the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.* incorporates a "pecuniary purpose" requirement for liability, so that only criminal enterprises that violate RICO for mercenary reasons would be liable civilly or criminally. (That interpretation of RICO had originated with the U.S. Court of Appeals for the Second Circuit, which had reversed the criminal convictions of several Croatian terrorists who

engaged in multiple bombings and arsons for "ideological" reasons related to their desire to achieve independence for their homeland). The Supreme Court unanimously held that RICO does not embody a "pecuniary purpose" requirement.

Co-counsel: Fay Clayton, Robinson, Curley & Clayton, P.C., 300 South Wacker Drive, Suite 1700, Chicago, Illinois 60606; Tel.: (312) 663-3100.

Opposing counsel: G. Robert Blakey, Notre Dame Law School, Notre Dame, IN 46556; Tel.: (219) 231-6371.

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 litigation described above, my practice has included preparing for civil litigation that did not proceed to trial or that was settled during trial; handling an international contract dispute that arose out of the privatization of oil fields and refineries in a central Asian republic (I and one of my partners represented our client in the arbitration of that contract dispute, which was conducted under UNCITRAL rules); advising clients conducting internal corporate investigations into possible violations of federal criminal law; and briefing and/or arguing appeals in civil and criminal cases.

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 be derived 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 have any deferred income or other benefits from any previous business relationships or employment. If I am confirmed, my law firm has agreed to pay out my capital, together with my annualized share of the firm's income for the current year, in cash at the time I resign my partnership to begin judicial service.

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 follow the dictates of the Code of Judicial Conduct and the provisions of applicable recusal laws, such as 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.

MIGUEL & LAURY ESTRADA

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	$ 73K		Notes payable to banks—secured	0	
U.S. Government securities—add schedule (savings bonds)	12K		Notes payable to banks—unsecured	0	
Listed securities—add schedule	0		Notes payable to relatives	0	
Unlisted securities--add schedule	0		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 tax and interest	0	
Doubtful	0		Real estate mortgages payable—add schedule (schedule attached)	386K	
Real estate owned—add schedule 1105 Prince St., Alex., VA	575K		Chattel mortgages and other liens payable	0	
Real estate mortgages receivable	0		Other debts--itemize:		
Autos and other personal property	120		DOJ TSP Loan	19K	
Cash value—life insurance	0		Mastercard	10K	
Other assets—itemize:			American Express	10K	
IRAs, 401(k), and KEOGH Plans	164K		Student Loan	2YK	
			Total liabilities	446K	
			Net Worth	378K	
Total Assets	824K		Total liabilities and net worth		
CONTINGENT LIABILITIES			GENERAL INFORMATION		
As endorser, comaker or guarantor	0		Are any assets pledged? (Add schedule.)	0	
On leases or contracts	0		Are you defendant in any suits or legal actions?	0	
Legal Claims	0		Have you ever taken bankruptcy?	No	
Provision for Federal Income Tax	0				
Other special debt	0				

MIGUEL A. ESTRADA
MORTGAGES

1. Temple-Island Mortage Corporation (first mortgage on residence)	$256,000
2. Bank of America (line of credit secured by second mortgage on residence)	$130,000
Total	**$386,000**

AO-10
Rev. 1/2001

FINANCIAL DISCLOSURE REPORT
FOR NOMINEES

Report Required by the Ethics in Government Act of 1978, (5 U.S.C. App., §§101-111)

1. Person Reporting *(Last name, first, middle initial)*	2. Court or Organization	3. Date of Report
Estrada, Miguel A.	U.S. Court of Appeals for the D.C. Circuit	May 14, 2001
4. Title *(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)*	**5. Report Type (check appropriate type)**	**6. Reporting Period**
U.S. Circuit Judge	X Nomination, Date May 9, 2001 ___ Initial ___ Annual ___ Final	January 1, 2000 to May 7, 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.	
Gibson, Dunn & Crutcher LLP 1050 Connecticut Avenue, N.W. Washington, D.C. 20036	Reviewing Officer _____ Date _____	

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

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

	POSITION	NAME OF ORGANIZATION/ENTITY
☐	NONE (No reportable positions.)	
1	Partner	Gibson, Dunn & Crutcher LLP
2	Trustee	Supreme Court Historical Society
3	Director	Center for Community Interest

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

	DATE	PARTIES AND TERMS
☐	NONE (No reportable agreements.)	
1		
2	2001	Termination of Partnership Agreement
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)
☐	NONE (No reportable non-investment income.)		
1	1999	Gibson, Dunn & Crutcher LLP	$301,000
2	2000	Gibson, Dunn & Crutcher LLP	$510,000
3	1999	Department of Justice (attorney)	$
4	2000	Department of Justice (attorney)	$
5			$

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Miguel A. Estrada	May 14, 2001

. REIMBURSEMENTS – transportation, lodging, food, entertainment.
(Includes those to spouse and dependent children. See pp. 25-27 of Instructions.)

SOURCE	DESCRIPTION
☐ NONE (No such reportable reimbursements.)	
	EXEMPT

. GIFTS. *(Includes those to spouse and dependent children. See pp. 28-31 of Instructions.)*

SOURCE	DESCRIPTION	VALUE
☐ NONE (No such reportable gifts.)		
	EXEMPT	$
		$
		$
		$

I. LIABILITIES. *(Includes those of spouse and dependent children See pp. 32-33 of Instructions.)*

CREDITOR	DESCRIPTION	VALUE CODE*
☐ NONE (No reportable liabilities.)		
American Express	Credit Card	K
Citibank MasterCard	Credit Card	K
Alabama Comm'n on Higher Education	Student Loan	K

*Value 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
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-over

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Miguel A. Estrada	May 14, 2001

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 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				
		(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
	Place "(X)" after each asset exempt from prior disclosure	Amt. Code1 (A-H)	Type (e.g. div., rent or int.)	Value Code2 (J-P)	Value Method Code3 (Q-W)	Type (e.g. buy, sell, merger, redemption)	(2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
	NONE (No reportable income, assets,									
1	Salomon Smith Barney Money Market Fund	A	int.	K	T	Exempt				
2	Citibank Accounts	B	int.	K	T	Exempt				
3	America's First Federal Credit Union Savings Accts	none	0	K	T	Exempt				
4	Vanguard 500 Index Fund	A	div.	K	T	Exempt				
5	Dreyfus S&P 500 Index Fund	A	div.	K	T	Exempt				
6	SouthTrust Bank Accounts	none	int.	J	T	Exempt				
7										
8										
9										
10										
11										
12										
13										
14										
15										
16										
17										

1	Income/Gain Codes: (See 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=More than $5,000,000	E=$15,001-$50,000
2	Value Codes: (See Col. C1, D3)	J=$15,000 or less N=$250,001-$500,000 P3=$25,000,001-$50,000,000	K=$15,001-$50,000 O=$500,001-$1,000,000	L=$50,001-$100,000 P1=$1,000,001-$5,000,000 P4=More than $50,000,000	M=$100,001-$250,000 P2=$5,000,001-$25,000,000	
3	Value Method Codes: (See 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: Miguel A. Estrada

Date of Report: May 14, 2002

VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

Description of Assets (including trust assets)	Income during reporting period		Gross value at end of reporting period		C Transactions during reporting period				
	(1)		(2)		(3)				(not exempt from disclosure)
Excepted Investment Fund Exempt from Prior Disclosure	Amt. Code1 (A-H)	Type Code2 (e.g. div., rent, int.)	Value Code1 (J-P)	Method Code2 (Q-W)	Type (e.g. buy, sell, redemption)	Date Month - Day	Value Code1 (J-P)	Gain Code2 (A-H)	Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions)									
8									
9									
10									
11									
12									
13									
24									
25									
26									
27									
28									
29									
30									
31									
32									
33									
34									
35									

Income Gain Codes: (See 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=More than $5,000,000; E=$15,001-$50,000

Value Codes: (See Cols. C1, D3) J=$15,000 or less; N=$250,001-$500,000; K=$15,001-$50,000; O=$500,001-$1,000,000; L=$50,001-$100,000; P1=$1,000,001-$5,000,000; M=$100,001-$250,000; P2=More than $5,000,000

Value Method Codes: (See 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: Miguel A. Estrada

Date of Report: May 14, 2001

VII. Page 3 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

Description of Assets (including trust assets) *Place "(X)" after each asset exempt from prior disclosure*	A Income during reporting period (1) Amount Code1 (A-H)	(2) Type (e.g., div., rent or int.)	B Gross value at end of reporting period (1) Value Code2 (J-P)	(2) Value Method Code3 (Q-W)	C Transactions during reporting period (1) Type (e.g., buy, sell, merger, redemption)	(2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions)									
36									
37									
38									
39									
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41									
42									
43									
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51									
52									
53									

1 Income/Gain Codes: (See 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=More than $5,000,000

2 Value Codes: (See 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=More than $50,000,000

3 Value Method Codes: (See 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: Miguel A. Estrada

Date of Report: May 14, 2001

VII. Page 4 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 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				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
Place "(X)" after each asset exempt from prior disclosure	A Amount Code 1 (A-H)	Type (e.g., div., rent, int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, merger, redemption)	Date Month-Day	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions)									
54									
55									
56									
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58									
59									
60									
61									
62									
63									
64									
65									
66									
67									
68									
69									
70									

1 Income/Gain Codes (See 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=More than $5,000,000	
2 Value Codes (See 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=More than $50,000,000		
3 Value Method Codes (See 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
	Miguel A. Estrada	May 14, 2001

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

Part II (Agreements): In the event I am confirmed, my law firm, Gibson, Dunn & Crutcher LLP, has agreed to pay my share of the firm's capital and insurance reserve in cash promptly after my resignation from the partnership. The firm has also agreed to pay me, at the same time and also in cash, my annualized share of the firm's income for the current year, computed on the basis of the per-share income earned by the firm during the year 2000.

IX. CERTIFICATION.

I certify that all 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., § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature Miguel A. Estrada 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., § 104.)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

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.)

Please refer to my Ethics in Government Act report.

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

Please refer to attached 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 played any role in any political campaign.

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.

The bulk of my legal career has been in the public sector, but I have consistently devoted time to *pro bono* obligations while working in private practice. During my first stint in private practice (at Wachtell, Lipton), I accepted an appointment to represent an incarcerated defendant who was seeking habeas relief from his state conviction. I wrote all appellate briefs and argued the case before the United States Court of Appeals for the Second Circuit. *See Campaneria v. Reid*, 891 F.2d 1014 (2d Cir. 1989). The amount of time devoted to this matter was approximately 300 hours.

Since returning to private practice (at Gibson Dunn), my *pro bono* activities have included:

a. Writing an *amicus curiae* brief on behalf of the U.S. Conference of Mayors, the National League of Cities and the National Governors' Association in *City of Chicago v. Morales*, 527 U.S. 41 (1997). *Morales* was a constitutional challenge to a Chicago ordinance that made it unlawful for members of street gangs to loiter in public spaces. The amicus brief, to which I devoted approximately 120 hours, supported the arguments made by the City of Chicago.

b. Representing a death row inmate in a challenge to his conviction and sentence. *See Strickler v. Greene*, 527 U.S. 263 (1999). I was the principal draftsman of petitioner's Supreme Court briefs on the merits and argued the case on his behalf in the Supreme Court. I devoted approximately 450 hours to this representation.

c. Representing the City of Annapolis, Maryland in defending the City's loitering ordinance—which prohibits loitering with the intent to engage in drug dealing—from constitutional attack. *See N.A.A.C.P., Anne Arundel County Branch v. City of Annapolis*, Civ. No. CCB-00-771 (D. Md.). I have devoted approximately 120 hours to that representation. In April 2001, after the district court issued a ruling invalidating the ordinance, the City of Annapolis determined not to further defend the constitutionality of the ordinance.

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 currently belong, nor have I ever belonged, to any organization that discriminates in any way 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 that recommends candidates for nomination to the United States Court of Appeals for the District of Columbia Circuit. Attorneys from the White House Counsel's Office asked me to interview for the position. I was interviewed once by two White House attorneys. I was later informed that I was likely to be nominated for the position. I was 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 view 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 a 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.

In my view, federal judges may decide only concrete cases or controversies that properly come to them; they may not "make law" or reach beyond the facts and circumstances of the particular case they must decide. That limited judicial role flows from the text of the Constitution, the separation of powers inherent in our constitutional scheme, the federal-state balance, and the presumption of validity that generally attaches to legislative actions.

Senator SCHUMER. We are going to call the next group of witnesses.

Senator SESSIONS. Mr. Chairman, while they are moving, I will just make one little brief comment on the judges that were not confirmed for the Tenth Circuit before. During that period of time, the D.C. Circuit had the lowest caseload per judge in America. One of the members said ten judges was enough. I think that was the feeling of the Senate, and so those two were not confirmed, leaving the court at ten, which still left it with the lowest caseload per judge in America.

We are now down to eight. I agreed that ten was a legitimate number, although probably we could go lower than that, frankly. But that was the basis of those two nominees, neither one of which had any political or personal problems that I am aware of.

Senator SCHUMER. I thank my friend from Alabama for that comment.

Now, we have here before Stanley Chesler, to be United States District Court Judge for New Jersey; Daniel Hovland, to be United States District Court Judge for North Dakota; James Kinkeade, to be United States District Court Judge for the Northern District of Texas; Linda Reade, for the United States District Court for the Northern District of Iowa; and Freda Wolfson, for the United States District Court for the District of New Jersey.

Will all of you please stand to be sworn and raise your right hands?

Do you swear that the testimony you are about to give before the committee will be the truth, the whole truth and nothing but the truth, so help you God?

Judge CHESLER. I do.

Judge HOVLAND. I do.

Judge KINKEADE. I do.

Judge READE. I do.

Judge WOLFSON. I do.

Senator SCHUMER. Thank you. You may be seated. We first thank you for your patience. You have seen the democratic process at work and one day maybe you will share your opinions of that with us, but we are not going to ask you to do that today. So don't worry.

Maybe because we are running toward the end of the day, I am going to ask three questions for each of you to answer. Before you do, you may introduce your family and you may add anything else into the record that you may wish.

One, why you want to be a judge; two, some cases. I am going to ask you the same question I asked Mr. Estrada—some Supreme Court or other cases that you might disagree with. And, three, will you have any problem following the law as written, abiding by precedent and deferring to Congress, where Congress appropriately exercises its power? This is a question about the new federalism.

So those are three questions. You can all think about them. Ms. Wolfson, you will get the most time to think about it. Mr. Chesler, you will get the least time to think about it, but the floor is yours, Mr. Chesler.

STATEMENT OF STANLEY CHESLER, OF NEW JERSEY, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY

Judge CHESLER. Thank you, Mr. Chairman. First, if I can introduce my family——

Senator SCHUMER. Please.

Judge CHESLER.—my wife, Fran Chesler, is here. She is a lawyer for a corporation. My daughter, Elizabeth, is here. She is a junior at Tufts University. My 90-year-old mother, from Brooklyn, is home waiting with bated breath for the results of these and future proceedings, and my sister, Helen Minkowitz, is also at home in Brooklyn.

Senator SCHUMER. You made two very good points, Judge Chesler.

Judge CHESLER. With regard to the first question, Mr. Chairman——

Senator SCHUMER. And all of you are judges already, so the question should really be a Federal judge.

Judge CHESLER. I am currently a U.S. Magistrate Judge and I have enjoyed my 15 years in that position. I have enjoyed working with the district judges who have been involved with me in the various matters which I have been deciding in cooperation with them. And after watching and participating in that process for all those years, there is nothing which I could aspire more to than elevation to a district judgeship so that I could continue what I am doing, except do it on a somewhat more elevated level. So I look forward to that if I am fortunate enough to be confirmed by the Senate.

Jumping to the question about the new federalism, it strikes me that the cases which have been emerging from the U.S. Supreme Court in recent years present the cutting edge of judicial decisionmaking at this point in time. And it strikes me that as all of the nominees up to—the nominee earlier today has indicated every enactment by Congress should be presumed to be constitutional.

Any court which reviews such enactments should, in fact, operate under the assumption that it is constitutional, and if there is some way that the statute can be interpreted so as to uphold its constitutionality, that interpretation should be followed by the court. And I adhere to that view of statutory and constitutional interpretation. With regard to the specific issues which may arise, I quite frankly have to suggest to you that, absent specific context, I couldn't possibly voice any particular opinions.

With regard to your third question, Mr. Chairman——

Senator SCHUMER. The Supreme Court case you might disagree with, already decided. That is a hard one. If you want to come back and——

Judge CHESLER. Let me put it this way: If I could pass to—I would be glad to think about it some more and——

Senator SCHUMER. Do you know what I am going to do? I am going to ask each of you to submit that in writing, if you don't want to do it here. Is that okay?

Judge CHESLER. That is fine, Mr. Chairman.

Senator SCHUMER. Without objection.

Mr. Hovland?

STATEMENT OF DANIEL HOVLAND, OF NORTH DAKOTA, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NORTH DAKOTA

Judge HOVLAND. Thank you, Mr. Chairman. First of all, I would like to introduce my wife who is with me here today, Kristen. She is down on the end of the first row and has been sitting here patiently all day.

I have three children that are all back at home in Bismarck, North Dakota. They were not able to make the trip here today. Our oldest son, Brandon, is 22 years old. I have a 12-year-old son, Mark, who is in the sixth grade, and an 8-year-old daughter, Lexi, who is in the second grade. Both go to school at Highland Acres School in Bismarck.

I want to recognize just a few others that weren't able to make the trip here today: my father, Lyndon Hovland, who lives in Fargo, North Dakota; my stepmother, Bev Hendricksen, who is also in Fargo; and my mother-in-law, Lois Gregory, who lives in Bismarck. They wish they could be here, but I know that they are anxiously listening.

On the first question, Mr. Chairman, about why I want to be a judge, I have been a practicing trial lawyer for 23 years and I started doing administrative law judge work about 8 years ago and I started conducting a lot of mediations and arbitrations about 8 years ago and I very much enjoy that type of work.

I believe that I truly have a temperament that is fair-minded and even-handed. I have enjoyed that work immensely. I believe that I would bring those characteristics to the judge if I am fortunate enough to be confirmed. I enjoy the law. I am not afraid of hard work and I believe that I have the characteristics that would make me a very good, fair-minded district court judge.

On the subject of precedent and federalism, Mr. Chairman, I have the utmost respect for the Constitution and I have the utmost respect for the doctrine of stare decisis, and I will faithfully uphold the law of the United States Supreme Court and, in my district, the Eighth Circuit Court of Appeals.

On the subject of federalism, I agree with my colleague that I would approach any challenge, any constitutional challenge, any question of a congressional enactment, with the basic premise that the laws are presumed to be constitutional and that Congress acted in a constitutional fashion when they enacted those laws. Whether it is Congress, whether it is a State law, any legislative enactment would be approached from that perspective from my standpoint on the bench.

I think that is the role of a judge. The role is limited to interpreting the law rather than creating and making new law, and we leave that in the hands of Congress and presume that they have acted in a constitutional manner.

Senator SCHUMER. Thank you, Mr. Hovland.

Judge Kinkeade?

STATEMENT OF JAMES KINKEADE, OF TEXAS, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF TEXAS

Judge KINKEADE. Well, unfortunately, I am here alone, not because I don't have loved ones. My wife is teaching first-graders to

read back in Irving, Texas, and my daughter is working in Dallas. My son is a freshman at Baylor University in Waco, Texas, and my parents are—they are watching me.

Why do I want to do this? Well, I was here 10 years ago and I am excited that you are allowing me to come again. Time ran out in an earlier administration. I have been a judge most of my adult life, for 20 years, and have tried everything from barking dog cases to capital murder cases. And it is who I am, it is what I do, and I have given my life to it.

Why do I want to be a Federal judge? That is a pinnacle of a career, to be honest with you. It is what as a judge you would hope that people would think you did a good enough job to be. And if I am honored to be confirmed and you decide that that is appropriate, then I will continue to try to do the best I can as a trial judge and look forward to that opportunity, if you decide and I am fortunate enough to be confirmed.

With regard to stare decisis, I will simply say this: I approach statutory construction from the idea, Senator Schumer, Mr. Chairman, that it is presumed to be constitutional. And I do not desire to be a legislator. I did not do that earlier in my life. I desired to be a judge. I am glad that that is what you want to do and others want to do. That is not what I wanted to do.

And with regard to—unfortunately, the Supreme Court occasionally says that, or maybe the circuit courts, that the Congress does not get it right. My obligation, to be honest with you, is to follow what the circuit court and the United States Supreme Court—what their ruling is, and I will do that. I think that is what I am obligated to do. That is what I have done and that is what I will continue to do, whether it had been with the Texas Legislature or whether it is with the Congress.

With regard to the United States Supreme Court opinions and whether I disagree, my difficulty with that is this: I do not want litigants that come in front of me to think that because I do have personal opinions, as I do, as you do, and as everyone else does, that I would not be fair with them. If I expressed my opinion here, they would think, oh, my goodness, Kinkeade is someone who would not be fair with me. And that is my difficulty with that.

And so I want you to know that I will follow opinions, whether I agree with them or disagree with them. I am going to follow the Fifth Circuit opinions and I am going to follow the United States Supreme Court opinions, and that is what I do.

Thank you, Mr. Chairman.

Senator SCHUMER. Thank you, Judge Kinkeade.

Now, Judge Reade.

STATEMENT OF LINDA READE, OF IOWA, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF IOWA

Judge READE. Good afternoon. I would first like to introduce my family sitting behind me: my sister, Renee, and her husband, Robin Gibson, from Minneapolis, Minnesota; my niece, Ann Gibson, who is from Alexandria, Virginia; not with me today my elderly mother, who lives in Sioux Falls, South Dakota, and her husband—they are not well enough to travel—as well as my nephew, Dobby Gibson,

and his wife, Kathy, who are working today in St. Paul. So I wish that they all had been with me.

I have no opening statement, except to thank you for inviting us to have a hearing before the committee today. I am very anxious to be a Federal judge. I have been a State court judge for nine years and during that period of time I have learned an awful lot about myself and about judging. I am looking forward to the additional challenge that goes with the Federal bench—more complex cases and a busier docket—and I am prepared to work the extra hours that that is going to take.

I don't know that I can add anything more than what my colleagues have expressed about new federalism. I know that it is frustrating to Congress to pass a law that they believe in, that they have worked hard on, only to have it struck down by the Supreme Court. That is a very frustrating situation.

I will approach all questions put to me with a presumption, as my colleagues have said, that the law that Congress passed is constitutional, and I will adhere, without waiver, to the Eighth Circuit precedents and the precedent of the United States Supreme Court.

Senator SCHUMER. Thank you, Judge Reade.

Now, Judge Wolfson.

STATEMENT OF FREDA WOLFSON, OF NEW JERSEY, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY

Judge WOLFSON. Thank you, Senator Schumer. I would like to introduce my family. With me this afternoon is my husband, Doug Wolfson, a former judge and now the Assistant Attorney General of the State of New Jersey, heading the Civil Division; my son, Brian, who is a freshman at Columbia; my son, Matthew, who is an eighth-grader—he took the day off; also, my niece, Karen Stringer, who is a third-year law student at UVA and came up today. And a couple of good friends from New Jersey came up, Phil and Joann Orban. Thank you, and thank you for having us here this afternoon.

Let me first address the question as to why I would like to be a Federal judge. I guess it is somewhat self-evident, since I am already sitting as a United States Magistrate Judge, and have sat in that capacity for the last 16 years.

As Senator Corzine said to you this morning, I went on this bench at a very, very young age and have spent virtually all of my legal career doing this job, and it has been a great proving ground for being a district court judge.

In my instances, I have exercised the powers of a district court judge by consent of the parties and I have had the opportunity, of course, to see cases come from the initial filing all the way to the time of trial, dealing with attorneys and trying to settle cases, mediate their disputes, and resolve any issues they may have. I think I am ready for this after 16 years. It is something that I would really like to do. I relish the opportunity to act in all instances as a district judge, as opposed to just in those where there is consent given.

And I think that having sat on this court in New Jersey for so long, I really have an appreciation of the attorneys in the State,

the issues they have to address, and the concerns, and I would be very happy to sit in this role.

With regard to new federalism, I think that my colleagues have really addressed the issue. By going last, it puts me in a little bit of a bind here. I agree we are bound by the rules of statutory construction which require us to presume the constitutionality of a statute, to attempt to interpret the statute to find it constitutional in such a way without doing violence to the plain language of the statute. And I will continue to do that. I have had at times had to interpret statutes and I will follow those rules going forward.

With regard to following precedent, that is a given for me. I am obligated to follow the Supreme Court decisions, the decisions of the Third Circuit. Given the fact that I have sat on the Federal court for all these years, I have numerous reported opinions, made many decisions, and you can look back at my record to see that it is not just a future commitment I am making to you but one that I have honored in all of my years on the bench, and I will continue to do so.

Senator SCHUMER. Thank you, Magistrate.

Now, let me turn it over to my colleague, our Ranking Member of our Courts Subcommittee, Jeff Sessions.

Senator SESSIONS. Thank you, Mr. Chairman. It is great to be with you.

I was thinking about that old anti-war poem about fallout. It said, "Though I know all men are brothers, let the questions fall on others." Maybe it is something you can be thankful to. We had a lot of questions earlier. Maybe you won't have quite so many.

I will say that even if we don't have a lot of questions of you, it is not because it is unimportant to us, but you have gone through quite an extensive process of recommendations, evaluations, the Department of Justice, the FBI. Senators and their staffs have reviewed your record and people feel good about you. Otherwise, you would be harassed some, I assure you. So I would congratulate you on that.

Judge Chesler and Judge Wolfson, you have both served as a magistrate judge. Would you just briefly share with me how you see the role of the magistrate judge and whether or not as a Federal judge you could see ways to use the abilities of the magistrate judge more, or do you think they are over-used?

Judge CHESLER. I think that the abilities of magistrate judges in some districts are being used to pretty much their full capacity, for example, in the District of New Jersey where Judge Wolfson and I come from. I think as Judge Wolfson indicated, by and large, over the years that we have served as magistrate judges, in one way or another we have performed virtually every function that a district judge would perform, from handling summary judgment motions, to preliminary injunctions, to civil trials, to criminal trials.

I think that that has served the District of New Jersey and the court system very effectively. Number one, it has helped substantially to ease the overwhelming burden of increasing loads of litigation that have been falling on the Federal court system, and particularly in metropolitan areas.

Secondly, it has served, I believe, as a useful training ground for future district judges. New Jersey has been very fortunate to have

a number of U.S. magistrate judges who have been elevated in the past few years. And if Judge Wolfson and I are fortunate enough to be confirmed, we will be delighted to follow in their footsteps.

I think that other districts perhaps have under-utilized magistrate judges by limiting the role which they can play to, on occasion, having them perform functions which are much more limited in terms of presiding over motions or, alternatively, conducting case management proceedings of the court or, alternatively, conducting settlement conferences.

As I said, I believe that those functions should be encouraged in other districts in the country, and I understand that the Administrative Office of the Courts indeed has so encouraged that.

Senator SESSIONS. Judge Wolfson?

Judge WOLFSON. Thank you. Much of what Judge Chesler said, of course, I agree with. Let me add a couple of things, though. One is I know that in certain districts, in some instances I think the magistrate judges are almost used as super-law clerks, writing habeas opinions and Social Security opinions.

We are very fortunate in New Jersey that our district judges have allowed us to exercise all of the powers that the statute permits us to exercise, and it has been very helpful for the district judges. Maybe they were visionaries when they first decided to do it, but they have reaped the benefits of it because we have gone a long way in helping them alleviate their caseloads.

And by being actively involved in the settlement negotiations and having a two-tiered judge system at times, we can take their cases, mediate them for them, settle a lot of these disputes before it gets to them and it is really just ready for trial, and then in certain circumstances try them.

Senator SESSIONS. That deals with the old dilemma where a Federal judge would try to settle a case, impose what they think is a right settlement, and then be accused of being biased if the settlement fell apart. I mean, you can have the magistrates go through the process of attempting to settle without biasing the ultimate trial judge. Is that an advantage of this procedure, one of the advantages?

Judge WOLFSON. It is, Senator Sessions. Indeed, when I have settlement conferences, oftentimes, and if the parties come in—and we try and use some innovative methods to settle in our district, as well—if the parties actually come in for the settlement, I will often explain to the parties and the lawyers our two-judge system and say I will not be—unless there has been a consent to proceed before me, I will not be the judge who will try your case, so you need not be concerned that if I give you my views today of where we should be coming out that the judge who will actually hear your case has in any way pre-judged the issues or is affected by what we do here today. It is very valuable.

Senator SESSIONS. The number of district judges, Article III judges, and magistrates in New Jersey, Mr. Chesler, how many?

Judge CHESLER. Senator, I believe there are 19 active district judges. I am not certain of the number of senior judges beyond that. There are, if I recall correctly, 11 full-time magistrate judges authorized in New Jersey.

Senator SESSIONS. And what about you?

Judge WOLFSON. It is the same. We are in the same district. It is one district with three sections, but we are all one district, and that is invaluable. Also, we find that as the lawyers in our State get to know us and respect us, it is more often that they will consent to our jurisdiction, and that is, of course, very helpful to the district judges to remove some of those cases from their docket.

And we know that we can give them a very specific trial date because we do not have a backlog of trials. And the fact that we are available, that when the parties are in the middle of a deposition they don't have to wait to file a motion—they know we are assigned to the case. They will call us on the phone and we will attempt to resolve their dispute, whether it is a privilege question or whatever.

And in New Jersey, we handle most of the disputes, discovery disputes, informally by letter and phone call rather than formal motion practice. We have cut down on motion practice so substantially, and so we give them that accessibility and that makes the case, of course, move much faster through the docket.

Senator SESSIONS. Thank you. I think those are good ideas. The Southern District of Alabama, I think, has been one of the leaders in utilizing Federal magistrates. There are three authorized district judges and three magistrate judges. They have always carried a high load. It has always been a respected position. Good lawyers seek the position and they are treated with respect by the bar and the court, and I think that is helpful. It would be a good lesson, I think, for all of you to think about how to use the magistrates well.

Is it Reade?

Judge READE. Yes.

Senator SESSIONS. I see you were chief of the Criminal Division in the U.S. Attorney's office. That is an office you don't get to easily. The chief of criminal, in my experience, is a person who has worked very hard and been successful in actually trying cases and has won the respect of the office and their peers.

How did you enjoy your time as a prosecutor?

Judge READE. It was really a life-changing experience for me as a lawyer. I got into court almost on a daily basis. I had the opportunity to supervise others who were in court almost daily. In addition to supervising, I tried a full caseload and tried several significant cases, including a very difficult arson case in which two volunteer firefighters were killed, and a rare book case. I had a gentleman who stole rare books from all over the United States and Canada and secreted them Iowa. Those two cases, I think, were the most prominent ones and the ones that received the most attention nationwide.

Senator SESSIONS. Well, do you miss it?

Judge READE. I have to say that being a judge has a lot of benefits. You can sit back away from the fray and watch the case unfold, as opposed to being personally involved in it. But, of course, both positions were very enjoyable for me.

Senator SESSIONS. You don't micromanage the poor prosecutors, do you? You haven't forgotten what that is like?

Judge READE. No. I tried not to do that.

Senator SESSIONS. Perhaps you knew Jenny Grenade, now Judge Jenny Grenade, who was my chief of the Criminal Division in the Southern District of Alabama. She was recently confirmed as a Federal judge.

Judge READE. I did not know her.

Senator SESSIONS. One of the things that concern me—and I often ask our nominees, do they understand the plight of the prosecutors? They are lawyers, too. They represent the people, also, but if you rule against them, they cannot appeal. If you rule against the defendant, the defendant can appeal.

I have on occasion seen judges a bit maybe confused and not quite sure how to rule. They would just always, when in doubt, rule against the prosecutor, on the view that, well, they will probably win the case anyway and I won't be reversed.

So let me ask you, do you feel an obligation to the people, the victims, the public and public safety, to make sure that you make those calls as best you can and not tilt toward the defendant to avoid possible appeal?

Judge Chesler, you have been a prosecutor, too, I notice, so maybe you have some sympathy.

Judge CHESLER. I do have some sense of how that can work, Senator. I firmly believe that it is the obligation of a sitting trial judge to make every single call based upon his or her evaluation of the legal issue in front of that judge, and that a judge does not have any business trying to figure out how the case should be tried or what one side or the other side needs or doesn't need to win.

And if that results in a reversal, well, the judge got paid to make the best decision that he or she could, and if a case gets reversed and the decision was an honest and intelligent one, that is the way it should come out.

Senator SESSIONS. Judge Hovland?

Judge HOVLAND. Senator, I would wholeheartedly agree with that, and I would hope that those that enter into the criminal arena are well represented by counsel and that they are on an even playing field. And I will evaluate the facts and apply the law to the facts as it needs to be applied. I would hope that both sides perceive that they have been given a fair shot and have been fairly represented in a criminal proceeding.

Senator SESSIONS. Judge Kinkeade?

Judge KINKEADE. Senator, I was on a criminal district bench for seven years in Dallas and tried a very busy docket and tried all kinds of serious cases. And I always felt as part of my job as judicial temperament was to make sure both sides knew that I was going to give them the best shot that they had to try their case without interfering or trying to decide who should win or who shouldn't win based upon some predilection.

And, yes, I understand the prosecutor and who they represent, and have always given them the opportunity to make whatever arguments and called it as I saw it at the time. Sometimes the prosecutor won, sometimes the prosecutor didn't, but I think they always respected me for that. And I had a good relationship with the prosecutor and with the defense bar and I plan on continuing that.

Senator SESSIONS. Thank you.

Judge Reade?

Judge READE. Yes. Senator, I believe that my record would speak for itself. Every litigant, whether they are the government or a private party, starts with a level playing field in my court and I make no decision based on who the party is or who they represent.

Senator SESSIONS. Judge Wolfson?

Judge WOLFSON. Senator Sessions, I agree with all those comments that have been made. Whether it is a civil case or a criminal case that comes before me, all parties, I believe, that come into my courtroom believe that they are going to get a fair shake that day, and there is no preference given to one side or the other.

Senator SESSIONS. Well, I know that judges hold the Assistant United States Attorneys to a high standard, and that is fine, but they are also entitled to put on their case. Sometimes, even though the case might be somewhat close on the rule of law, if they are entitled to prevail, they ought to be given that.

I would just say one more thing. Having served as a judge, all of you know and have some appreciation for just how challenging the management job of a Federal judge is. It is not a retirement position. It is a big management thing. You have got to utilize your magistrates, your law clerks, and the judge has simply got to work hard, also. Your record indicates you fully understand that.

Litigants who bring cases should not have to wait extraordinary amounts of time to get a motion for summary judgment or partial summary judgment ruled on. It costs them money, it delays final adjudication. Fundamentally, a judge just simply has to confront those issues, find time to do it, and give them a ruling the best you can.

But your records are excellent. Thank you for your comments.

Thank you, Mr. Chairman.

Senator SCHUMER. I want to thank you, Senator Sessions, not only for your participation and patience today, but also just for being a great partner as we chair our subcommittee.

I want to thank the witnesses and their families and friends. It has been a long day. I hope for the young lady in law school, it was somewhat educational. You rarely get to see something like this. This has been a unique hearing. For everybody else, I hope you have enjoyed it as well.

I want to thank the five of you. You are all fine nominees. I haven't heard a single bad thing about any one of you, so things bode well. The record will remain open for one week for either you to submit answers to the questions that I have asked and others have asked and for any of the members to submit additional statements about the second half of our hearing today, or the first with Mr. Estrada.

With that, I want to thank the staff. It has been a long day. You have performed very well and made us look good.

With that, we will adjourn.

[The biographical information of Judges Chesler, Hovland, Kinkeade, Reade, and Wolfson follow:]

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY,
UNITED STATES SENATE

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

   Stanley Richard Chesler

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

   United States District Judge - District of New Jersey

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

   U.S. District Court, District of New Jersey
   U.S. Courthouse & Post Office Building
   Newark, New Jersey 07101
   973-645-6596

4. Birthplace: State date and place of birth.

   June 15, 1947. Brooklyn, New York

5. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.

   Married to Francine Richer Chesler. Maiden name - Richer. Attorney with K. Hovnanian Companies Northeast Inc., 110 Fieldcrest Avenue, Edison, NJ 08818

   We have one dependent child.

6. Education: List in reverse chronological order, listing most recent first, each college, law school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

St. John's University School of Law	9/70 - 9/74 J.D. 6/74; magna cum laude - 1st in class
Brooklyn College	7/68 - 6/69 2/70 - 6/70 No degree (I received 30 graduate credits in education)
S.U.N.Y. Binghamton	1/68 - 6/68 No degree
Harpur College	6/64 - 1/68 B.A. 1/68

7. Employment Record: List in reverse chronological order, listing most recent first, all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

6/87 - present	U.S. District Court, District of New Jersey U.S. Courthouse & Post Office Building Newark, NJ 07101 U.S. Magistrate Judge
12/86 - 6/87	U.S. Attorney, District of New Jersey 970 Broad Street Newark, NJ 07102 Prosecutor
6/80 - 12/86	U.S. Dept. of Justice 970 Broad Street Newark, NJ 07102 Prosecutor

8/74 - 6/80	Bronx District Attorney 215 E. 161st Street Bronx, New York Prosecutor
9/73 - 6/74	Bronx District Attorney 215 E. 161st Street Bronx, New York Law Clerk
9/68 - 9/73	NYC Board of Education 110 Livingston Street Brooklyn, New York Teacher

8. Military Service: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge received.

None

9. Honors and Awards: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

A. Academic - Law School

1) Deans full tuition scholarship to St. John's University School of Law. 1971 - 1974.

2) American Jurisprudence Awards:

Torts, equity, property, introduction to civil procedure, evidence I and II, estate and gift taxation, corporations, administrative law, New York practice, remedies, conflict of laws.

3) Hornbook award presented by West Publishing Co.

4) International Academy of Trial Lawyers award.

5) Deans list 1970 - 1974.

6) J.D. awarded Magna Cum Laude - ranked first in graduating class.

B. U.S. Department of Justice Special Commendation Award. U.S. Department of Justice Special Achievement Award.

C. Elected as Fellow of the American Bar Foundation.

10. 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.

New Jersey State Bar Association

American Bar Association

Association of the Federal Bar of the State of New Jersey Member of Board of Advisors (approximately 1990 - present)

John J. Gibbons American Inn of Court-Master-Executive Board Member (1992 - present)

Fellow - American Bar Foundation

New York State Bar Association

National District Attorney's Association

11. Bar and Court Admission: List each state and court in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

New York State Bar	February 11, 1975
U.S. District Court, S.D.N.Y.	June 17, 1975

U.S. District Court, E.D.N.Y.	June 17, 1975
U.S. Court of Appeals for the Second Circuit	September 11, 1975
U.S. District Court, District of N.J.	December 23, 1985
New Jersey State Bar	December 23, 1985

12. Memberships: List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, charitable, or other organizations since graduation from college, other than those listed in response to Questions 10 or 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion - either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

City Club of New York

United Federation of Teachers

13. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other material you have written or edited, including material published on the Internet. Please supply four (4) copies of all published material to the Committee, unless the Committee has advised you that a copy has been obtained from another source. Also, please supply four (4) copies of all speeches delivered by you, in written or videotaped form over the past ten years, including the date and place where they were delivered, and readily available press reports about the speech.

None.

14. Congressional Testimony: List any occasion when you have testified before a committee or subcommittee of the Congress, including the name of the committee or subcommittee, the date of the testimony and a brief description of the substance of the testimony. In addition,

please supply four (4) copies of any written statement submitted as testimony and the transcript of the testimony, if in your possession.

None.

15. Health: Describe the present state of your health and provide the date of your last physical examination.

My health is excellent. My last physical exam was on June 6, 2001. My most recent cardiological exam was on September 21, 2001.

16. Citations: If you are or have been a judge, provide:

a) a short summary and citations for the ten (10) most significant opinions you have written;

1. Long v. Borough of Ringwood, 61 F.Supp.2d 273(D.N.J. 1998) aff'd. w'out opinion 213 F.3d, 628 (3d Cir. 2000). This case held that a municipality did not violate plaintiff's rights under the Fourteenth Amendment's due process clause, or the Fifth Amendment's taking clause by denying landowner's application for re-zoning. Plaintiff's procedural due process claim failed because New Jersey provided a procedurally adequate process for challenging the zoning decision. His substantive due process claim failed because he was unable to establish that the challenged conduct was either prompted by bias, bad faith, or improper motive, or was not rationally related to a legitimate state interest. Plaintiff failed to establish a taking under the Fifth Amendment because he was not able to demonstrate that the re-zoning denial deprived him of all economically viable uses of his property.

2. Lauchheimer v. Gulf Oil, 6 F.Supp 2d 339 (D.N.J. 1998). This case held that in a consumer class action, potential attorney's fee awards and punitive damage awards could not be aggregated for the purpose of meeting the amount in controversy requirements of Title 28 U.S.C. § 1332 for federal subject matter jurisdiction.

3. Market Transition Facility of New Jersey v. Tweena, 941 F.Supp. 462 (D.N.J. 1996). This case held that under a plain language interpretation of Title 28 U.S.C. § 1391(a) venue in a

case based upon diversity jurisdiction was proper in either: 1) a district where any defendant resides if all defendants reside in the same state, or 2) a judicial district where a substantial part of the events giving rise to the claim occurred. It rejected defendant's argument that, where all defendants reside in the same state, the statute requires venue to be laid in a district within that state.

4. HPD Laboratories v. The Clorox Company. 202 F.R.D. 410 (D.N.J. 2001). In this patent infringement and unfair competition action, plaintiff sought production of documents reflecting the opinion and advice of defendant's in-house paralegal. Defendant resisted, asserting that the communications were protected by the attorney-client privilege, based upon the paralegal's status with defendant's legal department. The claim of privilege was rejected because the record demonstrated that the communications were not made for the purpose of obtaining legal advice from an attorney or to assist one in rendering advice to a client. Instead, defendant's employees were approaching the paralegal for the paralegal's own advice which was dispensed independently without consultation with an attorney.

5. Job Haines Home for the Aged v. Young, 936 F.Supp. 223 (D.N.J. 1996). This securities class action was filed in a jurisdiction which had almost no connection with the case. The alleged misconduct occurred in California. The defendants, defense witnesses and documents were in California. The California courts had dealt with several virtually identical lawsuits. Indeed, the record suggested that the motivation for filing the suit in New Jersey was an attempt at forum shopping based upon the unsuccessful results in California. Under these circumstances, a transfer of the case pursuant to Title 28 U.S.C. § 1404(a) was warranted.

6. Montgomery Academy v. Carolyn Kohn, 50 F.Supp.2d 344 (D.N.J. 1999) aff'd. 82 F.Supp.2d 312 (D.N.J. 1999). This opinion involved the privileged nature of communications in an incipient attorney-client relationship. Defendant, founder of plaintiff school met plaintiff's counsel through a mutual friend. Defendant contacted counsel to do legal work unrelated to the subject of this suit. Thereafter, defendant discovered that the school's pension funds and some of her own personal investments had been lost in a Ponzi scheme. Defendant consulted with

counsel regarding these losses. At that time counsel had not been formally retained by plaintiff's board of directors. After the plaintiff's board formally retained counsel, counsel filed a complaint against defendant alleging defendant breached her fiduciary duties to the school in managing the pension funds. Defendant moved to disqualify counsel, asserting that she believed counsel was representing her during these discussions. Where defendant clearly conveyed confidential information to counsel under the reasonable belief that counsel represented her, an implied attorney-client relationship existed, and counsel had to be disqualified from representing plaintiff.

7. Independent Machine Co. v. International Tray Pads & Packaging, Inc., 991 F.Supp. 687 (D.N.J. 1998). In a case removed from state court based upon diversity jurisdiction, defendant contended that the amount in controversy requirement could be satisfied by reliance on the amount sought by defendant in a compulsory counterclaim. This contention was rejected based upon a clear congressional policy to narrowly limit removal jurisdiction to prevent encroachment on the right of state courts to decide cases before them and based upon the policies behind the well-pleaded complaint rule. The case was remanded.

8. Randi Zinberg v. Washington Bancorp, 138 F.R.D. 397 (D.N.J. 1990). In this securities class action, defendant challenged plaintiff's ability to satisfy the typicality requirement for class certification because her stepfather was her stockbroker. This contention was rejected because of the absence of any specific indication that plaintiff had access to insider information.

9. Bevere v. Oppenheimer & Co., 862 F.Supp. 1243 (D.N.J. 1994). This case dealt with the applicability of an arbitration provision to an E.R.I.S.A. breach of fiduciary duty claim. Plaintiffs' employer, Micro Products Engineering, provided a profit sharing plan to its employees. The owner of Micro Products subsequently opened an investment account in the plan's name with defendant. The customer agreement opening the account contained a broad arbitration clause. Subsequently, plaintiffs brought suit against defendant for breaching its fiduciary duties by permitting the owner of Micro Products to borrow against the plan assets to help his ailing company. Defendant moved to compel arbitration. Plaintiffs opposed

arbitration, contending that they had not signed the customer agreement and the owner of Micro Products had no power to bind them to agreement. This argument was rejected based upon a demonstration that, at a minimum, the owner had apparent authority to bind the plan (and thus, the plan participants) to the agreement. The application to compel arbitration was granted.

10. Countryside Oil Company v. Travelers Insurance Company, 928 F.Supp. 474 (D.N.J. 1995). An independent insurance broker mistakenly advised the insured that a renewed insurance policy covered accidental spills. Because the broker was independent, and not an agent of the insurer, his mistaken interpretation could not bind the insurer. The broker acted on the insured's behalf in advising him and lacked apparent authority to bind the insurer.

b) a short summary and citations for all rulings of yours that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court; and

Reversals:

1. Chin v. Chrysler, Civ. No. 95-5569 D.N.J. I held that plaintiff's counsel were not entitled to an award of attorney's fees under the Magnuson - Moss Act by reason of their reliance on the application of the catalyst theory. I concluded that the language in the act authorizing an award to a party who finally prevails in any action did not, under a plain language analysis, warrant an award of fees to a party who had obtained neither a settlement nor a judgment. The Honorable John Lifland, U.S.D.J., on appeal concluded that the statutory language was sufficiently similar to other statutes to which appellate courts have applied the catalyst theory to warrant its application to the Magnusson-Moss Act. These opinions are attached.

2. Equal Employment Opportunity Commission v. Emiliani, Civ. No. 93-1235 D.N.J. I held that a defamation counterclaim filed against a party to a civil suit was, under New Jersey law, protected by an absolute privilege when the defamatory statements were made as part of an effort to enlist the assistance of a witness. In an unpublished opinion, the

Third Circuit reversed, holding that I had misconstrued New Jersey's law on absolute privilege. These opinions are attached.

3. J&R Ice Cream Corporation v. California Smoothie - reported at 31 F.2d 1259 (3d Cir. 1994). I held that the New Jersey Consumer Fraud Act was applicable to the sale of a franchise in New Jersey. I also held that evidence of representations made to other franchisees was admissible under Federal Rule of Evidence 404(b).

The Third Circuit reversed. The Court held that the sale of a franchise was not merchandise under the consumer fraud act, and that plaintiffs were not consumers within the meaning of the statute. The Court also concluded that the evidence concerning misrepresentations to other franchisees was not relevant as evidence of either intent or common plan or scheme under Rule 404(b).

4. Flax v. United States, 791 F.Supp. 1035 (D.N.J. 1992). In this case I held that the discretionary function exemption to the Federal Tort Claims Act barred suit against the United States for the alleged negligence of F.B.I. agents in attempting to tail a kidnapper after a ransom was paid. As a result of the alleged negligence, in which the agents were unsuccessful in following the kidnapper, plaintiff's husband was subsequently murdered.

The Third Circuit reversed and remanded for additional discovery proceedings in an unpublished opinion, 983 F2d 1050 (3d Cir. 1994).

On remand, following further discovery, I granted summary judgment to the United States. The opinion is reported at 847 F.Supp. 1183 (D.N.J. 1994). It was not appealed. The Third Circuit's opinion is attached.

5. Eisenman v. Continental Airlines, Civ. No. 96-1368 reported at 1996 U.S. Dist. Lexis 21690 and 1996 U.S. Dist. Lexis 21688.

This case raised a claim that Continental Airlines defrauded its passengers by continuing to collect a ten per cent excise tax after the tax had expired. Defendant removed the case to federal court arguing that the case was removable under the "complete

pre-emption" and "artful pleading" doctrines. I concluded that the claims stated common law fraud claims, did not arise under federal law, and ordered the case be remanded to state court. The Honorable Harold A. Ackerman, U.S.D.J. concluded, on appeal that the complete pre-emption doctrine did apply, relying on two Court of Appeals decisions decided after my opinion was issued. Judge Ackerman's opinion is reported at 974 F.Supp. 425. (D.N.J. 1997).

6. DeGregorio v. American Board of Internal Medicine, Civ. No. 92-4924, reported at 1993 WL719564 (D.N.J.). Plaintiff, a doctor, filed a complaint alleging that the Board's procedure, which went into effect in 1990, of issuing time-limited Board certifications requiring re-certification every ten years violated Title 42 U.S.C. § 1983, breached fiduciary duties owed by the Board, violated the Sherman Antitrust Act and the New Jersey Antitrust Act, and constituted a common law restraint of trade. I recommended that summary judgment be granted on all of plaintiff's claims except the breach of fiduciary duty claim. I concluded that the evidence was insufficient to determine whether the recertification procedure was reasonably designed to further the public good or was adopted in an arbitrary and capricious manner, and therefore recommended that summary judgment be denied on this claim.

The Honorable Maryanne Trump Barry, U.S.D.J. adopted all of my recommendations, except that which concerned the fiduciary duty claim. She concluded that the evidence as to the purpose and reasons for adopting the procedure were undisputed, and dismissed that claim also. Her opinion is reported at 844 F.Supp. 186 (D.N.J. 1994).

7. SanFilippo v. Bongiovanni, Civ. No. 88-2575, D.N.J. In this case, plaintiff brought suit to challenge his dismissal from his position as a tenured professor by the state university, alleging, inter alia, a claim of retaliation under the First Amendment. The defendant university moved for summary judgment on the claim, arguing that plaintiff could not carry his burden of showing that he engaged in protected activity because his actions did not address a matter of public concern. In recommending that the district court deny this motion, I reasoned that since plaintiff's retaliation claim emanated from the right to petition clause of the First Amendment, as distinguished from the free speech clause, the public concern test did not apply to

an analysis of whether plaintiff's activities, the filing of grievances and lawsuits, were constitutionally protected. I concluded that where an individual's right to petition is concerned, the substance of the cause of action need not be a matter of public concern and that the exercise of the right to petition in pursuit of a private interest is entitled to protection under the First Amendment. The district court did not accept my recommendation and granted summary judgment. On appeal to the Third Circuit, 30 F.3d 424 (3d Cir. 1994), the appellate court vacated the grant of summary judgment, agreeing with my conclusion that where an individual's activities implicate the petition clause, rather than the free speech clause of the First Amendment, the conduct is protected even though it does not involve a matter of public concern.

8. Militello v. Bd. of Educ. of the City of Union City, 803 F.Supp. 974 (D.N.J. 1992). In this case, plaintiff sought payment of transcript fees for the preparation of a transcript of proceedings before a New Jersey state court administrative law judge in order to pursue federal review of the ALJ's determination. The review was sought pursuant to the Education for All Handicapped Children Act (currently referred to as the Individuals with Disabilities Education Act), Title 20 U.S.C. § 1415(e)(2). Plaintiff's application for transcript fees relied on the provisions of Title 28 U.S.C. § 753(f), which provides in pertinent part that "fees for transcripts furnished in other proceedings to persons permitted to appeal in forma pauperis shall also be paid by the United States if the trial judge or a circuit judge certifies that the appeal is not frivolous (but presents a substantial question." I concluded that the statute did not authorize government payment of transcript fees for state court proceedings, but rather only authorized such payment for appeals of federal proceedings. Because the context of the provision in question, Part III of Title 28, concerns court officers and employees of the United States courts, I determined that the reference to "other proceedings" in section 753(f) should be construed to mean proceedings before the federal district court. The Honorable Harold A. Ackerman, U.S.D.J. disagreed, holding that the statute should be given an expansive interpretation. My letter opinion is attached.

c) a short summary of and citations for all significant opinions on federal or state constitutional issues, together

with the citation for appellate court rulings on such opinions.

See: Long v. Borough of Ridgewood, 61 F.Supp.2d 273 (D.N.J. 1998).

San Filippo v. Bongiovanni, 88-2575 D.N.J. discussed above.

If any of the opinions or rulings listed were in state court or were not officially reported, please provide copies of the opinions.

17. Public Office, Political Activities and Affiliations:

a) List chronologically any public offices you have held, federal, state or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or nominations for appointed office for which were not confirmed by a state or federal legislative body.

a.	9/68 - 9/73	NYC Board of Education 110 Livingston Street Brooklyn, New York Teacher
b.	9/73 - 6/74	Bronx District Attorney 215 E. 161st Street Bronx, New York Law Clerk
c.	8/74 - 6/80	Bronx District Attorney 215 E. 161st Street Bronx, New York Prosecutor

d.	6/80 - 12/86	U.S. Dept. of Justice 970 Broad Street Newark, NJ 07102 Prosecutor
e.	12/86 - 6/87	U.S. Attorney, District of N.J. 970 Broad Street Newark, NJ 07102 Prosecutor

b) 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 participated in handing out leaflets in local elections during the early 1970's.

18. Legal Career: Please answer each part separately.

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;

Not applicable.

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

Not applicable.

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

8/74-6/80 - Office of the District Attorney - Bronx County, 215 East 161st Street, Bronx, New York
Assistant District Attorney

6/80-12/86 - United States Department of Justice - Newark Organized Crime Strike Force, 970 Broad Street, Newark, New Jersey
Special Attorney

12/86-6/87 - United States Attorney - District of New Jersey 970 Broad Street, Newark, New Jersey
Assistant U.S. Attorney

6/87-Present - U.S. Magistrate Judge - District of New Jersey, U.S. District Court, U.S. Courthouse & Post Office Building, Newark, New Jersey

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?

From 1975 to 1980, I was a New York state prosecutor specializing in investigative prosecution. The units I worked in and later supervised focused on investigating and prosecuting public corruption, organized criminal activity, narcotics and fraud.

From 1980 to 1987, as a federal prosecutor I primarily specialized in investigating and prosecuting labor racketeering activity.

From 1987 to date, I have been a full time U.S. Magistrate Judge.

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

Not applicable.

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 period I was a prosecutor, I appeared in court on a frequent basis.

2. What percentage of these appearances was in:
   (a) federal courts;
   55% (estimated)
   (b) state courts of record;
   45% (estimated)
   (c) other courts.
   0%

From 1975 to 1980, all of these appearances were in New York State courts of record. From 1980 to 1987, all of my appearances were in federal courts.

3. What percentage of your litigation was:
   (a) civil;
   0%
   (b) criminal.
   100%

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 ten cases to judgment in courts of record. I was sole counsel in eight of these cases and chief counsel in the other two.

5. Indicate the percentage of these trials that were decided by a jury.

80%

d. Describe your practice, if any, before the United States Supreme Court. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the U.S. Supreme Court in connection with your practice.

I have not practiced before the U.S. Supreme Court.

e. Describe legal services that you have provided to disadvantaged persons on a pro bono basis, and list specific examples of such service and the amount of time devoted to each.

My employment as a prosecutor and as a judge has barred me from providing pro bono legal services to individuals. I have provided pro bono services to the bar by participating as a lecturer at continuing legal education programs on a regular basis and through my participation as a master in the John J. Gibbons Inn of Court.

19. Litigation: Describe the ten most significant litigated matters which you personally handled, and for each provide the date of representation, the name of the court, 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. In addition, please provide the following :

(a) the citations, if the cases were reported and the docket number and date if unreported;

(b) a detailed summary of the substance of each case outlining briefly the factual and legal issues involved;

(c) the party or parties whom you represented; and

(d) describe in detail the nature of your participation in the litigation and the final disposition of the case.

1. United States v. David Friedland, et al, 85 Crim. 332

I was chief counsel for the United States in this criminal trial before the Honorable John Gerry, U.S.D.J. in the U.S. District Court, D.N.J.

My co-counsel were:

John J. Fahy
Reed, Smith, Shaw & McClay
1 Gateway Center
Newark, NJ 07102
973-621-3200

J. Fortier Imbert
c/o Citigroup Inc.
399 Park Ave.
New York, NY 10043
212-559-0825

My opposing counsel were:

Joseph Hayden
Walder, Sondak & Brogan
5 Becker Farm Road
Roseland, NJ 07068
973-992-5300

Robert Margulies
Margulies, Wind, Herrington & Knopf
15 Exchange Place, Jersey City, NJ 07302
201-333-0400

Robert Ansell
Ansell, Zaro, Grimm & Aaron
15 Lawrence Avenue, CN 7807
Ocean, NJ 07712
732-922-1000

Alfred DeCotiis
DeCotiis, Fitzpatrick, Gluck, Hayden & Cole
500 Frank W. Burr Blvd.
Teaneck, NJ 07666 - 201-928-1100

The case was tried between approximately 9/10/86 and 12/24/86.

This was a RICO prosecution brought against the former president of a Teamsters Union local, a trustee of the union's pension fund, former counsel to the pension fund and two former

New Jersey state legislators for participation in a scheme where the former legislators paid kickbacks to the union and pension officials in exchange for obtaining control over the investment of twenty million dollars in pension fund assets. The case proceeded to trial against the union and pension fund officials and lasted approximately three and one half months. All defendants were convicted of RICO violations. The convictions were affirmed by the Third Circuit Court of Appeals in the reported case of United States v. Zauber, 857 F2d 137 (3d Cir. 1988).

2. United States v. Salvatore Provenzano, et al, 83 Crim. 104.

I was chief counsel for the United States in this criminal trial before the Honorable Anne E. Thompson, U.S.D.J. in the U.S. District Court for the District of New Jersey.

My co-counsel were:

Ms.Joanna Knowles
615 North Chester Rd.
Swarthmore, Pa. 19081
610-544-8123

Mr. Stephen Hiyama
(address unknown)

Opposing counsel were:

Harvey Weissbard
Judge of the Appellate Division
Superior Court, State of New Jersey
50 W. Market St.
Newark, NJ 07102
973-693-5893

John Nulty
Marine Transport, Inc.
2421 Iorio Street
Union, NJ 07083
908-686-0086, Ext. 112

Joseph R. Benfante
225 Broadway, Suite 2700
New York, NY 10007
212-227-4700

Richard Carrol
attempts to find address unsuccessful

John P. Russell
attempts to find address unsuccessful

Larry Bronson
80 Pine Street
32nd Floor
New York, NY 10005
212-509-7100

S.M. Chris Franzblau
Franzblau, Dratch, PC
354 Eisenhower Pkwy.
Livingston, NJ 07039
973-992-3700

Edward Clark
attempts to find address unsuccessful

Paul Greenfield
225 Broadway, Suite 2700
New York, NY 10007
212-619-4100

The case was tried between approximately 9/18/83 and 12/21/83.

This was a mail fraud conspiracy prosecution brought against the officers of a number of Teamsters Union locals and the administrators of the prepaid dental plan which provided benefits to union members. The defendants were charged with participating in a scheme in which fabricated dental claims were submitted and paid in order to provide high ranking union officials with benefits which were not covered by the plan provisions. The union welfare funds were defrauded out of hundreds of thousands of dollars. The trial resulted in a guilty plea during trial,

two acquittals and six convictions, which were affirmed, in a non-published opinion. 762 F2d 995, (3d Cir. 1985).

3. United States v. Resnick, 81 Crim 398 D.N.J..

I was sole counsel for the United States in this criminal trial before the Honorable Frederick B. Lacey, U.S.D.J. in the U.S. District Court for the District of New Jersey.

My opposing counsel was:

Stephen Dratch
Franzblau, Dratch, P.C.
354 Eisenhower Parkway
Livingston, NJ 07039
973-992-3700

The case was tried in approximately March and April, 1982.

This was a prosecution brought against the administrator of a prepaid dental plan for having made false statements in the course of obtaining financing from an F.D.I.C. insured institution. The defendant was charged with using falsely inflated invoices in connection with equipment leases funded by the Chase Bank. The key trial issue was whether the defendant had the requisite knowledge and intent. The defendant was convicted. The conviction was affirmed in a non-published opinion at 716 F.2d 893 (3d Cir. 1983).

4. United States v. D'Agostino, 81 Crim. 145 D.N.J.

I was sole counsel for the United States in this criminal trial before the Honorable H. Curtis Meanor, U.S.D.J. in the U.S. District Court for the District of New Jersey. The case was tried between approximately October 13, 1982 and October 22, 1982.

Opposing counsel was:

Alan Silber
Gibbons, DelDeo, Dolan, Griffinger & Vecchione
1 Riverfront Plaza
Newark, NJ 07102
973-596-4637

This prosecution charged the defendant with interstate transportation of money obtained through extortion. The victim, a construction contractor, had agreed to invest $350,000 in a gambling casino which was to be built in Las Vegas by organized crime members. The victim decided to back out of the arrangement when he learned that he was going to need open heart surgery. Despite this, the defendant and his co-conspirators visited the victim immediately after the operation, and extorted $350,000 from him by threats of violence. The money was then used to make a mortgage payment on the land where the casino was to be built. The key issue in the case was whether or not an extortion had occurred. The victim refused to testify at trial, and was the subject of an outstanding material witness warrant. The defendant was convicted. The conviction was affirmed in a non-published opinion. 722 F2d 735 (3d Cir. 1983).

5. United States v. Cernadas, Mag. No. 83-3035C-01

I was sole counsel for the United States in this criminal trial before the Honorable Serena Perretti, U.S.M.J. in the U.S. District Court for the District of New Jersey.

My opposing counsel were:

Joseph Hayden
Walder, Sondak and Brogan
5 Becker Farm Rd.
Roseland, NJ 07068
973-992-5300

John Barry
(since deceased)

The case was tried in March of 1983.

This was a Taft-Hartley conspiracy prosecution brought against the president of a Newark I.L.A. local for accepting a bribe from a stevedoring company in exchange for ignoring union work rules. The key question in the case was whether the offense had occurred within the statute of limitations. Ultimately, the court determined that the conspiracy had ended more than five years prior to the prosecution and dismissed the case without sending it to the jury.

Other significant cases were handled by me while I was a state prosecutor. However, the trials occurred more than twenty years ago, and I cannot remember the names of the defendants, the judges, or the opposing counsel. I tried cases involving loansharking, embezzlement and thefts by government employees.

20. Criminal History: State whether you have ever been convicted of a crime, within ten years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and disposition and describe the particulars of the offense.

I have never been convicted of a crime.

21. Party to Civil or Administrative Proceedings: State whether you, or any business of which you are or were an officer, have ever been a party of otherwise involved as a party in any civil or administrative proceeding, within ten years of your nomination, that is reflected in a record available to the public. If so, please describe in detail the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings in which you were a guardian ad litem, stakeholder or material witness.

1) Raja'ee Bilal Nasir v. Anderson, et al, Civ. No.96-4775 DNJ

On October 10, 1996, I was named as a defendant in a pro se "Bivens" action alleging that plaintiff's constitutional rights were violated in the course of a federal criminal prosecution against him. Apparently, I was the Magistrate Judge who authorized the filing of the criminal complaint against Mr. Nasir. The complaint was dismissed by the Court on August 25, 1997. A copy of the Court's opinion is attached.

2) Vogue International Inc. and Fred Zito v. Advanced Magazine Publishers, d/b/a Conde Nast Publications, et al, Civ. No. 01-1048 DNJ

I am named as a defendant in this pro se suit brought by an unsuccessful litigant in a lawsuit which had been pending in this court. Following the entry of default judgment against the

defendants in that prior suit, the defendants filed a "Bivens"action against myself, the district judge who presided over the case, and all of the other attorneys and litigants in the case. A motion to dismiss is currently pending. A copy of the complaint is attached.

22. Potential Conflict of Interest: 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 only potential conflicts of interest which exist are my wife's employment, and my limited stock holdings. My wife's employer and the companies in which I own stock will be listed on my recusal list. I will resolve any potential conflicts in accordance with the Code of Judicial Conduct.

23. Outside Commitments During Court Service: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I have no such commitments.

24. Sources of Income: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, 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.

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

See attached financial statement.

26. Selection Process: Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?

a) If so, did it recommend your nomination?

I did not participate in a selection commission.

b) Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.

I was contacted by the Office of Counsel to the President and asked if I was interested in appointment as a District Judge. I was then invited to an interview with representatives of the Counsel to the President and the Justice Department.

c) 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 or seeking a commitment as to how you would rule on such case, issue, or question? If so, please explain fully.

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		455	000	Notes payable to banks-secured	--		
U.S. Government securities-add schedule		495	000	Notes payable to banks-unsecured	--		
Listed securities-add schedule		17	000	Notes payable to relatives	--		
Unlisted securities--add schedule		181	600	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 income and interest	--		
Doubtful		--		Real estate mortgages payable-add schedule	--		
Real estate owned-add schedule		500	000	Chattel mortgages and other liens payable	--		
Real estate mortgages receivable		--		Other debts-itemize:	--		
Autos and other personal property		42	000				
Cash value-life insurance							
Other assets itemize:							
				Total liabilities	--		
				Net Worth	1	690	600
Total Assets	1	690	600	Total liabilities and net worth			
CONTINGENT LIABILITIES				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?	Yes		
Legal Claims		--		Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax		--					
Other special debt		--					

SCHEDULES

LISTED SECURITIES:

Cisco Systems	200 shares	$4,000
Microsoft	100 shares	6,800
Evergreen Small Growth Fund A	1,476 shares	6,200
		$17,000

U.S. GOVERNMENT SECURITIES

Savings Bonds

67	$100 Series EE Bonds	
64	500 Series EE Bonds	
270	1,000 Series EE Bonds	
		$165,000 estimated

TREASURY BILLS & NOTES

Cusip No.	
912795JL6	75,000
912795JF9	3,000
9128275X6	15,000
9128276E7	5,000
9128276P2	10,000
9128276S6	10,000
9128276U9	5,000
9128276ZO	40,000
9128277D8	15,000
	$178,000

U.S. THRIFT PLAN G FUND $152,000

UNLISTED SECURITIES - MUNICIPAL BONDS

10,000	Sparta Township Bd. of Ed.	$10,800
20,000	N.J. State	21,600
5,000	N.J. State	5,400
15,000	N.J. State	15,200
10,000	N.J. State	10,700
10,000	Port Authority N.Y. & N.J.	9,900
10,000	N.J. State	9,600
5,000	N.J. State	4,800
15,000	Port Authority N.Y. & N.J.	14,700
15,000	N.J. State	14,300
5,000	N.J. State	4,800
10,000	Port Authority N.Y. & N.J.	8,600
10,000	Port Authority N.Y. & N.J.	9,800
		$140,200

UNLISTED SECURITIES - OTHER

Thrift Plan C Fund	$400
1 Rt. Stable Value Fund (401K)	21,000
1 Rt. 500 Index Fund (401K)	20,000
	$ 41,400

BANKS

First Union	$2,000
Merrill Lynch Bank	18,000
Fleet Bank	75,000
Synergy Bank	210,000
Sunrise Bank	42,000
Investors Bank	15,000
MBNA America Bank	95,000
	$455,000

REAL ESTATE	
870 Standish Avenue Mountainside, NJ	$350,000
2012 Lakeside Drive West Highland Lakes, NJ	$150,000
AUTOMOBILES	
1996 BMW 318T1	$12,000
2001 Subaru Forester	$17,000
1993 Honda Accord	$ 3,000
JEWELRY	$10,000

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
Chesler, Stanley R.	United States District Court	01/28/2002
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 01/23/2002 Initial Annual Final	**6. Reporting Period** 01/01/2001 to 01/15/2002
7. Chambers or Office Address U.S.P.O. & Cthse. Bldg. Room 457 Newark, NJ 07101	**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
☐	NONE (No reportable positions.)	
1	Co-trustee of Testamentary trust established by the Will of Anatol Epstein	
2		
3		

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

	DATE	PARTIES AND TERMS
☒	NONE (No reportable agreements.)	
1		
2		None
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)
☐	NONE (No reportable non-investment income.)		
1		K. Hovnanian Enterprises	
2			
3			
4			

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Chesler, Stanley R.

Date of Report: 01/28/2002

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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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 Evergreen Small Co. Growth Fund, Boston, MA	A	Dividend	J	T	Exempt				
2 Fleet Bank, Mountainside, NJ, ck. acct.	A	Interest	J	T	Exempt				
3 Fleet Bank, Cert. of Deposit	B	Interest	K	T	Exempt				
4 Fleet Bank ck. acct.	A	Interest	J	T	Exempt				
5 Fleet Bank. Cert. of Deposit (IRA)	C	Interest	K	T	Exempt				
6 Fleet Bank Cert. of Deposit (IRA)	C	Interest	J	T	Exempt				
7 U.S. Treasury Bills, Dept.of Treasury	E	Interest	M	T	Exempt				
8 Smith Barney CG Cap. Mkt. Lg. Cap. Growth Investment	A	Dividend	J	T	Exempt				
9 Smith Barney CG Cap. Mkts. Lg. Cap. Value Investment	A	Dividend	J	T	Exempt				
10 Smith Barney CG Cap. Mkts. Int'l. Equity Investment	A	Dividend	J	T	Exempt				
11 Smith Barney Cap. Mkt. Small Cap Growth Investment	A	Dividend	J	T	Exempt				
12 Smith Barney CG Capital Mkts. sm. cap value investment	A	Dividend	J	T	Exempt				
13 CG Capital Markets Intermediate fixed income	A	Dividend	J	T	Exempt				
14 Sparta Twp. Bd. of Ed. Bond	A	Interest	J	T	Exempt				
15 N.J. State Bond	A	Interest	J	T	Exempt				
16 N.J.State Bond	A	Interest	J	T	Exempt				
17 NJ State Bond	A	Interest	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

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: Chesler, Stanley R. | Date of Report: 01/28/2002

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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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 Port Authority NY&NJ Bond	A	Interest	J	T	Exempt				
19 Banco Popular, Brooklyn, NY, money market	A	Interest	K	T	Exempt				
20 Banco Popular, Brooklyn, NY ck. acct.	A	Interest	J	T	Exempt				
21 Banco Popular, Bklyn, NY ck. acct.	A	Interest	J	T	Exempt				
22 Banco Popular, Bklyn, NY savings acct.	A	Interest	J	T	Exempt				
23 U.S. Treasury Bills Fed. Reserve Bank of NY	E	Interest	N	T	Exempt				
24 Stock in FPL Group,Inc., Juno Beach, FLA	A	Dividend	J	T	Exempt				
25 Fleet Bank	C	Interest	M	T	Exempt				
26 IRT Stable Value Fund	A	Dividend	K	T	Exempt				
27 IRT 500 Index Fund	A	Dividend	K	T	Exempt				
28 Fleet Bank Checking	A	Interest	J	T	Exempt				
29 Fleet Bank checking	A	Interest	J	T	Exempt				
30 Fleet Bank checking	A	Interest	J	T	Exempt				
31 Fleet Bank - money mkt.	A	Interest	J	T	Exempt				
32 Fleet Bank - money mkt.	A	Interest	J	T	Exempt				
33 Fleet Bank - CD	A	Interest	J	T	Exempt				
34 Fleet Bank - money market	A	Interest	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

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: Chesler, Stanley R.

Date of Report: 01/29/2002

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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
						If not exempt from 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.)									
35 New Jersey State Bond	A	Interest	K	T	Exempt				
36 New Jersey State Bond	A	Interest	J	T	Exempt				
37 New Jersey State Bond	A	Interest	J	T	Exempt				
38 New Jersey State Bond	A	Interest	J	T	Exempt				
39 Port Authority NY & NJ Bond	A	Interest	J	T	Exempt				
40 ML Banking Advantage	A	Interest	K	T	Exempt				
41 Microsoft Common	A	Dividend	J	T	Exempt				
42 U.S. Treasury Bills, Dept. of Treasury	D	Interest	L	T	Exempt				
43 Smith Barney CG Cap.Mkts. Govt. Money Investment	A	Dividend	J	T	Exempt				
44 Synergy Bank CD's	A	Interest	L	T	Exempt				
45 Cisco Common	A	Dividend	J	T	Exempt				
46 Synergy Bank CD	A	Interest	L	T	Exempt				
47 Synergy Bank CD	A	Interest	K	T	Exempt				
48 Port Authority of NY & NJ bond	A	Interest	J	T	Exempt				
49 NJ State Bond	A	Interest	J	T	Exempt				
50 Sunrise Bank CD (IRA)	A	Interest	K	T	Exempt				
51 Investors Bank CD	A	Interest	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

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: Chesler, Stanley R.

Date of Report: 01/28/2002

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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(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 Port Authority NY & NJ bond	A	Interest	J	T	Exempt				
53									
54									
55									
56									
57									
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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
	Chesler, Stanley R.	01/28/2002

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

19.-23. These accounts are my mother's funds and are maintained as joint accounts in order to manage her financial affairs.

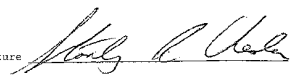
24.-25. These accounts are assets of the Anatol Epstein testamentary trust for the benefit of my niece.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Chesler, Stanley R.	01/28/2002

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 1/28/02

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

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY, UNITED STATES SENATE

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

   Daniel Lee Hovland

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

   United States District Judge, District of North Dakota

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

   Smith Bakke Hovland & Oppegard
   116 North 2nd Street, P.O. Box 460, Bismarck, North Dakota
   (701)258-0630

4. Birthplace: State date and place of birth.

   November 10, 1954; Moorhead, Minnesota

5. Marital Status: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please also indicate the number of dependent children.

   Married to Kristen Carol (Gregory) Hovland; homemaker. We have three (3) dependent children.

6. Education: List in reverse chronological order, listing most recent first, each college, law school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   University of North Dakota School of Law; 1976-1979; J.D. (May 1979)
   Concordia College, Moorhead, Minnesota; 1972-1976; B.A. (May 1976)

7. **Employment Record**: List in reverse chronological order, listing most recent first, all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

Partner - Smith Bakke Hovland & Oppegard, 116 North 2nd Street, Bismarck, North Dakota; April 1994-present

Partner – SRD Partnership, 116 North 2nd Street, Bismarck, North Dakota; April 1994-present

Board Member - North Dakota Parole Board, East of Bismarck, Bismarck, North Dakota; 2001-present

State Administrative Law Judge; Office of Administrative Hearings, 1707 North 9th Street, Bismarck, North Dakota; 1994-present

Partner – Fleck Mather & Strutz, Ltd., 400 East Broadway, Suite 600, Bismarck, North Dakota; July 1983-April 1994

Legal Assistance of North Dakota, 1025 North 3rd Street, Bismarck, North Dakota; 1988-1991; Member of Board of Directors

Assistant Attorney General, Office of the Attorney General, 1st Floor, State Capitol Building, Bismarck, North Dakota; August 1980-July 1983

Law Clerk – North Dakota Supreme Court, State Capitol Building, Judicial Wing, Bismarck, North Dakota; August 1979-August 1980

Bismarck Parks & Recreation District; 420 East Front Avenue, Bismarck, North Dakota; 1992-present; Commissioner – Bismarck Park Board

Missouri Valley Family YMCA, 1608 North Washington Street, Bismarck, North Dakota; 1992-1998; Member of Board of Directors; past president

8. **Military Service**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge received.

None

9. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

The Outstanding Board or Commission for 2001 (Bismarck Park Board); National Award from the National Recreation & Parks Association (NRPA); October 2001

Recipient of the Burgum-Johanson Lawyer of the Year Award, State of North Dakota; 1982

Burtness Scholarship, University of North Dakota School of Law; (1979)

American Jurisprudence Award – Product Liability, University of North Dakota School of Law; (1979)

Alpha Honor Society, Concordia College, Moorhead, Minnesota

Pi Gamma Mu Social Science Honor Society, Concordia College, Moorhead, Minnesota

10. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Member, North Dakota and Minnesota State Bar Associations

Board of Directors, Legal Assistance of North Dakota; 1988-1991

Committee for Unauthorized Practice of Law, State Bar Association of North Dakota; 1989-1992

Attorney Standards Committee for State Bar Association of North Dakota (SBAND); 1992-1996

Joint Committee on Civil Legal Services to the Poor (SBAND); 1992-1996

Federal Practice Committee; 1998-present

North Dakota Supreme Court's Public Trust and Confidence Implementation Committee; 2000-present

Joint Committee on Alternative Dispute Resolution (ADR); 2001-present

11. **Bar and Court Admission**: List each state and court in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

North Dakota – Supreme Court and all district courts; United States District Court, District of North Dakota and 8th Circuit Court of Appeals; October 1979-present

Minnesota – Supreme Court and all district courts; October 1979-present

12. **Memberships**: List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, charitable, or other organizations since graduation from college, other than those listed in response to Questions 10 or 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion - either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

Commissioner – Bismarck Park Board, Bismarck Parks & Recreation District, Bismarck, North Dakota (1994-present)
Member – North Dakota Parole Board (2001-present)
Board of Directors and past president – Missouri Valley Family YMCA, Bismarck North Dakota (1992-1998)
Member – Apple Creek Country Club, Bismarck, North Dakota (1997-1998)

To the best of my knowledge, none of these organizations have now, nor have they in the past, practiced discrimination on the basis of race, sex, or religion - either through formal membership requirements, or the practical implementation of membership policies.

13. **Published Writings**: List the titles, publishers, and dates of books, articles, reports, or other material you have written or edited, including material published on the Internet. Please supply four (4) copies of all published material to the Committee, unless the Committee has advised you that a copy has been obtained from another source. Also, please supply four (4) copies of all speeches delivered by you, in written or videotaped form over the past ten years, including the date and place where they were delivered, and readily available press reports about the speech.

***Sexual Harassment: What Employers and Risk Managers Need to Know*; published in the *Journal of Healthcare Risk Management (Summer 1995)*, a quarterly publication of the American Society for Healthcare Risk Management of the American Hospital Association.**

***Sexual Harassment: What Employers Need to Know*; published in *The Gavel*, a publication of the State Bar Association of North Dakota (Dec. 1996-Jan. 1997, Vol. 44, No. 1).**

***Sexual Harassment – A Discrimination Issue*; published in the *City Scan*, a publication of the North Dakota League of Cities (Dec. 1997).**

***Recognizing Conduct that May be Sexual Harassment*, published in the *City Scan* (Jan.-Feb. 1998).**

Letter to the Editor published in the *Bismarck Tribune* (December 15, 1996).

I have been a presenter at numerous seminars over the past 15+ years on the subject of sexual harassment in the workplace and other employment law topics. I have presented such seminars to lawyers, state officials, city and county officials and representatives of political subdivisions, human resource specialists, public and private employers, and employees throughout the state. Attached is a sample copy of an outline that is frequently distributed to the participants at these seminars.

14. **Congressional Testimony**: List any occasion when you have testified before a committee or subcommittee of the Congress, including the name of the committee or subcommittee, the date of the testimony and a brief description of the substance of the testimony. In addition, please supply four (4) copies of any written statement submitted as testimony and the transcript of the testimony, if in your possession.

None

15. **Health**: Describe the present state of your health and provide the date of your last physical examination.

Excellent health; last examination was in 2002.

16. **Citations**: If you are or have been a judge, provide:

(a) a short summary and citations for the ten (10) most significant opinions you have written;

(b) a short summary and citations for all rulings of yours that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court; and

(c) a short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions.

If any of the opinions or rulings listed were in state court or were not officially reported, please provide copies of the opinions.

Not applicable

17. **Public Office, Political Activities and Affiliations**:

(a) List chronologically any public offices you have held, federal, state or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or nominations for appointed office for which were not confirmed by a state or federal legislative body.

North Dakota Parole Board; 2001-present. Appointed by Governor John Hoeven.

Commissioner, Bismarck Parks & Recreation District; 1992-present. Elected position.

(b) 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

18. **Legal Career**: Please answer each part separately.

(a) Describe chronologically your law practice and legal experience after graduation from law school including:

(1) whether you served as clerk to a judge, and if so, the name for the judge, the court and dates of the period you were a clerk;

I served as a law clerk to Chief Justice Ralph J. Erickstad (deceased); North Dakota Supreme Court, August 1979-August 1980.

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

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 affiliated, and the nature of your affiliation with each.

Assistant Attorney General, Office of the Attorney General, State of North Dakota, State Capitol Building, Bismarck, North Dakota; 1980-1983.

Partner – Fleck Mather & Strutz, 400 East Broadway, Suite 600, Bismarck, North Dakota; 1985-1994; Associate 1983-1985.

Partner – Smith Bakke Hovland & Oppegard, 116 North 2nd Street, Bismarck, North Dakota; 1994-present.

Member – North Dakota Parole Board, Bismarck, North Dakota, 2001-present.

(b) (1) Describe the general character of your law practice and indicate by date if and when its character has changed over the years.

My law practice has been a trial practice with an emphasis on personal injury, wrongful death, products liability, medical malpractice, civil rights actions, and employment/labor law claims for the past twenty (20) years.

Since approximately 1994, my practice has expanded to include work as a mediator/arbitrator in civil lawsuits and as an administrative law judge for the Office of Administrative Hearings, State of North Dakota.

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

My client base has consisted of a number of insurance companies over the past twenty (20) years which include the North Dakota Insurance Reserve Fund (NDIRF), Milbank Insurance Company, State Auto Insurance Companies, St. Paul Insurance Companies, The Hartford, The Doctor's Company, American Family Insurance, Nodak Mutual Insurance Company, State Farm Insurance Companies, etc. My clients have included a vast number of cities, counties, park districts, school districts, and other political subdivisions throughout the State of North Dakota, as well as private citizens who have been involved in litigation as plaintiffs or defendants.

(c) (1) Describe whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe each such variance, providing dates.

I have appeared in court frequently over the past twenty (20) years handling civil lawsuits throughout the state. Most appearances have been in state court.

(2) Indicate the percentage of these appearances in

(A) federal courts;
10%
(B) state courts of record;
90%
(C) other courts.

(3) Indicate the percentage of these appearances in:

(A) civil proceedings;
95%
(B) criminal proceedings.
Less than 5%

(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 have tried to a verdict or judgment approximately fifty (50) cases. I was associate counsel in less than five (5) trials and lead or sole counsel in the remaining cases. There have been countless numbers of other civil cases that I have been involved in that have settled during trial.

(5) Indicate the percentage of these trials that were decided by a jury.

98%

(d) Describe your practice, if any, before the United States Supreme Court. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the U.S. Supreme Court in connection with your practice.

I have not appeared before the United States Supreme Court.

(e) Describe legal services that you have provided to disadvantaged persons or on a *pro bono* basis, and list specific examples of such service and the amount of time devoted to each.

I have routinely handled pro bono divorce cases on behalf of the State Bar Association of North Dakota every year. Those cases have generally involved approximately 40-50 hours of time per year.

19. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, and for each provide the date of representation, the name of the court, 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. In addition, please provide the following:

(a) the citations, if the cases were reported, and the docket number and date if unreported;

(b) a detailed summary of the substance of each case outlining briefly the factual and legal issues involved;

(c) the party or parties whom you represented; and

(d) describe in detail the nature of your participation in the litigation and the final disposition of the case.

1) ***Norman Shirley v. City of Jamestown, et al.*** **Civil No. A3-99-120. August 30, 1999 – June 19, 2001. United States District Court, District of North Dakota, Southeastern Division. Magistrate Karen K. Klein, presiding. Adverse counsel: Mark Fraase, Attorney at Law, 15 9th Street South, Fargo, North Dakota, (701) 235-7501; and Joe Johnson, Attorney at Law, 111 South 9th Street, Fargo, North Dakota, (701) 237-4433.**

This was a civil rights action which arose out of a fight that occurred at the Gladstone Inn in Jamestown on February 9, 1998. The plaintiff, Norman Shirley, had attended a meeting among co-workers at the Gladstone Inn when Shirley became disruptive and was asked to leave by the meeting organizer. The Jamestown Police Department was later contacted for assistance and Shirley was repeatedly asked to leave the meeting by the law enforcement officers who responded to the call. Shirley was subsequently removed from the meeting by the officers and a fight occurred in the hallway. During the fight, the police officers used physical force to try to restrain Shirley and also attempted to use pepper spray (mace) to subdue him. It ultimately took three (3) police officers to get control of Shirley and he was handcuffed. During the fight, Shirley's left

elbow became dislocated and he also suffered injuries and abrasions to his face. Shirley was transported to the Jamestown Hospital Emergency Room that evening for evaluation but he refused treatment. After he had been booked at the Stutsman County Correctional Center and charged with disorderly conduct, Shirley returned to the emergency room. It was later determined that he had a dislocated left elbow.

The lawsuit was commenced in August 1999, and I represented the defendants at trial. Shirley alleged several civil rights causes of action under 42 U.S.C. § 1983. Shirley contended that the law enforcement officers used excessive force during the fight in violation of the 4th Amendment and that the City of Jamestown had developed and maintained policies and customs exhibiting deliberate indifference to the constitutional rights of persons in Jamestown. In addition, there were claims of assault and battery and false arrest and imprisonment.

The case was tried to a jury of eight (8) persons in federal court in Fargo on January 23-25, 2001. The jury returned a defense verdict.

2) *Douglas M. Falcon v. Kidder County, et al.* Civil No. A1-93-141. January 25, 1992 – April 24, 1998. United States District Court, District of North Dakota, Southwestern Division. United States Magistrate Karen K. Klein, presiding. Adverse counsel: David D. Schweigert and Karen McBride, Attorneys at Law, P.O. Box 955, Bismarck, North Dakota, (701) 258-8988.

This was a civil rights action arising out of a serious accident that occurred on I-94 near a rest area located between Steele and Jamestown, North Dakota. The plaintiff, Douglas Falcon, had been removed from a Greyhound Bus in Steele because he was intoxicated. Falcon was subsequently transported to a rest area by two law enforcement officers to obtain a ride to his girlfriend's home in Jamestown. Falcon later attempted to hitchhike and was struck by a motor vehicle on the interstate and sustained serious injuries. The plaintiff alleged that Kidder County and the law enforcement officers involved in his transport had violated his civil rights, discriminated against him based on race, and had left him in a position of danger at the rest area in the middle of the night. I represented the defendants in this civil rights action at trial. The final disposition was a defense verdict.

3) *Malen Dewing v. Burleigh County Water Resource District.* Civil No. 97-C-1609. November 1, 1995–May 8, 2000. Burleigh County District Court, South Central Judicial District. Honorable Benny A. Graff, presiding. Adverse Counsel: Mr. Donald Negaard, P.O. Box

1000, Minot, North Dakota (701) 852-0381.

This was a property damage dispute that arose out of severe flooding that occurred north of Bismarck in 1995. The plaintiff, Malen Dewing, d/b/a Woodside Gardens, owned an organic farm located near the Missouri River. In 1975, the Soil Conservation Service constructed a floodway and two miles of dikes along Burnt Creek to alleviate flooding along the Missouri River basin. The defendant, Burleigh County Water Resource District, took over the ownership and operation of the flood diversion project in 1979. At the time the project was constructed, the landowners in the area were provided with indemnity agreements. Judge Benny Graff ruled that the indemnity agreements ran with the land and provided indemnification to Malen Dewing for any flooding which was caused by the Burnt Creek flood diversion project. Dewing had purchased the 20-acres of land in 1989.

Dewing contended that he had sustained extensive flooding damage from 1995 through 1999 and that he had sustained damages to his personal property, real property, and lost profits from his organic farm operations. The defendant, Burleigh County Water Resource District, argued that the primary flooding that occurred each spring was attributable to natural snow melt and runoff and that Dewing had failed to mitigate his damages. It was also alleged that Dewing had constructed a home, buildings, and a retail store on the floodplain after being warned of the dangers of flooding beforehand; that Dewing had never realized a profit from his organic farm operations at any time and that any claim of lost profits was speculative. Dewing was claiming total damages in excess of $250,000.

The case was tried to a nine (9) person jury in Burleigh County on November 16-19, 1999. I represented the defendant at trial. Several experts were called to testify on the subjects of engineering, hydrology, and economics. The experts included Wes Engbrecht, David Saxowsky, and engineer Michael Gunsch. The jury concluded that both Dewing and the Burleigh County Water Resource District were 50% at fault and responsible for the flooding damage. The result was a defense verdict.

4) *Walter Kunz v. A. Michael Booth, M.D., et al.* Civil No. 96-C-1277. October 1992-August 1997. Burleigh County District Court, South Central Judicial District. Honorable Donald L. Jorgensen, presiding. Co-Counsel: Lance Schreiner, P.O. Box 1695, Bismarck, North Dakota (701) 223-2711. Adverse Counsel: Duane Breitling, P.O. Box 458, Fargo, North Dakota (701) 280-5801.

This medical malpractice action arose out of complications that developed following a triple coronary bypass procedure that was performed on July 18, 1989. The plaintiff, Walter Kunz, had

undergone a coronary bypass procedure at St. Alexius Medical Center in Bismarck and the surgery was performed by A. Michael Booth, M.D., a cardiothoracic surgeon with the Heart & Lung Clinic. I represented Dr. Booth and the Clinic. Kunz had suffered a heart attack in January 1989 while in Arizona and diagnostic tests disclosed a need for bypass surgery. The bypass surgery performed on July 18, 1989, was uneventful but Kunz subsequently developed blood clots in both of his legs. He was diagnosed with compartment syndrome the day following surgery. Emergency surgery was performed on Kunz the evening of July 19, 1989, and multiple embolectomies and fasciotomies were performed. Thereafter, Kunz spent three (3) months in the hospital after he developed numerous complications including pneumonia, infection, and kidney failure. The medical bills incurred were in excess of $200,000.

The plaintiff contended that the preoperative care and monitoring of his Coumadin (anti-coagulant) therapy was substandard; that repeat echocardiograms should have been ordered before surgery to disclose blood clots in the heart; and that the post-operative care and monitoring was below the standard of care for a post-cardiac bypass patient. The plaintiff also contended at trial that Walter Kunz had an aneurysm in his heart that should have been resected or removed before proceeding with bypass surgery. The plaintiff called expert witnesses in the fields of cardiothoracic surgery and nursing care, including Dr. Dudley Johnson, one of the original founders of modern bypass surgery.

The defendants called several expert witnesses at trial to testify in the areas of cardiothoracic surgery, cardiology, vascular surgery, and nursing care. These included Dr. Eugene Strandness, a renowned specialist on compartment syndrome; and Dr. Demetre Nicoloff of the Minneapolis Heart Institute.

The case was tried to a jury of nine persons before the Honorable Donald L. Jorgensen. Following a 2-week trial, the jury rendered a verdict in favor of the defendants.

5) *Bruce Oster v. City of Jamestown, et al.* Civil No. C-00-365. December 1998-April 2002. Stutsman County District Court, Southeast Judicial District. Honorable Mikal Simonson, presiding. Adverse Counsel: Monty Mertz, P.O. Box 10396, Fargo, North Dakota (701) 293-7788.

This was a claim brought by a master electrician against the City of Jamestown and its electrical inspector. It was alleged that the City of Jamestown and its inspectors had tortiously interfered with the plaintiff's contractual relationship with his partner and had engaged in a scheme to essentially run the plaintiff out of business in the Jamestown area. I represented the City of Jamestown and Robert Lulay who was the City Electrical Inspector. The case was tried to a

9-person jury for one week in Jamestown. The final disposition was a defense verdict.

6) *Dawn Patterson v. Thomas P. Hutchens, M.D., et al.* Civil No. 92-C-2291. 1992-June 1994. Burleigh County District Court, South Central Judicial District. Honorable Gerald G. Glaser, presiding. Co-Counsel: William A. Strutz, P.O. Box 2798, Bismarck, North Dakota (701) 223-6585. Adverse Counsel: William P. Zuger (retired). Lee R. Bissonette, 1000 Superior Boulevard, Wayzata, Minnesota (800) 947-2176.

This was a medical malpractice action commenced against Dr. Thomas P. Hutchens, an OB/GYN specialist at the Mid Dakota Clinic in Bismarck, North Dakota. I was co-counsel for the defendants at trial. The plaintiff, Dawn Patterson, began treating with Dr. Hutchens in July of 1989 during a complicated pregnancy. Following the delivery of the child in mid-September 1989, Patterson continued to experience chronic problems of bleeding, cramping, pelvic pain, and pain with intercourse. The plaintiff was 20 years old when she began treating with Dr. Hutchens.

In January of 1990, Patterson underwent a diagnostic laparoscopy and dilation and curettage (D&C) to determine the cause(s) of her physical complaints. Several months later Patterson underwent a vaginal hysterectomy and in September of 1990, underwent a bilateral salpingo-oophorectomy (removal of the tubes and both ovaries) because of chronic problems of pelvic pain, pain with intercourse, and recurring symptomatic ovarian cysts. The plaintiff alleged that Dr. Hutchens was negligent in failing to conduct appropriate diagnostic tests and evaluation prior to the performance of any of these surgical procedures. In addition, it was alleged that there were no medical indications for the surgical procedures and that the surgeries were unnecessary and done solely for economic gain. The district court had allowed the plaintiff to pursue a claim for punitive damages. Dr. Hutchens denied the allegations of negligence and contended that all of the care and medical treatment that was rendered was medically appropriate and warranted.

The case was tried to a 9-person jury in Bismarck commencing February 21, 1994. A defense verdict was rendered by the jury on March 3, 1994. The jury concluded that there was no evidence of medical malpractice or negligence on the part of Dr. Hutchens.

7) *LeRoy Lundstrom and Jeanne Lundstrom, et al. v. Dr. Robert Scarlett.* Civil No. 93-C-1042. 1992-February 1994. Burleigh County District Court, South Central Judicial District. Honorable Dennis Schneider, presiding. Co-Counsel: William A. Strutz, P.O. Box 2798, Bismarck, North Dakota, (701) 223-6585. Adverse Counsel: Richard Baer, 1120

College Drive, Suite 211, Bismarck, North Dakota, (701) 258-0250.

This was a medical malpractice action which was commenced on March 26, 1992, against Dr. Robert K. Scarlett, an OB/GYN specialist at Mid Dakota Clinic in Bismarck, North Dakota. I was co-counsel for the defendants at trial. The action involved the death of an infant resulting from premature rupture of the membranes and a prolapsed cord. The plaintiff, Jeanne Lundstrom, became pregnant in late 1990 and presented herself to Dr. Scarlett for prenatal care. On May 7, 1991, Lundstrom experienced a premature rupture of her membranes. In addition, she also experienced a prolapsed umbilical cord and was rushed to the hospital by ambulance. Mrs. Lundstrom then underwent an emergency cesarean section performed by Dr. Scarlett. The infant was born alive, but the umbilical cord was wrapped around his head and there were two tight knots in the cord. The infant died within a short period of time.

The plaintiffs alleged that Dr. Scarlett was negligent in failing to provide appropriate prenatal care; in failing to conduct appropriate diagnostic tests and studies to detect premature rupture of the membranes in the clinic on the morning of May 7; in failing to conduct a non-stress test that morning and failing to monitor the baby to detect any signs of fetal distress; and in failing to hospitalize the patient and perform a cesarean section at an earlier time. Dr. Scarlett denied the allegations of negligence and contended that the medical care and treatment that was provided to the patient was proper and in conformance with contemporary standards of obstetrical care and practice.

The case was tried to a jury commencing on January 11, 1994, and concluded with a defense verdict on January 19, 1994.

8) *Shirley Johansen v. Jene Hasby, et al.* Civil No. 7871. June 1994-June 1996. Mountrail County District Court, Northwest Judicial District. Honorable Robert W. Holte, presiding. Co-Counsel: Paul Ebeltoft, P.O. Box 1097, Dickinson, North Dakota (701) 227-1841. Adverse Counsel: Jim Nostdahl, P.O. Box 1000, Minot, North Dakota (701) 842-0381; Bruce Carlson, P.O. Box 2189, Fargo, North Dakota, (701) 293-9190.

This was a wrongful death case brought against Jene Hasby. The decedent, Dennis Johansen, worked for a farmer by the name of Lane Anderson from 1988-1992, as a hired hand. Johansen himself had been a grain farmer nearly all of his life and was experienced in loading grain from the bins and hauling grain, etc. Johansen was crushed by a large grain auger while attempting to load grain from a grain bin into a grain truck. The grain truck had been equipped with a drill fill, bin sweep, and a hydraulically-operated diverter valve by defendant Jene Hasby. I represented Hasby at trial. The plaintiff

contended that Jene Hasby negligently installed this equipment on the grain truck.

A jury trial was held before the Honorable Robert W. Holte on May 14-17, 1996, in Stanley, North Dakota. The jury returned a verdict for the defendant.

9) *Jacqueline Krumwiede v. Mercer County Ambulance Service, Inc.*, Civil No. A1-95-015. February 1995- July 1996. United States District Court, District of North Dakota. United States Magistrate Dwight C.H. Kautzmann, presiding. Adverse Counsel: Deborah J. Carpenter, P.O. Box 2761, Bismarck, North Dakota (701), 223-3080.

This was an age discrimination case brought against the Mercer County Ambulance Service. I represented the defendant at trial.

The plaintiff, Jacqueline Krumwiede, was formerly employed as the coordinator for the Mercer County Ambulance Service in Hazen, North Dakota. She had held that position from 1985-1993. In May of 1993, the Board of Directors had decided to terminate both the coordinator and the assistant coordinator for the ambulance service and have one person perform the duties and responsibilities of coordinator. This cost-saving measure was implemented as a result of financial difficulties and a reorganization of the ambulance service. Interviews were conducted in late June of 1993 and the person ultimately selected for the new coordinator position was the former assistant coordinator.

In her original complaint, Krumwiede alleged that she was discriminated against on the basis of her age in violation of the Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621-634. The ADEA constituted the jurisdictional basis for the action.

A jury trial was held before a 9-person jury on July 8-10, 1996, in Bismarck. The jury returned a verdict for the defendant.

10) *Mary Olson v. Barnes County, et al.* Civil No. 51-88. February 1988-April 1991. Barnes County District Court, Southeast Judicial District. Honorable John T. Paulson, presiding. Co-Counsel: Paul Oppegard, P.O. Box 657, Moorhead, Minnesota, (218) 233-8105; Jim Wold, 11943 County Road 26, Luverne, North Dakota (701) 769-2275. Adverse Counsel: Lee Hagen, P.O. Box 3143, Fargo, North Dakota, (701) 293-8425.

This was a wrongful death action arising out of the death of a 19-year old male. The decedent, Tony Jones, was a passenger in a vehicle driven by a drunk driver that went off the highway and struck a power line pole. There were high voltage electrical wires that were draped over the vehicle at the time that rescue personnel arrived. There were representatives of several law enforcement agencies, the

highway patrol, and several emergency rescue teams that were present at the accident site attempting to extricate the injured persons from the vehicle. During the course of attempting to extricate and transport injured passengers from the vehicle awaiting ambulances, Jones was electrocuted when he came into contact with a 720-volt power line. This lawsuit was commenced against a number of parties who were present at the accident site. I represented Barnes County and the Barnes County law enforcement officers who were present at the scene of the accident. The case was tried to a 9-person jury in Valley City, North Dakota. The final disposition was a defense verdict.

20. **Criminal History**: State whether you have ever been convicted of a crime, within ten years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and disposition and describe the particulars of the offense.

No

21. **Party to Civil or Administrative Proceedings**: State whether you, or any business of which you are or were an officer, have ever been a party or otherwise involved as a party in any civil or administrative proceeding, within ten years of your nomination, that is reflected in a record available to the public. If so, please describe in detail the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings in which you were a guardian *ad litem*, stakeholder, or material witness.

On February 9, 2001, the Bismarck Parks & Recreation District was sued in a civil lawsuit entitled *Kathleen Olson and Amy Howard v. Bismarck Parks & Recreation District.* Civil No. 08-01-C-01278. At the time this lawsuit was commenced, I was the President of the Bismarck Park Board. This was a personal injury action that was commenced against the Bismarck Parks & Recreation District arising out of a sledding accident that occurred at the Tom O'Leary Golf Course in Bismarck, North Dakota. The lawsuit was dismissed by the trial court based on recreational immunity. The case was appealed to the North Dakota Supreme Court and affirmed on appeal. I was not retained to defend the case, I was never deposed; and I had no personal knowledge of the accident.

22. **Potential Conflict of Interest**: 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 closely adhere to and comply with the Code of Judicial Conduct and recuse myself from those cases where there is a direct conflict or where there is the appearance of a conflict or any impropriety. I am cognizant of the need to disqualify myself from any proceeding in which my impartiality may reasonably be questioned. The primary area of concern during my initial service in the position would be the handling of any litigation involving attorneys from the law firm of Smith Bakke Hovland & Oppegard.

23. **Outside Commitments During Court Service**: Do you have any plans, commitments, or arrangements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

At the present time, it is my hope to continue to serve as a Commissioner on the Bismarck Park Board for the Bismarck Parks & Recreation District. I have been a Commissioner on the Bismarck Park Board since 1994.

24. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding the nomination, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500. 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.

The financial disclosure report is attached.

25. **Statement of Net Worth**: Complete and attach the financial net worth statement in detail. Add schedules as called for.

The net worth statement is attached.

Selection Process: Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?

No. It is my understanding that there was a Transition Team in North Dakota that was involved in compiling a list of prospective candidates. There were no interviews conducted.

(a) If so, did it recommend your nomination?

There were four (4) candidates including myself, whose names were forwarded to the White House for consideration for an interview.

(b) Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.

The only involvement I had was as a participant in an interview conducted by the White House Counsel's Office in Washington, DC in mid-November 2001.

(c) 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 or seeking a commitment as to how you would rule on such case, issue, or question? If so, please explain fully.

No

AO-10 (re)
Rev. 1/2002

FINANCIAL DISCLOSURE REPORT
Nomination Report

Report required by the Ethics in Government Act of 1978, as amended (5 U.S.C. App. Sec. 101-111)

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
Ho[illegible]d, Daniel L.	U.S. District Court, ND	06/27/1902
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge	**5. Report Type (check type)** X Nomination, Date 06/26/2002 Initial Annual Final	**6. Reporting Period** 01/01/2001 to 06/15/1902
7. Chambers or Office Address 116 North 2nd Street Bismarck North Dakota 58501	**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	President	Daniel L. Hovland, P.C.
2	Partner	Smith Bakke Hovland & Oppegard
3	Commissioner	Bismarck Parks & Recreational District

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

☐ NONE (No reportable agreements.)

	DATE	PARTIES AND TERMS
1	2002	Smith Bakke Hovland & Oppegard.There will be a buy-out agreement with my former law firm that is currently being negotiated.
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	Daniel L. Hovland P.C.	$ 258,034.
2	2001	SRD Partnership	$18,095
3	2000	Daniel L. Hovland P.C.	$ 211,012
4	00	SRD Partnership	$15,077

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Hovland, Daniel L.	06/27/1902

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

(Includes those to spouse and dependent children. See pp. 25-27 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. 28-31 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 32-33 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
☐	NONE (No reportable liabilities.)		
1	Bank Center First	Mortgage - rental property -- Bismarck, ND	L
2	Norwest Bank	Mortgage - law firm, Bismarck, ND	K
3	U.S. Bank	Credit Card	J
4	Capital One	Credit Card	J
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
Hovland, Daniel L.	06/27/1902

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

A. Description of Assets (including trust assets) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
						If not exempt from 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.)									
1 Rental property, Bismarck, ND(1990 - $95,000)	A	Rent	M	Q	"Exempt"				
2 G.R. Associates	D	Distribution	K	W	"				
3 Ridgewood Electric Power Trust V		None	K	T	"				
4 Ridgewood Power Growth Fund		None	J	T	"				
5 Epoch-Kissimmee Investors	A	Distribution	K	T	"				
6 Epoch-Florida Capital Raleigh		None	K	T	"				
7 Epoch-Florida Capital Hotel Partners III		None	J	T	"				
8 Epoch-Florida Capital - Calypso Cay, Ltd.		None	K	T	"				
9 Epoch-Florida Capital Hotel Partners (Dallas)		None	J	T	"				
10 Master Investment I		None	L	T	"				
11 Master Investment II		None	K	T	"				
12 Phoenix-Engemann Aggressive Growth Fund		None	J	T	"				
13 Phoenix-Seneca Strategic Theme Fund	A	Dividend	J	T	"				
14 MKBY		None	K	T	"				
15 Ridgewood Electric Power Trust V (IRA)		None	J	T	"				
16 Ridgewood Power Growth Fund (IRA)		None	L	T	"				
17 Epoch-Florida Capital Land Investment (IRA)	D	Distribution	M	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 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
Hovland, Daniel L.	06/27/1902

VII. Page 2 INVESTMENTS and TRUSTS – income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

A. Description of Assets (including trust assets) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
						If not exempt from 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.)									
18 Epoch-Florida Capital Hotel Partners (IRA)		None	K	T	"				
19 Epoch-Florida Capital Hotel Partners II (IRA)		None	K	T	"				
20 Epoch-Florida Capital Hotel Partners III (IRA)		None	J	T	"				
21 Epoch-Florida Capital Raleigh (IRA)	A	Interest	J	T	"				
22 I.R.E.T. (IRA)			L	T	"				
23 Edmin.com		None	J	T	"				
Munder Net Fund (IRA)		None	J	T	"				
25 First American Funds (IRA)		None	J	T	"				
26 Janus Twenty Fund (401K)			K	T	"				
27 Janus Worldwide Fund (401K)			K	T	"				
28 Epoch - Florida Capital Hotel Partners III	A	Interest	J	T	"				
29 Epoch - Florida Hotel Partners II	A	Interest	J	T	"				
30 Epoch - Florida Hotel Partners II	A	Interest	J	T	"				
31 Kemper Advantage III - Large Cap U.S. Stock (IRA)		None	J	T	"				
32 Kemper Advantage III - Balanced (IRA)		None	J	T	"				
33 Northwestern Mutual (IRA'S)		None	J	T	"				
34 Bank Center First - Account	A	Interest	J	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 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
Hovland, Daniel L.	06/27/1902

VII. Page 3 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

A. Description of Assets (including trust assets) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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 Capital Credit Union - Account	A	Interest	J	T	"				
36 BNC National Bank - Account	A	Interest	J	T	"				
37 Pioneer Growth Shares Inc.	A	Dividend	J	T	"				
38									
39									
40									
42									
43									
44									
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

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
	Hovland, Daniel L.	06/27/1902

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

Inc[illegible]art of report.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Hovland, Daniel L.	06/27/1902

SECTION HEADING. (Indicate part of report.)

nformation continued from Parts I through VI, inclusive.

PART 1. POSITIONS (cont'd.)

Line	Position	Name of Organization/Entity
4	Member	North Dakota Parole Board

PART 3. NON-INVESTMENT INCOME (cont'd.)

Line	Date	Source and Type	Gross Income
5	2002	Daniel L. Hovland P.C.	$50,000.
6	2002	SRD Partnership	$12,970.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Hovland, Daniel L.	06/27/1902

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 Dan Hovland Date 6-28-02

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	9,000 -	Notes payable to banks-secured	38,500 -
U.S. Government securities-add schedule		Notes payable to banks-unsecured	
Listed securities-add schedule	697,729 -	Notes payable to relatives	
Unlisted securities-add schedule		Notes payable to others	
Accounts and notes receivable:		Accounts and bills due	10,000 -
Due from relatives and friends	20,000 -	Unpaid income tax	
Due from others		Other unpaid income and interest	
Doubtful		Real estate mortgages payable-add schedule	125,000 -
Real estate owned-add schedule	435,000 -	Chattel mortgages and other liens payable	
Real estate mortgages receivable		Other debts-itemize:	
Autos and other personal property	184,000 -		
Cash value-life insurance	109,383 -		
Other assets itemize:			
LAW FIRM - Personal Property	75,000 -		
		Total liabilities	173,500 -
		Net Worth	1,356,612 -
Total Assets	1,530,112 -	Total liabilities and net worth	1,530,112 -
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 -

LISTED SECURITIES

1) Phoenix-Engemann Aggressive Growth Fund
2) Phoenix-Seneca Strategic Theme Fund
3) MKBY
4) I.R.E.T. (IRA)
5) Munder Net Fund (IRA)
6) First American Funds (IRA)
7) Janus Twenty Fund (401K)
8) Janus Worldwide Fund (401K)
9) Kemper Advantage III - Large Cap U.S. Stock (IRA)
10) Kemper Advantage III - Balanced (IRA)
11) Northwestern Mutual (IRA'S)
12) Pioneer Growth Shares, Inc.

UNLISTED SECURITIES

1) G.R. Associates
2) Ridgewood Electric Power Trust V
3) Ridgewood Power Growth Fund
4) Epoch-Kissimmee Investors
5) Epoch-Florida Capital Raleigh
6) Epoch-Florida Capital Hotel Partners III
7) Epoch-Florida Capital - Calypso Cay, Ltd.
8) Epoch-Florida Capital Hotel Partners (Dallas)
9) Master Investment I
10) Master Investment II
11) Ridgewood Electric Power Trust (IRA)
12) Ridgewood Power Growth Fund (IRA)
13) Epoch-Florida Capital Land Investment (IRA)
14) Epoch-Florida Capital Hotel Partners (IRA)
15) Epoch-Florida Capital Hotel Partners II (IRA)
16) Epoch-Florida Capital Hotel Partners III (IRA)
17) Epoch-Florida Capital Raleigh (IRA)
18) Edmin.com
19) Epoch-Florida Capital Hotel Partners III
20) Epoch-Florida Hotel Partners II
21) Epoch-Florida Hotel Partners II

REAL ESTATE OWNED

1) Residence - Bismarck, North Dakota
2) Rental Property - Bismarck, North Dakota
3) Time Share - Big Sky, Montana
4) Law Firm building - Bismarck, North Dakota

REAL STATE MORTGAGES PAYABLE

1) Bank Center First, Bismarck, North Dakota (residence and rental property)
2) Wells Fargo Bank, Bismarck, North Dakota (law firm)

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY, UNITED STATES SENATE

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

   James Edgar Kinkeade

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

   U.S. District Judge for the Northern District of Texas

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

   Fifth District Court of Appeals at Dallas
   George Allen Building - 2nd Floor
   600 Commerce Street
   Dallas, Texas 75202
   (214) 712-3403

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

   October 22, 1951 - Denton, Texas

5. **Marital Status**: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please also indicate the number of dependent children.

   Married to Melissa Beth Kinkeade, formerly Melissa Beth Doran.
   She is a school teacher at Davis Elementary in the Irving Independent School District, Irving, Texas.

   Two dependent children

6. **Education**: List in reverse chronological order, listing most recent first, each college, law school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   University of Virginia, 1996-1998, L.L.M.
   Baylor Law School, 1972-1974, Doctor of Jurisprudence
   Baylor University, 1969-1973, Bachelor of Arts

7. **Employment Record**: List in reverse chronological order, listing most recent first, all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

Employment
1/1988 to present
State of Texas, Fifth District Court of Appeals
Justice
George L. Allen Sr. Courts Building
600 Commerce St., 2nd Floor
Dallas, Texas 75202

1991 to present
Texas Wesleyan School of Law
Adjunct Professor
1515 Commerce St.
Fort Worth, Texas 76102

9/1981 - 1/1988
194th District Court
Judge
Frank Crowley Courts Building
133 N. Industrial Blvd., 7th Floor
Dallas, Texas 75207

1/1981 to 8/1981
County of Dallas, Texas
Judge, County Criminal Court No. 10
Frank Crowley Courts Building
133 N. Industrial Blvd., 4th Floor
Dallas, Texas 75207

2/1975 to 12/1980
Power & Kinkeade
Attorney, Partner
1311 West Irving Blvd.
Irving, Texas 75061

1976 to 1980
City of Irving, Texas
Associate Municipal Judge
825 West Irving Blvd.
Irving, Texas 75061

6/1974 to 2/1975
Brewer & Price Law Firm
Clerk, then Attorney
1159 Cottonwood Lane, Suite 150
Irving, Texas 75038

12/1971 to 2/1972
Hamilton H. Frost
Bricklayer's Helper
Farm to Market Road 1995, Box 21083
Tyler, Texas 75704

Business Ventures

Loop 12 Joint Venture, 800 Airport Fwy., Suite 200, Irving, Texas 75061 - Partner/Owner, 9% interest in one acre raw land, near the corner of Irving Heights and Shady Grove in Irving, Texas

Proctor-Kinkeade - Partnership, 1503 Perry Road, Irving, Texas 75060 - I own 2 buildings with Vernon Proctor that are leased to several entities.

Dockinproc, Inc., 1010 W. Airport Fwy., Irving, Texas 75061 - closely held corporation - fastfood business (no longer in business), formerly vice-president.

Rio Viga LLC., 2924 Rock Island Rd., Irving, Texas 75060 - owns a building for lease in Red River, New Mexico

Organization Memberships

Board of Advocates, Baylor University School of Social Work, 2001 – present
Board of Trustees (Chair of Audit Committee), Baylor Healthcare System, 1998 – present
Board of Trustees, Baylor Irving Hospital, 1995 – present
Coach, Irving Boys Baseball Association:
- Boys ages 7 & 8, 1992 - 1993
- Boys ages 7 & 8, 1991 - 1992
- Boys ages 5 & 6, 1989 - 1990

Board of Trustees, Exodus, Inc., former Chairman and present member; homeless shelter for parolees and their families, 1989 - 1995
Fellowship Church, Grapevine, Texas – 1988 - present

Board of Trustees, Downtown YMCA, 1988 – 1997
Board of Trustees, Open, Inc. Prison Information Services,
1987-1994
Chair Board of Trustees, Volunteer Center of Dallas, 1986 – 1995
Board of Trustees, Dallas Baptist University – 1979 - 1988; 1990 - 1999
First Baptist Church, Irving, Texas – 1952 - 1988

8. **Military Service**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge received.

None

9. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

College - Phi Eta Sigma & Alpha Chi Honor Societies, Dean's List every semester, entered law school with a 3.77 G.P.A. after 95 hours and at the age of 20.

Law School - Treasurer of the Student Bar Association

After Law School -

- Produced the law day event that won the State Bar Certificate of Merit for the Irving Bar Association in 1976.
- Named one of Irving's Outstanding Young Men in 1976.
- Named the first recipient of the Outstanding Graduates of Irving Public Schools Award.
- Named one of Baylor University's Outstanding Young Alumni in 1988.
- Elected as Chairman of the Pastor Search Committee for my church in 1989.
- Named Outstanding Adjunct Professor 4 times at Texas Wesleyan School of Law, while teaching, Professional Responsibility, from 1991 to present.

10. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Member, Irving Bar Association

Member, Dallas Bar Association
Member, State Bar of Texas
Member, American Bar Association
(Chairman) Law Day event for Irving Bar that won the Certificate of Merit for the Irving Bar Association in 1976
(Chairman) Personnel Committee and Operation Committee for Court of Appeals.

Former Presiding Judge of the Criminal District Courts of Dallas County.

Member, Texas Supreme Court's Committee on Jury Selection

Former Chairman of the Juvenile Board, the governing body of the Juvenile Department for Dallas County, consisting of all 36 District Judges of Dallas County; streamlined and reorganized management system for Juvenile Board Manager.

Former Presiding Judge of the Central Jury Room of Dallas County.

Active in developing and presenting legislative proposals to the Dallas District Courts and Dallas Juvenile Board.

11. **Bar and Court Admission**: List each state and court in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

State of Texas, October 22, 1974 - all levels of courts
United States District Court, Northern District of Texas, May 20, 1982

12. **Memberships**: List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, charitable, or other organizations since graduation from college, other than those listed in response to Questions 10 or 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion - either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

Board of Trustees, Open, Inc. Prison Information Services, 1987-1994
Board of Trustees, Exodus, Inc., former Chairman and present member; homeless shelter for parolees and their families
Coach, Irving Boys Baseball Association:
Boys ages 5 & 6, 1989 - 1990
Boys ages 7 & 8, 1991 - 1992

Boys ages 7 & 8, 1992 - 1993
Board of Trustees (Chair of Audit Committee), Baylor Healthcare System, 1998 – present
Board of Trustees, Baylor Irving Hospital, 1995 – present
Board of Advocates, Baylor University School of Social Work, 2001 – present
Board of Trustees, Downtown YMCA, 1988 – 1997
Chair Board of Trustees, Volunteer Center of Dallas, 1986 – 1995
Board of Trustees, Dallas Baptist University - 1979 - 1988; 1990 - 1999
Fellowship Church, Grapevine, Texas – 1988 - present
First Baptist Church, Irving, Texas – 1952 - 1988

To my knowledge, none of these organizations have practiced invidious discrimination on the basis of race, sex, or religion.

13. **Published Writings**: List the titles, publishers, and dates of books, articles, reports, or other material you have written or edited, including material published on the Internet. Please supply four (4) copies of all published material to the Committee, unless the Committee has advised you that a copy has been obtained from another source. Also, please supply four (4) copies of all speeches delivered by you, in written or videotaped form over the past ten years, including the date and place where they were delivered, and readily available press reports about the speech.

Books

Co-Author West's Kinkeade and McColloch's Texas Penal Code Annotated
Co-Author NITA's A Practical Guide to Texas Evidence

Law Review Articles

Recent publications include *The Top Ten Reasons Clients File Grievances Against Their Lawyers*, 5 TEX WESLEYAN L. REV. 1, 35-53(1998), *Appellate Juvenile Justice In Texas-It's A Crime! Or Should Be*, 51 BAYLOR L. REV. 1, 17-61(1999), *Criminal Procedure: Pretrial*, 39 Sw. L.J. 483 (1985), and *Criminal Procedure: Pretrial*, 40 Sw. L.J. 569 (1986).

Speeches
I have participated in several panels and made several speeches regarding ethical conduct for lawyers. There are no written or recorded records of those speeches. The discussions were based on the article entitled *The Top Ten Reasons Clients File Grievances Against Their Lawyers*.

14. **Congressional Testimony**: List any occasion when you have testified before a committee or subcommittee of the Congress, including the name of the committee or subcommittee, the date of the testimony and a brief description of the substance of the testimony. In addition, please supply four (4) copies of any written statement submitted as testimony and the transcript of the testimony, if in your possession.

None

15. **Health**: Describe the present state of your health and provide the date of your last physical examination.

Excellent. April 23, 2002.

16. **Citations**: If you are or have been a judge, provide:

(a) a short summary and citations for the ten (10) most significant opinions you have written;

1. **City of Austin v. Houston Lighting & Power Co.**
05-89-01354-CV 10/7/92
844 S.W.2d 773, writ denied

In this multi-billion dollar case involving the construction of a nuclear power plant, the City sued the managing participant for breach of contract, fraud, and violation of the Deceptive Trade Practices Act. The trial court granted a take-nothing judgment in favor of Houston Lighting & Power Co.. The court affirmed, holding that under the facts and the terms of the participation agreement, the managing participant had no implied duty to perform the contract with skill and care because the management committee maintained ultimate control over the project.

2. **City of Garland v. The Dallas Morning News**
05-95-01350-CV 5/13/98
969 S.W.2d 548, affirmed 22 S.W.3d 351 (Tex. 2000)

In an unanimous 13-0 en banc decision, this court determined that a memoradum the City was seeking to protect from the News was public information that did not fall under any exception to the Open Records Act. The supreme court affirmed, and the legislature, in their next session, incorporated the omissions pointed out in the opinion into the revised Open Records Act.

3. **Trinity River Authority v. URS Consultants, Inc. Texas**
05-92-02807-CV 9/17/93
869 S.W.2d 367, affirmed 889 S.W.2d 259 (Tex. 1994)

Trinity River Authority (TRA) sued URS for damages resulting from the collapse of an equilizer basin wall at a sewage treatment plant operated by TRA. Appealing from a take-nothing summary judgment, TRA argued the statute of repose applied by the trial court was unconstitutional. The court concluded the statute of repose was constitutional. The Supreme Court affirmed.

4. **Chandler v. State**
05-97-00773-CR 02/11/99
988 S.W.2d 827, no pet.

Chandler's trial counsel was appointed as appellate counsel and filed an *Anders* brief. The Court concluded that because (1) counsel may have difficulty evaluating his own trial performance, and (2) counsel who may not have understood the law during trial could not recognize that same error on appeal, it is never appropriate for appointed appellate counsel to file an *Anders* brief in a case where he was also trial counsel.

5. **Ronald G. Murk v. State (dissent)**
05-88-01100-CR 07/07/89
775 S.W.2d 415, rev'd, 815 S.W.2d 556 (Tex. Crim. App. 1991)

At trial, the State deleted the intent portion of the information. Murk failed to object when the court specifically asked him whether he objected to the deletion. The dissent determined that new article 1.14(b) of the Texas Code of Criminal Procedure required that Murk object to the deletion otherwise he waives his objection. The Court of Criminal Appeals in *Studer v. State*, 799 S.W.2d 263 (Tex. Crim. App. 1990), follows the same reasoning as the dissent and reaches the same conclusion.

6. **Julius Paul Hardie, II v. State**
05-88-01414-CR 02/09/90
787 S.W.2d 89, aff'd, 807 S.W.2d 319 (Tex. Crim. App. 1991)

The court was asked to determine whether the trial court erred when it allowed the admission of the audio portion of a videotape showing the defendant invoking his constitutional right to counsel. The court held that the admission of the audio portion was reversible error. The Court of Criminal Appeals unanimously affirmed this decision using the same reasoning.

7. **Dorothy Jean Miller-El v. State**
05-86-00955-CR 04/19/90
790 S.W.2d 351 (on remand), pet. ref'd

In this case, the court performed a *Batson* analysis of the State's use of peremptory

challenges. The record showed that the State struck an African-American juror because she was a widow, had small children at home, and had only been on her current job for three months. The State, however, kept a white juror with small children at home and who had only been on her current job for two weeks. The State's failure to strike persons with the same or similar characteristics as the challenged juror weighed heavily against the legitimacy of its explanation. The court determined that the State struck the African-American juror on the basis of race.

8. **Van Brunt v. BancTexas Quorum**
05-87-01165-CV 05/08/90
804 S.W.2d 117 (en banc), no writ

The Bank brought an action against the guarantors of a note, secured by both personal property and real estate, seeking a deficiency judgment. Initially the dissent stated that, even though the bank failed to give adequate notice of its intent to sell the personal property securing the note, this failure did not preclude its entitlement to seek a deficiency judgment under the real property mortgage. On rehearing, the dissenting opinion became the majority holding of the court en banc.

9. **MJR's v. City of Dallas**
05-89-00765-CV 06/21/90
792 S.W.2d 569 (op. on reh'g), writ denied

Sexually oriented businesses challenged the constitutionality of a Dallas zoning ordinance, which placed distance restrictions on these types of businesses. The court upheld the constitutionality of the zoning ordinance. The court addressed under the Texas constitution the issues of zoning authority, unlawful taking, gender-based discrimination under the Texas Equal Rights Amendment, and preemption. The court also addressed the issue of overbreadth under the Fourth Amendment of the United States Constitution regarding the ordinance's nudity definition.

10. **Nethery v. State**
05-99-00239-CR 08/04/2000
29 S.W.3d 178, pet. ref'd

Nethery was convicted of engaging in organized criminal activity. The court held (1) the evidence was legally sufficient to prove all the elements of the offense and to corroborate the accomplice witness testimony, and (2) the double jeopardy clause was not implicated. However, the court reversed on Nethery's ineffective assistance of counsel claim due to an actual conflict that existed because of his trial attorney's separate representation of another client. The other client was

called as a State's witness in this case to help prove Nethery's guilt, and his testimony on cross-examination was extremely damaging to Nethery; but, trial counsel did nothing to neutralize it.

16. (b) a short summary and citations for all rulings of yours that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court; and

I was reversed on the following cases as a trial judge:

1. **Neptune v. State**, 679 S.W.2d 168 (Tex. App.--Dallas 1984, pet. ref'd)

Defendant was convicted of possession of cocaine. At trial, the State introduced, without objection, the lab analysis of the cocaine through a qualified toxicologist, who supervised the analysis but did not personally prepared the report. On appeal, the court determined that even though no objection was made to the report, it was inadmissible hearsay and could not be considered in its sufficiency review. Without this report, the evidence was insufficient to support the conviction. Now, hearsay admitted without objection is given probative value on review.

2. **Talkington v. State**, 682 S.W.2d 674 (Tex. App.--Eastland 1984, pet. ref'd)

Defendant was convicted of rape. Despite the fact that the court's charge tracked the statute and the appellate court determined that there was sufficient evidence to support the conviction, it held that the use of the term victim in the jury charge, when there was a question of whether the complainant had consented, was a comment on the weight of the evidence.

3. **Johnson v. State**, 695 S.W.2d 686 (Tex. App.--Dallas 1985), rev'd and remanded, 713 S.W.2d 347 (Tex. Crim. App. 1986)

Defendant was convicted of gambling promotion. The Texas Court of Criminal Appeals determined that the statute under which defendant was tried was unconstitutionally vague and unenforceable as a penal statute. It therefore remanded the cause to the trial court for it to dismiss the indictment.

4. **Manning v. State**, 704 S.W.2d 825, (Tex. App.--Dallas 1985), rev'd, 730 S.W.2d 744 (Tex. Crim. App. 1987)

Defendant was convicted of attempted murder. A jury at a pretrial competency hearing found defendant competent to stand trial. The appellate court affirmed the trial court's judgment. The Court of Criminal Appeals overruling an earlier

opinion held that even though it may seem obvious that the State proved defendant's competency, since there was some evidence of a prior, unvacated adjudication the State had the burden to prove competency beyond a reasonable doubt rather than by the lower preponderance of the evidence standard with which the jury was charged.

5. **Moore v. State**, 708 S.W.2d 484 (Tex. App.--Dallas 1986), rev'd and remanded, 749 S.W.2d 54 (Tex. Crim. App. 1988)

Defendants in this case were convicted of injury to a child. After the court assessed punishment, defendants moved for a new trial, which the court granted. The State then claimed that defendant had not served it with the motion and that granting the motion without notice to the State was fundamentally unfair. Consequently, the court set aside the motion for new trial and reinstated the judgment. The appellate court affirmed the trial court's judgment. The Court of Criminal Appeals determined that the once the trial court granted the motion for new trial, absent a clerical error, it was without authority to rescind that order. The Court of Criminal Appeals has since reversed its 1988 decision.

6. **Parris v. State**, 757 S.W.2d 842 (Tex. App.--Dallas 1988, pet. ref'd)

Defendant was convicted of murder. In the indictment, the State alleged that defendant caused the death of the victim by striking him with a deadly weapon, to wit, a blunt object or objects. The appellate court, therefore, determined that the State had to prove that the blunt object or objects involved had to be a deadly weapon. The State introduced evidence that defendant while holding the victim up banged the victim's head against a tree and evidence that the victim was thrown to the ground several times hitting his head on the sidewalk. The appellate court determined that neither the tree nor the sidewalk were deadly weapons because there was no evidence of blood on the tree or the sidewalk and no showing that defendant purposefully caused the victim's head to come in contact with the sidewalk.

7. **Devine v. State**, 786 S.W.2d 268 (Tex. Crim. App. 1989)

Defendant was convicted of robbery. Several times prior to the robbery at issue, defendant's ex-husband in response to threats he received from defendant that she would physically harm him and his new family if he did not give her money, gave her money. Finally in response to another threatening phone call stating that defendant would kill him and his wife and do something to his two small children that he would never forget, the ex-husband notified the police. Although the victim testified that he was afraid when he met with defendant, she took no overt action, such as displaying a weapon. The Court of Criminal Appeals determined that defendant's past threats and threats to harm the victim in the future if he did

not hand over the money were insufficient to show a threat of imminent bodily harm.

8. **Shipley v. State**, 727 S.W.2d 118 (Tex. App.--Dallas 1987), rev'd, 790 S.W.2d 604 (Tex. Crim. App. 1990)

Defendant was convicted of murder. Defendant was involved in two extra-marital affairs shortly before he shot his wife. During voir dire, defense counsel began asking the panel how they felt about extra-marital affairs and the State objected. The defense attorney rephrased the question, but the State objected again. Defense attorney was then forbidden from asking "that" question again. The attorney asked no further questions in this area. The appellate court affirmed the trial court determining that the question was improper. The Court of Criminal Appeals determined that since the State's objection was that the question was irrelevant, or alternatively, that it went to the facts of the case, defendant's counsel could have reasonable believed that the court sustained the objection on one of those two grounds. The Court held that by disallowing questions concerning extra-marital affairs, the defense attorney had been denied the intelligent use of the peremptory challenges.

9. **Thomas v. State**, 796 S.W.2d 196 (Tex. Crim. App. 1990)

Defendant was convicted of capital murder. After trial, it came to light that one of the jurors at the time of her service was on probation for a third degree felony theft and was under legal accusation for the misdemeanor offense of theft by check. Although asked in a jury questionnaire and during voir dire whether she had been charged, arrested, indicted, or convicted of any criminal offense, she responded in the negative. Because of the felony conviction and the theft accusation this juror was subject to disqualification. The Court of Criminal Appeals determined that the trial court should have granted defendant's motion for new trial.

Although I did not personally preside over jury selection, I include this case since I presided over the trial.

10. **Rognaldsen v. State**, No. F83-93668, verdict date March 20, 1984

Defendant was charged with murder but was convicted of the three level lower offense of negligent injury to a child, a class A misdemeanor. Evidence showed that defendant's dog killed her one-month old daughter. The appellate court reversed holding improper the admission of evidence of an extraneous offense, despite the fact that the objection at trial did not comport with the point on appeal or in the opinion. A second issue was novel in that the court agreed that drug use the night of the child's death was relevant, but that drug use on that same day or

on prior occasions was inadmissible.

was reversed on the following cases as an appellate judge:

1. **Edwin Neal Biggins v. State,** (Tex. App.--Dallas Feb. 9, 1990), rev'd, No. 317-90 (Tex. Crim. App. January 8, 1992)

Defendant was convicted of possession of cocaine with intent to deliver. The indictment charged defendant with actual delivery. The evidence showed constructive delivery. At the time of the opinion, the law was that if the proof showed constructive delivery, the transferor remained subject to a conviction based on actual delivery, provided that the trial court charged the jury on the law of parties. Subsequently, the Court of Criminal Appeals held that the law of parties must be included in both the abstract instruction and the application paragraph. Here, it was only included in the abstract instruction.

2. **One 1985 Chevrolet v. State**, 828 S.W.2d 778 (Tex. App.–Dallas Feb. 24, 1993), rev'd, 852 S.W.2d 932 (Tex. 1993)

A truck that was used to carry stolen items in a "fencing" operation was held by Texas Supreme Court to not have been "used in the commission" of the offense, thus not making it subject to forfeiture. The Texas Supreme Court disagreed with this court that the truck was used in commission of the offense and was subject to forfeiture.

3. **Szczepanik v. First Southern Trust**, 1995 WL 634138, no publication (Tex. App.–Dallas Oct. 25, 1995), rev'd, 883 S.W.2d 648 (Tex. 1994)

This case went to the Texas Supreme Court twice. In this opinion the Texas Supreme Court disagreed with this court regarding whether there was any evidence of lost profits that would have forced this case to go to the jury.

4. **Classen v. Irving Healthcare System**, 868 S.W.2d 815 (Tex. App.–Dallas August 25, 1993), rev'd 898 S.W.2d 300 (Tex. 1995)

This was a case of 1st impression by the Texas Supreme Court as to whether or not local governments were immune from suit. Court had split on this issue and the Texas Supreme Court held that sovereign immunity had been waived.

5. **Geary v. Texas Commerce Bank**, 938 S.W.2d 205 (Tex. App.–Dallas 1997), rev'd 967 S.W.2d 836 (Tex. 1998)

This involved the question of whether or not a bankruptcy court reorganization plan relieving a debtor's co-obligor placed the co-obligor's interest before the bankruptcy court so that he was a party in interest to the bankruptcy for federal res judicata purposes. This case involved interpretation of federal bankruptcy law and the Texas Supreme Court disagreed with this court that the appellant was not a party to bankruptcy and therefore could not assert res judicata.

6. **Conley, Lott, Nichols Machinery Co. v. Brooks**, 948 S.W.2d 345 (Tex. App.–Dallas June 9, 1997), rev'd, **In re Meador**, 968 S.W.2d 346 (Tex. 1998)

In a case where Texas had not formally adopted a standard for attorneys that receive unauthorized privileged information belonging to an adverse party, the court of appeals adopted the ABA standard that the attorney must notify opposing counsel and return the material. The Texas Supreme Court chose not to follow the higher standard of the ABA. This court followed a sister court in Contico Intl Inc. v. Alvarez, 910 S.W.2d 29 (Tex. App.-El Paso 1995 orig. proceeding), and in this opinion the Texas Supreme Court effectively overruled that opinion.

7. **Levy v. City of Plano**, No. 05-97-00061-CV (Tex. App.–Dallas June 10, 1999),
rev'd, 22 S.W.3d 397 (Tex. March 9, 2000)

The court followed a Texas Supreme Court opinion holding that it had no subject matter jurisdiction to consider the merits of Levy's appeal. Subsequently, the Texas Supreme Court issued an opinion on motion for rehearing overruling their own case and holding that this court did have subject matter jurisdiction to consider the merits of the appeal.

8. **In re David Beck,** 26 S.W.3d 553 (Tex. App.–Dallas August 31, 2001), rev'd **State of Texas ex. rel. Bill Hill, Relator v. Ct. of App. for the 5th Dist.,** 34 S.W.3d 924 (Tex. Crim. App. January 10, 2001)

The Court of Criminal Appeals ruled that even following a statute that clearly stated the records were not subject to subpoena was not a ministerial act, because no court had previously ruled on the issue. A clear statute is not a "clear legal right" until an appellate court has ruled on the matter. This is a different standard than the Texas Supreme Court follows for civil cases.

16. (c) a short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions. If any of the opinions or rulings listed were in state court or were not officially reported, please provide copies of the opinions.

I discussed federal or state constitutional issues in the following opinions:

1. **Ex parte Haron Stephens** (dissent) 05-88-00162-CR 05/26/88
753 S.W.2d 208, aff'd, 806 S.W.2d 812 (Tex. Crim. App. 1990)

This case discussed whether the prosecution for a lesser-included offense was barred by double jeopardy. U. S. CONST. amend. V; TEX. CONST. art. I, § 14.

2. **Phillip E. Bridwell v. State** 05-87-00197-CR 10/19/88
05-87-00198-CR 10/19/88
761 S.W.2d 401, aff'd, 804 S.W.2d 900 (Tex. Crim. App. 1991)

This case discussed whether the Texas Constitution provides any greater right against self-incrimination than does the United States Constitution. U. S. CONST. amend. V; TEX. CONST. art. I, § 10.

3. **E_ T_ J_ v. State** (dissent) 05-88-00390-CV 03/08/89
753 S.W.2d 487, dissent w/drawn & substituted, 766 S.W.2d 871, no writ

This case discussed a juvenile's right to effective assistance of counsel. U. S. CONST. amends. 6 & 14; TEX. CONST. art. I, § 10.

4. **Ronald G. Murk v. State** (dissent) 05-88-01100-CR 07/07/89
775 S.W.2d 415, rev'd, 815 S.W.2d 556

This case discussed how a constitutional definition should be read. TEX. CONST. art. V, § 12.

5. **Fred Russell Harris v. State** 05-88-01357-CR 12/07/89
783 S.W.2d 253, no pet.

This case held that if the State failed to prove an enhancement paragraph, it was precluded from establishing under the same primary offense that defendant was a habitual criminal. U. S. CONST. amend V; TEX. CONST. art. I, § 14.

6. **Julius Paul Hardie, II v. State** 05-88-01414-CR 02/09/90
787 S.W.2d 89, aff'd, 807 S.W.2d 319 (Tex. Crim. App. 1991)

This case held that defendant's invocation of his constitutional right to counsel could not be considered as evidence of guilt. U. S. CONST. amend. V; TEX. CONST. art. I, § 10.

7. **John Taylor Norris v. State** 05-88-01386-CR 02/26/90
788 S.W.2d 65, pet. ref'd

Discussed the constitutionality of the Texas outcry statute. Also discussed

whether admission of a chid's outcry statements violated defendant's right to confrontation. U. S. CONST. amends. 6 & 14; TEX. CONST. art. I, §§ 10 & 19.

8. **Dorothy Jean Miller-El v. State** 05-86-00955-CR 04/19/90
790 S.W.2d 351 (on remand), pet. ref'd

This case addressed Batson claims. U. S. CONST. amend. XIV.

9. **Henry Wayne Vann v. State** 05-89-00250-CR 04/19/90
788 S.W.2d 899, pet. ref'd

This case addressed Batson claims. U. S. CONST. amend. XIV.

10. **MJR's v. City of Dallas** 05-89-00765-CV 06/21/90
792 S.W.2d 569 (op. on reh'g), writ denied

This case discussed under the Texas Constitution city's right to enact zoning ordinances and whether the zoning ordinance at issue constituted a taking, violated the Equal Rights Amendment, and the Alcohol and Beverage Code preempted the city's zoning power. TEX. CONST. art. I, §§ 3a & 19; art. XI, § 5. It also discussed whether the zoning ordinance was overbroad under the United States Constitution.

11. **Emmanuel P. Rose v. State** 05-89-01040-CR 10/15/90
799 S.W.2d 381, no pet.

This case held that a request for production of a driver's license does not violate defendant's right against self-incrimination. U. S. CONST. amend. V; TEX. CONST. art. I, § 10.

12. **Russell Glen Thomas v. State** 05-90-00484-CR 05/07/91
812 S.W.2d 346, pet. ref'd

This case held that a prosecutor's comments concerning defendant's post-arrest silence violated due process. U. S. CONST. amends. V, VI, & XIV; TEX. CONST. art. I, § 10.

13. **James Roy v. State** 05-89-00793-CR 05/15/91
813 S.W.2d 532 (op. on reconsideration on PDR), pet. ref'd

This case discussed whether an assigned judge serving in the same capacity as an elected judge had jurisdiction to preside over the case. TEX. CONST. art. V, § 11.

14. **Paul Brent Dumas v. State** 05-90-00580-CR 06/04/91

812 S.W.2d 611, pet. ref'd

This case discussed whether the audio portion of a videotape containing defendant's invocation of his rights was admissible. U. S. CONST. amend. V; TEX. CONST. art. I, § 10.

15. **Thomas Dale Brown v. State** 05-90-00664-CR 07/25/91
814 S.W.2d 477, pet. ref'd

This case discussed defendant's constitutional right to remain silent. U. S. CONST. amend. V; TEX. CONST. art. I, § 10.

16. **Nethery v. State** 05-99-00239-CR 08/04/2000
29 S.W.3d 178, pet. ref'd

This case discussed double jeopardy and the right to effective assistance of counsel. U.S. CONST. amend. V & VI.

17. **Rocha v. State** 05-94-00839-CR 05/30/95
789 S.W.2d 789, no pet.

This case discussed whether state and federal equal protection provisions permit a defendant on deferred adjudication to appeal just as a defendant on "regular" probation can. U.S. CONST. amend. XIV; TEX. CONST. art. I, §§ 3, 3a.

18. **Webb v. State** 05-89-01022-CR 07/29/92
840 S.W.2d 543, no pet.

This case addressed Batson claims. U.S. CONST. amend. XIV.

19. **Fisher v. State** 05-91-00685-CR 07/21/92
05-91-00732-CR 07/21/92
839 S.W.2d 463, pet. ref'd

This case discussed whether separate trials for severed cases was barred by double jeopardy. U.S. CONST. amend. V; TEX. CONST. art. I, § 14.

20. **Barnes v. State** 05-91-01168-CR 08/24/92
05-91-01169-CR 08/24/92
839 S.W.2d 118, pet. ref'd

This case discussed whether double jeopardy barred prosecution for offense that was basis of extraneous offense testimony offered at prior trial. U.S. CONST. amend. V; TEX. CONST. art. I, § 14.

21. **Vaughn v. State** 05-91-00237-CR 05/05/92
833 S.W.2d 180, pet. ref'd

This case addressed whether the defendant voluntarily waived his rights under the Fifth Amendment and to have counsel present. U.S. CONST. V & VI.

22. **City of Garland v. The Dallas Morning News** 05-95-01350-CV 5/13/98
969 S.W.2d 548, affirmed 22 S.W.3d 351 (Tex. 2000)

This case discusses whether the trial court's failure to permit a jury trial on the amount of attorney's fees violates a party's right under the Texas Constitution to a jury trial in district court. TEX. CONST. art. 5, § 10.

23. **Trinity River Authority v. URS Consultants, Inc. Texas**
05-92-02807-CV 9/17/93
869 S.W.2d 367, affirmed 889 S.W.2d 259 (Tex. 1994)

This case discusses the constitutionality of a statute of repose applicable to architects and engineers. U. S. CONST. amend. XIV TEX. CONST. art. I, §§ 3, 19, 13, art. III, § 56.

24. **Dallas County District Attorney v. Doe** 05-97-0211-CV 5/11/98
05-98-00243-CV 969 S.W.2d 537 , no writ.

This case discusses whether the civil district court had the authority to declare a criminal statute constitutionally invalid.

17. **Public Office, Political Activities and Affiliations:**

(a) List chronologically any public offices you have held, federal, state or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or nominations for appointed office for which were not confirmed by a state or federal legislative body.

None

(b)

(c) 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

18. **Legal Career**: Please answer each part separately.

(a) Describe chronologically your law practice and legal experience after graduation from law school including:

(1) whether you served as clerk to a judge, and if so, the name for the judge, the court and dates of the period you were a clerk;

I did not clerk.

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

I did not practice alone.

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

May 1974 - January 1975
Clerk and Associate, Brewer & Price
1159 Cottonwood Valley, Suite 150
Irving, TX 75039
(972) 556-0902

February 1975 - December 1980
Partner, Power & Kinkeade Law Firm, Irving, Texas
Power and Associates
1311 W. Irving Blvd.
Irving, TX 75061-7330
(972) 259-1678

In 1981, I began service as a full-time judge.

1/1988 to present
State of Texas, Fifth District Court of Appeals
Justice
George L. Allen Sr. Courts Building
600 Commerce St., 2nd Floor

Dallas, Texas 75202

1991 to present
Texas Wesleyan School of Law
Adjunct Professor
1515 Commerce St.
Fort Worth, Texas 76102

9/1981 - 1/1988
194th District Court
Judge
Frank Crowley Courts Building
133 N. Industrial Blvd., 7th Floor
Dallas, Texas 75207

1/1981 to 8/1981
County of Dallas, Texas
Judge, County Criminal Court No. 10
Frank Crowley Courts Building
133 N. Industrial Blvd., 4th Floor
Dallas, Texas 75207

1976 to 1980
City of Irving, Texas
Part-Time Associate Municipal Judge
825 West Irving Blvd.
Irving, Texas 75061

(b) (1) Describe the general character of your law practice and indicate by date if and when its character has changed over the years.

General civil and criminal practice. I represented a large number of closely held businesses and acted as local counsel for several national corporations.

Our firm also had a large administrative practice in which I participated in consisting primarily of zoning and local government cases in the Dallas-Fort Worth metroplex area.

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

Our clients included Las Colinas Corp.; The Dallas Cowboys; Pettibone

Corp.; David McDavid Enterprises, including automobile sales and real estate acquisition; Irving Hospital; ACCO, a division of Anderson Clayton Foods; First National Bank of Irving; and Electronic Drilling Control, Inc.

I primarily acted as counsel for numerous closely held businesses, national corporations, and a bank. As an outgrowth of that practice, I had an active domestic relations and criminal practice.

(c) (1) Describe whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe each such variance, providing dates.

I appeared in court regularly on behalf of numerous business clients, and on behalf of clients in family and criminal courts.

(2) Indicate the percentage of these appearances in

(A)	federal courts;		Only in Bankruptcy court
(B)	state courts of record;	70%	
(C)	other courts.		30%

30% of the practice consisted of appearing on behalf of clients before various administrative municipal entities in one of the largest zoning and local government practices in the Dallas-Fort Worth metroplex area.

(3) Indicate the percentage of these appearances in:

(A)	civil proceedings;	65%
(B)	criminal proceedings.	35%

(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 practiced law since taking the bench January 1, 1981 and my practice prior to that time took me to many different jurisdictions in numerous cases. For these reasons my figures are very approximate. I tried about 80 cases to verdict or judgment. In about 2/3s of those I was the sole or chief counsel. I was associate counsel in the remaining 1/3.

(5) Indicate the percentage of these trials that were decided by a jury

20%

(d) Describe your practice, if any, before the United States Supreme Court. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the U.S. Supreme Court in connection with your practice.

I have not practiced before the United States Supreme Court.

(e) Describe legal services that you have provided to disadvantaged persons or on a *pro bono* basis, and list specific examples of such service and the amount of time devoted to each.

Lawyer for Dallas Baptist Association on an ad valorem tax case from 1977 to 1980 on a pro bono basis, in addition to pro bono work for numerous individual clients whose records are unavailable.

Coached boys baseball, basketball from 1988 to 2001.

Helped start a homeless shelter for parolees and their families, which now owns its own fifteen-unit apartment complex. Served on this organizational board from 1989 to 1995.

Trained my dog as a pet therapy dog and now travel with him to various local hospitals where physical therapists use him to help rehabilitate patients. January 2000 to present.

19. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, and for each provide the date of representation, the name of the court, 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. In addition, please provide the following:

(a) the citations, if the cases were reported, and the docket number and date if unreported;

(b) a detailed summary of the substance of each case outlining briefly the factual and legal issues involved;

(c) the party or parties whom you represented; and

(d) describe in detail the nature of your participation in the litigation and the final disposition of the case.

1. **Stoneback v. Cagle, No. C78-09783GF**

This case involved a suit by Stoneback to enforce a restrictive covenant in an employment agreement against my client, Cagle. The court held that the covenant was not reasonable either in time or scope. The case was important because it (1) was a forerunner to a series of Texas cases that defined and limited restrictive covenants in employment contracts in Texas, (2) involved numerous attempts by plaintiff's employees prior to the litigation to try to intimidate defendant from competing, and (3) helped end a monopoly in the business of specialty detailing of new and used cars in the metroplex area.

A hearing for a temporary restraining order was held October 12, 1978. This case was dismissed with prejudice on December 6, 1978 in 134th Judicial District Court by Judge Joe Burnett, Court of Appeals Fifth District at Dallas, George Allens, Sr. Courts Bldg.-2d floor, 600 Commerce, Dallas, Texas 75202, (214) 653-6054. I was the sole counsel in this case. The counsel for the opposing party was G. Robert Wileman, 5220 Spring Valley Rd., Ste. 520, Dallas, Texas 75240, (214) 490-1700.

2. **The City of Cedar Hill, Et al. v. Dallas Baptist Association, No. 80-8938-E**

This case involved an action by several taxing entities to collect ad valorem property taxes from a church camp near Dallas. The case also involved taxes large enough to force the selling or closing of this camp for young people and senior citizens. The law involved was unique because it involved the issue of religious worship exemption versus the state's right to tax church owned property that was allegedly not directly tied to religious worship. Numerous other taxing entities in Texas began similar actions against other church camps of various denominations and religions. I supervised this case for four years prior to the suit being filed. This included coordinating hearings before various local government bodies, securing exemptions for some years, monitoring legislative changes, and meeting with various attorneys throughout Texas involved in similar litigation for other religious organizations. The case was filed as I left to take the bench and was eventually settled using a proposal that portions of the camp were to be exempted and that vacant land would be taxed at a rate comparable to farmland. This was a proposal I helped formulate. This work involved over 500 hours of legal work, all pro bono. The importance of the case lay in the unique legal issues concerning the ad valorem taxation of church camps and because the only precedents were unfavorable to the camp's position.

A trial was held on October 5, 1983, and the case was settled on October 6, 1983, by an agreed judgment in the 101st Judicial District Court before Judge Craig Enoch, Court of Appeals Fifth District at Dallas, George Allens, Sr. Courts Bldg.-2d floor, 600 Commerce, Dallas, Texas 75202, (214) 653-6920. My co-counsel were Robert Edwin Davis and H. Campbell Zachary, 1717 Main St., Ste. 2800, Dallas, Texas 75201, (214) 939-5500. The counsel for the opposing parties were Lewis Sifford, 6300 Nations Bank Plaza, Dallas, Texas 75202, (214) 742-1200, representing the City of Cedar Hill and Henry J. Voegtle, III, former asst. dist. atty., 400 S. Zang St., Ste. 400, Dallas, Texas 75208, (214) 653-3600, representing John Childs.

3. **Randall Doran v. Western Cattle Mgmt. Co., Alan Weiss, & Harvey Schein, No. 10141C**

This case involved my client's veterinarian services on a herd of a highly specialized breed of cattle. Defendant contended that the cattle's offspring were dying in unusual numbers due to the doctor's improper care. We were able to introduce expert testimony to show that the breed had a history of calving problems due to the calves' unusually large heads, the

historic temperament of the breed, and the need for an attended birth. The case was successfully tried to verdict.

This case was tried in December 1975 in the 68th Judicial District Court before Judge Owen Giles (deceased). I was the sole counsel in this case. Counsel for the opposing party was Mike Aranson (deceased).

4. **Miller v. Grogan, No. 76-09042-UF**

Gail Miller sued my client, Don Grogan, to regain custody of their two boys, children from their previous marriage. Her two key witnesses were the children, ages ten and eleven, who testified that their father was unable to love them like their mother. As a defense, we simply showed that what children want is not always in their best interest The jury heard from witnesses that knew Don Grogan and his present wife intimately. The jury was shown the day-to-day lives of the two boys. The case was significant because the jury left the children with their father and because the children and their father grew closer after this trying time and established a long-term appropriate family bond.

This case was tried March 6-9, 1979, in the 302nd Judicial District Court before Judge Hollis Garmon (retired), PO Box 111, Greenville, Texas 75401, (903) 749-8505. I was chief counsel in this case. My co-counsel was Scottie H. Ashley, Jr., 800 Airport Frwy., Irving, Texas 75062, (214) 554-0929. Counsel for the opposing party was Richard Glaser, 2720 Fairmont St., Dallas, Texas 75201, (214) 871-7570.

5. **McDavid v. McDavid, No. 75-01984Y**

This was a divorce case property dispute involving real and personal property, and one of the largest marital estates in the jurisdiction at that time. I was in charge of preparing the witnesses and the case for trial.

This case was tried in September 1975 in Domestic Relations Court No. 4 before Judge Oswin Chrisman, 8401 N. Central Expwy., Ste. 610, Dallas, Texas 75225, (214) 999-0800. I was an associate counsel in this case. The chief counsel was Reid A. Rector,1000 Throckmorton St., Ft. Worth, Texas, 76102. His co-counsel in this case were Robert H. Power, 1311 W. Irving Blvd., Irving, Texas, 75061-7220, (972) 259-1678 and Scottie H. Ashley, Jr., 800 Airport Frwy., Irving, Texas 75062 (972) 554-0929. Counsel for the opposing party was Harvey M. Brants, 100 Main St., Ft. Worth, Texas 76102, (817) 338-1700.

6. **Estate of Geraldine Lewis, County Ct. No. 10,818,**

Dist. Ct. No. 79-423

This will contest involved my client contesting a new will that redivided the Lewis estate giving a disproportionate share to my client's brother. After a contested hearing over several days, the independent executorship of the brother was stopped and my client was appointed the estate's temporary administrator. This led to a settlement of the estate that involved my client receiving a fair distribution.

Numerous hearings took place in this case during July and August 1979. The hearings were held in the 235th Judicial District Court before Judge W. C. Boyd (retired), 401 Fulton St. Fredericksburg 78624, (512) 997-4954. I acted as chief counsel in this case until I took the bench on January 1, 1981. My co-counsel was Reid A. Rector, 1000 Throckmorton St., Ft. Worth, Texas, 76102, (817) 871-6266. Counsel for the opposing party was Richard S. Stark, 327 S. Dixon St., PO Box 656, Gainesville, Texas 76240, (817) 665-4333.

7. **State v. Tomberlin, No. F79-11041-RM**

This case involved felony theft of property from a construction site. The problem faced was that numerous items were taken from the site over a wide range of time and by a number of different persons. We were able to isolate the time when various items were reported stolen by the owner. We compared that with clear alibis for Roger Tomberlin during those times. We also showed that he had not assisted any of the other thieves. We were able to help locate those thieves and recover some of the property and/or assist the owner to obtain restitution. We also showed that the building materials alleged to have been taken by our client were "used" materials. The value of those materials was shown by an expert to only rise to the level of a class C misdemeanor. Considerable investigation that was believable to the district attorney and the owner of the property led to an eventual agreed reduction of the charge to the lowest possible misdemeanor charge, a class C misdemeanor, a traffic ticket level offense.

Mr. Tomberlin pleaded guilty to the misdemeanor offense on April 25, 1980, and received a $100 fine. This case was heard in the 194th Judicial District Court before Judge John Vance, 7738 LaManga Drive, Dallas, Texas 75248, (972) 387-0936. The prosecutor was asst. dist. atty. Rider Scott, 200 Crescent Ct., Dallas, Texas 75201 (214) 871-8294..

8. **State v. Monroe, No. 77-430, Smith County, Texas**

This case involved the felony possession of several pounds of marijuana.

Kirk Monroe, who lived behind the District Attorney of Smith County, was charged with growing numerous marijuana plants in the flower bed behind his home. The police pursuant to a search warrant conducted a search of the house and grounds with TV newspersons and cameras in tow. I conducted a pre-trial hearing and was able to uncover that the information from the confidential informant set out as the basis for the search warrant was false. Despite the video shown night after night on local television, this discovery and the fact that at the pre-trial hearing the State showed serious problems in linking defendant to the marijuana in the flower beds since other people had access to the flower beds led to the dismissal of all charges.

The key hearing was held in September 1976 before Judge Melton Mell (deceased). I acted as sole counsel in this case. Counsel for the opposing party was assistant district attorney Dan Hurst, 113 N. Spring St., Tyler, Texas 75702, (903) 595-1911.

9. **Pettibone Corp. v. W. P. Atkison Co., No. 76-6422F**

Pettibone sued Atkison for damages to a leased crane caused by the defendant. We were able to successfully defend the venue of the case. Atkison claimed several defenses including defects in the operating instructions, improper maintenance, and faulty construction of the crane. We were successful in our challenge to these defenses as not having been properly pleaded. The case was successfully tried to a verdict in September 1977. As plaintiff, we showed through the pre-trial discovery that the operator had lied about his qualifications and through expert testimony showed that the damage to the crane were due solely to operator error.

This case was tried in the 116th Judicial District Court before Judge James McCarthy (deceased). I was the sole counsel in this case. Counsel for the opposing party was John R. Brumbelow, 3535A S. Broadway Ave., Tyler, Texas 75701 (903) 561-4111.

10. **Winn v. Winn**
(Cause # unavailable from both the court and the law firm)

This was a post-divorce custody trial. Through discovery we uncovered that the custodial parent was growing marijuana at the home and using drugs in the home where the minor children resided. The court awarded my client custody of both minor children. The pretrial investigation and preparation along with the result made the case important.

This case was heard in August 1978 in the 16th Judicial District Court before Judge W. C. Boyd (deceased). I acted as chief counsel in this case. My co-counsel was Scottie H. Ashley, Jr., 800 Airport Frwy., Irving, Texas 75062, (972) 554-0929. Counsel for the opposing party was Mike Whitten, 218 N. Elm St., PO Box 1566, Denton, Texas 76201, (940) 383-1618.

20. **Criminal History**: State whether you have ever been convicted of a crime, within ten years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and disposition and describe the particulars of the offense.

None

21. **Party to Civil or Administrative Proceedings**: State whether you, or any business of which you are or were an officer, have ever been a party or otherwise involved as a party in any civil or administrative proceeding, within ten years of your nomination, that is reflected in a record available to the public. If so, please describe in detail the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings in which you were a guardian *ad litem*, stakeholder, or material witness.

Kathleen Spears v. The Fifth District Court of Appeals at Dallas, Texas, no. CV 93,00160 in the 345th District Court of Travis County, Texas, filed January 6, 1993. The Plaintiff non-suited me after about ninety days. The Plaintiff alleged she was mistreated after she reported that Justice Enoch had used her to perform personal and political chores. The case was resolved and a take nothing judgment was entered in June 1994.

My former law firms may have sued to collect attorney fees on several occasions.

Also a defendant I sent to prison filed a federal pro se writ of habeas corpus CA-81-2025 naming me as a defendant. The case was dismissed, because he had not exhausted his state remedies. I only learned of this case in 1992 when I was going through the FBI background search. As far as I remember, I was never notified of this case prior to 1992.

Breckenridge v. Weldon S. Copeland, et al - Civil Action No. 4:98:cv225. This pro se plaintiff sued several judges and five justices on the Court of Appeals for allegations involving actions by each in their official capacities as judges. Judge Paul Brown, United States District Judge for the Eastern District of Texas in Sherman dismissed with prejudice all the judges and justices. I was dismissed from the case on May 21, 1999.

Kevin Reid Althouse v. Roy Scott Kendall, et al., no. 3-03CV1125-H in the United States District Court, Northern District of Texas, Dallas Division, filed May 29, 2002. There

has been no service in this case. The Plaintiff alleges that I should not have allowed him to withdraw his appeal from his criminal conviction.

Wille'am Crawsforb' Bennett v. The State of Texas, et al., no. 3-02CV1227-M in the United States District Court, Northern District of Texas, Dallas Division, filed June 13, 2002. There has been no service in this case. The Plaintiff filed suit because the Fifth District Court of Appeals affirmed his criminal conviction.

22. **Potential Conflict of Interest**: 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 recuse myself in any case where my impartiality might reasonably be questioned, and in all instances, I will abide by the guidelines of the Judicial Code of Conduct.

23. **Outside Commitments During Court Service**: Do you have any plans, commitments, or arrangements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

Continue teaching Professional Responsibility as an Adjunct Professor of Law at Texas Wesleyan School of Law, if permission is granted by the Chief Justice of the Fifth Circuit Court of Appeals.

24. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding the nomination, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500. 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.

25. **Statement of Net Worth**: Complete and attach the financial net worth statement in detail. Add schedules as called for.

26. **Selection Process**: Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?

(a) If so, did it recommend your nomination? Yes

(b) Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.

Yes. A panel made up of former presidents of the State Bar, and other respected trial advocates throughout various parts of Texas, both rural and urban, review all judicial applications. The commission received the resumes of all applicants and invited only those approved for an interview. Interviews were conducted by the commission of several candidates about questions similar to those in the questionnaire. A few candidates were then recommended for an interview with Senators Phil Gramm and Kay Bailey Hutchison. That interview occurred in Washington, D.C. Subsequent to that interview, unknown to me, numerous individuals, were called to further check out my credentials. The Senators then called me back and they were going to recommend me to the President for a Federal Judgeship in the Northern District of Texas. I have interviewed with White House General Counsel's Staff and completed a White House questionnaire, F.B.I. questionnaire, Senate questionnaire, and was nominated by the President on July 18, 2002.

(c) 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 or seeking a commitment as to how you would rule on such case, issue, or question? If so, please explain fully.

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	20,	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			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 income and interest		
Doubtful			Real estate mortgages payable-add schedule	148,	000
Real estate owned-add schedule	575,	000	Chattel mortgages and other liens payable		
Real estate mortgages receivable			Other debts-itemize:		
Autos and other personal property	35,	000			
Cash value-life insurance					
Other assets itemize:					
			Total liabilities	148,	000
			Net Worth	482,	000
Total Assets	630,	000	Total liabilities and net worth	630,	000
CONTINGENT LIABILITIES	0		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					

ATTACHMENT to
Financial Statement: Net Worth

REAL PROPERTY OWNED (including mortgages):

1. Residence in Dallas County, Texas–value $130,000
   Mortgage $18,000
   Lending company: Homeside Lending, Inc.

2. Lot in Dallas County, Texas–value $30,000

3. Rental property (1) in Dallas County, Texas–value $150,000
   Mortgage $75,000
   Lending company: Bank of the West

4. Rental property (2) in Dallas County, Texas–value $50,000 (½ share in property)
   Owned by: Proctor-Kinkeade Partnership

5. Rental property (3) in Dallas County, Texas–value $55,000 (½ share in property)
   Owned by: Proctor-Kinkeade Partnership

6. Rental property (4) in Dallas County, Texas–value $90,000
   Mortgage $15,000
   Lending company: Midland Mortgage Company

7. Rental property (5) in Taos County, New Mexico–value $70,000 (1/3 share in property)
   Mortgage $40,000 (1/3 of total mortgage)
   Lending company: International 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. 101-111)

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
Kinkeade, James E.	TX-N	07/21/2002
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 07/19/2002 Initial Annual Final	**6. Reporting Period** 01/01/2001 to 06/30/2002
7. Chambers or Office Address 600 Commerce St 2nd Floor George Allen Bldg. Dallas, Texas 75202	**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	Adjunct Professor	Texas Wesleyan School of Law
2	Member	Rio Viga, LLC
3	Partner	Loop 12 Joint Venture

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

☐ NONE (No reportable agreements.)

	DATE	PARTIES AND TERMS
1	02/01/02	Teach Professional Responsibility at Texas Wesleyan Law School Summer and Fall of 2002
2	09/01/01	State of Texas Upon retirement I will receive a retirement benefit
3	01/01/30	County of Dallas Upon retirement at age 55 I will receive a retirement benefit

. 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)
2000	Court of Appeals 5th District of Texas at Dallas	$105,821.30
2001	Court of Appeals 5th District of Texas at Dallas	$105,450.33
2002	Court of Appeals 5th District of Texas at Dallas	$62,620.81
2001	County of Dallas	$3387.71

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Kinkeade, James E.	07/21/2002

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

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

	SOURCE (No such reportable reimbursements.)	DESCRIPTION
☐	NONE	
1	Exempt	
2		
3		
4		
5		
6		
7		

V. GIFTS

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

	SOURCE (No such reportable gifts.)	DESCRIPTION	VALUE
☐	NONE		
1	Exempt		
2			
3			

VI. LIABILITIES

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

	CREDITOR (No reportable liabilities.)	DESCRIPTION	VALUE CODE*
☐	NONE		
1	Bank of the West	Mortgage on Rental Property #1	L
	Midlanc Mortgage Co.	Mortgage on Rental Property #4	J
	International Bank	Mortgage on Rental Property #5	K

L 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: Kinkeade, James E.

Date of Report: 07/21/2002

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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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 Rental Property #1, Dallas County, Texas(1978 $25,000)	F	Rent	K	W	exempt				
2 Rental Property #2 P-K Dallas County, Texas(1985$15,975)	D	Rent	K	R	exempt				
3 Rental Property #3 P-K Dallas County, Texas (1979$30,000)	E	Rent	K	R	exempt				
4 Rental Property #4 Dallas County, Texas (1979 $30,000)	E	Rent	K	R	exempt				
5 Rental Property #5RioVigs Taos County,NM(2000 $40,000)	C	Rent	K	R	exempt				
6 Bank of America (Cash)	A	Interest	J	T	exempt				
7 Raw Land #1(Loop 12 Joint Venture) Dallas County, Texas		None	J	W	exempt				
8 Bank of the West (Cash)	A	Interest	K	T	exempt				
9 Texas State Retirement		None	P1	W	exempt				
10 Dallas County Retirement		None	L	W	exempt				
11									
12									
13									
14									
15									
16									
17									

eGain 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
el. 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: 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
el. 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

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

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Kinkeade, James I.	07/21/2002

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Kinkeade, James S.	07/21/2002

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	Partner	Proctor-Kinkeade Partnership
5	Trustee	Baylor Medical Center at Irving
6	Trustee	Baylor Healthcare System
7	Member	Board of Advocates of Baylor University School of Social Work

PART 3. NON-INVESTMENT INCOME (cont'd.)

Line	Date	Source and Type	Gross Income
5	2002	County of Dallas	$2396.24
6	2000	Texas Wesleyan School of Law	$20,000
7	2001	Texas Wesleyan School of Law	$12,000
8	2002	Texas Wesleyan School of Law	$10,000
9	2000	West Group	$6758.62
10	2001	West Group	$7846.34
11	2002	West Group	$11,166.92
12	2001	National Institute for Trial Advocacy	$1091.11
13	2002	National Institute for Trial Advocacy	$478.39
14	2001	County of Collin	$200
15	2000	Irving Independent School District	
16	2001	Irving Independent School District	
17	2002	Irving Independent School District	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Kinkeade, James E.	07/21/2002

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 Ed Kinkeade Date 7/21/2002

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

**QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY,
UNITED STATES SENATE**

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

   Linda Rae Reade
   Formerly known as Linda R. Clay

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

   United States District Court Judge for the Northern District of Iowa

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

   Polk County Courthouse
   500 Mulberry
   Des Moines, Iowa 50309
   (515) 286-3844

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

   February 1, 1948
   Sioux Falls, South Dakota

5. **Marital Status**: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please also indicate the number of dependent children.

   Not married. No dependent children

6. **Education**: List in reverse chronological order, listing most recent first, each college, law school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   Des Moines Area Community College, attended for my own enrichment and not as part of a degree program: Spanish-three semesters 1994-95; and photography-three semesters 1986 and 1999.

   Drake University Law School, attended 1974-1980, J.D. with Honors and Order of the Coif May 1980. (I attended part-time until 1978 and then went full-time). I took corporate taxation in 1981 after graduation for my own enrichment.

Iowa State University, attended 1970-1970, M.S. 1973.

Drake University, attended 1966-1970, B.A. 1970. I also took two semesters of accounting during 1973-74 for my own enrichment.

7. **Employment Record**: List in reverse chronological order, listing most recent first, all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

State of Iowa, Iowa Judicial Branch, State Capitol Building, Des Moines, Iowa 50309. Iowa District Court Judge, July 1993 to date.

Iowa Judges' Association, 521 E. Locust, Des Moines, Iowa 50309. Board of Directors, 1996-2000.

United States Department of Justice, East 1st and Locust, Des Moines, Iowa 50309. Assistant United States Attorney for the Southern District of Iowa, November 1986-July 1993. Chief of the General Criminal Division October 1990-July 1993.

Rosenberg, Rosenberg and Reade, 505 5th Avenue Ste. 1010, Des Moines, Iowa. Attorney (partner in the firm) January 1984-November 1986.

Iowa State Bar Review School, Inc., 521 E. Locust, Des Moines, Iowa 50309. Board of Directors, 1983-86; Treasurer 1984-86.

Friar, Friar and Reade, 1236 28th Place, West Des Moines, Iowa 50265 (my residence at the time), 1982-91. General Partner with 25% interest. My partners were my husband and his brother. The partnership owned a commercial building in Des Moines, Iowa.

League of Women Voters of Metropolitan Des Moines, no current address known, telephone number in phone book (515) 255-1453. Board of Directors 1982-87; President 1985-87; President-Elect 1984.

Rosenberg and Margulies, 505 5th Avenue Ste. 1010, Des Moines, Iowa 50309. Attorney (associate), December 1981-January 1984.

Brown, Winick, Graves, Donnelly & Baskerville, 2200 Ruan Center, Des Moines, Iowa 50309. Attorney (associate), July 1980-December 1981.

Brown, Winick, Graves, Donnelly & Baskerville, 200 Ruan Center, Des Moines, Iowa 50309. Law Clerk January 1980 to March 1980.

Rosenberg and Margulies, 505 5th Avenue Ste. 1010, Des Moines, Iowa. Law Clerk, January 1979 to November 1979.

State of Iowa, State Capitol Building, Des Moines, Iowa. Code indexer, August 1978 to October 1978.

Drake University Law School, 25th and University, Des Moines, Iowa 50311. Research Assistant for Professor Arthur Gaudio September 1978 to March 1979.

Starr Litigation Services, 1201 Grand Avenue, Des Moines, Iowa. Conducted telephone surveys to sample community opinions relating to issues involved in a case pending in West Virginia over one weekend (dates unknown).

Drake University, 25th and University, Des Moines, Iowa 50311. Assistant to the Dean of the Law School, July 1973-May 1978. Responsibilities: Administered and facilitated non-academic activities in the law school. Psychometrist January-June 1973. Responsibilities: Administered standardized and psychological tests. Assistant Director of Student Residences, July 1970-January 1973. Responsibilities: Administered housing for seven undergraduate residence halls and one married student complex, hired and trained residence hall staff, worked with student groups.

8. **Military Service**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge received.

Never served in the military

9. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Iowa Trial Lawyers Association, Judicial Achievement Award, 2001.

United States Department of Justice, United States Attorneys for the Northern and Southern Districts of Iowa, Enrique Camarena Certificate of Appreciation for contributions to Iowa's youth and families affected by substance abuse, 1999.

Iowa Corrections Association, "Outstanding Public Official", 1999.

Commendations from the Iowa Firemen's Association and the United States Bureau of Alcohol, Tobacco and Firearms for investigation and prosecuting

United States vs. Ryan, an arson in which two volunteer firefighters from West Burlington, Iowa were killed.

Commendations from the American Library Association, the University of New Mexico and Attorney General Richard Thornburg for investigation and prosecution of United States vs. Blumberg, an interstate transportation of stolen property case involving over twenty thousand rare books and documents stolen from libraries in forty-eight states, D.C. and Canada.

Commendation from the Executive Office of United States Attorneys, Washington, D.C. for superior performance in a managerial or supervisory role, 1993.

Order of the Coif, Drake University Law School, 1980.

Outstanding Drake Law School Graduate 1980, Iowa State Bar Association.

Managing Editor, Drake Law Review, 1979-80.

American Jurisprudence Award in Evidence, 1979.

10. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Iowa Judges' Association, 1993 to present. Board of Directors 1996-2000; Member of the Judicial Ethics & Conduct Committee 1993-95; Member of the Social Committee 1994-95; Member of the Judicial Education Committee 1995 to present and co-chair of the Judicial Education Committee 2001 to present.

Iowa State Bar Association, 1980 to present. Bench Bar Committee Co-chair 1998; Annual Meeting Committee 1998 to present; Jury Instruction Committee 1996 to present; Correctional Services Study Group, 2001; Criminal Law Section Council 1990-93.

Iowa State Bar Review School, Inc., Board of Directors, 1983-86. Treasurer 1984-86.

Polk County Bar Association, 1981 to present. Continuing Education Committee 1989.

Blackstone Inn of Court. Barrister 1989-92; Bencher 1992-96; Pupillage Group Leader several years.

C. Edwin Moore Inn of Court. Bencher 1999 to present. Counselor 2000 to

present; Pupillage Group Leader 1999 to present.

American Bar Association 1980-87, 1995, 2001 to present. Member of the Tort and Insurance Practice and Litigation Sections 1980-87; Judicial Division, National Conference of State Trial Judges 2001 to present.

Association of Trial Lawyers of Iowa, 1980-87. CLE Committee 1986.

Association of Trial Lawyers of America, 1982-87.

Iowa Supreme Court Committees: Advisory Committee on Judicial Branch Education, 2001 to present; Judicial Boundaries Working Group 1999; Advisory Committee on Rules 1995-97; Domestic Abuse Protective Order Registry Committee/Implementation Team 1996; Criminal Issues Committee on Equality in the Courts, 1994-96.

Iowa District Court, Fifth Judicial District: Quality Council. Chair 1995-97. Felony Court Process Improvement Team 1996-97; Polk County Drug Court Judge 1996-98; Youthful Offender Program Process Improvement Team Chair 1998.

11. **Bar and Court Admission**: List each state and court in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Iowa 6/13/80 to present.
United States District Court for the Southern District of Iowa 7/14/80 to present.
United States District Court for the Northern District of Iowa 12/31/80 to present.
United States Court of Appeals for Eighth Circuit 8/24/83 to present.
United States Supreme Court 7/29/83 to present.

12. **Memberships**: List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, charitable, or other organizations since graduation from college, other than those listed in response to Questions 10 or 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion - either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

Plymouth Congregational Church

YMCA

The Breakfast Exchange

League of Women Voters of Metropolitan Des Moines, Board of Directors 1982-87; President 1985-87; President-Elect 1984; Legislative Chairperson 1983; Speaker Bureau Chairperson 1982.

American Association of University Women, member 1985-87.

I do not think these organizations formerly discriminated or currently discriminate on the basis of race, sex or religion either through formal membership requirements or the practical implementation of membership policies.

13. **Published Writings**: List the titles, publishers, and dates of books, articles, reports, or other material you have written or edited, including material published on the Internet. Please supply four (4) copies of all published material to the Committee, unless the Committee has advised you that a copy has been obtained from another source. Also, please supply four (4) copies of all speeches delivered by you, in written or videotaped form over the past ten years, including the date and place where they were delivered, and readily available press reports about the speech.

Contributing Editor, Evidence in America: The Federal Rules in the States, a four-volume treatise on state rules of evidence published by the American Bar Association.

Case note: A Minimum of Thirty Days Notice and an Opportunity to be Heard Must be Given Prior to Termination of Worker's Compensation Benefits-Auxier vs. Woodward State Hospital-School (Iowa 1978) 27 Drake L.Rev. 736 (1977-78).

I have given many presentations on law topics to various groups over the years. I do not have copies of any of the presentations that I made.

- Indigent Defenders' Advocacy Course, November 2001. Initiated, planned and implemented a two-day course for attorneys who represent indigents in the Polk County criminal courts with Iowa Public Defender Tom Becker and Drake Legal Clinic Professor Robert Rigg.
- Iowa Judicial Institute, 2001 Topic: Legal Ethics
- Iowa Judicial Branch and National Judicial Education Program, 2001 Topic: Understanding Sexual Violence.

- Drake University Law School, each December 1995-2001, Topic: Case Law Update on Civil Procedure and Trial Practice. Taught trial advocacy Fall 1988 and Spring 1990.

- Emory Law School, Atlanta, Georgia, each May 1993-97, 1999-2001, Instructor for one week in Emory Trial Techniques program for second year law students.

- Iowa State Bar Association Annual Meeting, Topics: June 1988 understanding the federal sentencing guidelines; June 1991, June 1992, June 1993 federal criminal law updates; June 1999 participant in Fred Friendly Seminar on "The Judge as a Gatekeeper: Science and Technology in the Courtroom.

- Iowa State Bar Association, Young Lawyers Division. Topics: May 1994, 1995, 2000 and 2001 legal ethics; 1995 family law; August 1990, each August 1994-96 participant in Trial by Jury demonstration at the Iowa State Fair.

- Iowa State Bar Association Bench Bar Conference, Panel moderator 1998 and 2000. Master of ceremonies for the event, 2002.

- Judicial Nominating Commissioners Training Seminar, Topic: 1996, 1998, 2002. The responsibilities and challenges of being a district court judge.

- Iowa State Legislature Sentencing Commission, 1999, Topic: state sentencing practices.

- Iowa Institute for Public Leadership, State Government Leadership Panel, 1999.

- Iowa Academy of Trial Lawyers, Topics: 1997 ethical and tactical issues; 2001 trial techniques.

- Iowa Judges' Association Conference, Topics: June 1995 and June 1999 ethics for judges; June 1999 sex offenders.

- Polk County Bar Association, Topics: 1998, 1999, 2000, 2001 trial practice issues; 1997, 1998 ethics panel; December 2001 nuts and bolts for new attorneys. June 1994 opportunities in the law; December 1994 family law; March 1995 domestic abuse law.

- Iowa Law Enforcement Academy, Topics: March and May 1995 domestic abuse law; June 1995, commencement speaker for 145th Basic Level Training School.

- Iowa Organization of Women Attorneys, April 1995, Topic: domestic abuse law.

- Polk County Women Attorneys Association, Topics: April 1995 lawyers and the media; 1998 federal criminal discovery.

- Iowa Association of Legal Secretaries, March 1994, Topic: federal criminal law.

- Drake University Center for Public Service Attorneys, Trial Advocacy Institute, July 1994 trial advocacy.

- Iowa Prosecuting Attorneys' Association, Topics: 1989, 1992, 1994 criminal law, April 1991 trial advocacy; September 1994 trial process.

- North Dakota Prosecuting Attorneys' Seminar, 1993,Topic: arson investigation and prosecution.

- Kansas City Arson Task Force and the Missouri Division of Fire Safety Seminar, March 1992, Topic: arson investigation and prosecution.

- Iowa State University, Fire Service Institute, 1992, Topic: arson investigation and prosecution.

- Iowa Association of Arson Investigators Seminar, 1992, Topic: arson investigation and prosecution.

- United States Bureau of Alcohol, Tobacco and Firearms, Federal Law Enforcement Training Center, Glynco, Georgia, 1991, Topic: arson investigation and prosecution.

- United States Police Canine Association-United States Attorneys' Seminar, 1990, Topic: K-9 Search and Seizure.

- Iowa Association of Legal Administrators, September 1994, Topic: state and federal courts.

- Association of Trial Lawyers of Iowa, 1986, Topic: criminal law.

- Iowa Association of Legal Secretaries, 1994, Topic: federal courts.
- Lion's Club, March 1994, Topic: state court system.
- Appeared as a panel member on issues involving substance abuse on Iowa Public Television "Student Voices" in 1999.
- Interviewed about Polk County Drug Court on "Nightline" in 1998.
- Chaired several political forums in 1985-86, including the 1986 gubernatorial debate, which was televised statewide.

14. **Congressional Testimony**: List any occasion when you have testified before a committee or subcommittee of the Congress, including the name of the committee or subcommittee, the date of the testimony and a brief description of the substance of the testimony. In addition, please supply four (4) copies of any written statement submitted as testimony and the transcript of the testimony, if in your possession.

I have never testified before Congress.

15. **Health**: Describe the present state of your health and provide the date of your last physical examination.

My health is very good. My last physical examination was April 30, 2002. I have no health condition that would affect my ability to serve.

16. **Citations**: If you are or have been a judge, provide:

(1) a short summary and citations for the ten (10) most significant opinions you have written;

I am a state trial judge. Our opinions are not published:

State of Iowa vs. R.J. Reynolds, et. al., CL 71048, Iowa District Court for Polk County (August 26, 1997). The Iowa Attorney General, on behalf of the citizens of Iowa, sought compensatory damages, punitive damages, declaratory and injunctive relief and restitution against tobacco interests. The Attorney General claimed the State was damaged because it incurred and would continue to incur substantial costs to provide health care to citizens and employees who smoke cigarettes and suffer or will suffer from tobacco-related injuries, diseases and illnesses as a result of the conduct of tobacco companies. A motion to dismiss was filed. I sustained the motion to dismiss as to four counts of the eight-count

petition on the grounds the petition failed to state a claim on which relief can be granted. Affirmed on appeal: State of Iowa vs. Philip Morris, et. al., 577 N.W.2d 401 (Iowa 1998). (My opinion is marked Exhibit 16-1-1)

Michael P. McMurray et. al. vs. The City Council of the City of West Des Moines, Iowa, et. al, CL 83503, Iowa District Court for Polk County (April 4, 2001). Plaintiffs, two individuals and two shopping malls, filed suit against the City and City Council of West Des Moines, Iowa, asserting the City violated the Iowa urban renewal statute in financing certain improvements to the City's infrastructure to support the development of a retail shopping center. Defendants sought summary judgment, which was granted. I found there was no material issue of fact and that defendants were entitled to judgment as a matter of law because they had not violated any portion of the Iowa urban renewal statute, Iowa Code Chapter 403. Affirmed on appeal: 642 N.W.2d 273 (Iowa 2002), rehearing denied, 2002 Iowa Sup. LEXIS 58 (March 26, 2002). (My opinion is marked Exhibit 16-1-2)

Greenwood Manor, et. al. vs. Iowa Department of Public Health, State Health Facilities Council, ACCL 3312, Iowa District Court for Polk County (May 15, 2000). Petitioners, three nursing homes, sought judicial review of the State Health Facilities Council's decision to deny their Motion for a Contested Case Proceeding regarding Coralville Manor's application for a Certificate of Need. They contended the SHFC should have categorized the Certificate of Need hearing as a contested case proceeding, and its failure to grant their motion to that effect constituted an error of law. I found the Petitioners had no constitutional or statutory right to a contested case proceeding on the Certificate of Need. Affirmed on appeal: 641 N.W.2d 823 (Iowa 2002). (My opinion is marked Exhibit 16-1-3)

Jeffrey McCracken vs. Iowa Department of Human Services, AA 2897, Iowa District Court for Polk County (October 13, 1997). Petitioner contended the Iowa Department of Human Services' action in reopening a child abuse investigation was in excess of its authority under Iowa law. He also contended he was denied procedural due process. I rejected these arguments and affirmed the Iowa Department of Human Services. Affirmed on appeal: 595 N.W.2d 779 (Iowa 1999). (My opinion is marked Exhibit 16-1-4)

State of Iowa vs. Loren Glenn Huss, Jr., FECR 31984, Iowa District Court for Polk County (December 13, 2001). Defendant was charged with Murder in the First Degree in 1986. The County Attorney and defense counsel agreed to present stipulated evidence that demonstrated Defendant was insane at the time of the murder of his girlfriend. Judge Levin took the stipulation, did not find the defendant either guilty or not guilty and set the case for jury trial. A jury found defendant guilty of

murder in the first degree. On direct appeal and on habeas corpus review by the U.S. District Court, the conviction was affirmed. On appeal, the United States Court of Appeals for the Eighth Circuit reversed and remanded the case to the Iowa District Court for Polk County, Huss vs. Graves, 252 F.3d 952 (8th Cir. 2001). The case was assigned to me. I found Defendant not guilty by reason of insanity. (My opinion is marked Exhibit 16-1-5)

VanOort Construction Company, Inc., Jerry VanOort, Casey VanOort and Jeff Wangsness vs. Nuckoll's Concrete Service, Inc., CL 69558, Iowa District Court for Polk County (July 21, 1997). Plaintiffs sued Defendant for beach of contract, to wit, failure to make monthly payments pursuant to an Agreement and Covenant Not to Compete. Defendant asserted a counterclaim alleging a violation of the covenant not to compete. After a trial to the court, I dismissed the claims of Plaintiffs and entered judgment against the Plaintiffs on the counterclaim. Affirmed on appeal: 599 N.W.2d 684 (Iowa 1999). (My opinion is marked Exhibit 16-1-6)

ACCO Unlimted Corporation and Andrew Christenson vs. City of Johnston, CE 32833, Iowa District Court for Polk County (February 20, 1998). Plaintiff property owner and his corporate tenant sued the City following a condemnation of its property for flood control. ACCO Unlimited sought declaratory and injunctive relief, which I denied. Affirmed on appeal: 611 N.W.2d 506 (Iowa 2000). (My opinion is marked Exhibit 16-1-7)

Robert Carr, Elaine Gundacker and Richard Heidloff vs. Bankers Trust Company, Bryan H. Hall, Tom Smith, Davis and Hockenberg, Wine, Brown, Koehn & Shors, P.C. and David B. VanSickel, CL 108-59993, Iowa District Court for Polk County (August 16, 1994). One count of Plaintiffs' petition against defendants asserted a claim for defamation based on statements made in the local newspaper. I sustained Defendants' motion for summary judgment on the defamation claim. Affirmed on appeal: 546 N.W.2d 901 (Iowa 1996). (My opinion is marked Exhibit 16-1-8)

CUNA Mutual Insurance Society vs. Larry C. Matzke, CL 110-60725, Iowa District Court for Polk County (March 10, 1994). Plaintiff brought a declaratory judgment action to test coverage under disability provisions in a group insurance policy. I sustained Plaintiff's motion for summary judgment finding no coverage. Affirmed on appeal: 532 N.W.2d 759 (Iowa 1995). (My opinion is marked Exhibit 16-1-9)

Larry L. Bennett vs. Iowa Department of Natural Resources, AA 2691 Iowa District Court for Polk County (June 17, 1996). Upon appeal from a ruling of the Iowa Department of Natural Resources, I affirmed the

agency's declaratory ruling which found processing municipal solid waste by means of combustion does not constitute recycling under the environmental statutes and under applicable statutes, only the volume remaining after combustion can be counted in calculating how much waste has been recycled. Affirmed on appeal: 573 N.W.2d 25 (Iowa 1997). (My opinion is marked Exhibit 16-1-10)

(2) a short summary and citations for all rulings of yours that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court; and

State of Iowa ex. rel. Palmer vs. Unisys Corp., CL 068701, Iowa District Court for Polk County (April 17, 2000). Reversed: 637 N.W.2d 142 (Iowa 2001). The Iowa Supreme Court found I erred in granting summary judgment on the issue of whether Unisys Corp. could establish a claim for restitution against Lewin VHI on a theory of unjust enrichment.

IBP, Inc. vs. Harker, AA 3272, Iowa District Court for Polk County (October 11, 1999). Reversed and remanded: 633 N.W.2d 322 (Iowa 2001). In this appeal from a decision of the Industrial Commissioner, the Iowa Supreme Court found I erred in ordering the employer to pay for the employee's independent medical examination because the employee selected the treating physicians whose disability ratings were being challenged by the employee.

Anna Bradley vs. Iowa Department of Personnel, AA 2724, Iowa District Court for Polk County (April 8, 1997). Affirmed in part, reversed in part and remanded: 596 N.W.2d 526 (Iowa 1999). Plaintiff challenged the state agency's contract letting procedures in an administrative action. I found the State did not violate any statute, executive order or procedure in the manner in which computer training was procured. The Supreme Court agreed except in the case of the 1995 Department of Transportation training program. The case was remanded for further proceedings, including a determination of attorney's fees. On remand I found there was no legal authority for payment of attorneys' fees. The Iowa Court of Appeals affirmed: 2002 Iowa App. LEXIS 148.

Shine vs. Iowa Department of Human Services, AA 2935, Iowa District Court for Polk County (January 30, 1998). Reversed and remanded: 592 N.W.2d 684 (Iowa 1999). This was a case of first impression. My decision that the State could not obtain a set-off for delinquent child support against a Second Injury Fund award was reversed.

Iowa vs. Gary Dean White, FECR 115145, 114454, Iowa District Court for Polk County (plea taken May 18, 1998). Reversed and remanded: 587 N.W.2d 240 (Iowa 1998)(en banc)(dissenting Justices Harris, Carter,

Neuman and Chief Justice McGiverin). The Court found the plea of guilty was not knowingly made because the judges and defendant's counsel did not advise him there was a possibility that his sentences could be ordered to run consecutively. The dissenting justices found the defendant was adequately advised by me of the potential for consecutive sentences and urged setting another area of inquiry during the plea colloquy was not necessary.

David Nelson vs. Agro Globe Engineering, Inc., CL 67664, Iowa District Court for Polk County (September 4, 1996). Reversed and remanded: 578 N.W.2d 659 (Iowa 1998). David Nelson had a restrictive covenant in his employment agreement with Agro. After trial, I partially rewrote the restrictive covenant, finding the covenant was unreasonable and unenforceable as written. The Iowa Court of Appeals affirmed. The Iowa Supreme Court disagreed with me and the Iowa Court of Appeals, finding the covenant was not unreasonable as written and should not have been modified. While the case was on appeal, Nelson went to work for a competitor. On appeal, Agro sought injunctive relief. The Iowa Supreme Court remanded the case for determination whether Nelson's skills were unique and if so, whether Agro would suffer irreparable damage from the loss of his services.

City of Cedar Rapids vs. Board of Trustees of the Municipal Fire and Police Retirement System of Iowa, CL 67537,Iowa District Court for Polk County (June 27, 1996). Reversed and remanded: 572 N.W.2d 919 (Iowa 1998). On review from a decision of the Board of Trustees, I sustained a writ of certiorari sought by the City of Cedar Rapids to challenge the Board's finding that a police officer was entitled to "accidental" rather than "ordinary" disability retirement benefits. The Iowa Supreme Court disagreed finding substantial evidence to support the Board's ruling.

Smith Barney, Inc. and William Kirke vs. Robert B. Keeney and Barbara Keeney. CE 32652, Iowa District Court for Polk County (June 4, 1996) and Smith Barney, Inc. and William Kirke vs. Merry Lamond, CE 33100, Iowa District Court for Polk County (June 4, 1996). Reversed and remanded: 570 N.W.2d 75 (Iowa 1997). Defendants moved to compel arbitration pursuant to a customer agreement, which provided any controversies arising out of or relating to defendants' accounts would be settled by arbitration in accordance with the NASD, the New York Stock Exchange or the American Stock Exchange. Defendants elected to arbitrate before the NASD, which had a rule that no dispute or claim could be arbitrated before them if six years had elapsed from the occurrence giving rise to the claim or dispute. I held the court had the authority to decide whether the arbitration was time-barred. The Iowa Supreme Court disagreed finding NASD should make that decision.

Winnebago Industries vs. Brenda Smith, AA2415, Iowa District Court for Polk County (February 9, 1995). Appeal dismissed; reversed and remanded on cross appeal. 548 N.W.2d 582 (Iowa 1996). The Iowa Supreme Court held I erred in affirming the Iowa Industrial Commissioner's award following a remand from the district court. The Court found the remand gave the Commissioner authority to consider whether Claimant proved an entitlement to benefits for personal partial disability and not to modify (increase) other types of benefits.

Second Injury Fund of Iowa vs. Perry Nelson, AA 2248, Iowa District Court for Polk County (May 13, 1994). Affirmed in part and reversed in part, remanded, 544 N.W.2d 258 (Iowa 1995). I affirmed the Industrial Commissioner's award of permanent partial disability benefits against the employer and the Second Injury Fund. The Iowa Supreme Court reversed the judgment against the Second Injury Fund.

In re the Marriage of Deborah H. Plasencia and Raphael A. Plasencia, CD 86-48017, Iowa District Court for Polk County (May 20, 1994). Affirmed as modified: 541 N.W.2d 912 (Iowa Ct. App. 1995). The Court of Appeals affirmed the division of property in this dissolution action except for my treatment of potential causes of action arising from the husband's personal injury.

Robert Jeffrey White vs. J.O.Shaff, CL 77786, Iowa District Court for Polk County (April 25, 2000). Reversed and remanded: Iowa Court of Appeals, 2001 Iowa App. LEXIS 480. The Court of Appeals disagreed with my trial findings and conclusions in which I found plaintiff failed to prove defendant made fraudulent transfers, failed to prove a breach of fiduciary duty and failed to prove exceptional circumstances warranting a piercing of the corporate veil.

AT&T vs. Wheels, AA 2238, Iowa District Court for Polk County. Affirmed in part and reversed in part and remanded, Iowa Court of Appeals 5-042/93-394 in an unpublished decision. The Court of Appeals disagreed with my affirmance of a penalty against AT&T for unreasonably failing to pay worker's compensation benefits. All other portions of my decision were upheld. (The Iowa Court of Appeals Decision is Exhibit 16-2-1)

In re the Marriage of Jaya Bilgi and Aru Biligi, DM 79-46048, Iowa District Court for Polk County (May 27, 1994). Affirmed as Modified, Iowa Court of Appeals, No. 5-223/94-924. In this dissolution of marriage case, the Iowa Court of Appeals disagreed with the amount of the cash property award. (The Iowa Court of Appeals Decision is Exhibit 16-2-2)

State vs. Gary Banks, FECR 120907, Iowa District Court for Polk County (plea taken May 18, 1998). Reversed and remanded: Iowa Supreme

Court No. 98-1364 (October 12, 1999). The Court reversed and remanded finding no factual basis for the plea. (The Iowa Supreme Court decision is Exhibit 16-2-3)

In re the Marriage of Twyla Jean Niska and John R. Niska, Jr., CD 55796, Iowa District Court for Polk County (November 18, 1997). Affirmed as modified: No. 8-432/98-0044 (August 23, 1993). The Court of Appeals affirmed the child custody and economic provisions of the parties' dissolution decree except for the division of the proceeds from the sale of the parties' home. (The Iowa Court of Appeals Decision is Exhibit 16-2-4)

In re the Marriage of Dorothy Ann Woods and Robert William Woods, CD 079-46079, Iowa District Court for Polk County (February 25, 1994). Affirmed as modified: Iowa Court of Appeals, 5-137/94-424 (August 17, 1995). In this dissolution of marriage action, the Iowa Court of Appeals affirmed all economic provisions challenged, except for the date upon which the alimony awarded should cease. The Court also eliminated life insurance protection for the alimony payments. (The Iowa Court of Appeals Decision is Exhibit 16-2-5)

In the Interest of A.M., L.B., & M.B., Minor Children, JV 210573, 210574, 211570, Iowa Juvenile Court for Polk County (March 7, 2002). I terminated the parental rights of C.M. to all three of her children. By accident, I cited to the incorrect code section as a basis for my termination of her rights as to the child M.B. On appeal error was admitted as to the child M.B. M.B.'s case was dismissed by the Iowa Court of Appeals. The case was promptly refiled. (The Iowa Court of Appeals Order is Exhibit 16-2-6)

I think this is a complete list; however I am aware of no official compilations for me to verify my own records.

(3) a short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions.

In addition to the cases previously mentioned herein:

State of Iowa vs. Josette Amanda Williams, FECR 158872, Iowa District Court for Polk County (March 18, 2002). I overruled a motion to suppress statements made to police while in custody. (My ruling is Exhibit 16-3-1)

State of Iowa vs. Porsha Leshai Allen, FECR 158879, Iowa District Court for Polk County (January 29, 2002). I overruled a motion to suppress statements made to police while in custody. (My ruling is Exhibit 16-3-2)

State of Iowa vs. Michael Chatman, FECR 153784, Iowa District Court for Polk County (June 5, 2001). I overruled a motion to suppress identification of defendant. (My ruling is Exhibit 16-3-3).

State of Iowa vs. Justin Marshall Maschke, FECR 153162, Iowa District Court for Polk County (March 30, 2001). I overruled a motion to suppress statements made to police. (My ruling is Exhibit 16-3-4).

State of Iowa vs. Harold Tyrone Johnson, FECR 152718, Iowa District Court for Polk County (March 27, 2001). I overruled a motion to suppress statements made to police. (My ruling is Exhibit 16-3-5).

State of Iowa vs. Alman March Kenyon, FECR 145145, Iowa District Court for Polk County (July 16, 2000). I overruled a motion to suppress evidence seized in a consent search. (My ruling is Exhibit 16-3-6).

State of Iowa vs. Frank E. McDonald, FECR 150195, Iowa District Court for Polk County, (July 27, 2001). I overruled a motion to find Iowa Code section 321J.2 unconstitutional. The statute makes it a criminal offense to operate a motor vehicle while any amount of controlled substance is present in the person, as measured in the person's blood or urine. I overruled a motion to suppress statements made to law enforcement. I suppressed a blood sample taken by law enforcement because the State failed to prove the officers who took the sample had first established reasonable grounds to believe the defendant was under the influence of alcohol or drugs, as required in Iowa Code section 321J.6. (My ruling is Exhibit 16-3-7).

State of Iowa vs. Bobby Ray Bailey, FECR 153002, Iowa District Court for Polk County (October 24, 2001). I overruled a motion to suppress statements made to law enforcement. (My ruling is Exhibit 16-3-8)

Herbert Remer vs. David Shedlock, CE 56-28079, Iowa District Court for Polk County (January 12, 1995). I sustained an application for permanent injunction requiring defendant not to enter the residential and commercial property of plaintiff and overruled a motion to find defendant in contempt for allegedly trespassing on private property in violation of a preliminary injunction. Defendant argued the injunction would violate his First Amendment rights. (My ruling is Exhibit 16-3-9).

State of Iowa v. Donald Piper, FECR 146618, Iowa District Court for Polk County (March 4, 2002). I overruled a motion to dismiss criminal proceedings on double jeopardy grounds following the granting of a mistrial in a murder case. (My ruling is Exhibit 16-3-10).

If any of the opinions or rulings listed were in state court or were not officially reported, please provide copies of the opinions.

17. **Public Office, Political Activities and Affiliations**:

(1) List chronologically any public offices you have held, federal, state or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or nominations for appointed office for which were not confirmed by a state or federal legislative body.

Assistant United States Attorney for the Southern District of Iowa 1986-1993. I was appointed by United States Attorney General Ed Meese on request of United States Attorney for the Southern District of Iowa, Richard Turner.

(2) 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 worked on the primary campaign of Larry Pope who was elected to the Iowa House of Representatives in November 1978. I was involved with the campaign in May and June of 1978, prior to the primary election. I put up yard signs, helped with mailings and attended events with the candidate. I think I was referred to as the campaign manager during these few weeks.

As a teenager I belonged to Teenage Republicans. We put up signs, helped with mailings, etc. I did not have an official title. I do not remember the dates that I worked on these campaigns.

18. **Legal Career**: Please answer each part separately.

(1) Describe chronologically your law practice and legal experience after graduation from law school including:

(1) whether you served as clerk to a judge, and if so, the name for the judge, the court and 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 affiliated, and the nature of your affiliation with each.

Brown, Winick, Graves, Donnelly & Baskerville, 2200 Ruan Center, Des Moines, Iowa. Attorney (associate). July 1980-December 1981. Practiced federal and state civil law

Rosenberg and Margulies, 1010 Insurance Exchange Building, 505 5th Avenue, Des Moines, Iowa. Attorney (associate) December 981-January 1984. Practiced federal and state civil and criminal law.

Rosenberg, Rosenberg and Reade, 1010 Insurance Exchange Building, 505 5th Avenue, Des Moines, Iowa. Attorney (partner in the firm) January 1984-November 1986. Practiced federal and state civil and criminal law.

United States Department of Justice, Assistant United States Attorney for the Southern District of Iowa, Des Moines, Iowa, November 1986-July 1993. Chief of the General Criminal Division October 1990-July 1993. The first year in the office I practiced nearly exclusively in the bankruptcy court. Beginning in approximately 1987, I practiced exclusively in federal criminal law.

State of Iowa, Iowa District Court Judge, July 1993 to date. Employer's Address: Iowa Judicial Branch, State Capitol, Des Moines, Iowa 50309. I am a general jurisdiction judge.

(2) (1) Describe the general character of your law practice and indicate by date if and when its character has changed over the years.

When I practiced with the Brown firm, I did research for the partners on litigation, tax and business issues. I handled a case in Tax Court on excise tax. I assisted a partner in discovery and research on a civil case filed in Iowa District Court and removed to the United States District Court for the Southern District of Iowa.

When I joined Rosenberg and Margulies as an associate and when we formed Rosenberg Rosenberg and Reade, I engaged in a typical office practice for approximately half of the time and in civil and criminal litigation the balance of the time.

When I became an Assistant United States Attorney for the Southern District of Iowa I practiced for one year nearly exclusively in bankruptcy court. Approximately one year later I transferred to the criminal division of the office where I remained until I left the office in 1993.

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

When I practiced with the Brown firm our clients were typically businesses.

At the Rosenberg firm our clients were primarily individuals or small businesses.

While an Assistant United States Attorney I practiced exclusively in bankruptcy for approximately one year. Thereafter I practiced exclusively in federal criminal law. My client was the United States of America. In United States Bankruptcy Court I represented various agencies including the Internal Revenue Service, the Small Business Administration and Farmer's Home Administration. In United States District Court I prosecuted cases investigated by various federal agencies including the Federal Bureau of Investigation, Bureau of Alcohol Tobacco and Firearms, United States Department of Labor, United States Secret Service, the Internal Revenue Service, Immigration and Naturalization Service, United States Marshals Service, Department of Health and Human Services, United States Fish and Wildlife, United States Postal Service and the Drug Enforcement Administration.

(3) (1) Describe whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe each such variance, providing dates.

As an associate with the Brown Firm, 1980-81, I appeared in court on civil matters infrequently.

As an associate and partner with the Rosenberg firm, 1981-1986, I appeared frequently in court. I appeared more frequently in court during the 1984-86 period than in the earlier years.

While an Assistant United States Attorney I was in federal courts on a very frequent basis.

(2) Indicate the percentage of these appearances in

(1) federal courts;
(2) state courts of record;
(3) other courts.

While in practice with the Brown firm, I appeared only in state court.

While in practice with the Rosenberg firm, I appeared 50% in federal court and 50% in state courts.

As an Assistant United States Attorney, I appeared exclusively in federal courts.

(3) Indicate the percentage of these appearances in:

(1) civil proceedings;
(2) criminal proceedings.

While in practice with the Brown firm I appeared only in civil proceedings.

While in practice with the Rosenberg firm, I appeared equally in civil and criminal proceedings.

The first year I was an Assistant United States Attorney I appeared almost exclusively on civil matters. After the first year, I appeared exclusively on criminal matters.

(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.

While in practice with the Brown firm I did not try any cases.

While in practice with the Rosenberg firm I was associate counsel with Raymond Rosenberg on two civil cases tried to a jury in state court and one civil case tried to a jury in state court. I also served as associate counsel on three criminal cases in federal court to jury verdict and one criminal case in federal court to the court. I tried one civil case to the court as sole counsel.

As an Assistant United States Attorney, I tried approximately fourteen cases to verdict. I was always sole counsel.
This figure does not include contested sentencing hearings at which evidence was taken.

(5) Indicate the percentage of these trials that were decided by a jury.

While practicing with the Rosenberg firm about seventy percent of the cases I was involved in were decided by a jury.

Approximately ninety-three per cent of all of the cases I tried to verdict or judgment while an Assistant United States Attorney were decided by a jury.

(4) Describe your practice, if any, before the United States Supreme Court. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the U.S. Supreme Court in connection with your practice.

none

(5) Describe legal services that you have provided to disadvantaged persons or on a *pro bono* basis, and list specific examples of such service and the amount of time devoted to each.

While in the private practice of law I accepted court-appointments in federal court. I recall one court appointment to represent a man accused of arson and another to represent a man accused of interstate transportation of stolen property. When I was an Assistant United States Attorney we were not permitted to perform pro bono work. As a judge I am not able to perform pro bono work; however, in 2001 I initiated and helped conduct a training program for attorneys who contract with the State to provide legal services to the indigent in criminal cases. I am also a frequent presenter at legal and judicial education programs. I also serve as the co-chair of the Iowa Judges' Association Education Committee and on the Iowa Judicial Branch Education Committee. I have judged junior high, college and law school mock trial competitions. I have also volunteered my time over several years to teach second year law students for one week at the Emory Trial Techniques program in Atlanta, Georgia.

19. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, and for each provide the date of representation, the name of the court, 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. In addition, please provide the following:

(1) the citations, if the cases were reported, and the docket number and date if unreported;

(2) a detailed summary of the substance of each case outlining briefly the

factual and legal issues involved;

(3) the party or parties whom you represented; and

(4) describe in detail the nature of your participation in the litigation and the final disposition of the case.

U.S. vs. James Rasmussen, Docket No. 85-22, United States District Court for the Southern District of Iowa Central Division, Honorable William C. Stuart presided. Indicted April 8, 1985. Trial dates October 6-17, 1986. I and co-counsels Raymond Rosenberg, 505 5th Avenue Ste.1010, Des Moines, IA 50309 (515) 243-7600 and Burns Mossman, 700 Walnut, Des Moines, Iowa 50309, (515) 283-3168) represented the defendant. Assistant United States Attorney Richard Richards, U.S. Courthouse Annex, 110 E. Court, Des Moines, Iowa, (515) 284-6257 represented the United States. Our client, a bridge contractor, was charged with five counts of federal income tax evasion (26 U.S.C. § 7201). The government alleged defendant received and failed to report as income sums of money from a third party as kickbacks for the award of painting subcontracts. Defendant asserted the sums of money were not income, but rather loans from the third party. My primary role was to prepare the case for trial, assembling the documents, interviewing and preparing witnesses, and managing the exhibits during trial. Our client was acquitted.

Rita Coury vs. Robert Manning, Ray E. Tyler, Weitz Corp., Central National Bank and the City of Des Moines, et al., No.CL24716, Iowa District Court for Polk County, Honorable Ray Hanrahan presided. Petition filed September 29, 1981. Trial dates: April 10-17, 1984. I was plaintiff's counsel with Raymond Rosenberg, 505 5th Avenues Ste. 1010, Des Moines, IA 50309 (515) 243-7600. I did the majority of the discovery, case preparation and I examined witnesses at trial. Raymond Rosenberg was the primary counsel. The defendants against whom a judgment was obtained were Ray E. Tyler and Robert Manning. I think William Fanter or someone at Bradshaw, Fowler, Proctor and Fairgrave, 801 Grand, Des Moines, Iowa 50309 (515) 246-5821 represented Tyler. Theodore Duffield represented the truck driver, Mr. Manning. (Mr. Duffield had several strokes, no longer practices law and would be unable to respond to an inquiry.) Our client was run over while walking on a city sidewalk at a construction site under the control of the city when a dump truck backed up without warning, knocked her to the ground and ran over her legs. The jury compared fault and awarded damages to our client.

U.S. vs. Dale Lynn Ryan, No. CR91-71, United States District Court for the Southern District of Iowa, Honorable Harold D. Vietor presided. Ryan was indicted July 15, 1991. Trial dates: September 3-16, 1991. I was the Assistant United States Attorney for the Southern District of Iowa who represented the plaintiff. I did not have co-counsel. Keith Uhl, unlisted address, (515) 255-8082; T.K.Ford, Hoth Building #205, Burlington, Iowa 52601 (319) 753-2871 and

Michael Schilling, 205 Washington St. #200, Burlington, Iowa 52601 (319) 752-3641 represented defendant at trial. I worked with an informal task force of law enforcement agents for at least one year prior to the indictment preparing the case for the grand jury. I presented the evidence to the grand jury, participated in pretrial discovery, argued motions and tried the case to verdict before a jury. Defendant was charged and convicted of destroying a building used in interstate commerce resulting in the death of two public safety officers. (18 U.S.C. § 844(i)). Defendant ran a fitness center in West Burlington Iowa, owned by his father. The business was failing and eventually closed. On New Year's night the fitness center caught on fire. The first two firefighters who responded to the scene and entered the building to fight the fire apparently became lost in the building, ran out of air and died in the building. Defendant asserted the fire resulted from a cash register that caught on fire and that he had nothing to do with the fire. Using only circumstantial evidence, I proved the fire was an arson and that defendant set the fire. I argued the sentencing issues. I wrote the direct appeal brief and argued the case before the panel. 9 F.3d 660 (Iowa 1993)(panel decision). The panel decision was vacated and a rehearing and rehearing en banc were granted at which time the conviction and sentence were affirmed. 41 F.3rd 361 (1994). The conviction was subsequently vacated upon a finding the federal court had no jurisdiction because the fitness center was only being passively used in interstate commerce at the time of the arson. 227 F.3d 1058 (8th Cir. 2000).

U.S. vs. Stephen Carrie Blumberg, CR 190-63, United States District Court for the Southern District of Iowa, Honorable Harold D. Vietor presided. I was an Assistant United States Attorney for the Southern District of Iowa representing the plaintiff. I did not have a co-counsel. Raymond Rosenberg, 505 5th Avenue Ste. 1010, Des Moines, Iowa (515) 243-7600 represented defendant. His co-counsel was Don Nickerson who now works for Wellmark, 636 Grand Avenue, Des Moines, Iowa 50309 (515) 245-4744. I worked for at least two months prior to the indictment preparing the case for presentation to the grand jury. I presented the evidence to the grand jury. Defendant was indicted on June 8, 1990. I participated in pretrial discovery and argued motions. Trial was held January 23-31, 1991. I was trial counsel. Defendant was charged and convicted of conspiracy and transportation of stolen goods in interstate commerce, violations of 18 U.S.C. §§ 371, 2314, and 2315. Among the stolen goods were over 20,000 rare books and documents stolen from libraries throughout the United States and Canada. The books were recovered in defendant's residence in Ottumwa, Iowa after a confidential informant came forward and supplied sufficient verified information to obtain a search warrant on the residence. Defendant presented an insanity defense. Defendant was convicted on all counts. I argued the issues at sentencing. His conviction was affirmed on appeal. I wrote the brief and argued the case on appeal. Dean Stowers, 505 5th Avenue Ste. 1010, Des Moines, Iowa 50309 (515) 243-7600 represented defendant on appeal. Defendant's conviction was affirmed, 961 F.2d 787 (8th Cir. 1992).

U.S. vs. James Trainer and David Rittman, CR 88-91, United States District Court for the Southern District of Iowa, Honorable Charles R. Wolle presided. The indictment was returned August 18, 1988. The case was tried March 6-13, 1989. William Kutmus, 620 Fleming Building, Des Moines, Iowa 50309 (515) 288-3339 represented defendant Trainer. Don Nickerson who now works for Wellmark, 636 Grand Avenue, Des Moines, Iowa 50309 (515) 245-4744 represented defendant Rittman. I was an Assistant United States Attorney for the Southern District of Iowa representing the plaintiff. I did not have co-counsel. I investigated the case with the grand jury for about three months prior to presenting the evidence to the grand jury and securing an indictment. I participated in pretrial discovery and argued motions. I tried the case to a jury. Defendants were convicted of conspiracy to embezzle funds of an employee benefit plan and embezzlement of funds of an employee benefit plan. (18 U.S.C. §§ 371, 664). I argued the issues at sentencing. Defendants owned and operated Total Group Services which served as third-party administrator for numerous welfare plans for mid-sized Iowa corporations. TGS undertook to purchase stop-loss insurance on behalf of its clients and to process insurance claims. As such they were given access to welfare benefit bank accounts for their clients. Instead of paying out the employers' money for these legitimate purposes and as agreed, defendants converted the money to their own use. The defendants did not appeal.

U.S. vs. Jon Kneen, CR88-46, United States District Court for the Southern District of Iowa, Honorable Harold D. Vietor presiding. Date of Indictment March 7, 1988. The case was tried September 6-12, 1988. Donald Wine, 2300 Financial Center, 666 Walnut St., Des Moines, Iowa 515-288-2500 and Royal Martin, 321 S. Plymouth Ct. 10th Floor, Chicago, Illinois 60604 (312) 360-5000 represented the defendant. I was the Assistant United States Attorney for the Southern District of Iowa who represented the plaintiff. I did not have a co-counsel. For several months prior to the presentation to the grand jury I worked with the IRS agent who investigated the case. During this time we developed evidence that an Iowa lawyer had participated in the creation of some of the false documents used before the I.R.S. He was given immunity for his testimony. (His license to practice law was later suspended by the Iowa Supreme Court as a result of his conduct with Mr. Kneen.) I presented the case to the grand jury and secured an indictment. I participated in pretrial discovery and argued motions. I tried the case to a jury. Defendant was convicted of tax evasion 26 U.S.C. § 7201, filing a false partnership return 26 U.S.C. § 7206(1) and nine counts of making false statements to the Internal Revenue Service 18 U.S.§ 1001. I argued the sentencing issues and post-trial motions. On appeal the income tax evasion count was reversed. The false statement counts were affirmed. 888 F.2d 770 (8th Cir. 1989). I wrote the appeal brief but I did not argue the case on appeal because I was unavailable.

U.S. vs. Floyd Conner and Randall Bell, CR 88-115 and CR 88-114, United States District Court for the Southern District of Iowa, Honorable Harold D. Vietor presided. Date of indictment November 16, 1988. Dates of trial February 6-8, 1989. Robert Wright, Jr., 400 Locust, Des Moines, Iowa 50309 (515) 252-7578 represented Randall Bell at trial. Mark Godwin, now a City Attorney for Des Moines, 400 E.1st, Des Moines, Iowa 50309 (515) 283-4564 represented Floyd Conner at trial. I was an Assistant United States Attorney who represented the plaintiff at trial. I did not have a co-counsel. I worked on the case two months before I presented the evidence to the grand jury and obtained an indictment. I participated in pretrial discovery and argued motions. The evidence was that law enforcement apprehended defendants and took them out of their car at gunpoint. Both defendants were armed with firearms. Bell defended on the basis that the firearm had not traveled in interstate commerce. Connor stood on a general denial. I tried the case to a jury. Defendants were each convicted of being felons in possession of firearms, violations of 18 U.S.C. § 922(g). Floyd Conner did not appeal his conviction. Randall Bell's conviction was affirmed on appeal [United States v. Bell, No. 89-1386 (8th Cir. November 15, 1989)(unpublished per curiam)], but eventually the armed career criminal enhancement imposed on appeal was reversed. 970 F.2d 428 (Iowa 1992). I wrote the briefs and argued the cases on appeal.

U.S. vs. Lanny Leeper, CR90-3, United States District Court for the Southern District of Iowa, Honorable Charles L. Wolle presided. Date of Indictment March 22, 1990. Dates of trial: May 7-11, 1990. William Kutmus, 620 Fleming Building, Des Moines, Iowa 50309 (515) 288-3339 represented defendant at trial. I was an Assistant United States Attorney for the Southern District of Iowa representing the plaintiff. I did not have a co-counsel. I worked on the case over a couple months before I presented the evidence to the grand jury and secured an indictment. I participated in pretrial discovery and argued motions. I tried the case to a jury. Defendant was convicted of being a felon in possession of a firearm, a violation of 18 U.S.C. 922(g). I argued the sentencing issues. Residents of a Des Moines home alerted the police an armed man had fired shots into their home and fled in a blue truck. Des Moines police officers spotted the truck and observed the driver make an upward motion with his arm over the top of the truck cab. The police stopped the truck and arrested the defendant driver. A firearm was located in the street. Ballistic tests proved the shell casing from the house were fired by the gun recovered in the street. A gunshot residue test revealed Leeper had had physical contact with a recently fired gun. A palm print matching Leeper's palm print was found on the magazine of the recovered firearm. Judge Wolle found him to be an armed career criminal and imposed an enhanced sentence. Defendant appealed. Larry Scalise, 801 Grand Ave., Des Moines, Iowa 50309 (515) 244-3500 represented defendant on appeal. I wrote the brief and argued the case on appeal. The conviction and sentence were affirmed: 964 F.2d 751 (8th Cir. 1992).

United States vs. Douglas Cornelius, CR89-106, United States District Court for the Southern District of Iowa, Honorable Charles Wolle presided. Date of Indictment December 13, 1989. Date of trial April 2-5, 1990. Joseph Cahill, 1015 5th St., Nevada, Iowa 50201 (515) 382-6571 represented Defendant. I was an Assistant United States Attorney for the Southern District of Iowa representing the plaintiff. I did not have co-counsel. Prior to trial I investigated the case with law enforcement and presented the case to the grand jury. I participated in pretrial discovery and argued motions. I tried the case to a jury. Defendant was convicted of being a felon in possession of a firearm, a violation of 18 U.S.C. § 922(g). Defendant entered his former girlfriend's house late at night, without her permission and in possession of a sawed-offed shotgun after having made threats toward her earlier in the evening. At sentencing Judge Wolle found him to be a career offender but not an armed career criminal. The U.S. appealed. On appeal the conviction was affirmed but the sentence was reversed because Judge Wolle had not found defendant to be an armed career criminal. 931 F.2d 490 (8th Cir 1991). Subsequently Judge Wolle sentenced Defendant as an armed career criminal. The Eighth circuit remanded the case for sentencing because Judge Wolle refused to receive Defendant's evidence on the issue of the sentencing enhancement on remand. 968 F.2d 703 (8th Cir. 1992). After remand for resentencing Judge Wolle found Defendant was an armed career criminal, which was reversed on appeal because the guilty plea on one of the predicate offenses on which the armed career criminal enhancement was based was found to be faulty. 999 F.2d 1293 (8th Cir. 1993). I wrote the briefs on the first two appeals and argued the case on appeal two times.

United States vs Aristus Van Jung, Johan McGlown, Lewis Eason, Gregory Looney and Randy Whitfield, Nos. CR 90-94, CR 90-95, CR 90-129, United States District Court for the Southern District of Iowa, Honorable Harold D. Vietor presided. Jung, McGlown and Eason were indicted August 22, 1990 on charges of conspiracy, armed bank robbery and use of a firearm in the commission of a crime of violence, violations of 18 U.S.C. §§ 371, 2113(a) and (d) and 924(c). Jung and McGlown entered a federally insured bank, displayed firearms and robbed the bank. In the course of the robbery, a teller activated the alarm and another teller put a stack of money in the robbers' sack that had a dye pack in it. As the three left the bank one of the robbers dropped the sack of money and they were slowed down as they tried to retrieve the money. Police were able to apprehend the three and they were charged. A thorough investigation ensued. The FBI and Des Moines Police developed evidence that there were two other males who were participants in the robbery but did not enter the bank. Prior to trial the initial three defendants pled guilty and agreed to testify against the other two perpetrators. On December 11, 1990 Looney and Whitfield were indicted for the same bank robbery. They were tried March 11-13, 1991. Testimony of the cooperating defendants coupled with substantial circumstantial and corroborating evidence were presented at trial. Defendants presented an alibi defense claiming they were with Looney's mother at home at the time of the robbery. Shortly after arraignment, I had had the FBI investigate whether the mother was

at work at the day and time of the robbery and I was able to soundly impeach her trial testimony. Both defendants were convicted on all counts. I assisted the FBI in the investigation of these cases and presented the cases to the grand jury. I negotiated the plea agreements with three who pled. I participated in all pretrial discovery and motions and tried the two-defendant case to a jury. I did not have a co-counsel. I participated in the sentencing hearings on all five defendants and filed a motion for a reduction of sentence for Jung and McGlown. Counsel for defendants were: Alfredo Parrish and Andrew Dunn, 2910 Grand Avenue, Des Moines, Iowa 50312 (515) 284-5737 for Jung; Karla Fultz (now an Associate Juvenile Court Judge) Polk County Courthouse, 500 Mulberry, Des Moines, Iowa 50309, (515) 286-3756 for McGlown; Bruce Cook, 8554 Alice Avenue, Clive, Iowa 50325 (515) 278-6008 for Eason; John Schuster (deceased) for Looney and William Price (now an Associate District Court Judge) Polk County Courthouse, 500 Mulberry, Des Moines, Iowa 50309 (515) 286-3903 represented Whitfield.

20. **Criminal History**: State whether you have ever been convicted of a crime, within ten years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and disposition and describe the particulars of the offense.

No

21. **Party to Civil or Administrative Proceedings**: State whether you, or any business of which you are or were an officer, have ever been a party or otherwise involved as a party in any civil or administrative proceeding, within ten years of your nomination, that is reflected in a record available to the public. If so, please describe in detail the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings in which you were a guardian *ad litem*, stakeholder, or material witness.

Dissolution of Marriage: Linda R. Reade vs. Arthur C. Vogel, Iowa District Court for Polk County, CD 54844. Divorce granted May 30, 1997.

*Randy Whitfield v. Linda R. Reade, et. al., Docket No. 4:91-CV50218, U.S. District Court for the Southern District of Iowa. Defendant was convicted of bank robbery in March 1991. One month after the verdict, Whitfield filed this lawsuit. FBI Special Agent Oxler, also named as a defendant, was the case agent. The other named-Defendants in this civil suit were co-defendants. Two of them testified against him at trial. Whitfield claimed I sponsored perjured testimony in order to convict him. The Court dismissed the suit as frivolous.

*Tomas Rodriguez vs. Linda Reade, Docket No. 4-93-CV-70014, U.S. District Court for the Southern District of Iowa, Defendant was convicted of reentering the United States after having been deported. In 1992 he sued another

Assistant United States Attorney and me, his former wife, two federal probation officers, an INS agent and his defense attorney seeking money damages for allegedly wrongfully conspiring to prosecute, convict and sentence him. He claimed he was in the United States legally and INS stole his papers that showed he was legally in the United States. The Court dismissed the suit as frivolous. Affirmed on appeal 6 F.3d 784 (8th Cir. 1993).

*George Ornduff vs. Steven R. Hahn, et al., Docket No. 4:96-CV-40664, U.S.District Court for the Southern District of Iowa. Ornduff was indicted for obstruction of justice in 1992 and was unable to stand trial because he was found to have a mental disease that rendered him incompetent to stand trial. Ornduff was held at a federal medical facility in Minnesota and treated for mental illness. In 1996 he brought a claim against the United States Attorney for the Southern District of Iowa (Gene Shepard), another Assistant United States Attorney and I, as well as a bankruptcy judge (Russell Hill), his defense attorney, a deputy U.S. Marshal and many others accusing us of conspiracy to falsely imprison him. He brought an identical claim in the United States District Court for the District of Minnesota. The claims were dismissed in both districts for failure to state an actionable claim against any of the defendants. Dismissal affirmed on appeal 1997 U.S. App. Lexis 23880.

*George Ornduff v. George Williamson, et. al., Docket 4-98-CV 90323, U.S. District Court for the Southern District of Iowa. Ornduff was indicted for obstruction of justice in 1992 and was unable to stand trial because he was found to have a mental disease that rendered him incompetent to stand trial. Ornduff was held at a federal medical facility in Minnesota and treated for mental illness. In 1998 he brought a claim under the Federal Tort Claims Act against the United States Attorney for the Southern District of Iowa (Gene Shepard), another Assistant United States Attorney and I, as well as U.S. Bureau of Prisons personnel, court security officers, an FBI agent, a deputy U.S. Marshal and many others accusing us of violating his rights. The case was dismissed by the Clerk of Court on November 18, 1998, for failure to perfect service on the defendants.

**Roy D. Reha vs. Jack Bishop, et. al., No. 4-01-CV-10443, U.S. District Court for the Southern District of Iowa. Plaintiff Reha sued all the justices of the Iowa Supreme Court, the Judges of the Iowa Fifth Judicial District of Iowa, including me, the Iowa Attorney General and two named assistants, the State Treasurer, an Iowa Department of Transportation employee and many other city and county officials. The exact nature of plaintiff's complaint cannot be discerned from the complaint, which exceeds 80 pages. To my knowledge Mr. Reha never appeared in my court. The U.S. District Court dismissed the case on October 10, 2001 for failure to state a claim upon which relief can be granted

**Roy D. Reha vs. Gregory Dickel, et. al., No. 4-01-CV 10076, U.S. District Court for the Southern District of Iowa. Plaintiff Reha sued the Judges of the Fifth

Judicial District, including me, numerous city, state and Polk County officials and many others. The exact nature of the plaintiff's complaint cannot be discerned from the complaint, which is over 80 pages in length. To my knowledge Mr. Reha never appeared in my court. Dismissed May 23, 2001 for failure to state a claim upon which relief can be granted. The United States Court of Appeals for the Eighth Circuit affirmed the dismissal on January 14, 2002.

**Stephan M. Arleaux vs. Linda Reade, et. al., CL 66571, Iowa District Court for Polk County. Arleaux sued two other judges and me, the Iowa Attorney General and the Governor because he was displeased with rulings made in two state court actions relating to a domestic abuse case and a dissolution of marriage case. The Petition was dismissed against all defendants on March 25, 1996. The dismissal relating to claims against the judicial officers was for failure to state any act the judicial officers did outside their judicial duties, which would not be immune from suit.

*Suits brought by criminal defendants against me for alleged conduct while an Assistant United States Attorney.

**Suits brought against me in my capacity as an Iowa District Court Judge

22. **Potential Conflict of Interest**: 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 know of any categories of litigation or any financial arrangements that are likely to present a potential conflict of interest for me.

I will faithfully comply with the ethical rules set forth in the Code of Conduct for U.S. Judges and the advisory opinions issued there under.

23. **Outside Commitments During Court Service**: Do you have any plans, commitments, or arrangements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No

24. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding the nomination, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500. 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 see my financial disclosure report required by the Ethics in Government Act of 1978.

25. **Statement of Net Worth**: Complete and attach the financial net worth statement in detail. Add schedules as called for.

Please see the attached net worth statement.

26. **Selection Process**: Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination?

A committee of three lawyers was appointed by Senator Chuck Grassley to review credentials and interview potential candidates. I do not know if they recommended me to the Senator, but I assume they did.

(1) Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.

I was interviewed by a panel of three lawyers: Harlan ("Bud") Hockenberg; Joseph Gunderson and Wythe Wylie. These lawyers made recommendations to United States Senator Charles Grassley. I do not know what they recommended. I assume I was one of the persons they recommended. Senator Grassley in turn sent my name together with three others to President Bush. President Bush selected me after White House Counsel's staff interviewed me. I was formally nominated after the FBI conducted a background investigation of me and a representative of the United States Department of Justice interviewed me.

(2) 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 or seeking a commitment as to how you would rule on such case, issue, or question? If so, please explain fully.

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	34,000		Notes payable to banks-secured	
U.S. Government securities-add schedule	8,000		Notes payable to banks-unsecured	
Listed securities-add schedule	13,016		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 income and interest	
Doubtful			Real estate mortgages payable-add schedule	111,267
Real estate owned-add schedule	220,000		Chattel mortgages and other liens payable	3,188
Real estate mortgages receivable			Other debts-itemize:	
Autos and other personal property	175,000			
Cash value-life insurance				
Other assets itemize:				
TSP	119,183			
Deferred Comp Investments	2,351			
IRA	6,689		Total liabilities	114,455
			Net Worth	463,784
Total Assets	578,239		Total liabilities and net worth	578,239
CONTINGENT LIABILITIES			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							

SCHEDULES TO FINANCIAL STATEMENT

ASSETS

U.S. Government Securities	
U.S. Savings Bonds	$ 8,000
Real Estate Owned	
Personal Residence	$220, 000
Securities	
15 units IMIT Insured Muni Income Trust Series 14	$3565.95
Morgan Stanley Liquid Asset Fund	$ 169.73
111 Shares Cisco, Inc.	$1,465.20
100 Shares Medtronic, Inc.	$4,100.00
100 Shares MSDW American Opp. Fund	$2,461.87
300 Shares VanKampen Select Growth Fund	$1,254.00

LIABILITIES

Real Estate Mortgages	
Personal Residence	$111,267

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
Reade, Linda R.	District Court ND Iowa	06/27/2002
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge Nominee	**5. Report Type (check type)** X Nomination, Date 06/26/2002 Initial Annual Final	**6. Reporting Period** 01/01/2001 to 06/26/2002
7. Chambers or Office Address Polk County Courthouse 500 Mulberry Des Moines, Iowa 50309	**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
[ ]	**NONE** (No reportable agreements.)	
1	08/01/93	State of Iowa and me-Iowa Judicial Retirement Plan. The State will pay me retirement income when I am eligible to retire.
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)
[ ]	**NONE** (No reportable non-investment income.)		
1	6-26-02	State of Iowa wages calendar year to date	$49,205
2	6-26-02	Fees from performing weddings calendar year to date	$450
3	2001	State of Iowa wages	$97,210.10
4	2001	Drake University Law School-CLE lectures	$1500

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Reade, Linda R.	Date of Report 06/27/2002

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: Reade, Linda R.

Date of Report: 05/27/2002

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

exempt

A. Description of Assets (including trust assets) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period: (1) Amount Code (A-H)	B. Income during reporting period: (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period: (1) Value Code (J-P)	C. Gross value at end of reporting period: (2) Value Method Code (Q-W)	D. Transactions during reporting period: (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 Nest Bank Accounts	A	Interest	J	T					
2 Firstar Bank Accounts	B	Interest	K	T					
3 CSCO stock			J	T					
4 Medtronic Inc. stock	A	Dividend	J	T					
5 Morgan Stanley Liquid Asset Fund	A	Interest	J	T					
6 VanKampen Select Growth Fund			J	T					
7 Morgan Stanley American Opp. Fund B			J	T					
8 VanKampen Ins. Muni Inc Trust 14	A	Interest	J	T					
9 CGM Mutual Fund	A	Dividend	J	T					
10 US Savings Bonds			J	T					
11 Stock Index Fund-Valic			J	T					
12 Science & Technology Fund VALIC			J	T					
13 Putnam New Opportunity Fund			J	T					
14 Putnam Global Gr Fund			J	T					
15 American Cent Ultra Fund			J	T					
16									
17									

1 Inc/Gain Codes: A=$1,200 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-$100,000; G=$.00,201-$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
	Reade, Linda R.	06/27/2002

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Reade, Linda R.	06/27/2002

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	2001	Fees from performing weddings	$1000
6	2000	State of Iowa wages	$96,460
7	2000	Fees from performing weddings	$1000

ANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Reade, Linda R.	06/27/2002

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 Linda R. Reade Date June 27, 2002

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

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY, UNITED STATES SENATE

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

   Freda Linsenbaum Wolfson (nee Linsenbaum).

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

   United States District Court Judge, District of New Jersey.

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

   The Honorable Freda L. Wolfson, U.S.M.J.
   Clarkson S. Fisher United States Courthouse and Federal Building
   402 E. State Street, Room 6050
   Trenton, NJ 08625
   (609) 989-2040

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

   5/20/54; Vineland, New Jersey.

5. **Marital Status**: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please also indicate the number of dependent children.

   Married: 6/8/75

   Spouse: Douglas K. Wolfson, Esq.

   Occupation: 1/02-present:
   New Jersey Assistant Attorney General
   Director of Division of Law in the
   Department of Law & Public Safety
   Office of the New Jersey Attorney General
   Richard J. Hughes Justice Complex
   25 W. Market Street, P.O. Box 112
   Trenton, NJ 08625-0112

   Children: Two dependent children.

6. **Education**: List in reverse chronological order, listing most recent first, each college, law school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1976-1979: Rutgers University School of Law – Newark; J.D., Cum Laude, 1979.
1972-1976: Rutgers University – Douglass College; B.A., Magna Cum Laude, 1976.

7. **Employment Record**: List in reverse chronological order, listing most recent first, all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

5/86-present:
United States Magistrate Judge
United States District Court, District of New Jersey
Clarkson S. Fisher United States Courthouse and Federal Building
402 E. State Street
Trenton, NJ 08625
(609) 989-2040

2/81-5/86:
Litigation Associate
Clapp & Eisenberg (now dissolved)
One Newark Center
Newark, NJ 07102
Contact: William J. O'Shaughnessey, Esq., (973) 622-4444

9/79-2/81:
Litigation Associate
Lowenstein, Sandler, Kohl, Fisher & Boylan
65 Livingston Avenue
Roseland, NJ 07068
Contact: Richard D. Wilkinson, Esq., (973) 992-8700

1/79-6/79:
Teaching Assistant
Rutgers University School of Law — Newark
123 Washington Street
Newark, NJ 07102
(973) 353-5289

6/78-8/78:
Law Clerk
Sullivan & Cromwell
125 Broad Street
New York, NY 10004
(212) 558-4000

9/77-5/78:
Research Assistant
Rutgers University School of Law — Newark
123 Washington Street
Newark, NJ 07102
(973) 353-5289

6/77-8/77:
Law Clerk
Budd, Larner, Gross, Rosenbaum, Greenberg & Sade
150 J.F.K. Parkway
Short Hills, NJ 07078
(973) 379-4800

6/74-4/77:
Library Assistant
Rutgers University Math Library
Hill Center
110 Frelinghuysen Road
Piscataway, NJ 08854
(732) 445-3735

8. **Military Service**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge received.

None.

9. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Academic Achievements:

Rutgers University — Douglass College:

Magna Cum Laude

Phi Beta Kappa
Pi Sigma Alpha (Political Science Honor Society)
Eagleton Institute of Politics Undergraduate Fellow

Rutgers University School of Law — Newark:

Cum Laude
Rutgers Law Review: Editor, 1978-1979; Staff, 1977-1978
Philip J. Levin Scholar, 1976-1977
Teaching Assistant to former Prof. Steven Gifis, 1979
Research Assistant to former Prof. R. Jane Zuckerman, 1977-1978

Professional Honors:

Alumni Association of Rutgers University School of Law — Newark
Outstanding Alumnus Award, 2002

American Bar Foundation
Fellow

New Jersey Bar Association — Young Lawyers Division
Professional Achievement Award, 1986-1987

United States District Court, District of New Jersey
Certified Arbitrator, 1986

10. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Professional Organizations and Committees:

United States Court of Appeals for the Third Circuit:

Task Force for Indigent Litigants in Civil Cases, 1998-present

United States District Court, District of New Jersey:

Pro Se Committee:
Chair, 2000-present
Supervisor of Pro Se Law Clerks, 2000-present

EEO Committee:
Officer, Trenton Vicinage, 1999-present
Coordinator, 1992-1999
Member, 1992-present

District Committee on Long Range Budgetary Planning:
Member, 1998-2000

Historical Society:
Member, 2001-present

Supreme Court of New Jersey:

Committee on Masters and Hearing Officers, 1987-1988

Rutgers University School of Law — Newark:

Judges Advisory Committee

Bar Associations:

American Bar Association
Middlesex County Bar Association

11. **Bar and Court Admission**: List each state and court in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

State of New Jersey, 1979
United States District Court, District of New Jersey, 1979
United States Court of Appeals for the Third Circuit, 1984

12. **Memberships**: List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, charitable, or other organizations since graduation from college, other than those listed in response to Questions 10 or 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion - either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

Rutgers University School of Law — Newark, Alumni Association;
no discrimination known.

Anshe Emeth Memorial Temple, New Brunswick, NJ;
no discrimination known.

Nob Valley Swim Club, North Brunswick, NJ;
no discrimination known.

13. **Published Writings**: List the titles, publishers, and dates of books, articles, reports, or other material you have written or edited, including material published on the Internet. Please supply four (4) copies of all published material to the Committee, unless the Committee has advised you that a copy has been obtained from another source. Also, please supply four (4) copies of all speeches delivered by you, in written or videotaped form over the past ten years, including the date and place where they were delivered, and readily available press reports about the speech.

Published Writings:

Civil Procedure — Jurisdiction — *Shaffer v. Heitner* — If International Shoe Fits, Attach It, 31 Rutgers L. Rev. 308 (1978).

Digest of Selected Articles (Co-Author, Quarterly Column), 10 Real Est. L.J. 94, 171 (1981).

National Parks and Recreation Act of 1978 — Pine Barrens of New Jersey, 103 N.J.L.J. 135 (Feb. 15, 1979).

Removal and John Doe Defendants, 2 Fed. B.J. 4 (1986).

Professional Seminars: I have not delivered any recorded speeches, but I have participated in numerous professional seminars as a speaker or panelist.

Speaker:

Hispanic Bar Association of New Jersey Annual Conference in Puerto Rico
Amended Rules of Civil Procedure, 2001
Nuts and Bolts of Federal Practice, 2000

Mercer County Bar Association
Federal Discovery Practice and Rules of Civil Procedure, 1996

Middlesex County Bar Association, Women Lawyers Section
Becoming A Judge, 2000
The Role of the United States Magistrate, 1994

National Business Law Institute
Federal Court Rules and Procedure in New Jersey, 1998

New Jersey Institute of Continuing Legal Education
ADR Conference III — ADR Into the Millennium, 1999
Federal Practice Update, 1995

University of Medicine and Dentistry, New Jersey
Humanities at Lunch, 1991

Panelist:

Association of the Federal Bar of the State of New Jersey
Annual United States Judicial Conference for the District of New Jersey
26th Annual Conference, 2002
24th Annual Conference, 2000
22nd Annual Conference, 1998
21st Annual Conference, 1997
18th Annual Conference, 1994

ATLA-NJ Educational Foundation
Annual Boardwalk Seminar, Employment Law, Hottest Legal Issues, 2002
Annual Boardwalk Seminar, Employment Law, Evidentiary Issues, 2000

Essex County Bar Association
Practicing Before the Federal Magistrates, 2002

New Jersey Institute of Continuing Legal Education
Employment Law, 2001
Practice Before United States Magistrate Judges, 2000
Practice Before United States Magistrate Judges, 1999
ABCs of Federal Bar Practice, 1997
Attorney-Client Privilege and Work Product Doctrine, 1993
Attorney-Client Privilege and Work Product Doctrine, 1992

New Jersey State Bar Association, Young Lawyers Division
Discovery Practices, 1987

Princeton Bar Association
Discovery Practices, 1996

14. **Congressional Testimony**: List any occasion when you have testified before a committee or subcommittee of the Congress, including the name of the committee or subcommittee, the date of the testimony and a brief description of the substance of the testimony. In addition, please supply four (4) copies of any written statement submitted as testimony and the transcript of the testimony, if in your possession.

None.

15. **Health**: Describe the present state of your health and provide the date of your last physical examination.

Excellent health; last physical examination 5/16/02.

16. **Citations**: If you are or have been a judge, provide:

(a) a short summary and citations for the ten (10) most significant opinions you have written;

(1) **Figueroa v. Blackburn**, 39 F. Supp. 2d 479 (D.N.J. 1999), aff'd, 208 F.3d 435 (3d Cir. 2000).

In this civil rights case, plaintiff filed suit against a state municipal court judge, seeking damages arising from a contempt citation. Defendant judge moved for summary judgment on the grounds of absolute judicial immunity. I granted defendant's motion, holding that: (1) the doctrine of absolute judicial immunity applied not only to courts of general jurisdiction, but also to those of limited jurisdiction, such as municipal courts; (2) defendant was acting in her judicial capacity when she cited plaintiff for contempt of court, even though she failed to afford plaintiff a mandatory five-day stay of his jail sentence; (3) defendant did not issue the contempt order in the complete absence of all jurisdiction; and (4) defendant therefore had absolute immunity from suit.

(2) **Larison v. City of Trenton**, 180 F.R.D. 261 (D.N.J. 1998).

In this civil rights litigation, plaintiff filed suit against defendant city and others for civil rights violations which allegedly occurred during his arrest. Based upon allegations that police officers had intentionally destroyed videotapes showing they had beaten him in his jail cell, plaintiff moved for leave to amend his complaint to add tort claims for negligent and intentional spoliation of evidence. Plaintiff also sought to add a due process claim based upon an alleged delay in bringing him before a municipal court judge. I granted plaintiff's motion in part and denied it in part, holding that: (1) even if New Jersey recognized a tort for intentional spoliation of evidence, plaintiff had failed to allege facts sufficient to establish a prima facie case; (2) New Jersey did not recognize the tort of negligent spoliation; and (3) plaintiff had

adequately alleged a due process claim for unreasonable delay.

(3) **Princeton Biochemicals, Inc. v. Beckman Instruments, Inc.**, 180 F.R.D. 254 (D.N.J. 1997).

In this patent infringement case, plaintiff sued defendant competitor alleging that defendant's capillary electrophoresis apparatus incorporated a patented invention. Defendant moved to bifurcate trial and discovery on the issues of liability and damages/willful infringement. I granted defendant's motion, holding that bifurcation of trial into liability and damages phases was appropriate because both issues were complex, there was no significant overlap of issues, and the issue of willfulness would be more appropriately determined after liability had been established.

(4) **Excelsior Ins. Co. v. Pennsbury Pain Ctr.**, 975 F. Supp. 342 (D.N.J. 1996), order modified, Civ. A. No. 94-2279 (CSF), 1996 U.S. Dist. LEXIS 21542 (D.N.J. Nov. 19, 1996), reconsideration and certif. denied, 1997 U.S. Dist. LEXIS 14337 (D.N.J. Jan. 31, 1997).

In this property damage litigation, third-party defendant insurer sought to set aside a settlement agreement entered into by defendant/third-party plaintiff insured and plaintiff insurance company to settle plaintiff's claim for damages for a fire that started in the insured's office suite. During the pendency of hearings for court approval of the settlement pursuant to Griggs v. Bertram, 88 N.J. 347, 443 A.2d 163 (1982), the insured notified the Court and the other parties that it had filed for Chapter 11 bankruptcy prior to the commencement of the hearings. The bankruptcy was subsequently approved. I denied the insurer's motion to set aside the settlement agreement, holding that: (1) the agreement was enforceable despite its lack of the insured's signature, because both parties intended to reach the agreement; (2) the Griggs proceedings were valid even though they took place after the imposition of the bankruptcy law automatic stay of proceedings; (3) the insurance proceeds from the insured's policy would not be considered property of the bankruptcy estate, as the rights to the proceeds were assigned from the insured to plaintiff by way of their settlement agreement; (4) the fact that Court approval of the settlement had not been obtained at time the insured filed its bankruptcy petition did not mean that the settlement agreement was an executory contract that was deemed rejected. In conclusion, I found that the settlement was reasonable and entered in good faith, and thus, under Griggs, enforceable against the insurer, who had refused to defend the insured against plaintiff's claims.

(5) **Ciba-Geigy Corp. v. Sandoz Ltd.**, 916 F. Supp. 404 (D.N.J. 1995).

In this environmental litigation, defendants moved for a protective order to compel plaintiff to return copies of a 23-page privileged document which defense counsel had inadvertently disclosed, without conducting any privilege review, by producing multiple copies on two separate occasions and designating it as a deposition exhibit. The document was produced in relatively small productions which were under no time constraints. I denied defendants' motion, holding that defendants had waived the attorney-client privilege as to the document by inadvertently producing it under circumstances evincing an absence of reasonable precautions to preserve its confidentiality.

(6) **McDonnell v. United States**, 870 F. Supp. 576 (D.N.J. 1994).

In this Freedom of Information Act (FOIA) suit for disclosure of information withheld by the government concerning a 1934 fire aboard a luxury ocean liner, plaintiff author filed a motion for attorney's fees incurred. I granted plaintiff's motion, holding that: (1) plaintiff's success in obtaining a number of documents from the government regarding the maritime disaster was significant enough to support a recovery of attorney's fees; (2) the litigation was reasonably necessary for plaintiff to obtain the withheld documents; (3) plaintiff would not have obtained those documents had he not filed a FOIA complaint; and (4) his attorney's incomplete success required that the fee award be reduced.

(7) **Ziemann v. Burlington County Bridge Comm'n**, 155 F.R.D. 497 (D.N.J. 1994).

In this sexual harassment suit for damages for mental distress and suffering, defendant employer moved to compel plaintiff's psychiatric and psychological evaluations, to compel the release of certain medical and counseling records of plaintiff, and for fees and expenses on the motion. Plaintiff cross-moved for protective order. I granted defendant's motion in part, denied it in part, and denied plaintiff's cross-motion, holding that: (1) given a recent substantial development in plaintiff's mental condition, plaintiff would be required to undergo further psychiatric and psychological evaluations by defense experts; (2) although federal law did not recognize a marriage counselor privilege, communications resulting from a marriage counselor relationship should receive protection as an outgrowth of the psychotherapist-patient privilege; (3) plaintiff would be compelled to disclose an unredacted version of her records from her counseling program because she had waived any attorney-client privilege as to those documents by revealing her attorney-client communications to her treating physician, who was not operating as an agent of her attorney; and (4) defendants were not entitled to an award of reasonable expenses incurred on the motion.

(8) **Clement v. Consolidated Rail Corp.**, 130 F.R.D. 530 (D.N.J. 1990).

In this case, plaintiff, the representative of a decedent driver's estate, brought an action against the decedent's employer, railroad, and truck chassis owner to recover for decedent's death which resulted during the course of his job duties from a collision between his vehicle and a truck chassis. Plaintiff filed a motion in limine to preclude admission of evidence of decedent's use or consumption of alcohol or controlled dangerous substances. I granted plaintiff's motion, holding that: (1) evidence of decedent's use of alcohol, his .051 blood-alcohol level (below the level of legal intoxication in New Jersey), and his violation of company safety rules against alcohol use was inadmissible on the issue of liability because the prejudice of such evidence outweighed its probative value, as there was insufficient evidence of an unfitness to drive; and (2) evidence of decedent's consumption of alcohol and occasional drug use was inadmissible on the issue of future earnings capacity, even if such evidence demonstrated unfavorable character traits.

(9) **Nestle Foods Corp. v. Aetna Casualty & Surety Co.**, 135 F.R.D. 101 (D.N.J. 1990)

In this declaratory judgment action against defendant insurers which issued comprehensive general liability policies, for a determination of coverage for environmental property damage caused by plaintiff insured, plaintiff moved to compel discovery concerning policy drafting history and materials relating to other insureds, and one of the defendants cross-moved for expedited discovery on the applicable choice of law. I granted plaintiff's motion in part, denied it in part, and denied defendant's cross-motion, holding that: (1) the drafting history of the operative policy language was discoverable, so that plaintiff could explore the etiology of the language and the intent of its drafters; (2) the ten earliest and ten most recent underwriting files concerning the environmental pollution claims of other insureds were discoverable, since they might show that identical language had been afforded various interpretations by defendant; (3) some information concerning defendants' knowledge of contamination at the subject landfill was discoverable; (4) defendants' evaluation of environmental risks was not relevant, as it was not reasonably calculated to lead to admissible evidence; (5) defendants' deposition and trial witness lists from other actions were discoverable; (6) inter-insurer communications were not discoverable, as plaintiff failed to detail the relevance of such information; (7) plaintiff's contention interrogatories seeking information on various coverage defenses asserted by defendants in the past were premature; and (8) defendant was not entitled to expedited discovery on the choice-of-law issue.

(10) **Palmer v. Merluzzi**, 689 F. Supp. 400 (D.N.J. 1988), aff'd, 868 F.2d 90 (3d Cir. 1989).

In this civil rights suit by plaintiff high school student who was suspended from participating in extracurricular events for 60 days for smoking marijuana and drinking beer on school property, defendant school officials moved for summary judgment. I recommended that defendants' motion be granted, finding that: (1) under New Jersey law, plaintiff's interest in participating in extracurricular activities did not rise to the level of a property interest protected by procedural due process under the Fourteenth Amendment; (2) the 60-day extracurricular suspension imposed did not violate school regulations or due process rights; (3) plaintiff's liberty interest in his good name, reputation, honor, and integrity was not impaired by a description of the incident in his permanent school record; and (4) the suspension did not violate plaintiff's right to equal protection, as the school's drug policy enforced a legitimate goal and all students involved in the incident received the same punishment. My Report and Recommendation was adopted by the District Court Judge, who granted defendants' motion.

(b) a short summary and citations for all rulings of yours that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court;

(1) **Martin v. Mennen Co.**, 63 Fair Empl. Prac. Cas. (BNA) 1522, (D.N.J. 1989), vacated without reported opinion, 898 F.2d 141 (3d Cir.), cert. denied, 497 U.S. 1004 (1990).

In this age discrimination suit, plaintiff claimed that he had been wrongfully denied a job position upgrade because of his age. I granted defendants' motion for summary judgment, holding that plaintiff had failed to make a prima facie showing of age discrimination under the Age Discrimination in Employment Act, 29 U.S.C. § 623, because he failed to establish that non-members of the protected class who were treated more favorably had held positions comparable to his own. My decision was vacated on appeal. Despite my best efforts, I have not been able to locate a copy of the appellate opinion.

(c) a short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions.

(1) **Heritage Minerals, Inc. v. U.S.A.,**

Civ. No. 99-83 (MLC), slip op. (D.N.J. Oct. 23, 2000).

In this environmental litigation, plaintiffs moved for leave to file an amended complaint to assert claims against certain defendants, including the New Jersey Department of Environmental Protection (NJDEP), under the Comprehensive Environmental Response Control and Liability Act (CERCLA). NJDEP opposed the motion, arguing that plaintiffs' proposed CERCLA claims were futile because the Eleventh Amendment barred plaintiffs from suing the State. I denied plaintiffs' motion, holding that: (1) CERCLA did not abrogate NJDEP's Eleventh Amendment immunity, because CERCLA did not authorize a citizen's suit against a state for alleged failure to administer a CERCLA remedy; and (2) plaintiffs would not be permitted to characterize NJDEP as a de facto federal officer, as a means of circumventing its Eleventh Amendment immunity.

(2) **Garwood v. Borough of Allentown,**

Civ. No. 94-2995 (AET), slip op. (D.N.J. Jan. 26, 1995).

In this civil rights litigation, plaintiff, a former police officer, filed suit against defendant municipality and several of its officials, alleging that his constitutional rights had been violated because he was arbitrarily and capriciously prosecuted and discharged for having someone other than himself answer questions on a psychological test. Plaintiff moved for leave to file an amended complaint to clarify his constitutional invasion of privacy claim, based upon allegations that defendants had compelled plaintiff's ex-wife to sign an affidavit containing confidential communications made between her and plaintiff while they were married. I denied plaintiff's motion, holding that: (1) while the marital communications privilege affects issues of admissibility, there was no similar constitutional provision which extended this principle into a general right of privacy for a spouse whose marital communication is disclosed; (2) plaintiff could not recover damages from defendants or his ex-wife for disclosing a marital communication; and (3) there was no constitutional right to privacy which protected a marital communication.

(3) **The Public Watchdog v. Florio,**

Civ. No. 93-4603 (GEB), Rep. & Rec. (D.N.J. Sept. 19, 1994).

In this civil rights suit against a number of state entities, plaintiffs claimed that New Jersey's statutory scheme governing the assessment of penalty

points and surcharges and the suspension of drivers' licenses for traffic violation convictions was unconstitutional because it violated their substantive and procedural due process rights. Defendants moved for summary judgment. I recommended that defendants' motion be granted, finding that: (1) the rational basis test would apply in determining whether the State's penalty point scheme violated plaintiffs' substantive due process rights, as neither a suspect classification nor a fundamental right was implicated by the State's system; (2) the State's point system passed the rational basis test, as it was reasonably related to legitimate state interests; (3) the State's system did not violate procedural due process; (4) the State's system did not deny plaintiffs their "right to travel" under the Due Process and Equal Protection Clauses; and (5) the imposition of points and penalties under the state scheme did not violate the Double Jeopardy Clause. My Report and Recommendation was adopted by the District Court Judge, who granted defendants' motion.

(4) **Hill v. Beyer**,

Civ. No. 89-323 (GEB), Rep. & Rec. (D.N.J. Aug. 27, 1993).

In this post-conviction relief matter, petitioner filed for a writ of habeas corpus claiming that he had not been properly advised of his constitutional rights to be free from compulsory self-incrimination, to a jury trial, and to confront his accusers, and that he therefore had not knowingly and voluntarily entered his guilty plea to felony murder, which resulted in a life sentence. Upon hearing petitioner's and his former defense attorney's testimony, I recommended that the petition be granted, finding that petitioner had sustained his burden of proving that his guilty plea was not knowingly and voluntarily made because: (1) he had only ten years of schooling and a seventh-grade-level reading ability; (2) his prior criminal history did not indicate familiarity with the particular area of law involved in the instant case; (3) his former attorney's testimony and the correspondence between them indicated that petitioner was unaware that a guilty plea would forfeit certain constitutional rights; (4) the trial judge failed to appraise petitioner of the litany of constitutional rights he would waive by pleading guilty; and (5) the plea form used did not contain an exposition of those rights. My Report and Recommendation was not adopted by the District Court Judge, who denied the petition. The Third Circuit reversed on appeal, and the writ was issued. Hill v. Beyer, 62 F.3d 474 (3d Cir. 1995).

(5) **Maglione v. Kelly**,

Civ. No. 91-1101 (GEB), Rep. & Rec. (D.N.J. June 25, 1993).

In this civil rights litigation, plaintiff sued a police officer and others under 42 U.S.C. §§ 1983, 1985(3), seeking damages for alleged violations of his civil rights in connection with his arrest. Defendant police officer moved for partial summary judgment. I recommended that defendant's motion be granted, finding that: (1) defendant had probable cause to arrest plaintiff, and

that this finding barred plaintiff's § 1983 claim for false arrest; (2) plaintiff's § 1983 claim for malicious prosecution was barred because the favorable termination element of that claim could not be met, as plaintiff had been convicted in the underlying state criminal case; (3) defendant's acts of grabbing plaintiff's sweatshirt and pushing him were objectively reasonable under the circumstances, and as such, did not rise to the level of a Fourth Amendment excessive force claim under § 1983; (4) plaintiff's Fourteenth Amendment substantive due process rights were not violated by the arrest, because he was not deprived of any liberty or property interest and the arrest did not amount to conscience-shocking behavior; and (5) given that a § 1983 cause of action was available to him, plaintiff's Bivens claim must fail because a direct constitutional claim would be an unnecessary waste of judicial resources. My Report and Recommendation was adopted by the District Court Judge, who granted defendant's motion.

(6) **Pension Fund v. Omni Funding Group, Inc.,**
Civ. No. 84-4320 (GEB), slip op. (D.N.J. Oct. 16, 1989).

In this pension fund fraud case, in which plaintiffs sought to recover losses sustained as a result of illegal activities committed by defendants, plaintiffs moved to compel defendants to provide deposition testimony and to bar defendants from asserting their Fifth Amendment privilege. I granted plaintiffs' motion in part and denied it in part, holding that: (1) defendants' earlier federal criminal convictions did not preclude their right to assert the Fifth Amendment privilege in the instant civil matter; (2) the entry of a guilty plea in a criminal proceeding did not operate to waive the Fifth Amendment privilege in a subsequent civil matter; (3) defendant Friedland had waived his Fifth Amendment privilege by freely answering incriminating questions during a deposition taken in the instant case; and (4) defendants were not entitled to make a blanket assertion of their Fifth Amendment privilege during depositions, and were instead required to respond to any perceived incriminating question with a reason why their responsive answer might furnish a link in the chain of evidence needed to prosecute them.

(7) **Pallarino v. Kish,**
Civ. No. 86-1904 (CSF), Rep. & Rec. (D.N.J. Apr. 20, 1988).

In this civil rights litigation, plaintiff teacher brought suit against school officials under 42 U.S.C. §1983, claiming that her right to procedural due process was violated when defendant school board refused to grant her a hearing before dismissing her. Prior to the commencement of this suit, a state administrative law court found that plaintiff had acquired tenure status during her employment as a teacher, and plaintiff was awarded reinstatement, back pay, and seniority. Defendants moved for summary judgment. I recommended that defendants' motion be denied, finding that: (1) the state administrative law court's comprehensive award did not bar plaintiff from seeking damages resulting from defendant school board's alleged violation

of her constitutional rights; (2) the doctrine of qualified immunity could only protect defendants from claims asserted against them in their personal capacities, and did not insulate them from liability to the extent that they were sued in their official capacities; and (3) the doctrine of qualified immunity did not protect defendants from claims asserted against them in their personal capacities because New Jersey law regarding the qualifications for tenure was clearly established at the time defendant school officials refused plaintiff's request for a hearing prior to her dismissal. My Report and Recommendation was adopted by the District Court Judge, who denied defendants' motion.

(8) **Palmer v. Merluzzi**, 689 F. Supp. 400 (D.N.J. 1988), aff'd, 868 F.2d 90 (3d Cir. 1989).

Summarized at answer 16(a)(10), supra.

If any of the opinions or rulings listed were in state court or were not officially reported, please provide copies of the opinions.

17. **Public Office, Political Activities and Affiliations**:

(a) List chronologically any public offices you have held, federal, state or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or nominations for appointed office for which you were not confirmed by a state or federal legislative body.

None.

(b) 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.

None.

18. **Legal Career**: Please answer each part separately.

(a) Describe chronologically your law practice and legal 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 dates of the period you were a clerk;

None.

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

None.

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

5/86-present:
United States Magistrate Judge
United States District Court, District of New Jersey
Clarkson S. Fisher U.S. Courthouse and Federal Building
402 E. State Street
Trenton, NJ 08625
(609) 989-2040

2/81-5/86:
Litigation Associate
Clapp & Eisenberg (now dissolved)
One Newark Center
Newark, NJ 07102
Contact: William J. O'Shaughnessey, Esq., (973) 622-4444

9/79-2/81:
Litigation Associate
Lowenstein, Sandler, Kohl, Fisher & Boylan
65 Livingston Avenue
Roseland, NJ 07068
Contact: Richard D. Wilkinson, Esq., (973) 992-8700

6/78-8/78:
Law Clerk
Sullivan & Cromwell
125 Broad Street
New York, NY 10004
(212) 558-4000

6/77-8/77:
Law Clerk
Budd, Larner, Gross, Rosenbaum, Greenberg & Sade
150 J.F.K. Parkway
Short Hills, NJ 07078
(973) 379-4800

(b) (1) Describe the general character of your law practice and indicate by date if and when its character has changed over the years.

My private practice experience, prior to my judicial appointment sixteen years ago, spanned only approximately six and one-half years of my career. Virtually all of that experience involved civil matters.

From 1981 to 1986, I was a litigation attorney at Clapp & Eisenberg, where my assigned cases were fairly evenly divided between the federal and state courts, and largely involved commercial litigation, employment litigation, and defense of ski areas, including several out-of-state ski areas and Hidden Valley, located in Vernon, New Jersey. I also had substantial experience appearing before the New Jersey Casino Control Commission in connection with casino licensing hearings for Playboy Enterprises, Inc., various individuals associated with Bally, and other contractors doing business with casinos. Although none of these cases went to trial, I performed all discovery and drafted all motions. Ultimately, all were resolved either through settlement or successful motion practice.

After graduating from law school in 1979, I was a litigation associate at Lowenstein, Sandler, Kohl, Fisher & Boylan until I joined Clapp & Eisenberg in 1981. My practice at Lowenstein was similar to that at Clapp & Eisenberg, except that I also represented a habeas corpus petitioner in federal court, and represented several criminal defendants as pro bono counsel.

The bulk of my legal career has been spent in the Federal District

Court as a United States Magistrate Judge, where I have served since my May 22, 1986 appointment at the age of 32. I have published forty-seven opinions in that capacity. See attached Published Opinions List.

Since 1990, I have presided over 32 civil trials, 18 jury trials, and 14 bench trials. Appeals to the Third Circuit were perfected in 3 of those cases. In each case, the judgment was affirmed without a reported opinion. Connors v. McGovern, Civ. No. 98-1809, slip op. (D.N.J. July 27, 2000), aff'd, No. 00-2522 (3d Cir. July 27, 2001); Travelers Ins. Co. v. Viking Yacht Co., Civ. No. 93-833, slip op. (D.N.J. Sept. 6, 1996), aff'd, 129 F.3d 1256 (3d Cir. 1997); Strassburger v. United States, Civ. No. 92-5423, slip op. (D.N.J. July 27, 1995), aff'd, 91 F.3d 125 (3d Cir. 1996).

I have also conducted 4 criminal trials since 1990. In one of those cases, an appeal was taken and the Third Circuit affirmed the judgment. United States v. Rosario, Crim. No. 94-5050K-01, slip op. (D.N.J. May 9, 1995), aff'd, 118 F.3d 160 (3d Cir. 1997).

In addition, I have prepared Reports and Recommendations for 77 habeas corpus applications. In two of those cases, I recommended that a writ be granted and the District Court did not adopt my recommendation. On appeal, the Third Circuit reversed the District Court, and a writ was issued in each case. See Hill v. Beyer, 62 F.3d 474 (3d Cir. 1995); Humanik v. Beyer, 871 F.2d 432 (3d Cir.), cert. denied, 493 U.S. 812 (1989).

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

My typical former clients were casino license applicants, in the casino law area, along with corporations, small businesses and banks, in areas involving commercial disputes, trade secrets, restrictive covenants, and employment disputes.

(c) (1) Describe whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe each such variance, providing dates.

I appeared in court frequently for motion practice and settlements, and occasionally for trials.

(2) Indicate the percentage of these appearances in

(A) federal courts: 42%
(B) state courts of record: 42%
(C) other courts: administrative courts: 16%

At certain times in my career, particularly during the years 1980 and 1982-1983, my practice was greater in the administrative courts, and comprised approximately 50% of my practice during those years. These percentages are not exact, but are my best estimates.

(3) Indicate the percentage of these appearances in:

(A) civil proceedings: 95%
(B) criminal proceedings: 5%

(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.

One civil jury trial; sole counsel.
Two Casino Control Commission hearings; associate counsel.
Two municipal court criminal trials; sole counsel.
One trial before an Administrative Law Judge; sole counsel.

(5) Indicate the percentage of these trials that were decided by a jury.

15% (one civil trial).

(d) Describe your practice, if any, before the United States Supreme Court. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the U.S. Supreme Court in connection with your practice.

None.

(e) Describe legal services that you have provided to disadvantaged persons or on a *pro bono* basis, and list specific examples of such service and the amount of time devoted to each.

I have been prohibited from providing any legal services since becoming a Magistrate Judge in 1986. While in private practice, I represented a parent in a termination of parental rights case venued in the Superior Court of New Jersey, Essex County. Approximately 50 hours were spent on that case. I also represented several separate criminal defendants in municipal court. Approximately 30 hours were spent on those endeavors.

During the years 1982-1986, I represented plaintiff Wilbur McNeil, an Investigator for the New Jersey Division of Alcoholic Beverage Control, pro bono in a Title VII action against the Division for alleged racial discrimination in failing to promote him and for various disciplinary actions instituted against him. I acted as sole counsel on the case, and spent in excess of 100 hours handling all discovery, depositions, motions, and preparation of the final pretrial order. The case was pending trial when I was appointed to the bench in 1986, and was ultimately tried to a judgment in favor of plaintiff by another Clapp & Eisenberg attorney. See Response to Question 19(5), McNeil v. New Jersey Div. of Alcoholic Beverage Control, infra.

19. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, and for each provide the date of representation, the name of the court, the name of the judge or judges before whom the case was litigated and the individual names, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties. In addition, please provide the following:

(a) the citations, if the cases were reported, and the docket number and date if unreported;

(b) a detailed summary of the substance of each case outlining briefly the factual and legal issues involved;

(c) the party or parties whom you represented; and

(d) describe in detail the nature of your participation in the litigation and the final disposition of the case.

My best recollection of the most significant litigated matters which I personally handled in the six and one-half years prior to my 1986 judicial appointment follows. Despite due diligence, I am unable to recall some of the details requested, as indicated below, due to the passage of time and the dissolution of my prior law firm, Clapp & Eisenberg. My practice largely involved commercial litigation, employment litigation, and defense of ski areas. I also had substantial experience appearing before the New Jersey Casino Control Commission in connection with casino licensing hearings. Given my relatively brief tenure as a practicing attorney, I have identified six, rather than ten significant litigated matters.

(1) **In re Application of Bally Enterprises,**
OAL No. CCC unknown (N.J. Casino Control Comm'n).

In 1980, I represented Alexander Wilms, an individual shareholder in Bally Enterprises who sought to be licensed in New Jersey before the Casino Control Commission. At the time, the applicable statute required that any person or entity having at least a 5% ownership in the company seeking to be licensed as a casino had to be separately qualified and licensed. The burden was on the applicant to demonstrate his or her fitness for licensure. I attended Mr. Wilms' Commission hearings for approximately 2-3 months. Ultimately, Mr. Wilms was found to be qualified by the Commission and was licensed accordingly.

Despite due diligence, I do not recall the name of opposing counsel, who represented the New Jersey Department of Law & Public Safety, Division of Gaming Enforcement, P.O. Box 047, Trenton, NJ 08625-0047, phone (609) 292-9394.

(2) **In re Application of Playboy Enterprises, Inc.,**
OAL No. CCC unknown (N.J. Casino Control Comm'n).

During 1982 and 1983, I actively participated in the representation of Playboy Enterprises, Inc., and Hugh Hefner before the New Jersey Casino Control Commission. Playboy sought to be licensed as a casino operator, and Hugh Hefner had to be separately licensed as well. The burden rested with the petitioners, and was a high threshold. In addition, licensing required the affirmative vote of at least four out of the five members of the Commission on each issue. A number of substantial questions were raised about the fitness of the company and Hefner. Two of the more significant issues involved alleged improprieties in the operation of Playboy's casino in London and an alleged bribe paid by the New York Playboy Club to certain Alcohol and Health officials in New York City in the 1960s. The alleged bribery matter arose in the context of a scandal which had rocked New York City and resulted in Playboy cooperating with the government in prosecuting the corrupt officials. These issues, inter alia, required extensive investigation, testimony, and expert review. At the time, New Jersey's Casino Act was still relatively new, and everyone was forging into areas of untested law. I assisted Edward N. FitzPatrick (now deceased), a former partner at Clapp & Eisenberg. I was the only associate assigned to the case and was responsible for handling all documents, briefing evidentiary issues, preparing witnesses, and presenting some of the witnesses at the hearing. Substantial briefing, including the submission of detailed findings of fact and conclusions of law, were prepared. I attended all sessions of the hearing, which spanned approximately two and one-half months. My involvement also included assisting in the preparation of an appellate brief submitted to the Superior Court of New Jersey, Appellate Division. This case was an almost full-time pursuit for approximately one year. Playboy and Hefner received three out

of five votes in their favor on the New York matter, and at least four votes on all other issues. Because four votes were required on each issue, they did not qualify for a casino license. The appeal was unsuccessful, as was a petition for certification to the Supreme Court of New Jersey.

Counsel representing Elsinore Corp., a joint-venturer with Playboy, was David M. Satz, Jr., Esq., Saiber, Schlesinger, Satz & Goldstein, Gateway One, Newark, NJ 07102, phone (973) 622-3333. My adversaries were Assistant Attorney General Thomas N. Auriemma, Esq., then Counsel to the Casino Control Commission, P.O. Box 047, Trenton, NJ 08625-0047, phone (609) 292-3999; and James F. Flanagan, III, Esq., then counsel to the Division of Gaming Enforcement, and now an attorney with Tompkins, McGuire, Wachenfeld & Barry, Gateway Four, Newark, NJ 07102, phone (973) 622-3000.

(3) **Research-Cottrell, Inc. v. FMC & Georgia Crane,**

Civ. No. unknown (United States District Court, D.N.J.).

During the years 1981-1985, I served as primary counsel for defendant Georgia Crane in a federal civil action in the United States District Court, District of New Jersey, which was assigned to the Honorable Harold Ackerman. The litigation centered upon who was responsible for substantial damage caused to a tower under construction by FMC when a large crane owned and operated within that tower by my client tipped over during a severe wind storm. Representatives of Georgia Crane were present at the job site. Specific issues arose as to who bore responsibility for the tie-down or securing of the crane, and as to the sufficiency of warnings and instructions with respect to the crane. The case required substantial factual development, as well as expert review. I conducted depositions, filed and responded to motions, prepared the final pretrial order, and participated in settlement negotiations. The case settled before trial.

Plaintiff was represented by Stanley W. Kallmann, Esq., Gennet, Kallmann, Antin & Robinson, 6 Campus Drive, Parsippany, NJ 07054, phone (973) 285-1919. My client's co-defendant was represented by David R. Kott, Esq., McCarter & English, 100 Mulberry Street, Newark, NJ 07102, phone (973) 622-4444.

(4) **Estate of Michael Schenker,**

Civ. No. unknown (N.J. Super. Ct. Ch. Div., Somerset County).

During 1984 and 1985, I was lead counsel in this will contest case, which was venued in the Superior Court of New Jersey, Chancery Division, Somerset County. I represented petitioners, decedent's mother, Anna Alexander, and his friend, Raymond Trolan, who were beneficiaries of, and relied upon, the decedent's holographic will to contest his wife's claim under a prior executed

will. The decedent was a successful small businessman who had amassed a fair amount of assets. He committed suicide following a period of depression occasioned by allegedly discovering that his wife had been involved in an extra-marital affair. Under a will prepared by an attorney, the estate was left almost entirely to the decedent's wife. However, friends of the decedent found a holographic will in the hotel room where the decedent had spent his last hours. New Jersey law recognizes holographic wills by statute, and I argued that the will met the requisites of the statute. In response, the wife contended that the holographic will was the result of undue influence by two of the decedent's friends who stood to benefit from that document, including one of my clients, and that the decedent was not competent to execute the holographic will. I not only opposed the wife's contentions, but also argued that the holographic will was consistent with the decedent's testamentary intent, in light of his belief that his wife had been unfaithful. Discovery was substantial on the factual issues. All discovery was completed by me, and on the day of trial, we settled the case in an amount satisfactory to both of my clients.

The case was assigned to the Honorable William M. D'Annunzio, who is now a retired judge of the Appellate Division, and currently of counsel to the law firm of Budd, Larner, Gross, Rosenbaum, Greenberg & Sade, 150 JFK Parkway, Short Hills, NJ 07078, phone (973) 315-4425. My adversary was Dennis J. Drasco, Esq., Lum, Danzis, Drasco, Positan & Kleinberg, 103 Eisenhower Parkway, Roseland, NJ 07068, phone (973) 403-9000.

(5) **McNeil v. New Jersey Div. of Alcoholic Beverage Control**

Civ. No. unknown (United States District Court, D.N.J.).

During the years 1982-1986, approximately, I represented plaintiff Wilbur McNeil, an Investigator for the New Jersey Division of Alcoholic Beverage Control, in a Title VII action against the Division for alleged racial discrimination in failing to promote him and for various disciplinary actions instituted against him. The case was venued in the United States District Court, District of New Jersey, Newark, before then District Judge H. Lee Sarokin. My client was African-American, and claimed that during his many years of employment with the Division of Alcoholic Beverage Control, he had been refused promotions, transferred substantial distances from his home, and otherwise discriminated against because of his race. He also asserted claims of retaliation. Although he had commenced this Title VII action pro se, I was appointed by the court to represent him on a pro bono basis. Plaintiff had a long history of employment, and pointed to many instances of discrimination. Therefore, extensive factual discovery, as well as motion practice, was necessary. I acted as chief counsel on the case, and spent in excess of 100 hours handling all discovery, depositions, motions, and preparation of the final pretrial order. The case was pending trial when I was appointed to the bench in 1986, and it was taken over by fellow Clapp & Eisenberg attorney Kathy Hooke, who now practices law in Maine. Ultimately, the case was tried by a United States District Court Judge in

Pennsylvania to a judgment in favor of plaintiff.

My adversary was then Deputy Attorney General Rosemarie R. Williams, who represented the Division of Alcoholic Beverage Control, 140 E. Front Street, P.O. Box 087, Trenton, NJ 08625-0087, phone (609) 984-2830. She is now a New Jersey Superior Court Judge, Somerset County Courthouse, P.O. Box 3000, Somerville, NJ 08876, phone (908) 231-7195. Although there may have been other Deputy Attorneys General assigned to the case, I do not recall their names, despite due diligence.

(6) **Unknown**,

Civ. No. unknown (N.J. Super. Ct. Law Div., Mercer County).

In or about 1983, I tried to completion a civil jury case in the Superior Court of New Jersey, Mercer County, in which I represented a defendant who had allegedly failed to make certain payments in connection with a construction project. To the best of my recollection, my client, either the general contractor or the owner of a construction site, was sued for failing to make payment allegedly owing for work done by a subcontractor. Defenses were raised as to the quality of the work, but primarily, the question was whether the individual or the company was liable, and whether the corporate veil should be pierced. Evidence was presented on those issues as well as on the underlying obligation. Despite due diligence, I do not recall the name of the party whom I represented in this case. This case was being handled by an attorney in my former firm, Clapp & Eisenberg, who suddenly became unavailable for trial four days before the scheduled trial date. I took over the case, reviewed the file, prepared the witnesses, and ultimately tried the case before a jury. At the conclusion of all the evidence, I was successful on a motion for judgment.

Despite due diligence, I do not recall the judge, the name of the case, or the docket number. My adversary was John Zen Jackson, Esq., currently of the law firm of Kalison, McBride, Jackson & Murphy, 645 Martinsville Road, P.O. Box 814, Liberty Corner, NJ 07938, phone (908) 647-4600.

20. **Criminal History**: State whether you have ever been convicted of a crime, within ten years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and disposition and describe the particulars of the offense.

None.

21. **Party to Civil or Administrative Proceedings**: State whether you, or any business of which you are or were an officer, have ever been a party or otherwise involved as a party in any civil or administrative proceeding, within ten years of your nomination, that is reflected in

a record available to the public. If so, please describe in detail the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings in which you were a guardian *ad litem*, stakeholder, or material witness.

On March 26, 1993, a pro se plaintiff sued me, along with six other federal judges, essentially asserting that each of the judges assigned to any of his numerous cases had failed to appoint counsel or had otherwise violated his civil rights. The case was dismissed in its entirety as frivolous on May 3, 1993. Ca'Paldo v. Hon. Anne E. Thompson, et al., Civ. No. 93-1287, dismissed sua sponte (D.N.J. 1993).

In 1998, my husband and I were named as defendants, together with our then-nanny, Lee Ann Carpenter, in a personal injury action stemming from a motor vehicle accident in which Ms. Carpenter was driving our vehicle. Kampf v. Carpenter, L-6576-98, Superior Court of New Jersey, Law Division, Middlesex County. The action was dismissed as to my husband and myself in June 1999. The action continues against Ms. Carpenter individually.

22. **Potential Conflict of Interest**: 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 date, I have addressed any potential conflicts of interest by maintaining a conflicts list with the Clerk of the Federal Court. Furthermore, I review each case that comes before me to determine whether there is any conflict which has been inadvertently missed by our Clerk's office. I also currently recuse myself from cases where the State of New Jersey is a party represented by the New Jersey Attorney General's Office, in light of my husband's recent undertaking as the Director of the Division of Law in that office. Finally, from the time my husband became a Superior Court Judge in the State Court more than ten years ago, until his recent appointment to the New Jersey Attorney General's Office, we have both avoided arrangements which could unnecessarily implicate a conflict.

23. **Outside Commitments During Court Service**: Do you have any plans, commitments, or arrangements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

None.

24. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding the nomination, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500. 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.

25. **Statement of Net Worth**: Complete and attach the financial net worth statement in detail. Add schedules as called for.

See attached financial net worth statement.

26. **Selection Process**: Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?

Yes.

(a) If so, did it recommend your nomination?

The recommendations were kept confidential, but I assume that I was recommended.

(b) Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.

I first completed a questionnaire for the selection committee. I was then interviewed by a six-member selection subcommittee, then by the entire selection committee, and finally by Senators Torricelli and Corzine. Ultimately, I was interviewed by the White House Counsel's Office, including Judge Gonzales.

(c) 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 or seeking a commitment as to how you would rule on such case, issue, or question? If so, please explain fully.

None.

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY, UNITED STATES SENATE

Supplement to Response 18(b)(1)

PUBLISHED OPINIONS:

(* 10 most significant)

2000		**Concepcion v. Morton**, 125 F. Supp. 2d 111 (D.N.J. 2000).
		Jackson v. Chubb Corp., 193 F.R.D. 216 (D.N.J. 2000).
1999	*	**Figueroa v. Blackburn**, 39 F. Supp. 2d 479 (D.N.J. 1999), aff'd, 208 F.3d 435 (3d Cir. 2000).
		Mattson v. Hawkins (In re Hawkins), 231 B.R. 222 (D.N.J. 1999).
		Voilas v. General Motors Corp., 73 F. Supp. 2d 452 (D.N.J. 1999).
1998		**Greig v. Macy's Northeast, Inc.**, 1 F. Supp. 2d 397 (D.N.J. 1998).
	*	**Larison v. City of Trenton**, 180 F.R.D. 261 (D.N.J. 1998).
		Phillips v. Borough of Keyport, 179 F.R.D. 140 (D.N.J. 1998).
1997		**EOI Corp. v. Medical Mktg. Ltd.**, 172 F.R.D. 133 (D.N.J. 1997).
	*	**Princeton Biochemicals, Inc. v. Beckman Instruments, Inc.**, 180 F.R.D. 254 (D.N.J. 1997).
		Rivera v. DiSabato, 962 F. Supp. 38 (D.N.J. 1997).
		Schepise v. Saturn Corp., Civ. A. No. 94-385 (MLP), 1997 U.S. Dist. LEXIS 21323, 1997 WL 897676 (D.N.J. July 30, 1997).
		Voilas v. General Motors Corp., 173 F.R.D. 389 (D.N.J. 1997).
1996		**ABB Air Preheater, Inc. v. Regenerative Envtl. Equip. Co.**, 167 F.R.D. 668 (D.N.J. 1996).
	*	**Excelsior Ins. Co. v. Pennsbury Pain Ctr.**, 975 F. Supp. 342 (D.N.J. 1996), order modified, Civ. A. No. 94-2279 (CSF), 1996 U.S. Dist. LEXIS 21542 (D.N.J. Nov. 19, 1996), reconsideration and certif. denied, 1997 U.S. Dist. LEXIS 14337 (D.N.J. Jan. 31, 1997).
		Fingermates Inc. v. Nailtiques Cosmetic Corp., 42 U.S.P.Q.2d 1248 (D.N.J. 1996).
		Greig v. Macy's Northeast, Inc., Civ. A. No. 95-1259 (MLP), 1996 U.S. Dist. LEXIS 22142 (D.N.J. Nov. 21, 1996)
1995		**Brilev v. City of Trenton**, 164 F.R.D. 26 (D.N.J. 1995).
	*	**Ciba-Geigy Corp. v. Sandoz Ltd.**, 916 F. Supp. 404 (D.N.J. 1995).
		Clark v. Board of Educ., 907 F. Supp. 826 (D.N.J. 1995).
1994	*	**McDonnell v. United States**, 870 F. Supp. 576 (D.N.J. 1994).
		Ward v. Maritz Inc., 156 F.R.D. 592 (D.N.J. 1994).
	*	**Ziemann v. Burlington County Bridge Comm'n**, 155 F.R.D. 497 (D.N.J. 1994).
1993		**Robertson v. Central Jersey Bank & Trust Co.**, 834 F. Supp. 705 (D.N.J. 1993).

1992		**GPAC, Inc. v. D.W.W. Enters., Inc.**, 144 F.R.D. 60 (D.N.J. 1992).
		Jordan v. Tapper, 143 F.R.D. 575 (D.N.J. 1992).
		In re Complaint of Munyan, 143 F.R.D. 560 (D.N.J. 1992).
1991		**New Jersey Mach., Inc. v. Alford Indus., Inc.**, 21 U.S.P.Q.2d 2033 (D.N.J. 1991), aff'd, 983 F.2d 1087 (Fed. Cir. 1992).
		Oxfurth v. Siemens A.G., 142 F.R.D. 424 (D.N.J. 1991).
1990	*	**Clement v. Consolidated Rail Corp.**, 130 F.R.D. 530 (D.N.J. 1990).
		DeMarco v. Ginn, 137 F.R.D. 214 (D.N.J. 1990).
		Leonen v. Johns-Manville, 135 F.R.D. 94 (D.N.J. 1990).
		Maynard v. United States, 133 F.R.D. 107 (D.N.J. 1990).
	*	**Nestle Foods Corp. v. Aetna Cas. & Sur.Co.**, 135 F.R.D. 101 (D.N.J. 1990).
		Nestle Foods Corp. v. Aetna Cas. & Sur. Co., 129 F.R.D. 483 (D.N.J. 1990).
		Stamy v. Packer, 138 F.R.D. 412 (D.N.J. 1990).
1989		**Clement v. Consolidated Rail Corp.**, 734 F. Supp. 151 (D.N.J. 1989).
		Martin v. Mennen Co., 63 Fair Empl. Prac. Cas. (BNA) 1522, 1989 WL 509799 (D.N.J. 1989), vacated without reported opinion, 898 F.2d 141 (3d Cir.), cert. denied, 497 U.S. 1004 (1990).
		Trucking Employees of North Jersey Welfare Fund, Inc. v. Brockway Fast Motor Freight Co., 130 F.R.D. 314 (D.N.J. 1989).
		Wei v. Bodner, 127 F.R.D. 91 (D.N.J. 1989).
1988		**Benton Graphics v. Uddeholm Corp.**, 118 F.R.D. 386 (D.N.J. 1987).
		Martin v. Mennen Co., 63 Fair Empl. Prac. Cas. (BNA) 1515, 1988 WL 489593 (D.N.J. 1988).
	*	**Palmer v. Merluzzi**, 689 F. Supp. 400 (D.N.J. 1988), aff'd, 868 F.2d 90 (3d Cir. 1989).
1987		**Holloway v. Whaley**, 116 F.R.D. 675 (D.N.J. 1987).
		Jaroslawicz v. Engelhard Corp., 115 F.R.D. 515 (D.N.J. 1987).
		Scouler v. Craig, 116 F.R.D. 494 (D.N.J. 1987).
		United States v. Midwestern Pouch Express, Inc., 662 F. Supp. 207 (D.N.J. 1987).
1986		**Brock v. Teamsters Local Union No. 863**, 113 F.R.D. 32 (D.N.J. 1986).

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
Wolfson, Freda L.	District of New Jersey	08/01/2002
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 08/01/2002 Initial Annual Final	01/01/2001 to 08/01/2002
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 402 E. State Street Trenton, NJ 08605	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)
	NONE (No reportable non-investment income.)		
	2001-01/25/02:	State of New Jersey Superior Court Judge - Salary	
	01/28/02-present:	State of New Jersey - Assistant Attorney General - Salary	

FINANCIAL DISCLOSURE REPORT Wolfson, Freda L. 08/01/2002

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

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

	SOURCE (NONE: No such reportable reimbursements.)	DESCRIPTION
1		Exempt
2		
3		
4		
5		
6		
7		

V. GIFTS

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

	SOURCE (NONE: No such reportable gifts.)	DESCRIPTION	VALUE
1		Exempt	
2			
3			

VI. LIABILITIES

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

	CREDITOR (NONE: No reportable liabilities.)	DESCRIPTION	VALUE CODE
1	AT&T Universal Card	Credit Card	K
2	American Express	Credit Card	K
3	Citi Card	Credit Card	J
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: Wolfson, Freda L. | Date of Report: 08/01/2002

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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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				
1 Dreyfus Tax Exempt Money Market Fund		None	J	T	"				
2 FICO (Zero Coupon Bond)		None	J	T	"				
3 FICO (Zero Coupon Bond)		None	J	T	"				
4 Hamilton, NJ Cop RO		None	J	T	"				
5 N.Y. State Dorm. Auth. Spec. Oblig. Bonds RO		None			"				
6 New Jersey Garden State Savings Bond (Bldg. Auth.)		None			"				
7 New Jersey Garden State Savings Bond (Bldg. Auth.)		None	J	T	"				
8 New Jersey Garden State Savings Bond (Bldg. Auth.)		None	J	T	"				
9 New Jersey Garden State Savings Bond (Bldg. Auth.)		None	J	T	"				
10 New Jersey Garden State Savings Bond (Bldg. Auth.)		None	J	T	"				
11 Hovnanian Enterprises, Inc.		None	J	T	"				
12 U.S. Savings Bonds		None	J	T	"				
13 U.S. Savings Bonds		None	J	T	"				
14 Fleet Bank	A	Interest	J	T	"				
15 Converse Common Stock		None	J	T	"				
16 IRA-See below investments 17-27, 32-35					"				
17 Scudder Growth & Income		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

Name of Person Reporting: Wolfson, Freda L.

Date of Report: 08/01/2002

FINANCIAL DISCLOSURE REPORT

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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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 Dreyfus Appreciation	A	Dividend	J	T	"				
19 Gabelli Growth	A	Dividend	J	T	"				
20 Neuberger Berman Genesis	A	Dividend	J	T	"				
21 Royce Micro-Cap	A	Dividend	J	T	"				
22 Baron Asset	A	Dividend	J	T	"				
23 Wasatch Growth	A	Dividend	J	T	"				
24 Brinson Global Ex-US	A	Dividend			"				
25 Lazard Intl Equity		None	J	T	"				
26 JP Morgan Em Mkts Equity	A	Interest	J	T	"				
27 SB Money Funds - Govt		None			"				
28 Smith Barney Prem Securities Class C Mutual Funds		None	J	T	"				
29 Metro Football Stadium Dist. Co.	A	Interest	J	T	"				
30 Alliance Premiere Growth Fund CLC		None	J	T	"				
31 Arlington Tax-exempt & Independent School District	A	Interest	J	T	"				
32 R S Value & Growth Fund	A	Interest	J	T	"				
33 Lord Abbet Affil. Fund	A	Dividend	J	T	"				
34 Tom Galileo Select Equities		None	J	T	"				

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

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: Wolfson, Freda L. | Date of Report: 08/01/2002

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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period: (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period: (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period: (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 UBS International Equity Fund		None	J	T	"				
36 California Commerce Bank Certificate of Deposit		None			"				
37 N.J. Garden State Savings Bond (Bldg. Auth.)		None	J	T	"				
38 FICO (Zero Coupon Bond)		None	J	T	"				
39 FICO (Zero Coupon Bond)		None			"				
40 Smith Barney Bank Deposit Program - Citibank	A	Interest	J	T	"				
41									
42									
43									
44									
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; F=$50,001-$100,000; G=$100,001-$1,000,000; H1=$1,000,001-$5,000,000; H2=$5,000,001 or more (Col. B1, D4)

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; 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 (Col. C1, D3)

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

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Wolfson, Freda L.	Date of Report 08/01/2002

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.
(Indicate part of report.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Wolfson, Freda L.	08/01/2002

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 Freda L. Wolfson Date 8/5/02

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	8,000	Notes payable to banks-secured	0
U.S. Government securities-add schedule	12,000	Notes payable to banks-unsecured	0
Listed securities-add schedule	133,000	Notes payable to relatives	0
Unlisted securities–add schedule	0	Notes payable to others	0
Accounts and notes receivable:	0	Accounts and bills due	80,000
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 (mortgage and home equity loan)	157,984
Real estate owned-add schedule (personal residence)	400,000	Chattel mortgages and other liens payable	0
Real estate mortgages receivable	0	Other debts-itemize:	
Autos and other personal property (clothes, furniture and computers)	100,000	Thrift Savings Plan Loan	20,019
Cash value-life insurance	3,000	Car leases (2)	758/mo.
Other assets itemize:			
Jewelry	60,000		
Art	5,000		
Wine	10,000	Total liabilities	258,761
Thrift Savings Plan	264,469	Net Worth	736,708
Total Assets	995,469	Total liabilities and net worth	995,469
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		

[Whereupon, at 5:25 p.m., the committee was adjourned.]
[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Follow-up Questions for Miguel Estrada
Senator Richard J. Durbin
Senate Judiciary Committee

1) During your nominations hearing, Senator Edwards asked whether you consider yourself a "strict constructionist" when it comes to interpreting the Constitution. You described yourself instead as a "fair constructionist."

a) How do you distinguish these two concepts? In what ways are they similar? In what ways are they different?

RESPONSE: I do not believe that a legal text, such as the Constitution, should be construed "strictly" (*i.e.*, grudgingly) or "loosely" (*i.e.*, without careful regard to the text's language so as to achieve a meaning beyond that which the text will fairly bear). In my view, the Constitution, like other legal texts, should be construed reasonably and fairly, to give effect to all that its text contains. Although the phrase "strict construction" is often used to reflect a legal philosophy that simply gives appropriate consideration to the text of the Constitution, the phrase is also sometimes used in a pejorative fashion to describe an approach to interpretation that does not fairly reflect the meaning that the words, history and background of the text will fairly bear. For that reason, I avoided using that phrase in response to Senator Edwards' question.

b) Of the current members of the Supreme Court, who would you characterize as a strict constructionist? Who would you characterize as a fair constructionist? How would you characterize the remaining justices?

RESPONSE: Although the current members of the United States Supreme Court sometimes emphasize different interpretive tools—giving, for example, greater or less prominence to text, history or precedent in a particular case—I believe each of them attempts in good faith to give a fair reading to the Constitutional provisions that come before the Court. For that reason, I would characterize each member of the current Court as a "fair constructionist."

c) In terms of judicial philosophy, please name several judges, living or dead, whom you admire and would like to emulate on the bench.

RESPONSE: There is no judge, living or dead, whom I would seek to emulate on the bench, whether in terms of judicial philosophy or otherwise. If I am fortunate enough to be confirmed, I hope to seek aid from whatever legal materials may shed light on the problem before me, and thus to reach the correct answer to that problem to the best of my abilities, without any preconception about how some other judge might approach the question.

I have been fortunate to know several great judges and justices in my lifetime. I admire Judge Amalya Kearse and Justice Anthony Kennedy, for whom I was a law clerk.

During my time as a law clerk for Justice Kennedy, I also got to work with retired Justice Lewis F. Powell, Jr., for whom I developed a great deal of affection and admiration.

2) In an attempt to learn more about your judicial philosophy, several of my colleagues asked for your opinion about constitutional questions that are now settled law and that are unlikely to come before you as an appellate court judge. For example, Chairman Leahy asked for your views on Romer v. Evans, a Supreme Court opinion striking down a state constitutional provision that prohibited municipalities from passing gay rights ordinances. You responded:

> **the question as framed is inherently unknowable for somebody in my position who has not sat through the case, listened to the arguments, conferred with the colleagues, and done all of the legwork of investigating every last clue that the briefs and the arguments offer up.**

Likewise, in response to questioning from Senator Schumer, you stated:

> **The only time that I will feel comfortable in opining whether the Court got it right would be if I had done everything that the Court had to do in order to actually issue their ruling.**

a) In your role as an Assistant to the Solicitor General, I am sure you read many of the Supreme Court's decisions. Have you ever expressed any opinion on the merits of a Supreme Court decision, to your colleagues or friends, when you had not read the briefs and watched the oral argument in the case? For example, have you ever told anyone that you thought that Romer v. Evans was rightly or wrongly decided?

RESPONSE: During my tenure at the Solicitor General's office, it was not uncommon for lawyers in the office to discuss issues then pending, or recently decided, by the Supreme Court. Such discussions were generally informal (often at the lunch table, since it was the practice of the attorneys in the office to lunch together in the Department's cafeteria) and did not purport to reflect a considered judgment that a particular decision was objectively "right" or "wrong" based on an appraisal of all briefing, argument, and primary materials—the type of judgment that a sitting judge would have to make in deciding the case. It was probably the case that neither my Justice Department colleagues nor I had read every brief filed in a particular case or attended argument. Generally, my colleagues and I would speak of a particular decision in terms of whether it served the Government's programmatic interests and/or whether the majority opinion set forth better reasons for the outcome than did the dissenting opinion (*i.e.*, whether one of the opinions was a better piece of legal reasoning and writing). I do not have any recollection that I or any of my colleagues ever described any particular decision (including *Romer*) as "wrong," but it is possible that remarks such as that were made in informal conversations—as shorthand for whether a decision accorded with the Government's interest in an area or whether the outcome urged by a dissenting opinion was advocated better than the result reached by the Court's majority.

b) You and I met privately before your hearing, and I asked you for your views on Roe v. Wade. You indicated that you considered the answer to that question to be a private matter. But your answer suggested that you do have an opinion. Do you have an opinion on the merits of Roe v. Wade? If so, have you read the briefs and a transcript of the oral argument?

RESPONSE: I stated during our meeting that, like many Americans, I have personal views on the subject of abortion, which views I consider a private matter that I was unprepared to share or discuss with you. I also stated that I do not harbor any personal views of any kind that, if I were a judge, would preclude me from applying controlling Supreme Court case law in the area of abortion. I did not state that I have private views on whether the case of *Roe v. Wade* was correctly decided. As I stated during my hearing, it would not be appropriate for me to express such a view without doing the intensive work that a judge hearing that case would have to undertake—not only reading briefs and hearing the arguments of counsel, but also independently investigating the relevant constitutional text, case law, and history.

3) **You serve on the National Board of Directors for a non-profit foundation called the Center for the Community Interest, or CCI. According to CCI's website, the group's goal is "to make communities and neighborhoods safe places to live and raise children and to make the public spaces of our cities secure and inviting places for all by helping to identify common sense, balanced solutions to crime and quality-of-life problems and to defend those policies against unreasonable legal attacks."**

a) How did you become associated with CCI? For how long have you served on the Board of Directors?

RESPONSE: In the Fall of 1998, Eliot Spitzer was elected Attorney General of New York. Mr. Spitzer was a Board member of CCI (and, through his family foundation, was and is an important financial supporter of CCI). As a result of his election, Mr. Spitzer had to resign his Board position. I was invited to join the board, and fill the ensuing vacancy, by another Board member, Scott Muller. Mr. Muller has long been involved in CCI, and I knew him as a highly respected attorney who practices in Washington, D.C. and New York City; he was recently confirmed by the Senate as General Counsel of the CIA. I have served on the Board since my election in late 1998/early 1999.

b) As a director, what role do you play in the management of the organization? How frequently does the Board meet?

RESPONSE: CCI has a full-time staff that deals with day-to-day matters. The Board deals with major policy issues and the general direction and management of the organization.

It has been a goal of the current Board to increase the number of times we meet. When I first joined the Board, we met only twice a year. We now try to meet three or four times a year. Meetings of the Board may be conducted if a quorum of a majority of the directors is present. Although I try to attend every meeting personally or by telephone, I have not participated in every meeting of the Board that has been held since I joined the Board.

4) **Although the organization purports to defend "common sense" government policies "against unreasonable legal attacks," CCI has adopted some very controversial positions over the last few years. For example, in Dickerson v. United States, CCI filed an amicus brief urging the Supreme Court to overturn the landmark Miranda decision, which ensures that criminal suspects have adequate notice of their legal rights.**

As you know, the position favored by CCI in Dickerson was rejected by a decisive seven member majority of the Supreme Court, in a decision authored by Chief Justice Rehnquist. The only dissenters in the case were Justices Antonin Scalia and Clarence Thomas.

a) As a Director of CCI, did you participate in deliberations or play any other role in the group's decision to file an amicus brief in Dickerson?

RESPONSE: Yes. I was one of the Board members who voted on the question whether CCI should file a brief in the case.

b) Do you support the group's position in that case? Why or why not?

RESPONSE: I voted in favor of filing an *amicus* brief in the case. As I saw it, the case primarily involved an important unsettled legal issue that hinged on the constitutionality of an Act of Congress, 18 U.S.C. § 3501, rather than the issue whether *Miranda* should be superseded because of any disagreement that the current Supreme Court might have with that decision.

As is widely known, the Supreme Court in *Miranda* required that certain warnings be given to suspects during custodial interrogations. It is less widely known that, in announcing that ruling, the Supreme Court also stated (384 U.S. at 467):

> It is impossible for us to foresee the potential alternatives for protecting the privilege which might be devised by Congress or the States in the exercise of their creative rule-making capacities. Therefore we cannot say that the Constitution necessarily requires adherence to any particular solution for the inherent compulsions of the interrogation process as it is presently conducted. Our decision in no way creates a constitutional straitjacket which will handicap sound efforts at reform, nor is it intended to have this effect. We encourage Congress and the States to continue their laudable search for increasingly effective ways of protecting the

rights of the individual while promoting efficient enforcement of our criminal laws.

In 1968, in the wake of that decision and in reliance on the Court's suggestion, Congress enacted 18 U.S.C. § 3501. That statute required federal courts to admit into evidence all voluntary confessions, after assessing the issue of voluntariness in light of all the facts and circumstances surrounding the confession— including whether the suspect received the warnings required by the *Miranda* case.

Although some lower courts had assumed that Section 3501 was not constitutional, as a CCI Board member I supported the filing of an *amicus* brief that supported the constitutionality of the statute. I believed that a law duly passed by both Houses of Congress and signed by the President should not be ignored by the lower courts without an authoritative resolution of the constitutional question by the Supreme Court of the United States.

c) Do you think that the defendant's challenge of the Fourth Circuit's decision in Dickerson was an unreasonable legal attack?

RESPONSE: No.

d) Chief Justice Rehnquist's decision in Dickerson invoked the doctrine of stare decisis. Do you agree with the application of that doctrine in this case? When is it appropriate for the Supreme Court to overturn its own precedents?

RESPONSE: *Dickerson* reflects a reasonable application of the doctrine of stare decisis. In my view, it is rarely appropriate for the Supreme Court to overturn one of its own precedents. The circumstances that bear on the appropriateness of such a course were summarized by the Court in *Agostini v. Felton*, 521 U.S. 203, 235-37 (1997), and by the plurality opinion in *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 854-55 (1992).

5) Dickerson was an alarming case to many of us because the Fourth Circuit Court of Appeals, on its own initiative, determined that Miranda was no longer binding law. They reached this conclusion even though the Supreme Court continued to apply Miranda to criminal cases in both the federal and state systems; and despite the fact that neither the government nor the criminal defendant was willing to argue that Miranda did not apply. The Fourth Circuit's ruling in Dickerson strikes me as a prime example of the conservative judicial activism we sometimes see today.

a) What assurances can you give the Committee that you will follow Supreme Court precedent unless and until the Court explicitly overrules itself?

RESPONSE: I can absolutely assure the Committee that I will follow binding Supreme Court precedent until and unless such precedent has been

displaced by subsequent decisions of the Supreme Court itself.

b) If confirmed to the D.C. Circuit, can you assure us that you will faithfully apply the Supreme Court's ruling in Miranda? What about the Supreme Court's decision in Bakke, which upheld the constitutionality of affirmative action programs in certain circumstances?

RESPONSE: I can assure the Committee that I would faithfully apply the *Miranda* decision as I would any other Supreme Court case that has not been superseded by the Court. With respect to *Bakke* specifically, in which thre was no majority opinion by the Court, there is arguably a division among the courts of appeals on the question whether the various opinions issued by the individual Justices who participated in the case set forth a rule of law that lower courts are required to follow. Compare *Hopwood v. Texas*, 78 F.3d 932, 944 (5th Cir. 1996), and *Johnson v. Board of Regents of Univ. of Georgia*, 263 F.3d 1234, 1247-50, 1261 (11th Cir. 2001), with *Smith v. University of Washington Law Sch.*, 233 F.3d 1188, 1199-1200 (9th Cir. 2000), and *Grutter v. Bollinger*, 288 F.3d 732, 738-42 (6th Cir. 2002). As I stated during my appearance before the Committee, because that issue might come before me as judge, I do not believe I should express any views on it.

6) **Let me ask you about two other controversial positions that CCI has adopted in the last few years. In United States v. Knights, CCI argued as an amicus party that warrantless, suspicionless searches of probationers and parolees are constitutional. Likewise, in Department of Housing and Urban Development v. Rucker, CCI defended HUD's so-called "One-Strike" policy, which permitted automatic eviction of an entire household from public housing if any resident or guest was involved in a drug-related crime.**

a) As a Director of CCI, did you participate in deliberations or play any other role in the group's decision to file an amicus brief in Knights or Rucker?

RESPONSE: I do not have any recollection of participating in any Board deliberations concerning these two cases. I have made inquiry of the CCI staff, and I have been advised that neither case came before the Board during my tenure as a Board member. In the case of *Rucker*, it appears that CCI became involved in the litigation while the case was pending in the lower federal courts, and thus the issue whether to participate in the litigation came before the Board before I became a Board member. In the case of *Knights*, I have been advised that CCI's position echoed the view taken by CCI in a 1997 case that presented a similar issue. I am advised that because the issue already had been addressed by the Board in connection with that 1997 case, the Executive Committee of the Board (of which I was not a member) authorized the filing of the brief without further input from other Board members.

b) Do you support the group's position in either of these cases? Why or why not?

RESPONSE: I have not made a sufficient, independent study of the issues and briefing in each case to know whether I agree with the positions espoused by CCI in these cases. I would note, however, that each case resulted in a unanimous opinion by the Supreme Court that appears to vindicate the position urged by CCI.

7) **It is difficult to find a news account about your nomination that fails to mention your status as a potential nominee of President Bush to the Supreme Court. Frankly, I think this speculation is very premature. You do not have any judicial record yet, so it is hard to know what kind of judge you will be on the Court of Appeals.**

a) Have you given any thought to whether you might like to serve on the Supreme Court someday? What are your aspirations at this point in your career?

RESPONSE: During the pendency of my nomination, my wife and I occasionally have received from friends, acquaintances and well-wishers copies of the types of newspaper articles to which your question refers. I have seen some of those articles in our local newspapers as well. Of course, any lawyer would be honored to be viewed as someone who some day might be considered for a position on the Supreme Court. However, beyond discussing with friends and acquaintances the contents of such press articles, I have not carefully considered the issue. As your question points out, it would be premature for me to do so. My aspirations at this point are to be confirmed as a United States Circuit Judge, and to discharge the duties of that position to the best of my abilities.

b) Has anyone from the White House or the Justice Department ever discussed with you the prospect of serving on the Supreme Court someday? If so, what did he or she tell you?

RESPONSE: No one from the White House or the Justice Department has discussed with me the prospect of serving on the Supreme Court of the United States.

Follow-up Questions from Edward M. Kennedy to Miguel Estrada, Nominee to the D.C. Circuit

7. 1) **President Bush stated in his 2000 campaign that he would nominate judges like Justice Scalia and Justice Thomas. The President repeated this pledge this past Spring, promising his party that he would continue to nominate and fight for "conservative judges." Many of my colleagues have held you up as an example of such a conservative nominee. In the Spring, one Senator argued that this Committee had not moved faster to grant you a hearing because "if you're conservative and a minority, the bar is set higher for you." Another Senator stated that you were being opposed because Senate Democrats "will simply not accept a" nominee who does "not tow the line of the left of center."**

Do you consider yourself a "conservative" lawyer? Why or why not? Why do you believe that you are being promoted by your supporters as a conservative judicial nominee? Do you believe that your judicial philosophy is akin to that of Justices Scalia and Thomas? Why or why not?

RESPONSE: My role as an attorney is to advocate my clients' positions within ethical bounds, rather than to promote any particular political point of view, conservative or otherwise. I have worked as an attorney for a variety of clients, including the United States Government, state and local governments, individuals charged with criminal activity, large corporations, and indigent prisoners seeking federal habeas corpus (including a death row inmate). In those representations, I have advocated a variety of positions that might be characterized as either liberal or conservative.

While I am grateful for the wide-ranging and bipartisan support that my nomination has received, I have no knowledge of the specific reasons that might cause a particular supporter of my nomination to promote my candidacy for judicial office.

As a judge, I would view my job as trying to reach the correct answer to the question before me, without being guided by any preconceptions or speculation as to how any other judge or Justice might approach the same issue.

8. 2) **I am sure you are aware of *Hoffman Plastic Compounds, Inc. v. National Labor Relations Board* (D.C. Cir. 2001). The controversy in the case arose when Hoffman Plastics fired workers in retaliation for their attempts to organize a union, and in response, the National Labor Relations Board ordered reinstatement and backpay for the workers affected. The NLRB later denied reinstatement and granted only limited backpay to Jose Castro, an undocumented worker. Hoffman Plastics challenged the NLRB decision, and the D.C. Circuit – in a 5 to 4 *en banc* decision – ultimately rejected the employer's argument and enforced the Board's order. The D.C. Circuit determined that the NLRB appropriately crafted its order to take into account the policies underlying both the National Labor Relations Act and the Immigration Reform and Control Act.**

Last term, the Supreme Court reversed the decision of the D.C. Circuit and held – in a 5 to 4 decision – that certain immigrant workers are not entitled to backpay remedies under the National Labor Relations Act. The Supreme Court's decision affects as many as 6 million immigrant workers across the United States, and employers have used it to claim that those workers have no labor protections.

The Supreme Court and the D.C. Circuit came out differently in this case; how would you have resolved the issue in this case? Do you believe that the Supreme Court gave appropriate deference to the NLRB? Why do you think that the Supreme Court and the D.C. Circuit came to different conclusions in this case?

RESPONSE: Although I have read the Supreme Court's opinion in *Hoffman Plastics*, I have not read the briefs in the case, was not present at the oral argument, and have not independently researched the issue decided by the Court. For those reasons, I am in not in a position to know how I might I have resolved the issue in the case had that issue come before me as a judge; nor (for the same reasons) am I in a position to answer the question whether the Supreme Court acted appropriately in failing to defer to the NLRB.

Courts at different levels of the federal judiciary sometimes reach different conclusions with respect to the same issue. Although I am not aware of all the considerations that might have entered into the respective decisions of the Supreme Court and the D.C. Circuit in *Hoffman Plastics*, the closeness of the vote in the Supreme Court and in the *en banc* D.C. Circuit suggests that the case presented very difficult legal issues. The complexity of those issues might have accounted for the different views that each of those courts took of the question presented.

9. 3) **An April 11th, 2002 article in the *Los Angeles Times* states that you have "made no secret" of your "disdain" for Supreme Court rulings favoring affirmative action.**

Have you spoken to reporters, colleagues or friends about affirmative action? What views have you expressed about legal rulings or policy regarding affirmative action?

RESPONSE: Although I was visiting Honduras during the week of April 11, 2002, a friend sent me a copy of the *Los Angeles Times* article to which you refer, which was authored by David Savage. When I read the article upon my return, I recall that I was quite surprised by the passage to which you refer, because I had not been contacted by Mr. Savage in connection with this article. Although I believe I may have met Mr. Savage at Supreme Court bar functions, I am certain I have never discussed the subject of affirmative action (or, to the best of my recollection, any other legal issue) with him.

It is possible that I may have discussed the subject of affirmative action with colleagues or friends, though I do not recall the particulars of any specific conversations with specific friends or colleagues on this subject. Of course, any policy views that I might have as a private citizen on the subject of affirmative action would not enter into

how I would approach any case that comes before me as a judge. Under controlling Supreme Court authority, particularly *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995), if a government program creates a racial classification, it will be subject to "strict scrutiny." Whether the program survives that sort of scrutiny will often involve a highly contextual and fact-specific inquiry into the nature of the justifications asserted by the government and the "fit" between those justifications and the classification at issue. *Adarand* and similar cases provide the framework that I would be required to apply, and would apply, in considering these issues as a judge.

4) **I know that you clerked on the Supreme Court for Justice Kennedy, and that you are one of the few Hispanic-Americans ever to have clerked on the Supreme Court. One of the issues that has received some attention in recent years has to do with the dearth of minorities and women who have received clerkships on the Supreme Court.**

You were asked about the possible reasons for the lack of minority law clerks, and for possible remedies, in the context of an article written for *USA Today*. According to the article, you "dismissed the statistics showing little representation of minorities" and stated that "if there was some reason for under-representation, it would be something to look into, but I don't have any reason to think it's anything other than a reflection of trends in society." Your quote was contrasted with statements by others that a variety of reasons were to blame for this lack of minority clerks including an "old boy network."

Why were you "dismissive" of evidence of underrepresentation? What did you mean when you said that this reflected only "trends in society"? Do you believe that discrimination might play a factor in the underrepresentation?

RESPONSE: Respectfully, I do not believe I was dismissive of minority under-representation among law clerk ranks. That was instead a reporter's *characterization* of my statements concerning "trends in society."

When I was contacted by the *USA Today* reporter, I believed that a major theme of the proposed article would center on the proposition that, were the Supreme Court a private business, it would be liable for unlawful discrimination based on the small number of minority hires alone. That theme, in fact, appeared prominently in the article when it was published. I responded to that notion by pointing out that it would not be fair to accuse the Justices of unlawful discrimination based on such aggregate numbers because each Justice hires independently, and because the numbers in any event reflected "trends in society." By that, I meant that the Justices generally hire as law clerks only those young lawyers who have completed appellate clerkships with distinguished lower-court judges, who in turn hire only the most accomplished law students from our country's most elite institutions. Because the numbers of minority law students who meet those exacting academic requirements is not very large, I suggested to the reporter that the issue he was investigating was part of a broader societal problem.

10. 5) **The issue of affirmative action has recently divided the D.C. Circuit. For**

instance, in *MD/DC/DE Broadcasters Assoc. v. FCC*, 236 F.3d 13 (D.C. Cir. 2001), the D.C. Circuit found a portion of the FCC's Equal Employment Opportunity policy to be unconstitutional. The regulations required licensees to conduct "broad outreach" when hiring new employees. Licensees had two options. Under Option A, the licensee would choose from an FCC-approved recruiting mechanism. Under Option B, the licensee could design its own recruiting mechanism, and would be required to report the race, gender, and source of referral for each applicant.

The Court found that Option B triggered strict scrutiny, and that the rule failed strict scrutiny because it was not narrowly tailored to support a compelling governmental interest. Three judges dissented from the denial of the suggestion to rehear the case *en banc*, noting that strict scrutiny was inappropriate because Option B could be satisfied by broad "non-racially targeted recruiting" such as "advertising in a local newspaper read by both minorities and non minorities" alike.

Do you believe that this case was correctly decided? Please explain. Under what circumstances do you believe it is constitutional for a public employer to conduct broad outreach to increase racial and ethnic diversity in the pool of qualified applicants? What type of governmental interest would you find necessary to find such a program constitutional?

RESPONSE: I have not read the briefs in the case, was not present at the oral argument, and have not independently researched the issue decided by the Court. For those reasons, I am in not in a position to know how I might I have resolved the issue in the case had that issue come before me as a judge.

Moreover, I do not believe I can appropriately enumerate the circumstances under which it might be constitutional for a public employer to conduct "broad outreach to increase racial and ethnic diversity," because this is the type of question that might come before me as a judge. As I noted in response to question 3, the "strict scrutiny" that *Adarand* requires when racial classifications are at issue will generally involve highly contextual and fact-specific inquiries into the nature of the justifications asserted by the government and the "fit" between those justifications and the particular classification. The highly-contextual nature of that inquiry, and the need avoid prejudging issues that might come before me as a judge, make it impossible for me to attempt to posit abstract governmental interests that might be sufficient to satisfy the requirements of *Adarand* in particular cases.

11. 6) **In *American Trucking v. EPA* (D.C. Cir. 2000), the D.C. Circuit held that the EPA lacked authority to establish health standards for air pollution. As we all know, air pollution is a major problem, particularly in urban areas where its effect is most acutely felt by children. The Clean Air Act gives the Environmental Protection Agency authority to use the latest in scientific knowledge to set air quality standards that are "requisite" to protect the public health. In 1997, the Agency set a new standard for smog and soot after getting recommendations from a panel that included members of the National Academy of**

Sciences, medical doctors, epidemiologists, toxicologists, environmental scientists, and members of state air pollution control agencies.

A panel of the D.C. Circuit, however, held that the governing provision of the Clean Air Act was too broad a delegation of power to the EPA to provide an intelligible principle for administrative action. According to the D.C. Circuit, the delegation was so broad as to violate the "non-delegation" doctrine. The Supreme Court subsequently reversed the D.C. Circuit's decision in a unanimous holding.

What are your views on the D.C. Circuit's decision in American Trucking v. EPA? How would you have resolved the question presented in that case? In your view, when is a congressional delegation to an administrative agency so broad as to violate the Constitution?

12.

RESPONSE: I have not read the briefs in the case, was not present at the oral argument, and have not independently researched the issue decided by the Court. For those reasons, I am in not in a position to know how I might I have resolved the issue in *American Trucking* had that issue come before me as a judge. Of course, the fact the Supreme Court was unanimous in reversing the D.C. Circuit's judgment in *American Trucking* strongly suggests that the court of appeals seriously misapprehended or misapplied controlling doctrine.

I do not believe it is possible to address in the abstract what might be the outer limits of Congress' power to confer authority on other governmental bodies, because the Supreme Court has suggested in several cases that the particular factual context is significant in analyzing the appropriateness of a particular delegation. For example, the Court has stated that the inquiry may be "less stringent in cases where the entity exercising the delegated authority itself possesses independent authority over the subject matter." *United States v. Mazurie*, 419 U.S. 544, 556-57 (1975) (delegation to Indian tribe); *see also United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 542-43 (1950) (upholding delegation of certain immigration-law duties to the President "during a time of national emergency"); *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 319-20 (1936) (foreign affairs). Of course, the fact that the Supreme Court only rarely has struck down statutes on this ground suggests that the Court has been quite deferential to congressional judgments about the types of delegations that reasonably might be needed to carry on the business of government.

7. **In nominating you and, subsequently, in promoting your nomination, President Bush and the White House have emphasized that you are a nominee of Hispanic and of Central American origin, and that, if confirmed, you would be the first Hispanic to sit on the U.S. Court of Appeals for the D.C. Circuit. I have long been a supporter of increased racial and ethnic diversity on our federal courts, and I am interested in your views on the matter.**

Why, in your view, is your ethnic background relevant to your nomination?

What, if anything, do you believe that your ethnic background would bring to your service as a judge on the D.C. Circuit?

RESPONSE: The President is the leader of a large and diverse country, and it is accordingly appropriate for him, in exercising his constitutional nomination and appointment powers, to select qualified individuals who reflect the breadth and diversity of our Nation. Among other things, by calling attention to such appointments the President and others make clear to all that ours is a Nation that endeavors to value achievement and skill without regard to race or creed.

8) **The Congressional Hispanic Caucus stated in their letter declining to endorse your nomination that:**

> **The appointment of a Latino to reflect diversity is rendered meaningless unless the nominee can demonstrate an understanding of the historical role courts have played in the lives of minorities in extending equal protections and rights; has some involvement in the Latino community that provides insight into the values and mores of the Latino culture in order to understand the unique legal challenges facing Latinos; and recognizes both the role model responsibilities he or she assumes as well as having an appreciation for protecting and promoting the legal rights of minorities who have historically been the victims of discrimination.**

In your view, is your nomination intended in part to promote ethnic "diversity" on the D. C. Circuit? Do you agree with the Congressional Hispanic Caucus that a "nomination of a Latino to reflect diversity" is meaningless if that nominee lacks a historic understanding and appreciation for some or all of the above? Why or why not?

RESPONSE: I have not spoken to the President about the decision-making process that led him to honor me with this nomination, and thus I am not in a position to address what he might have intended to promote or accomplish by nominating me. I strongly disagree, however, with the Congressional Hispanic Caucus' view that I lack an understanding of the role and importance of courts in protecting the legal rights of minorities, of the values and mores of Latino culture, or the significance of role models for minority communities.

Response of Stanley R. Chesler to the question posed by Senator Schumer to United States District Court nominees during the confirmation hearing held by the Senate Judiciary Committee on September 26, 2002.

Question: What three United States Supreme court cases can you identify with which you disagree?

1. In Plessy v. Ferguson, 163 U.S. 537 (1896), the Supreme Court's majority opinion established the so called "separate but equal" doctrine. Justice Harlan's dissent stated the view which the court should have adopted. He said, "In respect of civil rights, common to all citizens, the constitution does not, I think, permit any public authority to know the race of those entitled to be protected in the enjoyment of such rights....Indeed, such legislation as that here in question is inconsistent not only with equality of rights which pertains to citizenship, national and state, but with personal liberty enjoyed to everyone within the United States." 163 U.S. 554 (Harlan, J., dissenting).

2. Olmstead v. United States, 277 U.S. 438 (1928), held that the Fourth Amendment protection against unreasonable searches and seizures only applies to tangible property – and does not protect against the seizure of oral communication unless a physical trespass occurs. In my view, the decision failed to acknowledge that "the Fourth Amendment protects people – and not simply 'areas'– against unreasonable searches and seizures", Katz v. United States, 389 U.S. 347, 353 (1967). As Katz subsequently held, the Fourth Amendment is intended to protect reasonable expectations of privacy, including oral and telephone communications.

3. Ex Parte Bain, 121 U.S. 1 (1887), held that any change to the language of an indictment without resubmission to a Grand Jury is barred by the Fifth Amendment – even if the "amendment" merely strikes surplus allegations which are unnecessary to the charge. This was overruled by United States v. Miller, 471 U.S. 130 (1985) .

RESPONSES OF DANIEL HOVLAND
NOMINEE TO THE U.S. DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
TO THE HONORABLE PATRICK J. LEAHY'S QUESTIONS

1. Mr. Hovland, it is clear from your Senate Questionnaire that the majority of your legal work has involved civil defense litigation. Can you please share with us any criminal litigation experience you have that will prepare you to preside over a criminal docket as a District Court judge?

Response: **The majority of my work as a trial lawyer over the past 23 years has been civil litigation. I have, however, handled criminal cases in state courts throughout my career and am familiar with the criminal process and procedure. If fortunate enough to be confirmed, I am committed to spending the time needed to ensure that I am well-prepared to handle any case that may come before me. I will spend a considerable amount of time reading and preparing for the criminal cases over which I would preside if confirmed as a district court judge. I also hope to utilize the excellent training resources available to new judges through the Federal Judicial Center. In addition, I fully intend to seek the advice, assistance, and counsel of the very experienced senior district court judges in North Dakota. Please be assured that if confirmed I will spend whatever time, effort, and long hours are needed to ensure that I will capably and competently handle any criminal cases over which I would preside.**

2. Do you believe there is a constitutional right to privacy? If so, please describe what you believe to be the specific components of this right. If not, please explain.

The United States Supreme Court and the United States Court of Appeals for the Eighth Circuit have clearly stated that there is a constitutional right to privacy and I will faithfully uphold those precedents if confirmed as a district court judge. The Supreme Court has recognized that involved within this substantive due process right are rights concerning procreation, marriage, abortion, child-rearing, etc. If confirmed, I will uphold the precedents of the United States Supreme Court without hesitation or equivocation.

3. I noticed that your practice has focused on defending clients primarily in the areas of sexual harassment and malpractice. What assurances can you give the Committee that, if confirmed, you will be fair procedurally and substantively, to plaintiffs in these areas of law, and that in all areas of law you will be equally fair to plaintiffs and defendants?

My trial practice over the past several decades has included representation of both plaintiffs and defendants in the handling of sexual harassment and malpractice claims. I have represented plaintiffs in approximately 25-30% of the cases; and in the area of sexual harassment claims, it approaches 50%. Having represented both plaintiffs and defendants over the years has provided me with a fair, balanced, and objective approach to the handling of such claims. During my work as a mediator, I have always sought to be fair, objective, even tempered, courteous, and respectful to the attorneys, the litigants, and the witnesses in all cases. I will carry those characteristics with me to the bench if I am fortunate enough to be confirmed.

RESPONSES OF DANIEL HOVLAND
NOMINEE TO THE U.S. DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
TO THE HONORABLE CHARLES E. SCHUMER'S QUESTIONS

1. What 3 United States Supreme Court cases can you identify with which you disagree?

1) *Behrens v. Pelletier*, 516 U.S. 299, 116 S.Ct. 834 (1996)

The decision has generated attention concerning multiple interlocutory appeals of orders denying motions for summary judgment in qualified immunity actions.

2) *Thompson v. Western States Medical Center, et al.*, 122 S.Ct. 1497 (2002).

In this 5-4 decision, the Supreme Court held that certain provisions of the Food and Drug Administration Modernization Act (FDAMA) were unconstitutional restrictions of commercial speech. The decision has been criticized for its broad application of the commercial free speech doctrine.

3) *Korematsu v. United States*, 321 U.S. 760 (1944)

The Supreme Court affirmed the conviction of a person of Japanese ancestry for violation of a curfew order solely because of the individual's ancestry.

Despite the fact that there may be decisions of the United States Supreme Court with which I may have some personal disagreement, I am mindful of the responsibility of a district court judge to uphold the precedent of the Supreme Court and, if confirmed, I will do so without hesitation and irrespective of my personal feelings.

Ed Kinkeade's responses to Senator Leahy's Questions
Nominee to the U.S. District Court for the Northern District of Texas

1. Justice Kinkeade, you have presided over many capital murder cases and handled numerous death penalty appeals during your time on the state bench. As you may know, I am particularly concerned with the significant number of cases across the country where death row inmates are subsequently found to be innocent. In the case involving Mr. Marvin Wells, I believe you were conducting jury selection before it was discovered that the prosecutor's office was charging the wrong man for a highly publicized murder.

Over the last few years, many prominent Americans have begun raising concerns about the death penalty. Some are current or former supporters of capital punishment. For example, in a speech last summer, Justice O'Connor said there were "serious Questions" about whether the death penalty is fairly administered in the U.S., and asked: "[T]he system may well be allowing some innocent defendants to be executed." Do you agree with this assessment? Please explain.

I agree that the system must do a better job of providing due process to those charged with capital murder. As a judge, I have participated in four death penalty cases. I have not handled any death penalty appeals, because all death penalty appeals in Texas go directly to the Court of Criminal Appeals, the highest criminal appellate court in Texas. Every defendant is entitled to quality representation, and sufficient funds to hire any needed experts.

This year from January 4-11 at The University of Texas in Austin, Texas, Judge Patrick Higginbotham of the United States Fifth Court of Appeals, Professor Mike Tigar, and the Center for American and International Law sponsored the first certification program for Texas attorneys interested in defending death penalty cases. One hundred three attorneys and twelve law students, many of whom received full scholarships, spent an intensive eight days in the study of the trial of death penalty cases. This course provided lectures and small group discussions around a hypothetical case. The participants were videotaped and critiqued as they practiced capital trial skills. I was honored to have been consulted by Judge Higginbotham and the organizers of the course as to a judge's perspective. I look forward to a continuing relationship with this effort next year and in the future.

For these cases, quality defense and due process must be the gold standard. As a trial judge, I appointed the best lawyers, authorized adequate funds to pay them, and made sufficient funds available for experts and other expenses.

2. Justice Kinkeade, you were at the forefront of the movement against the improper practice of unexplained peremptory challenges excluding minorities from serving on juries. What further measures do you think could be taken to ensure that there is an equal opportunity for participation by people of all backgrounds in our jury system?

In 1997, I served on the Texas Supreme Court's Jury Task Force, and chaired the subcommittee on juror pay. In addition to judges applying Batson, there are systemic

changes that would help ensure that a cross-section of the community serves on juries. The subcommittee recommended the following changes:

a. Raising juror pay.
b. Providing tax incentives to employers who continue to pay employees while on jury duty.
c. Providing free public transportation for all persons during jury service.
d. Instituting a system of one day or one trial jury service.
e. Considering other incentives to encourage all citizens to appear when summoned for jury service.

Ed Kinkeade's responses to Senator Schumer's Questions
Nominee to the U.S. District Court for the Northern District of Texas

1. Name three United States Supreme Court Cases with which you disagree.

a. *Plessy v. Ferguson*, 163 U. S. 537 (1896) - Finding that separate but equal satisfied the equal protection clause of the fourteenth amendment was wrong. I agree with Justice Harlan that "Our Constitution is color-blind, and knows nor tolerates classes among citizens."
b. *Lochner v. New York*, 198 U.S. 45 (1905) - This case and its progeny read into the Constitution an economic substantive due process right.
c. *Abrams v. United States*, 250 U.S. 616 (1919) - The court incorrectly limited free speech under the First Amendment.

Senator Leahy's Questions for Judge Linda Rae Reade
Nominee to the U.S. District Court for the Northern District of Iowa

1. In your capacity as a state court trial judge, you have considered many motions to suppress evidence gathered by police. I notice in your questionnaire that you have frequently denied these motions and admitted the evidence. You do not cite to any instances where you granted a motion to suppress evidence due to a violation of constitutional rights. During your nine years on the state court bench, have you granted a motion to suppress evidence that was obtained in violation of the Constitution? Please explain.

   The Polk County Attorney's Office frequently resolves Fourth, Fifth and Sixth Amendment issues with defense counsel short of having a suppression hearing. As a result, a good number of constitutional questions never make it to my court.

   I suppressed the test results on body samples in a vehicular homicide case in State of Iowa v. Frank E. McDonald (see Exhibit 16-3-7 attached to my Senate Questionnaire). As I recall, Defendant made his argument for suppression under both the Fourth Amendment and Iowa Code section 321J.6. I found that law enforcement did not have "reasonable grounds" to believe Mr. McDonald was under the influence of drugs or alcohol when they requested a body sample.

   In the first-degree murder case State of Iowa v. Bobby Ray Bailey (see Exhibit 16-3-8 attached to my Senate Questionnaire) the Polk County Attorney's Office agreed not to use Defendant's statements which had been recorded by law enforcement and Defendant's statements made when law enforcement was photographing his body pursuant to a search warrant, thus preempting my suppression of this evidence.

2. Do you believe there is a constitutional right to privacy? If so, please describe what you believe to be the specific components of this right. If not, please explain.

   The United States Supreme Court has found a right to privacy in various parts of the United States Constitution including, but not limited to the following: First Amendment (Stanley v. Georgia, 394 U.S. 557 (1969)); Fourth and Fifth Amendments (Terry v. Ohio, 392 U.S.1, 8-9 (1968), Katz v. U.S., 389 U.S. 347 (1967)); Fourteenth Amendment (Roe v. Wade, 410 U.S. 113 (1973)); and the Ninth Amendment (Griswold v. Connecticut, 381 U.S. 479 (1965)). The Right to Privacy is generally described as the "right to be let alone." The Court has found that the guarantee of personal privacy is implicated in activities related to marriage, procreation, contraception, family relationships, child rearing and education. If I am fortunate enough to be confirmed as a federal district court judge, I will follow the precedents of the United States Court of the Appeals for the Eighth Circuit and the United States Supreme Court. I would faithfully and without hesitation apply precedent as I have done in the past.

3. Some of the most beloved judges in our history are those who have stood up to popular sentiment to protect the rights of minorities or people whose views made them outcasts or pariahs. Please tell us one instance in your judicial career where you took an unpopular stand or in your private practice where you represented an unpopular client and stood by it under pressure?

   In State of Iowa v. Loren Glenn Huss, Jr. (Exhibit 16-1-5 to my Senate Questionnaire) I found Defendant not guilty of the brutal murder of his girlfriend. The decision was based on the evidence, which established he was insane at the time of the offense.

Senator Schumer's Question for Judge Linda Rae Reade
Nominee to the U.S. District Court for the Northern District of Iowa

What three United States Supreme Court cases can you identify with which you disagree?

Plessy v. Ferguson, 163 U.S. 537 (1896). In Plessy v. Ferguson, the United States Supreme Court held a state statute that provided for separate railroad cars for whites and African-Americans did not deprive African-Americans of any right under the Fourteenth Amendment to the United States Constitution. As ultimately decided in Brown v. Board of Education, 347 U.S. 483 (1954), providing separate but equal accommodations is a denial of equal protection guaranteed by the Fourteenth Amendment to the United States Constitution.

U.S. v. Rabinowitz, 339 U.S. 56 (1950). In Rabinowitz, the United States Supreme Court held that a search of the arrestee's office without a search warrant, but incident to execution of an arrest warrant for him, was not a violation of the Fourth and Fourteenth Amendments to the United States Constitution.

Harris v. U.S., 331 U.S. 145 (1947). In Harris, the United States Supreme Court held that a search of the arrestee's four-room apartment without a search warrant, but incident to his arrest in one of the four rooms, was not a violation of the Fourth Amendment to the United States Constitution. The Court reasoned that there was no constitutional violation because the search of the entire apartment including closed areas was incident to an arrest and the officers were entitled to extend their search beyond his person to the premises under his control.

Response of Freda L. Wolfson to the question posed by Senator Schumer to United States District Court nominees during the confirmation hearing held by the Senate Judiciary Committee on September 26, 2002.

Question: What three United States Supreme Court cases can you identify with which you disagree?

Response:

In Plessy v. Ferguson, 163 U.S. 537 (1896), the Supreme Court held that a state statute requiring passenger railroads to provide separate but equal accommodations for African Americans and Caucasians did not violate the Thirteenth or Fourteenth Amendments. Obviously, this principle is anathema to all of us today. But it was not until 1954 that this principle was officially repudiated in the landmark decision of Brown v. Board of Education , 347 U.S. 483 (1954).

In Betts v. Brady, 316 U.S. 455 (1942), the Supreme Court held that the due process clause of the Fourteenth Amendment did not make the Sixth Amendment right guaranteeing the appointment of counsel in criminal cases applicable to the states; instead whether to appoint counsel in any given case was left to the individual state courts. Betts, however, was later remedied by the Supreme Court in Gideon v. Wainwright, 372 U.S. 335 (1963), in which the Court held that the Sixth Amendment right to counsel is made obligatory on the states in all criminal cases by the Fourteenth Amendment. Thus, an indigent defendant in a criminal case has the right to have counsel appointed for him.

In General Electric Company v. Gilbert, 429 U.S. 125 (1976), the Supreme Court held that an employer's inclusive disability benefits plan which failed to cover pregnancy-related disabilities, did not violate Title VII of the Civil Rights Act of 1964, unless the exclusion of pregnancy disability benefits was a pretext for discriminating against women. That opinion appeared to ignore the applicable administrative guidelines promulgated by the EEOC and was contrary to the opinions of the six Courts of Appeal that had considered the issue. Accordingly, Congress enacted the Pregnancy Discrimination Act, which effectively overruled General Electric, and also rejected the reasoning that differential treatment of pregnancy is not gender-based discrimination. See Newport News Shipbuilding and Dry Dock Company v. EEOC, 462 U.S. 669 (1983).

SUBMISSIONS FOR THE RECORD

July 17, 2001

Honorable Orrin Hatch
United States Senator
Committee on the Judiciary
224 Dirksen Building
Washington, DC 20510

RE: Support for Miguel Estrada's Nomination as United States Court of Appeals Judge for the District of Columbia Circuit

Dear Senator Hatch:

I am writing to express my support for Miguel Estrada's nomination as United States Court of Appeals Judge for the District of Columbia Circuit. Mr. Estrada is a talented and accomplished attorney who will make an outstanding addition to the prestigious DC Circuit.

From his humble beginnings as an immigrant from Honduras who achieved a stellar academic career at Columbia University and Harvard Law School, to his varied and impressive achievements in the Justice Department and private firms, Mr. Estrada has shown himself to be of superior talents and accomplishments.

I am confident that this first Hispanic member of the DC Circuit will continue to lead a distinguished career with thoughtful and fair decisions. I urge you to expeditiously attend to his confirmation.

Thank you for your consideration.

Sincerely,

Richard S. Amador
President & CEO

4301 EAST VALLEY BOULEVARD, LOS ANGELES, CA 90032-3619 • (323) 269-0751 • Fax (323) 266-4326

AMERICAN GI FORUM OF THE UNITED STATES
OFFICE OF THE NATIONAL COMMANDER

A CONGRESSIONALLY CHARTERED VETERANS FAMILY ORGANIZATION

109 NORTH 122 ND STREET ◆ SEATTLE, WASHINGTON 98133 ◆ (206) 364-5948 ◆ Fax (206) 361-1341 ◆ E-Mail agifnc@aol.com

Francisco F. Ivarra ◆ National Commander

June 3, 2002

The Honorable Patrick J. Leahy
Chairman, Senate Judiciary Committee
224 Senate Dirksen Office Building
Washington, DC 20510

Membership

Hispanic Association on Corporate Responsiblity (HACR)

Hispanic Education Foundation (HEF)

League of United Latin American Citizens (LULAC)

Mexican and American Solidarity Foundation (MASF)

National Council Of La Raza (NCLR)

National Hispanic Leadership Agenda (NHLA)

National Veterans Outreach Program (NVOP)

SER Jobs for Progress, Inc. (SER)

Dear Mr. Chairman:

On behalf of the American GI Forum of the United States, I am writing to call on the Senate Judiciary to have a hearing for Miguel A. Estrada for the position of United States Circuit Judge for the District of Columbia. He deserves a hearing and an up or down vote.

Mr. Estrada, who came to the United States from his native Honduras at age 17, has an impressive background. He is a currently a partner with Gibson, Dunn & Crutcher LLP, where he is a member of the firm's Appellate Constitutional Law Practice Group and its Business Crimes and Investigations Practice Group and has argued 15 cases before the U.S. Supreme Court.

Mr. Estrada has spent most of his professional career in public service. He served as Assistant to the Solicitor General of the United States and as Assistant U.S. Attorney and Deputy Chief of the Appellate Section in the U.S. Attorney Office for the Southern District of New York.

Mr. Estrada served as a law clerk for the Honorable Anthony M. Kennedy, Supreme Court of the United States. He attended Harvard Law School, where he was editor of the Harvard Law Review and received a J.D. degree magna cum laude in 1986 and graduated from Columbia College in New York with an A.B. magna cum laude.

If confirmed, Mr. Estrada would be the first Hispanic to sit on the D.C. Circuit Court. The confirmation of this historic appointment will help open doors for more Hispanic judges.

The American GI Forum of the United States, urges the Senate Judiciary Committee to schedule a hearing and vote for Mr. Miguel A. Estrada for the U.S. Court of Appeals for the District of Columbia.

Sincerely,

Samuel Calderon
Chief Operating Officer

We Help People!

The Association for the Advancement of Mexican Americans

6001 Gulf Freeway
Houston, Texas 77023
Office: 713-926-4756
Fax: 713-926-8035
www.aamainc.com

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September 23, 2002

U.S. Senator Patrick Leahy
433 Russell Senate Office Building
United States Senate
Washington, D.C. 20570

Dear Senator Leahy:

This letter serves to support the nomination of Miguel A. Estrada to the United States Court of Appeals for the District of Columbia Circuit. We believe Judge Estrada's work speaks for itself. He is highly qualified to serve in this important position.

Miguel Estrada graduated from Harvard Law School and since that time has worked over 16 years in the justice system. He is respected and admired by those who know him for his focused desire to serve the Nation.

In the last 10 years his work has included:

- Assistant U.S. Attorney – United States Attorney's Office
  Southern District of New York
  Assistant to the Solicitor General's Office – U.S. Department of Justice
  Partner – Gibson, Dunn & Crutcher LLP

You could not find a finer man to represent the people of the United States and we ask that you give Miguel Estrada a hearing and confirm his nomination.

Sincerely,

Jacob Monty
AAMA Board Chair
CEO

Gilberto Moreno
AAMA President /

Congress of the United States
Washington, DC 20515

September 23, 2002

Dear Senators Daschle, Lott, Leahy, and Hatch:

We are Hispanic Members of the United States House of Representatives who write to strongly support Miguel Estrada, President Bush's nominee to be a judge on the United States Court of Appeals for the District of Columbia Circuit. If confirmed, Miguel would be the first Hispanic judge on what is widely recognized as the nation's second highest federal court. President Bush made an historic decision by nominating Miguel Estrada, and we urge the Senate to promptly confirm this outstanding Hispanic-American.

Miguel Estrada is an American success story. He immigrated to the United States as a teenager from Honduras speaking little English. He attended Columbia College and Harvard Law School, graduating *magna cum laude* from both. He clerked for Judge Amalya Kearse on the Second Circuit and Justice Anthony Kennedy on the Supreme Court. Miguel is one of the few Hispanics ever to serve as a law clerk on the Supreme Court of the United States. Miguel worked as an Assistant United States Attorney in the Southern District of New York, and both tried cases in federal district court and argued appeals before the Second Circuit on behalf of the United States. He has worked twice in private practice at leading law firms, in New York at Wachtell, Lipton, Rosen & Katz and in Washington at Gibson, Dunn & Crutcher.

Miguel also served for five years in the Office of Solicitor General at the United States Department of Justice. In that capacity, Miguel argued 14 cases before the Supreme Court and wrote numerous briefs on behalf of the United States. He is widely recognized as a brilliant lawyer and oral advocate, and his official performance reviews noted that he "inspired co-workers by example."

As demonstrated during his service as Assistant to the Solicitor General, Assistant United States Attorney, and law clerk on the Supreme Court, Miguel Estrada believes in the integrity of the courts and the law. He appreciates the difference between law and policy, between the judicial task and the legislative task.

Based on his qualifications, intellect, judgment, and temperament, it is no surprise that Miguel Estrada received a unanimous "well qualified" rating -- the highest possible rating -- from the American Bar Association Standing Committee on Federal Judiciary. As Hispanic Members of Congress, we are very proud that the American Bar Association gave this outstanding Hispanic-American its highest possible rating.

Miguel has performed significant public service beyond his work in government. Most notably, while in private practice, he represented *pro bono* a capital defendant before the Supreme Court. Capital cases are very difficult legally and emotionally for the lawyers representing the capital defendants. Miguel's decision to involve himself in a difficult capital case speaks volumes about his integrity and devotion to the legal system, and his willingness to perform difficult public service. He also assisted the former United States Attorney in New York, who was appointed by President Clinton, in discussing how to ensure that more federal prosecutors are Hispanic.

Miguel is widely supported by Hispanic organizations, such as the Hispanic National Bar Association, the League of United Latin American Citizens, and the U.S. Hispanic Chamber of Commerce. He also is supported by prominent Democrat lawyers, such as Ronald Klain, who served as Counsel to Vice President Gore, Robert Litt, who served as Assistant Attorney General for the Criminal Division under President Clinton, and Randy Moss, who served as Assistant Attorney General for the Office of Legal Counsel under President Clinton. Furthermore, Seth Waxman, who served as Solicitor General under President Clinton, has written to the Judiciary Committee that he has "great respect both for Mr. Estrada's intellect and for his integrity" and that Miguel was "a model of professionalism and competence."

Miguel Estrada would be the first Hispanic judge on the United States Court of Appeals for the District of Columbia Circuit. You and your colleagues have spoken often about the need for balance on the courts. It is past time that an Hispanic judge serve on this important court. Confirmation of Miguel Estrada would provide balance. We urge you to treat Miguel Estrada with fairness and to confirm him promptly.

Thank you for your consideration of our views.

Sincerely,

Henry Bonilla
Member of Congress

Lincoln Diaz-Balart
Member of Congress

Ileana Ros-Lehtinen
Member of Congress

November 28, 2001

Patrick J. Leahy
Chairman
Senate Judiciary Committee
United States Senate
Washington, D.C. 20510

Dear Senator Leahy:

On May 9, 2001, President Bush announced his first 11 nominations to the United States Courts of Appeals at a ceremony in the White House's East Room. One of those nominees was Miguel Estrada, a judicial nominee for the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit").

Because the D.C. Circuit Court handles so many critical constitutional and administrative issues involving the federal government, it is often referred to as the second most history important federal court in the Nation, after the Supreme Court. Indeed, as a sign of the court's importance, three former judges from the D.C. Circuit are now on the Supreme Court: Justices Scalia, Thomas, and Ginsburg.

No Hispanic has ever served as a judge on the D.C. Circuit Court. Accepting the common description of the D.C. Circuit Court as the Nation's second most important federal court, Miguel Estrada will, if confirmed, unofficially become the highest ranking Hispanic federal judge in American history. Estrada's nomination is therefore an historic event and represents one more important step in the breaking down of barriers that in the past made it difficult if not impossible for Hispanic lawyers to become judges.

Despite the historic significance of Estrada's nomination, over five months have now passed since the nomination, and the Senate Judiciary Committee has inexplicably failed to afford Estrada a hearing. (As of October 15, 2001, only 3 of the President's first 11 judicial nominees have received a hearing.)

Estrada's qualifications are impeccable. He received a unanimous "well qualified rating from the American Bar Association, which is the ABA's highest possible rating. Estrada's background and experience demonstrate why he received that "well qualified" rating -- and why he will be a superb judge and a credit to the Hispanic community.

Estrada was born in Tegucigalpa, Honduras, in 1961 and came to the United States as a teenager speaking virtually no English. In 1979, Estrada enrolled at Columbia College where he later graduated *magna cum laude*. Estrada then entered Harvard Law School where he served as an officer on the editorial board of the *Harvard Law Review* and in 1986 graduated *magna cum laude*.

A Program under the auspices of the Joint Center for Political and Economic Studies
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After graduation from Harvard, Estrada earned a position as a law clerk for Judge Amalya L. Kearse, an influential and well-known judge on the U.S. Court of Appeals for the Second Circuit in New York. Then in 1988, Estrada was selected to serve as a law clerk to Supreme Court Justice Anthony M. Kennedy. A Supreme Court clerkship is one of the most prestigious positions a young lawyer can obtain. Estrada is one of only a handful of Hispanics ever to serve as a Supreme Court law clerk.

After clerking for Justice Kennedy, Estrada joined the U.S. Attorney's Office in Manhattan as an Assistant United States Attorney. He soon became Deputy Chief of the Appellate Section of the U.S. Attorney's Office. While at the U.S. Attorney's Office, Estrada tried approximately 10 cases in federal district court and argued 7 appeals on behalf of the United States before the U.S. Court of Appeals for the Second Circuit.

In 1992, Estrada returned to Washington where he served as Assistant to the Solicitor General at the U.S. Justice Department. The Office of Solicitor General represents the United States before the Supreme Court. Estrada served in that office from 1992 to 1997, in both the Bush and the Clinton Administrations. Estrada has now argued 15 cases before the U.S. Supreme Court, which is believed to be the most ever by an Hispanic lawyer. Justices of all ideologies on the Supreme Court have praised Estrada for his extraordinary intellect and the exquisite quality of his briefs and oral arguments.

In 1997, Estrada left the federal government and joined the Washington, D.C. law firm of Gibson Dunn & Crutcher. He currently is a partner at that firm. In private practice, Estrada has represented a variety of the firm's institutional clients in complex civil and criminal litigation, at the pre-trial, trial, and appellate stages. Estrada also has performed significant pro bono work. For example, Estrada represented pro bono an indigent death row defendant in a difficult capital murder case before the Supreme Court.

As noted above, Estrada received a unanimous "well-qualified" rating from the American Bar Association. That is a particularly extraordinary rating given Estrada's age (now 40), but it accurately reflects his legal accomplishments and skill.

I support the nomination of Miguel Estrada and respectfully request the Senate Judiciary Committee to hold a hearing on his qualifications. I am sure that the Committee will agree that as judge, Miguel Estrada will be a credit to the federal judiciary, the President, the Hispanic community, and all Americans.

Sincerely yours,

Roger A. Campos, Esq.
Executive Director

c.c. Senator Orrin G. Hatch, Ranking Member

SHERIFF-CORONER DEPARTMENT
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July 12, 2001

The Honorable Orrin Hatch, United States Senator
Ranking Member
Committee on the Judiciary
224 Dirksen Building
Washington, DC 20510

Re: Support for Miguel Estrada's Nomination as United States Court of Appeals Judge for the District of Columbia Circuit

Dear Senator Hatch,

I am writing to express my support for the nomination of Miguel Estrada as United States Court of Appeals Judge for the District of Columbia Circuit. Mr. Estrada is a brilliantly talented and accomplished attorney who will make an outstanding addition to the prestigious DC Circuit.

Mr. Estrada emigrated from Honduras while in his teens and went on to achieve stellar academic standing at Columbia University and the Harvard School of Law. His legal experience includes service in the private sector and with the Department of Justice, where he has demonstrated his superior talents and abilities.

I am confident that as the first Hispanic member of the DC Circuit, he will continue to distinguish himself and render thoughtful and equitable decisions. I urge you to expeditiously attend to his confirmation.

Sincerely,

Michael S. Carona
Sheriff-Coroner

MC:cav

CENTRO DE LA COMUNIDAD UNIDA
UNITED COMMUNITY CENTER
1028 S. 9th Street Milwaukee, WI 53204
(414) 384-3100 Fax: (414) 649-4411

August 22, 2002

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State Senator Herb Kohl
Washington Office
330 Hart Senate Office Building
United States Senate
Washington, D.C. 20510

Dear Senator Kohl:

On behalf of Centro de la Comunidad Unida/United Community Center (UCC), I am writing to convey our support for Miguel A. Estrada for the position of United States Circuit Judge for the District of Columbia.

Mr. Estrada, who came to the United States from his native Honduras at age 17, has an impressive background. He is a currently a partner with Gibson, Dunn & Crutcher LLP, where he is a member of the firm's Appellate Constitutional Law Practice Group and its Business Crimes and Investigations Practice Group and has argued 15 cases before the U.S. Supreme Court.

Mr. Estrada has spent most of his professional career in public service. He served as Assistant to the Solicitor General of the United States and as Assistant U.S. Attorney and Deputy Chief of the Appellate Section in the U.S. Attorney Office for the Southern District of New York.

Mr. Estrada served as a law clerk for the Honorable Anthony M. Kennedy, Supreme Court of the United States. He attended Harvard Law School, where he was editor of the Harvard Law Review and received a J.D. degree magna cum laude in 1986 and graduated from Columbia College in New York with an A.B.magna cum laude.

If confirmed, Mr. Estrada would be the first Hispanic to sit on the D.C. Circuit Court. The confirmation of this historic appointment will help open doors for more Hispanic judges.

UCC, strongly supports Mr. Miguel A. Estrada and urges the Senate Judiciary Committee to schedule a hearing and support the nomination of this outstanding Hispanic to the U.S. Court of Appeals for the District of Columbia.

Sincerely,

Walter Sava

WS/ms
bcc: Chairman Leahy
Senator Orrin G. Hatch
Progress for America

September 1, 2002

The Honorable Patrick J. Leahy
Chairman, Senate Judiciary Committee
224 Senate Dirksen Office Building
Washington, DC 20510
(202) 224-4242 – (202) 228-3479 (Fax)

Dear Mr. Chairman:

On Behalf of CHRISTIAN COMMUNITY CENTER WORLD EVANGELICAL CHURCH "JESUS CHRIST IS LORD", we are writing to call on the Senate Judiciary to have a hearing for Miguel A. Estrada for the position of United States Circuit Judge for the District of Columbia.

Mr. Estrada who came to the United States from his native Honduras at age 17, has an impressive background. He is a currently a partner with Gibson, Dunn & Crutcher LLP, where he is member of the firm's Appellate Constitutional Law Practice Group and its Business Crimes and Investigations Practice Group and has argued 15 cases before the U.S. Supreme Court.

Mr. Estrada has spent most of this professional career in public service. He served as Assistant to the Solicitor General of the United States and as Assistant U.S. attorney and Deputy Chief of the Appellate Section in the U.S. Attorney Office for the Southern Distric of New York.

Mr. Estrada served as a law clerk for the Honorable Anthony M. Kennedy, Supreme Court of the United States. He attended Harvad Law School, where he was editor of the Harvad Law review and received a J.D. degree magna cum laude in 1986 and graduated from Columbia College in New York with an A.B. magna cum laude. Could we ask for a more qualified nominee? Even the American Bar Association has given him a well-qualified rating.

If confirmed, Mr. Estrada would be the first Hispanic to sit on the D.C. Circuit Court. The confirmation of this historic appointment will help open doors for more Hispanic Judges.

We strongly support Mr. Miguel A. Estrada and urge you to support the nomination of this outstanding Hispanic to the U.S. Court of Appeals for the District of Columbia.

Sincerely,

DR. OSCAR CARDOZA
Senior Pastor

From:
Christian Comunity Center
World Evangelical Church
"Jesus Christ, is Lord"
2407 Market Av. San Pablo Ca.,94806

September 19, 2002

The Honorable Patrick J. Leahy
Chairman
Senate Committee on the Judiciary
SD-224 Dirksen Senate Office Building
United States Senate
Washington, D.C. 20510-6275

The Honorable Orrin G. Hatch
Ranking Member
Senate Committee on the Judiciary
SD-152 Dirksen Senate Office Building
United States Senate
Washington, D.C. 20510-6275

Re: Nomination of Miguel A. Estrada

Dear Chairman Leahy and Senator Hatch:

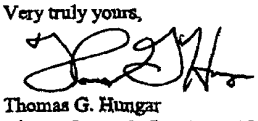
We are writing to express our support for the nomination of Miguel A. Estrada to be a Judge of the United States Court of Appeals for the District of Columbia Circuit. We served with Mr. Estrada in the Office of the Solicitor General, and we know him to be a person of exceptional intellect, integrity, and professionalism who would make a superb Circuit Judge.

Miguel is a brilliant lawyer, with an extraordinary capacity for articulate and incisive legal analysis and a commanding knowledge of and appreciation for the law. Moreover, he is a person whose conduct is characterized by the utmost integrity and scrupulous fairness, as befits a nominee to the federal bench. In addition, Miguel has a deep and abiding love for his adopted country and the principles for which it stands, and in particular for the rule of law. We hold varying ideological views and affiliations that range across the political spectrum, but we are unanimous in our conviction that Miguel would be a fair and honest judge who would decide cases in accordance with the applicable legal principles and precedents, not on the basis of personal preferences or political viewpoints.

We also know Miguel to be a delightful and charming colleague, someone who can engage in open, honest, and respectful discussion of legal issues with others, regardless of their ideological perspectives. Based on our experience as his colleagues in the Solicitor General's office, we are confident that he possesses the temperament, character, and qualities of fairness and respect necessary to be an exemplary judge. In combination, Miguel's exceptional legal ability and talent, his character and integrity, and his deep and varied experience as a public servant and in private practice make him an excellent candidate for service on the federal bench.

We hope this information will be of assistance to the Committee in its consideration of Mr. Estrada's nomination. He is superbly qualified to be a Circuit Judge for the District of Columbia Circuit, and we urge your favorable consideration of his nomination.

Very truly yours,



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* All references to institutions are for identification purposes only.

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University of Pennsylvania Law School*
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Philadelphia, Pa. 19104

Christopher J. Wright
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1200 18th St., N.W.
Washington, DC 20036

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Congregación Cristiana y Misionera "Fe y Alabanza"

2100 North Quebec Street, Arlington, VA 22207

Senior Pastor, Rev. Félix González. Phone: (703) 528 4496

Assistant Pastors: Rev. Maryluz González. Félix E. Jr.; Missionary & Associate Pastor: Rev. Nuty Marroquin.

July 3, 2002

The Honorable Patrick J. Leahy
Chairman, Senate Judiciary Committee
224 Senate Dirksen Office Building
Washington, DC 20510

Dear Mr. Chairman:

On behalf of Congregacion Cristiana Y Misionera "Fe Y Alabanza", I am writing to call ante Senate Judiciary to have a hearing for Miguel A. Estrada for the position of United States Circuit Judge for the District of Columbia. He deserves a hearing and an up or down vote.

Mr. Estrada, who came to the United States from his native Honduras at age 17, has an impressive background. He is currently a partner with Gibson, Dunn & Crutcher LLP, where he is a member of the firm's Appellate Constitutional Law Practice Group and its Business Crimes and Investigations Practice Group and has argued 15 cases before the US. Supreme Court.

Mr. Estrada has spent most of his professional career in public service. He served as Assistant to the Solicitor General of the United States and as Assistant U.S. Attorney and Deputy Chief of the Appellate Section in the U.S. Attorney Office for the Southern District of New York.

Mr. Estrada served as a *law* clerk for the Honorable Anthony M. Kennedy, Supreme Court of the United States. He attended Harvard Law School, where he was editor of the Harvard Law Review and received a J.D. degree magna cum laude in 1986 and graduated from Columbia College in New York with an A.B. magna cum Laude.

If confirmed, Mr. Estrada would be the first Hispanic to sit on the D.C. Circuit Court. The confirmation of this historic appointment will help open doors for more Hispanic judges.

The Congregacion Cristiana y Misionera "Fe Y Alabanza", urges the Senate Judiciary Committee to schedule a hearing and vote for Mr. Miguel A. Estrada for the U.S. Court of Appeals for the District of Columbia.

Sincerely,

Rev. Felix B. Gonzalez, Sr.
Senior Pastor

"Porque la tierra será llena del conocimiento de la Gloria de Jehová, como las aguas cubren el mar." Habacuc 2:14

THE CUBAN AMERICAN NATIONAL FOUNDATION

Senator Patrick J. Leahy
433 Russell Senate Office Building
Washington, D.C.
Via Fax: (202) 244-3479

May 31, 2002

Dear Senator Leahy:

I write in support of the nomination of Miguel Estrada to serve on the Court of Appeals for the District of Colombia.

The life story of Mr. Estrada is both inspiring and illuminating. Coming to this country in search of opportunity and freedom, he found both. In a few short years, Mr. Estrada went from being an immigrant with no knowledge of our culture or language to a magna cum laude graduate of Harvard, a respected and accomplished civil servant and now the nominee for one of our most important judicial assignments.

Mr. Senator, as the Chairman of one of the largest Hispanic organizations in the country, I know of many such success stories in the Hispanic community. Mr. Estrada is a fine example of how this great nation nurtures and advances individuals based on their skills and determination, not their national origin or the language of their birth. Mr. Estrada is man of proven integrity, vision, and balance. He is a man who has shown he values the opinions of others and can work with people from across the political spectrum. As potentially the first Hispanic judge on the DC Court of Appeals, he will also be a highly visible role model for children of all backgrounds.

Mr. Senator, the American dream is not supposed to languish in committee. I strongly urge the Committee on the Judiciary to fulfill its advice and consent role by taking up Mr. Estrada's nomination at the earliest opportunity.

Sincerely,

Jorge Mas Santos
Chairman

1822 Jefferson Place NW • Washington DC • 20036 • 202.530.1894 • Fax 202.530.2444 • www.canf.org • canfnews@aol.com

THE CUBAN AMERICAN NATIONAL FOUNDATION

Senator Patrick J. Leahy
433 Russell Senate Office Building
Washington, D.C.
Via Fax: (202) 244-3479

September 23, 2002

Dear Senator Leahy:

Last May, I wrote to ask that Miguel Estrada be given a hearing on his nomination to serve on the Court of Appeals for the District of Columbia. I am very gratified to learn that later this week Mr. Estrada will finally have his day before your committee.

I remain concerned, however, by reports that the full Senate may not have an opportunity to vote on this nomination before recess. Mr. Estrada is an exceptionally qualified candidate for the Court of Appeals and a man who embodies the very best of the promise of this nation – that every man and woman has a chance to rise to the highest reaches of our government, no matter how humble his or her origins.

Senator, here in South Florida our community is invigorated and strengthened by the contribution of immigrants from Central and South America, from the Caribbean and from Mexico. Miguel Estrada's nomination is a source of pride and satisfaction that reaches deep into our community. He is a living example of how the White House and the Senate can work together to ensure that the best people are brought into our judiciary.

Miguel Estrada has broad bipartisan support and an enviable record of achievement. He will be a great asset to the Court of Appeals. I am working with members of the Hispanic community and the broader non-Hispanic community to support his candidacy. I respectfully but strongly urge that the full Senate act on his nomination without further delay.

Sincerely,

Jorge Mas Santos
Chairman

1822 Jefferson Place NW • Washington DC • 20036 • 202.530.1894 • Fax 202.530.2444 • www.canf.org • canfnews@aol.com

4826 Oakwood Ave.
Los Angeles, CA. 90004

Cuban-American Voters
National
Unity Committee

Phone: (323) 463-9353
Fax: (323) 463-9363

Los Angeles, August 26, 2002-08-27
Senator Dianne Feinstein
Fax (202) 228-3954

Dear Senator Feinstein,

On behalf of The CUBAN AMERICAN VOTERS NATIONAL UNITY COMMITTEE I am writing to convey our support For Miguel A. Estrada for the position of United States Circuit Judge for the District of Columbia.

Mr. Estrada, who came to the United States from his native Honduras at age 17, has an impressive background. He is a Currently Partner with Gibson, Dunn & Crutcher LLP, where he is a member of the firm's Appellate Constitutional Law Practice Group and its Business Crimes and Investigations Practice Group and has argued 15 cases before the U.S. Supreme Court.

Mr. Estrada has spent most of his professional career in public service. He served as Assistant to the Solicitor General of the United States and as Assistant U.S. Attorney and Deputy Chief of the Appellate Section in the U.S. Attorney Office for the Southern District of New York.

Mr. Estrada served as a law clerk for the Honorable Anthony M. Kennedy, Supreme Court of the United States. He attended Harvard Law School, where he was editor of the Harvard Review and received a J.D. Degree magna cum laude in 1986 and graduated From Columbia College in New York with an A. B. magna cum laude.

If confirmed Mr. Estrada would be the first Hispanic to sit on the D. C. Circuit Court. The confirmation of this historic Appointment Will help open doors for more Hispanic judges.

THE CUBAN AMERICAN VOTERS NATIONAL UNITY COMMITTEE strongly supports Mr. Miguel A. Estrada and urges the Senate Judiciary Committee to schedule a hearing and support the nomination of this outstanding Hispanic to the U. S. Court of Appeals for the District of Columbia.

Sincerely,

Jose Luis Fernandez
Press Secretary

CC: Senator Patric Leahy – (202) 224-9516
Senator Orrin G. Hatch – (202) 228-1698

DE LA CRUZ INT'L. MINISTRIES, INC.

Rev. Reyna Cruz
President

September 13, 2002

The Honorable Dianne Feinstein
United States Senate
Senate Hart Office Building- 331
Washington, DC 20005
(202) 224-3841 - (202) 228-3954 (Fax)

Dear Senator Feinstein:

On behalf of DE LA CRUZ INT'L. MINISTRIES, INC., I am writing to convey our support for Miguel A. Estrada for the position of United States Circuit Judge for the District of Columbia.

Mr. Estrada, who came to the United States from his native Honduras at age 17, has an impressive background. He is a currently a partner with Gibson, Dunn & Crutcher LLP, where he is a member of the firm's Appellate Constitutional Law Practice Group and its Business Crimes and Investigations Practice Group and has argued 15 cases before the U.S. Supreme Court.

Mr. Estrada has spent most of his professional career in public service. He served as Assistant to the Solicitor General of the United States serving both Democrat and Republican administrations, as well as Assistant U.S. Attorney and Deputy Chief of the Appellate Section in the U.S. Attorney Office for the Southern District of New York.

Mr. Estrada served as a law clerk for the Honorable Anthony M. Kennedy, Supreme Court of the United States. He attended Harvard Law School, where he was editor of the Harvard Law Review and received a J.D. degree magna cum laude in 1986 and graduated from Columbia College in New York with an A.B.magna cum laude. Could we ask for a more qualified nominee? Even the American Bar Association has given him a well-qualified rating.

If confirmed, Mr. Estrada would be the first Hispanic to sit on the D.C. Circuit Court. The confirmation of this historic appointment will help open doors for more Hispanic judges.

We strongly support Mr. Miguel A. Estrada and urge you to support the nomination of this outstanding Hispanic to the U.S. Court of Appeals for the District of Columbia.

Sincerely,

Rev. Reyna Cruz
President

6625 Ajax Ave, Bell Gardens, CA 90201 Tel. (323) 560- 2727 Fax (323) 560-3417

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

January 27, 2000

DELIBERATIVE PROCESS

The Honorable John Linder
Chairman, Subcommittee on Rules and
Organization of the House
Committee on Rules
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

We have carefully reviewed the testimony presented to the Subcommittee on Rules and Organization of the House at its hearing on July 15, 1999, on "Cooperation, Comity, and Confrontation: Congressional Oversight of the Executive Branch." The Department of Justice appreciates the Subcommittee's interest in this area, and we would like to take this opportunity to present in this letter, for the benefit of both Members of Congress and the public at large, the approach we take to the issues raised at the hearing. As always, we are committed to cooperating with your Subcommittee, and all committees of Congress, with respect to the oversight process.

The testimony presented at the hearing suggests to us that there is a need for improved communication and sensitivity between the Executive and Legislative Branches regarding our respective institutional needs and interests. It also suggests that there is considerable misunderstanding about the principles that govern the Department's longstanding positions and practices on responding to congressional oversight requests. We hope that this discussion of those governing principles will be helpful to the Committee and foster an improved understanding of the Department's interests in responding to oversight requests.

General Approach

The oversight process is, of course, an important underpinning of the legislative process. Congressional committees need to gather information about how statutes are applied and funds are spent so that they can assess whether additional legislation is necessary either to rectify practical problems in current law or to address problems not covered by current law. By helping Congress be better informed when it makes legislative decisions, oversight promotes the accountability of government. The information that committees gather in this oversight capacity is also important for the Executive Branch in the future implementation of the law and its participation in the legislative process. We have found that the oversight process can shed

valuable light on Department operations and assist our leadership in addressing problems that might not otherwise have been clear.

President Reagan's November 4, 1982 Memorandum for the Heads of Executive Departments and Agencies on "Procedures Governing Responses to Congressional Requests for Information" sets forth the longstanding Executive Branch policy on cooperating with Congressional oversight:

> The policy of this Administration is to comply with Congressional requests for information to the fullest extent consistent with the constitutional and statutory obligations of the Executive Branch . . . [E]xecutive privilege will be asserted only in the most compelling circumstances, and only after careful review demonstrates that assertion of the privilege is necessary. Historically, good faith negotiations between Congress and the Executive Branch have minimized the need for invoking executive privilege, and this tradition of accommodation should continue as the primary means of resolving conflicts between the Branches.

The D.C. Circuit Court of Appeals has recognized the obligations of Congress and the Executive Branch to seek to accommodate the legitimate needs of the other:

> The framers . . . expect[ed] that where conflicts in scope of authority arose between the coordinate branches, a spirit of dynamic compromise would promote resolution of the dispute in the manner most likely to result in efficient and effective functioning of our governmental system. Under this view, the coordinate branches do not exist in an exclusively adversary relationship to one another when a conflict in authority arises. Rather, each branch should take cognizance of an implicit constitutional mandate to seek optimal accommodation through a realistic evaluation of the needs of the conflicting branches in the particular fact situation.

United States v. American Tel. & Tel. Co., 567 F.2d 121, 127 (D.C. Cir. 1977). Attorney General William French Smith captured the essence of the accommodation process in a 1981 opinion: "The accommodation required is not simply an exchange of concessions or a test of political strength. It is an obligation of each branch to make a principled effort to acknowledge, and if possible to meet, the legitimate needs of the other branch." Opinion of the Attorney General for the President, Assertion of Executive Privilege in Response to a Congressional Subpoena, 5 Op. O.L.C. 27, 31 (1981).

In implementing the longstanding policy of the Executive Branch to comply with Congressional requests for information to the fullest extent consistent with the constitutional and statutory obligations of the Executive Branch, the Department's goal in all cases is to satisfy legitimate legislative interests while protecting Executive Branch confidentiality interests. Examples of confidential information include national security information, materials that are

protected by law (such as grand jury information pursuant to Rule 6(e) of the Federal Rules of Criminal Procedure and taxpayer information pursuant to 26 U.S.C. § 6103); information the disclosure of which might compromise open criminal investigations or prosecutions or civil cases or constitute an unwarranted invasion of personal privacy; and predecisional deliberative communications (such as internal advice and preliminary positions and recommendations).

We believe that it must be the Department's efforts to safeguard these important Executive Branch institutional interests that have led to the frustrations expressed during the Subcommittee's hearing. We hope that we can reduce those frustrations in the future by setting forth here our perspective on some of the more important institutional interests that are implicated during the course of Congressional oversight.

Open Matters

Much of the testimony at the hearing addressed oversight of ongoing Department investigations and litigation. Although Congress has a clearly legitimate interest in determining how the Department enforces statutes, Congressional inquiries during the pendency of a matter pose an inherent threat to the integrity of the Department's law enforcement and litigation functions. Such inquiries inescapably create the risk that the public and the courts will perceive undue political and Congressional influence over law enforcement and litigation decisions. Such inquiries also often seek records and other information that our responsibilities for these matters preclude us from disclosing. Consequently, we have sought whenever possible to provide information about closed, rather than open, matters. This enables Congress to analyze and evaluate how statutory programs are handled and the Department conducts its business, while avoiding the potential interference that inquiries into open matters entail.

The open matters concern is especially significant with respect to ongoing law enforcement investigations. The Department's longstanding policy is to decline to provide Congressional committees with access to open law enforcement files. Almost 60 years ago, Attorney General Robert H. Jackson informed Congress that:

> It is the position of the Department, restated now with the approval of and at the direction of the President, that all investigative reports are confidential documents of the executive department of the Government, to aid in the duty laid upon the President by the Constitution to "take care that the Laws be faithfully executed," and that congressional or public access to them would not be in the public interest . . . .

40 Op. Att'y. Gen. 45, 46 (1941). Attorney General Jackson's position was not new. His letter cited prior Attorney General letters taking the same position dating back to the beginning of the 20th century (id. at 47-48).

The rationale for this policy is set forth in a published opinion of the Office of Legal Counsel issued by Charles J. Cooper, Assistant Attorney General for the Office of Legal Counsel

during part of the Reagan Administration. See Response to Congressional Requests for Information Regarding Decisions made Under the Independent Counsel Act, 10 Op. O.L.C. 68, 76-77 (1986). Mr. Cooper noted that providing a Congressional committee with confidential information about active criminal investigations would place the Congress in a position to exert pressure or attempt to influence the prosecution of criminal cases. Id. at 76. Congress would become, "in a sense, a partner in the investigation," id., and could thereby attempt to second-guess tactical and strategic decisions, question witness interview schedules, debate conflicting internal recommendations, and generally attempt to influence the outcome of the criminal investigation. Such a practice would significantly damage law enforcement efforts and shake public and judicial confidence in the criminal justice system. Id. at 76-77.

Decisions about the course of an investigation must be made without reference to political considerations. As one Justice Department official noted 30 years ago, "the Executive cannot effectively investigate if Congress is, in a sense, a partner in the investigation. If a congressional committee is fully apprised of all details of an investigation as the investigation proceeds, there is a substantial danger that congressional pressures will influence the course of the investigation." Memorandum for Edward L. Morgan, Deputy Counsel to the President, from Thomas E. Kauper, Deputy Assistant Attorney General, Office of Legal Counsel, Re: Submission of Open CID Investigation Files 2 (Dec. 19, 1969).

In addition to the problem of Congressional pressure and the appearance of such pressure, the disclosure of documents from our open files could also provide a "road map" of the Department's ongoing investigations. The documents, or information that they contain, could come into the possession of the targets of the investigation through inadvertence or a deliberate act on the part of someone having access to them. The investigation would be seriously prejudiced by the revelation of the direction of the investigation, information about the evidence that the prosecutors have obtained, and assessments of the strengths and weaknesses of various aspects of the investigation. As Attorney General Jackson observed:

> Disclosure of the [law enforcement] reports could not do otherwise than seriously prejudice law enforcement. Counsel for a defendant or a prospective defendant, could have no greater help than to know how much or how little information the Government has, and what witnesses or sources of information it can rely upon. This is exactly what these reports are intended to contain.

40 Op. Atty. Gen. at 46. The Department has similar interests in the confidentiality of internal documents relating to its representation of the United States in civil litigation. Our litigation files usually contain confidential correspondence with client agencies as well as the work product of our attorneys in suits that frequently seek millions of tax dollars. They also contain "road maps" of our litigation plans and preparations, as well as confidential reports from experts and consultants. Those plans could be seriously jeopardized and our positions in litigation compromised if we are obliged to disclose our internal deliberations including, but not limited to,

our assessments of the strengths and weaknesses of evidence or the law, before they are presented in court. That may result in an unfair advantage to those who seek public funds and deprive the taxpayers of confidential representation enjoyed by other litigants.

In addition, the reputations of individuals mentioned in internal law enforcement and litigation documents could be severely damaged by the public release of information about them, even though the case might ultimately not warrant prosecution or other legal action. The Department takes very seriously its responsibility to respect the privacy interests of individuals about whom information is developed during the law enforcement process or litigation.

Internal Department Deliberations

With respect to oversight on closed matters, the Department has a broad confidentiality interest in materials that reflect its internal deliberative process. In particular, we have sought to ensure that all law enforcement and litigation decisions are products of open, frank and independent assessments of the pertinent law and facts -- uninhibited by political and improper influences that may be present outside the Department. We have long been concerned about the chilling effect that would ripple throughout government if prosecutors, policy advisors at all levels and line attorneys believed that their honest opinion -- be it "good" or "bad" -- may be the topic of debate in Congressional hearings or floor debates. These include assessments of evidence and law, candid advice on strengths and weaknesses of legal arguments, and recommendations to take or not to take legal action against individuals and corporate entities.

The Department must seek to protect this give-and-take process so that the participants in the process can vigorously debate issues before them and remain able to provide decisionmakers with complete and honest counsel regarding the conduct of the Department's business. If each participant's contribution can be dissected by Congress in a public forum, then the free and candid flow of ideas and recommendations would certainly be jeopardized. The Supreme Court has recognized the legitimacy of this "chilling effect" concern: "Human experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances and for their own interests to the detriment of the decisionmaking process." United States v. Nixon, 418 U.S. 683, 705 (1974). Our experience indicates that the Department can develop accommodations with Congressional committees that satisfy their needs for information that may be contained in deliberative material while at the same time protecting the Department's interest in avoiding a chill on the candor of future deliberations.

The foregoing concerns apply with special force to Congressional requests for prosecution and declination memoranda and similar documents. These are extremely sensitive law enforcement materials. The Department's attorneys are asked to render unbiased, professional judgments about the merits of potential criminal and civil law enforcement cases. If their deliberative documents were made subject to Congressional challenge and scrutiny, we would face a grave danger that they would be chilled from providing the candid and independent analysis essential to just and effective law enforcement or, just as troubling, that

they might err on the side of prosecution simply to avoid public second-guessing. This in turn would undermine public and judicial confidence in our law enforcement processes, untoward consequences we are confident that Congress, like the Department, wishes to avoid.

Privacy

In addition to these concerns, disclosure of declination memoranda would implicate significant individual privacy interests as well. Such documents discuss the possibility of bringing charges against individuals who are investigated but not prosecuted, and often contain unflattering personal information as well as assessments of witness credibility and legal positions. The disclosure of the contents of these documents could be devastating to the individuals they discuss. We try to accommodate Congressional needs for information about declinations whenever possible by making appropriate Department officials available to brief Committee Members and staff. This affords us an opportunity to answer their questions, which can be helpful because it can include the context and process that accompanied the decision. Hence, the discussion with staff may provide useful information and minimize the intrusion on individual privacy and the chill on our attorneys' preparation of future deliberative documents.

Line Attorneys

The Department also has a strong institutional interest in ensuring that appropriate supervisory personnel, rather than line attorneys and agents, answer Congressional questions about Department actions. This is based in part upon our view that supervisory personnel, not line employees, make the decisions that are the subjects of congressional review, and therefore they should be the ones to explain the decisions. More fundamentally, however, we need to ensure that our attorneys and agents can exercise the independent judgment essential to the integrity of law enforcement and litigation functions and to public confidence in those decisions. Senator Orrin Hatch has recognized the legitimacy of the Department's practice in this area, observing that Congressional examination of line attorneys "could chill career Department of Justice lawyers in the exercise of their daily duties." See Letter to Attorney General Janet Reno from Senator Orrin Hatch, dated September 21, 1993. Representative Henry Hyde has likewise opposed Congressional interviews of line prosecutors. See Letter of Representative Hyde to Representative Carlos Moorhead, dated September 7, 1993. By questioning supervisors and ultimately the Department's Senate-confirmed leadership, Congress can fulfill its oversight responsibilities without undermining the independence of line attorneys and agents.

* * *

In sum, the Department recognizes that the process of Congressional oversight is an important part of our system of government. We are committed to cooperating with oversight requests to the fullest extent consistent with our constitutional and statutory responsibilities.

We welcome your suggestions about how we should work together to accommodate the needs of our respective branches of government. Please do not hesitate to contact me if you would like to discuss these matters further. I intend at all times to work diligently with you toward satisfying the respective needs of our coordinate branches.

Sincerely,

Robert Raben
Assistant Attorney General

cc: The Honorable Tony Hall
Ranking Minority Member

U.S. Department of Justice

Office of Legislative Affairs

Washington, D.C. 20530

June 5, 2002

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds to your letter dated May 15, 2002, requesting appeal recommendations, certiorari recommendations, and amicus recommendations that Miguel Estrada worked on when he was employed at the Department of Justice.

The categories of documents that you have requested are among the most highly privileged and deliberative documents generated within the Department of Justice. The Solicitor General must have the benefit of candid and confidential advice in order to discharge his critical responsibility of deciding what appeals the Government will take and what positions the Government will adopt in pending litigation. Attorneys like Mr. Estrada who serve as Assistants to the Solicitor General are asked to render candid, unbiased, and professional advice about the merits of potential appeals. They do so by preparing exactly the kinds of recommendation memoranda that you have requested. These documents review the substantive legal issues in a case, the broader jurisprudential implications of the case, policy considerations, the strength of the factual record, and the overall likelihood of success on appeal.

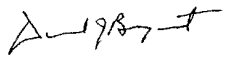
If highly privileged and deliberative documents of this kind are not shielded from disclosure, the Department will face the grave danger that Assistants to the Solicitor General, and others in comparable positions, will be chilled in the future from providing the candid and independent analysis that is essential to high-level decisionmaking. As the unanimous Supreme Court recognized: "Human experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances and for their own interests to the detriment of the decisionmaking process." United States v. Nixon, 418 U.S. 683, 705 (1974). The Court observed that "the importance of this confidentiality is too plain to require further discussion." Id. Simply put, the Department cannot function properly if our attorneys write these kinds of documents with one eye focused on the effect that their words, if made public, might have on their qualification for future office.

For these reasons, the Department has a longstanding policy -- which has endured across Administrations of both parties -- of declining to release publicly or make available to Congress the kinds of documents you have requested.

We trust that you will appreciate the important institutional interests that lead us to decline your request. In our judgment, the Committee has had ample time and alternative means for obtaining assessments of how Mr. Estrada's performance as an Assistant to the Solicitor General bears on the merits of his nomination. In particular, you have been free to inquire of the Solicitors General under whom Mr. Estrada served their views as to his qualifications for the position to which he has been nominated.

On January 25, 2002, you promised a Committee hearing for Mr. Estrada this year. So that the Committee can meet your commitment, we would request that you contact me or Judge Gonzales, as soon as possible to discuss this matter if you have any questions or concerns.

Sincerely,



Daniel J. Bryant
Assistant Attorney General

cc: The Honorable Orrin G. Hatch
Ranking Minority Member

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April 10, 2002

Margarita H. Tapia
Press Secretary
Senator Orrin G. Hatch
United States Senate
152 Dirksen Building
Washington, DC 20510

Re: Miguel Estrada Nomination

Dear Ms. Tapia:

It was a pleasure meeting you at the press conference in support of Miguel Estrada to the U.S. Court of Appeals for the DC Circuit. As you know, the National Troopers Coalition, composed of approximately 40,000 state law enforcement officers, supports this nomination. He is truly an outstanding nominee.

The NTC has testified before the Judiciary Committee in the past on nominees that the NTC supports. If there is anything that we can do to help you further with this nomination, please do not hesitate to let me know.

Very truly yours,

James J. Doyle, III

JJD:jll

Enclosure

FEDERATION OF MAYORS OF PUERTO RICO
P.O. Box 7885, Guaynabo, Puerto Rico 00970
(787) 789-0888

Tuesday, September 03, 2002

Senator Orrin G. Hatch
Fax number (202) 228-1698

Dear Senator Hatch:

On behalf of the Federation of Mayors of Puerto Rico, we are writing to convey our support for Miguel A. Estrada for the position of United States Circuit Judge for the District of Columbia. As you know, we represent 33 municipalities in Puerto Rico with over one million voting Hispanic US Citizens living in the cities we were elected to represent.

Mr. Estrada, who came to the United States from his native Honduras at age 17, has an impressive background. He is currently a partner with Gibson, Dunn & Crutcher LLP, where he is a member of the firm's Appellate Constitutional Law Practice Group and its Business Crimes and Investigations Practice Group and has argued 15 cases before the U.S. Supreme Court.

Mr. Estrada has spent most of his professional career in public service. He served as Assistant to the Solicitor General of the United States and as Assistant U.S. Attorney and Deputy Chief of the Appellate Section in the U.S. Attorney Office for the Southern District of New York.

Mr. Estrada served as a law clerk for the Honorable Anthony M. Kennedy, Supreme Court of the United States. He attended Harvard Law School, where he was editor of the Harvard Law Review and received a J.D. degree magna cum laude in 1986 and graduated from Columbia College in New York with an A.B.magna cum laude.

If confirmed, Mr. Estrada would be the first Hispanic to sit on the D.C. Circuit Court. The confirmation of this historic appointment will help open doors for more Hispanic judges.

The Federation of Mayors of Puerto Rico, strongly supports Mr. Miguel A. Estrada and urges the Senate Judiciary Committee to schedule a hearing and support the nomination of this outstanding Hispanic to the U.S. Court of Appeals for the District of Columbia.

Sincerely,

Hector Oneill
President

Carlos Mendez
Vice President

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FRIEDRICHSTRASSE 95
D-10117 BERLIN
TELEPHONE 011 (4930) 2022-6400
FACSIMILE 011 (4930) 2022-6500

June 24, 2002

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy:

We write to express our concern about your recent request that the Department of Justice turn over "appeal recommendations, certiorari recommendations, and amicus recommendations" that Miguel Estrada worked on while in the Office of the Solicitor General.

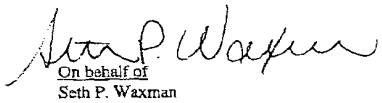
As former heads of the Office of the Solicitor General – under Presidents of both parties -- we can attest to the vital importance of candor and confidentiality in the Solicitor General's decisionmaking process. The Solicitor General is charged with the weighty responsibility of deciding whether to appeal adverse decisions in cases where the United States is a party, whether to seek Supreme Court review of adverse appellate decisions, and whether to participate as *amicus curiae* in other high-profile cases that implicate an important federal interest. The Solicitor General has the responsibility of representing the interests not just of the Justice Department, nor just of the Executive Branch, but of the entire federal government, including Congress.

It goes without saying that, when we made these and other critical decisions, we relied on frank, honest, and thorough advice from our staff attorneys, like Mr. Estrada. Our decisionmaking process required the unbridled, open exchange of ideas – an exchange that simply cannot take place if attorneys have reason to fear that their private recommendations are not private at all, but vulnerable to public disclosure. Attorneys inevitably will hesitate before giving their honest, independent analysis if their opinions are not safeguarded from future disclosure. High-level decisionmaking requires candor, and candor in turn requires confidentiality.

Any attempt to intrude into the Office's highly privileged deliberations would come at the cost of the Solicitor General's ability to defend vigorously the United States' litigation interests -- a cost that also would be borne by Congress itself.

Although we profoundly respect the Senate's duty to evaluate Mr. Estrada's fitness for the federal judiciary, we do not think that the confidentiality and integrity of internal deliberations should be sacrificed in the process.

Sincerely,



On behalf of
Seth P. Waxman
Walter Dellinger
Drew S. Days, III
Kenneth W. Starr
Charles Fried
Robert H. Bork
Archibald Cox

cc: The Honorable Orrin G. Hatch
The Honorable Alberto R. Gonzales
The Honorable John D. Ashcroft

GRAND LODGE
FRATERNAL ORDER OF POLICE®

309 Massachusetts Ave., N.E.
Washington, DC 20002
Phone 202-547-8189 • Fax 202-547-8190

STEVE YOUNG
PRESIDENT

JAMES O. PASCO, JR.
EXECUTIVE DIRECTOR

29 November 2001

The Honorable Orrin G. Hatch
Ranking Member, Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Hatch:

I am writing on behalf of the membership of the Fraternal Order of Police to advise you of our support for the nomination of Miguel A. Estrada to the United States Court of Appeals for the District of Columbia Circuit.

A necessary qualification for any candidate for a position within the Federal Judiciary should be a proven record of success as a practicing attorney. I believe that it is also necessary for a candidate to be familiar with the inner-workings of the Court, and to have the respect of the law enforcement community of which they are an important part. Mr. Estrada meets both of these important criteria, as evidenced by his unanimous "well qualified" rating from the American Bar Association, the ABA's highest rating.

Born in Honduras, and coming to the United States as a teenager, Mr. Estrada graduated *magna cum laude* from both Columbia College and Harvard Law School. In 1988, he was selected to serve in the prestigious position of law clerk to Supreme Court Justice Anthony M. Kennedy. After his clerkship, Mr. Estrada joined the U.S. Attorney's Office in New York, and soon rose to the rank of Deputy Chief of the Appellate Section. From 1992 to 1997, he served as Assistant to the Solicitor General at the Department of Justice, and has now argued 15 cases before the U.S. Supreme Court—believed to be the most ever by an Hispanic-American lawyer.

Mr. Estrada has demonstrated that he will be an outstanding addition to the Federal bench, and on behalf of the more than 299,000 members of the Fraternal Order of Police, I again offer our strong support for his nomination. Please do not hesitate to contact me, or Executive Director Jim Pasco, if we may be of any further assistance.

Sincerely,

Steve Young
National President

José A. Fuentes-Agostini
1301 K St., N. W.
Suite 1100 – East Tower
Washington, D.C. 20005

Wednesday, September 18, 2002

Senator Orrin G. Hatch
Fax number (202) 228-1698

Dear Senator Hatch:

As former Attorney General of Puerto Rico, and presently Counsel at a prestigious Law Firm in Washington, D. C., I would like to convey my support to Miguel A. Estrada for the position of United States Circuit Judge for the District of Columbia. As Appellate Counsel with more than 15 cases argued before US Circuit Courts, I can attest to the high standards to which the members of the bar of this illustrious court are held. Without any doubt, Mr. Estrada is highly qualified to serve in this most important position.

Mr. Estrada, who came to the United States from his native Honduras at age 17, has an impressive background. He is currently a partner with Gibson, Dunn & Crutcher LLP, where he is a member of the firm's Appellate Constitutional Law Practice Group and its Business Crimes and Investigations Practice Group and has argued 15 cases before the U.S. Supreme Court.

Mr. Estrada has spent most of his professional career in public service. He served as Assistant to the Solicitor General of the United States and as Assistant U.S. Attorney and Deputy Chief of the Appellate Section in the U.S. Attorney Office for the Southern District of New York.

Mr. Estrada served as a law clerk for the Honorable Anthony M. Kennedy, Supreme Court of the United States. He attended Harvard Law School, where he was editor of the Harvard Law Review and received a J.D. degree magna cum laude in 1986 and graduated from Columbia College in New York with an A.B. magna cum laude.

If confirmed, Mr. Estrada would be the first Hispanic to sit on the D.C. Circuit Court. The confirmation of this historic appointment will help open doors for more Hispanic judges.

I strongly support Mr. Miguel A. Estrada and urge the Senate Judiciary Committee to support the nomination of this outstanding Hispanic to the U.S. Court of Appeals for the District of Columbia. I feel confident that in this important position he will not only be distinguished in his service to our country but make all Hispanics proud.

Sincerely,

José A. Fuentes-Agostini

THE WHITE HOUSE
WASHINGTON

September 17, 2002

Dear Chairman Leahy:

I write to bring to your attention certain information regarding Miguel Estrada, one of the President's nominees to the United States Court of Appeals for the District of Columbia Circuit.

Mr. Estrada has now provided the Committee with copies of performance reviews he received while he was an attorney in the Office of Solicitor General. The performance reviews demonstrate that he received the highest possible rating ("outstanding") in each conceivable job performance category for each of the years he served in that office. The rating official who signed Mr. Estrada's performance reviews from 1994 to 1996 was former Deputy Solicitor General Paul Bender (the reviews were also signed by Solicitor General Drew Days).

The performance reviews stated the following about Mr. Estrada to support the conclusion that Mr. Estrada's performance was "outstanding."

- "states the operative facts and applicable law completely and persuasively, with record citations, and in conformance with court and office rules, and with concern for fairness, clarity, simplicity, and conciseness."
- "[i]s extremely knowledgeable of resource materials and uses them expertly; acting independently, goes directly to point of the matter and gives reliable, accurate, responsive information in communicating position to others."
- "[a]ll dealings, oral, and written, with the courts, clients, and others are conducted in a diplomatic, cooperative, and candid manner."
- "[a]ll briefs, motions or memoranda reviewed consistently reflect no policies at variance with Departmental or Governmental policies, or fails to discuss and analyze relevant authorities."
- "[i]s constantly sought for advice and counsel. Inspires co-workers by example."

I hope that the foregoing will be helpful. Please do not hesitate to contact me if I can be of further assistance.

Sincerely,

/ Gonzales

Alberto R. Gonzales

The Honorable Patrick J. Leahy
Chairman
United States Senate
Committee on the Judiciary
Washington, D.C. 20510

cc: The Honorable Orrin G. Hatch

THE WASHINGTON POST

A34 THURSDAY, SEPTEMBER 26, 2002

Alberto R. Gonzales

No More Stalling

It's time for the Senate to confirm Miguel Estrada.

After 16 months of delay, the Senate Judiciary Committee will hold a hearing today on Miguel Estrada, one of President Bush's nominees to the U.S. Court of Appeals for the D.C. Circuit. Estrada is superbly qualified for the job and would be the first Hispanic to serve on that court, which some consider to be the second-most-important federal court in America after the Supreme Court.

His extraordinary intellect, experience, integrity and support normally would mean a swift Senate confirmation—particularly given the historic nature of the nomination. But some Senate Democrats have deemed Estrada controversial and are apparently threatening to block his confirmation. Sen. Charles E. Schumer (D-N.Y.) stated last April: "From my perusal of the record, [Estrada] is way out of the mainstream."

I do not know what record Schumer could have been referring to. Estrada has not been the author of controversial opinions or articles, nor has he spoken out on divisive issues. He is not a politician or an interest-group leader who has sought to make policy. What he has done is serve, in a variety of public and private capacities, as a brilliant and careful lawyer devoted to the courts and the law.

ASSOCIATED PRESS

But in the current political atmosphere, some nominees are not being assessed by the traditional standards of quality and ability to follow the law as a judge, but rather are being delayed or outright blocked because of distorted analyses of their perceived policy or personal views. As the president, the chief justice and the American Bar Association have stated, every judicial nominee deserves a prompt hearing and fair vote—no matter who is president or which party controls the Senate. In the words of the ABA, "Vote them up or down, but don't hang them out to dry." It is past time for the Senate to act on a bipartisan basis to institute a fair and timely judicial confirmation process that will endure well into the future.

The problems in the judicial confirmation process have gone beyond mere delay, however. Even after hearings, for example, the Senate Judiciary Committee has refused to allow full Senate votes on well-qualified nominees—despite the fact that the president's nominees would be confirmed if they received a full Senate vote. Single-issue Washington interest groups have played an unfortunate role in the process, moreover, by distorting records, leveling unfair charges and ignoring bipartisan support for the president's nominees.

That Estrada could be seen as controversial is an example of this regrettable trend. By any reasonable standard, he is an American success story. He came to this country as a teenager from Honduras speaking little English. He attended Columbia College and Harvard Law School, graduating with honors from both. He clerked for Justice Anthony M. Kennedy on the Supreme Court, served as an assistant U.S. attorney in the Southern District of New York and has worked at leading law firms in New York and Washington. He spent five years—four during the Clinton administration—in the U.S. solicitor general's office, which represents the United States before the Supreme Court. Estrada has argued 15 cases before the high court and is well known for his written and oral advocacy.

While in private practice, he devoted hundreds of hours—for free—to the representation of a death row inmate before the Supreme Court. Estrada's co-counsel in that case has written to the Senate that "[o]ne would not expect the defense of a death row inmate to become the legal mission of a strong political conservative." Estrada's decision to involve himself in that case demonstrates his devotion to the rule of law.

Estrada also has tremendous bipartisan support. He received a unanimous "well qualified" rating—the highest possible—from the ABA, which Schumer and Democratic Sen. Patrick J. Leahy (Vt.) have referred to as the "gold standard" for evaluating judicial nominees. A number of prominent Hispanic organizations have supported Estrada and urged the Senate to treat him fairly. He is supported by leading Democratic lawyers, including Ron Klain, who served as chief of staff to Vice President Al Gore, and by high-level officials of the Clinton Justice Department.

Former colleagues in the solicitor general's office also have publicly praised Estrada. Seth Waxman, solicitor general under President Clinton, has written to the Senate that he has "great respect both for Mr. Estrada's intellect and for his integrity" and that he is "a model of professionalism and competence." A bipartisan group of 14 former colleagues who served with Estrada in that office wrote to the Senate that Estrada "would be a fair and honest judge who would decide cases in accordance with applicable legal principles and precedents."

Few lawyers in the United States have the combination of intellect and experience that Miguel Estrada will bring to the D.C. Circuit. A mainstream nominee who has exhibited throughout his career the integrity and temperament to be a superb appeals court judge, a Hispanic immigrant who has risen to the peak of the legal profession, Miguel Estrada is an inspiration to Hispanics and to all Americans. The Senate should confirm him promptly.

ONE BATTERY PARK PLAZA, NEW YORK, N.Y. 10004 TEL: (212) 577-3300 www.legal-aid.org

Daniel L. Greenberg
President and Attorney-in-Chief

Theresa de Leon
Chief Operating Officer

September 27, 2002

The Honorable Patrick J. Leahy
Chairman, Senate Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

By FAX: 202 228-0861

Dear Senator Leahy:

It has come to my attention that Leonard F. Joy, the Attorney-in-Charge of the Legal Aid Society's Federal Defender Division, has sent to your attention, and that of Senator Hatch, a letter supporting the nomination of Miguel Estrada as a Circuit Judge in the District of Columbia. As the President and Attorney-in-Chief of The Legal Aid Society, of which the Federal Defender Division is a part, I am writing to inform the Committee that the opinions expressed in the letter are personal to Mr. Joy and do not reflect the opinion of the Society. The letter should not have been sent on Legal Aid Society stationery and Mr. Joy regrets having done so.

Sincerely,

Daniel L. Greenberg

cc: The Honorable Orrin G. Hatch
The Honorable Charles Schumer

300

NEWS RELEASE

ORRIN HATCH

United States Senator for Utah

September 26, 2002 Contact: Margarita Tapia, 202/224-5225

Statement of Senator Orrin G. Hatch
Ranking Republican Member
Before the United States Senate Committee on the Judiciary
Hearing on

Miguel Angel Estrada for the U.S. Court of Appeals for the District of Columbia Circuit

Mr. Chairman, let me first of all thank you for chairing this hearing for Miguel Angel Estrada who is nominated for the D.C. Circuit Court of Appeals.

There are many people who have been waiting for this event and many more people who are watching today for the first time as we display our American institutions and the value we give to the independence of our judiciary. The fact that this hearing comes near the beginning of Hispanic Heritage Month is surely not lost on all my colleagues on this Committee. I am hopeful that this Committee will join me in seeking that the confirmation of the highly qualified lawyer before us today will occur before Hispanic Heritage Month is over.

As a very special matter, I would like to welcome to this hearing The Honorable Mario Conahuati, the Ambassador of Honduras to the United States, who is with us today. Thank you very much for coming Mr. Ambassador. We are honored to have you with us.

I would also like to welcome the leaders of the many Hispanic communities and organizations in the United States who are here to express support for this nomination as well the Senators from Virginia, the members of the Republican Senate leadership and my good friend Senator Domenici of New Mexico who has worked tirelessly for Hispanics in this country.

Mr. Chairman, I would like to make a general comment on the context of judicial confirmations in which this hearing is being held. For over a year, we have had a very troubling debate over issues that we though our founding fathers had settles long ago with our Constitution. I am heartened to read the scores of editorials all across this country that have addressed the notion of injecting ideology into the judicial confirmation process, because this notion has been near-universally rejected -- except, of course, for a handful of law professors, the well-paid lobbyists in the back of this room, and a few diehards.

It seems to me that the only way to make sense of the advice and consent role that our Constitution's framers envisioned for the Senate is to begin with the assumption that the President's constitutional power to nominate should be given a fair amount of deference, and that we should defeat nominees only where problems of character or inability to follow the law are evident.

In other words, the question of ideology in judicial confirmations is answered by the American people and the Constitution when the President is constitutionally elected. As Alexander Hamilton recorded for us, the Senate's task of advice and consent is to advise and to query on the judiciousness and character of nominees, not to challenge, by our naked power, the people's will in electing who shall nominate.

To do otherwise, it seems to me, is to risk making the federal courts an extension of this political body. This would threaten one of the cornerstones of this country's unique success – an independent judiciary.

We must accept that the balance in the judiciary will change over time as Presidents change, but much more slowly. For the Senate, to do otherwise is to ignore the Constitution's electoral process and to usurp the will of the American people. To attempt to bring balance to courts in any other way is to circumvent the Constitution yet again, without a single vote of support being cast by the American people.

These are not just my views. This is our Anglo-American judicial tradition. It is reflected in everything that marks a good judge, not least of which is Canon 5 of the Code of Judicial Conduct of the American Bar Association that expressly forbids nominees to judicial duty from making *"pledges or promises of conduct in office [or] statements that commit or appear to commit the nominee with respect to cases, controversies, or issues that are likely to come before the courts."* I should expect that no Senator on this Committee would invite a nominee to breach this code of ethics, and it worries me that we are come close.

Now I am glad to welcome today Miguel Estrada. I would like to speak a little on why Miguel Estrada is here before us today, beyond the obvious fact that the President nominated him. Miguel Estrada is here today because he deserves to be here under any standard that any disinterested person could devise.

Mr. Estrada graduated from Columbia University *magna cum laude* and as a Phi Beta Kappa. He went on to Harvard Law School where he graduated again *magna cum laude* and after serving as Editor of the *Harvard Law Review*. He went on to clerk for the Second Circuit Court of Appeals in New York, and then he was chosen to clerk for Associate Justice Anthony Kennedy at the United States Supreme Court.

Mr. Estrada later served as Assistant U.S. Attorney and Deputy Chief of the Appellate Section in the U.S. Attorney's office for the Southern District of New York. Then between 1992 until 1997, Mr. Estrada returned to Washington to work for the Clinton administration as Assistant to the Solicitor General in the Department of Justice. He has argued 15 cases before the Supreme Court and is today one of America's leading appellate advocates.

It is evident that Miguel Estrada is here today for no other reason than this -- **he is qualified for the position for which President Bush has nominated him**. I know it, and after today's hearing, so will the American people.

But notwithstanding all of Mr. Estrada's hard work and unanimous rating of highly qualified by the American Bar Association, he has been subjected -- so far -- to the piñata confirmation process with which we have all become familiar this year. The extreme left-wing Washington groups go after judicial nominees like kids after a piñata. They beat it and beat it until they hope something comes out that they can then chew and distort.

In the case of Mr. Estrada, the ritual has been slightly different. They have been unable to find anything they can chew on and spit out at us, so they now say that we simply do not know enough about Mr. Estrada to confirm him. Well, it's not that we do not know enough. We know as much about him as we have known about any nominee. Their complaint is that we know all there is and the usual character destroyers haven't found anything to distort.

But surely, we should not expect to hear it suggested today that Mr. Estrada does not have enough judicial experience. **Only 3 of the 18** Democrat appointed judges on the D.C Circuit Court had any prior judicial experience before their nominations. These include Ruth Bader Ginsburg and Abner Mikva. Likewise, judicial luminaries such as Louis Brandeis and Byron White had no judicial experience before being nominated to the Supreme Court. And Thurgood Marshall, the first African American on the Supreme Court, had no judicial experience before he was nominated to the Second Circuit. I could go on and on.

I would like to address another aspect of Mr. Estrada's background. I know Miguel Estrada and I know how proud he is, in ways that he is unable to express, about being the first Hispanic nominated to the D.C. Circuit Court of Appeals. So I will express it. This is a matter of pride for him for the same reason that it is for any of us, not just because Mr. Estrada is a symbol for Hispanics in America, but because Miguel Estrada's story is the best example of the American dream of all immigrants. He and I are proud because we love this great country and the future it continues to promise to young immigrants.

In fact, I have never seen any Hispanic nominee whose nomination has so resonated with the Latino community. Here you are on the cover of Washington Hispanic, right above Kathleen Kennedy and next to Colin Powell, I might add.

Miguel Estrada was born in Tegucigalpa, Honduras. He was so bright at an early age that he was an enrolled at a Jesuit school at the age of 5. He was raised in a middle class family. At age 17, he came to live with his mother who had immigrated to New York knowing very little English. Today he sits before the Senate of the United States waiting to be confirmed to one of the greatest courts in the land.

I am embarrassed, therefore, by the new lows that some have gone to attack Mr. Estrada. Detractors have suggested that because he has been successful and has had the privilege of a fine education, he is somehow less than a full-blooded Hispanic.

Even more offensive, it seems to me, are the code words that some of his detractors use about him,-- code words which perpetuate terrible stereotypes about Latinos, --- used in effect to diminish Miguel Estrada's great accomplishment and the respect he has from colleagues of all political persuasions.

As Chairman and founder 13 years ago of the nonpartisan Republican Hispanic Task Force – which, despite the name, is made up of both Republican and Democratic members -- I have tried to achieve greater inclusion of Hispanics in the federal government.

And I am concerned by the obstacles they face. One new obstacle Hispanics face today is the fear that many liberals in this town have that there could be role models for Hispanics that might be conservative – despite the fact that polls show that the great majority of Hispanics are conservative. But surely, the advancement of an entire people cannot be dependent on one party being in power.

This past week I met with a number of leaders of Hispanic organizations from all across the country. I asked them what they think about the subtle prejudices that Mr. Estrada is facing and they agree. Perhaps, they are more offended than I could ever be.

The Hispanic experience, in fact, sheds new light on the debate we have been having about ideology in judicial confirmations. Many new Hispanic-Americans have left countries without independent judiciaries. And they are all too familiar with countries with political parties that claim cradle-to-grave rights over their allegiances and futures.

I have a special affinity for Hispanics and for the potential of the Latin culture in influencing the future of this country. Polls show that Latinos are among the hardest working Americans. That is because like many immigrant cultures in this country, Hispanics often have two and even three jobs. Surveys show they have strong family values and a real attachment to their faith traditions and they value education as the vehicle to success for their children.

In short, they have reinvigorated the American dream, and I expect that they will bring new understandings of our nationhood, that some of us might not fully see with tired eyes.

Without trumpeting the over-used word "diversity," I have made it my business to support the nominations of talented Hispanics for my entire career in the Senate. I hope that the desire for diversity that many of my Democrat colleagues say they share with me will trump the reckless and destructive pursuit of injecting ideology into the judicial confirmations process as we move forward on this particular nomination.

In Spanish speaking churches all over this country and in every denomination, Hispanics sing a song called ***DE COLORES***. This means ***OF MANY COLORS.*** It celebrates the many colors in which we all are created.

Hispanics come in many colors, with all kinds of backgrounds. They enjoy among themselves a wide diversity already. And they left behind countries filled with ideologues that would chain them to single political parties. Latinos share a common

sense appreciation of each other's achievements in this country without any regard whatsoever to ideology, over which some Americans have the luxury of obsessing.

Any political party's attempt to control a group and to bar independent thought and belief, in effect to disallow diversity of though within the Hispanic community, is simply wrong and no people should stand for that.

For months I have been sounding the alarm of the influence of the special interest groups in the nominations process. While the game plan is unvaried, the quarterbacks change, and now it is the two or three liberal Hispanic groups on the field. They too demand that Hispanics think and live a certain way.

Well, I have news for them, Hispanic-American -- like all Americans, have liberals and conservatives. No one should be so arrogant as to demand that a whole community should think as they do. They ought to be ashamed of themselves. They have sold out the aspirations of their people just to sit around ***schmoozing*** with the arrogant power elite in Washington.

But let's be clear, these liberal groups are only two or three in number, and they are basically surrogates for the Democrat Party – some would say henchmen. They are marginalized given the large number of Hispanic organizations that have come out in support of Mr. Estrada. I should note that Mr. Estrada's supporters include **LULAC**, the League of United Latin American Citizens, -- the largest and oldest Latino organization in this country.

Mr. Chairman., like President Bush, I think it is high time that a talented lawyer of Hispanic descent sits on the second most prestigious court in the land. Miguel Estrada is that man. I thank you again and ask to put letters of support for Mr. Estrada into the record.

###

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United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

September 24, 2002

Dear Colleague:

As you know, Miguel Estrada is one of President Bush's two nominees for the United States Court of Appeals for the District of Columbia Circuit and that prestigious Court's first Hispanic nominee ever. At the request of the Committee, Mr. Estrada recently provided copies of his annual performance evaluations during his tenure in the Office of the Solicitor General at the Department of Justice. Because the documents are highly relevant to the Committee's consideration of Mr. Estrada's nomination and cast serious doubt on recent public allegations made against Mr. Estrada by Paul Bender, a former supervisor in the Solicitor General's Office, write to bring them to the attention of you and other members of the Committee.

As the Committee is aware, Mr. Estrada served in the Solicitor General's Office from September 1992 to July 1997. Most of this time involved service during the Clinton Administration. His service overlapped with that of Mr. Bender from 1994 to 1996, when Mr. Bender was the politically appointed Principal Deputy Solicitor General. As the accompanying letter from Judge Gonzales to Chairman Leahy points out, Mr. Estrada's performance evaluations indicate that he received the highest possible rating ("outstanding") in every job performance category. The "rating official" who prepared and signed the performance reviews for 1994 to 1996 was Mr. Bender. Moreover, these evaluations were then reviewed and approved by Solicitor General Drew Days III.

Mr. Bender's comments, which are summarized in Judge Gonzales's letter, represent his contemporaneous evaluation of Mr. Estrada's legal ability, judgment, temperament, and reputation for fairness and integrity. They were made at a time when Mr. Estrada was a line attorney in the Solicitor General's Office, not a nominee for the D.C. Circuit. They also are consistent with the evaluations of virtually every other person familiar with his record who has written the Committee to favorably recommend Mr. Estrada's nomination. These supporters include former Vice President Gore's Chief of Staff, Ron Klain, who noted in a letter to the Committee that "Miguel is a serious lawyer who takes the law seriously.... [who] will faithfully apply the precedents of his court, and of the Supreme Court, without regard to his personal views or his political perspectives... [and] will rule justly toward all, without showing favor to any group or individual."

As you may be aware from recent press accounts, Mr. Bender ironically has cited his personal experience as one of Mr. Estrada's supervisors as the basis for his stated belief that Estrada is an "ideologue" who cannot be trusted to address legal questions honestly or to state the law fairly and accurately. Mr. Bender has stated that he found Estrada so "ideologically driven that he couldn't be trusted to state the law in a fair, neutral way." Mr. Bender also alleged on a different occasion that Estrada's "ideological viewpoints are very strong . . . and that causes his judgment to be unbalanced."

Mr. Bender's contemporaneous statements in his performance evaluations of Mr. Estrada strongly suggest the lack of credibility in his recent unsubstantiated allegations, which now appear to be nothing more than an after-the-fact politically-motivated effort to smear Mr. Estrada's reputation and unfairly taint his chances for confirmation. The performance evaluations Mr. Estrada has provided confirm what every other lawyer who knows him personally -- including numerous Democrats -- has said: That Miguel Estrada is highly qualified for the D.C. Circuit and the Senate should confirm him.

In addition, I have attached a copy of my letter, which was published in the *Wall Street Journal* on August 6, 2002, relating to Mr. Bender's allegations. As the Senate considers Mr. Estrada's nomination, I thought you would find the attached helpful.

Sincerely,

Orrin G. Hatch
Ranking Republican Member

Hat 99.40

Date: 9/26/2002 8:14 AM
Sender: Leesa Eichner
To: #LEAHYList; David Carle; Susanne Fleek; Matt Payne-Funk; Beth Stein; Bob Schiff; Christopher Rhee; Tom Oscherwitz; Jeffrey Miller; Jonathan Meyer; Farhana Khera; Olati Johnson; David Hantman; Helaine Greenfeld; Lisa Graves; Robert Gordon; Natacha Blain; Jeff Berman; Victoria Bassetti; Melody Barnes
Priority: Normal
Subject: Hatch Letter in the NYTIMES

The New York Times, September 26, 2002
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The New York Times
September 26, 2002, Thursday, Late Edition - Final
SECTION: Section A; Page 28; Column 4; Editorial Desk

LENGTH: 221 words

HEADLINE: Federal Court Nominee

BODY:

To the Editor:

"Full Disclosure for Judicial Candidates" (editorial, Sept. 25) argues for access to protected legal memorandums by Miguel Estrada while he worked in the solicitor general's office. All seven living former solicitors general, both Republican and Democratic, oppose that request because it would hinder legal advice given by Justice Department employees. You claim that precedent exists, but you ignore important distinctions between Mr. Estrada, a nonpolitical career lawyer whose job was to recommend possible legal positions, and Robert H. Bork, a political appointee whose writings were entirely different.

The Judiciary Committee has as much information about Mr. Estrada as it has ever had about a judicial nominee. He has passed numerous levels of screening by the White House and the Justice Department. He was awarded the American Bar Association's highest recommendation based on interviews with the lawyers and judges who know his work best.

By the close of Thursday's hearing, we will know everything necessary for a vote, and I expect that if the Senate puts politics aside, Mr. Estrada will be widely supported and confirmed.

ORRIN G. HATCH
Washington, Sept. 25, 2002

WSJ A21 8/6/02

LETTERS TO THE EDITOR

'Political Maneuvering' Hurts the Bench

I am writing to set the record straight with respect to a letter sent to you by my colleague, Sen. Charles Schumer, which attempted to justify Judiciary Committee Chairman Patrick Leahy's demand for privileged Justice Department documents written by D.C. Circuit nominee Miguel Estrada ("Judicial Nominee's Views Must Be Disclosed to Us," July 9).

Sen. Leahy has demanded production of the internal memoranda Mr. Estrada wrote while working as an assistant in the Solicitor General's office. Sen. Leahy claims he needs those memos because of criticism of Mr. Estrada by a former political deputy in the Solicitor's office.

This former political deputy, Paul Bender, has been questioned carefully by the American Bar Association—an organization whose views on judicial nominees, according to the Democratic Party, deserve great weight. The ABA resoundingly rejected the criticisms Mr. Bender leveled against Mr. Estrada when it unanimously found Mr. Estrada well-qualified for the bench.

Further, every solicitor general under whom Mr. Estrada served, two Democrats and one Republican, have complemented Mr. Estrada on his legal ability. Their views should be dispositive with respect to his work history at the Solicitor's Office—not the isolated grumblings of a single colleague who was known to have generated a good share of ill-will among those with whom he worked.

Sen. Schumer claims that demands for these privileged memos have been made and honored before. He does not identify any such instances, and I am aware of none, and I have been in the Senate for 26 years. A Washington legal newspaper published an article on the topic and came up with only two instances that bore even the most remote connection to Sen. Leahy's request. Both requests related to documents generated by political appointees—not career lawyers, as Mr. Estrada was when he wrote the memos at issue. And, both related to requests for a very small number of documents—a single memo in the case of then-Justice William Rehnquist, and three documents in the case of then-Associate Attorney General Steve Trott.

In neither instance were any memos ever transmitted to Capitol Hill, as Sen. Leahy has demanded. Congress has always demonstrated respect for the privileged nature of such documents. Perhaps that is why all seven living former solicitors general—a majority of whom were appointed by Democratic presidents—have signed a letter opposing Sen. Leahy's demand for these materials. In the face of this unanimous, bipartisan legal argument by all of the chief legal advocates for the U.S., Sen. Schumer's claim that the documents should be turned over is without merit.

In the face of political maneuvering to stall the confirmations of the president's judicial nominees, we are experiencing a judicial vacancy crisis. While Mr. Estrada continues to wait for his confirmation hearing, a full third of the seats on the D.C. Circuit remain unfilled. Worse, parties seeking justice in the D.C. Courts of Appeal continue to wait for their day in court.

Orrin G. Hatch
Ranking Republican
Senate Judiciary Committee
Washington

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October 12, 2001

The Honorable Patrick J. Leahy
Chairman, Senate Judiciary Committee
SD-224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy:

I am writing on behalf of the Hispanic Bar Association of the District of Columbia (HBA-DC) to endorse Miguel Estrada for the U.S. Court of Appeals for the District of Columbia Circuit. The Endorsements Committee of the HBA-DC has conducted a thorough review of Mr. Estrada and his qualifications, including interviews of a number of his former opposing counsel, co-counsel, and colleagues. In addition, members of the HBA-DC Endorsements Committee met with Mr. Estrada to discuss his nomination. Based on our review, we recommend that the Committee vote in favor of Mr. Estrada's nomination.

Mr. Estrada has substantial and impressive qualifications that make him aptly suited to serve on the D.C. Circuit. He is a partner with Gibson, Dunn & Crutcher LLP, where he has an appellate practice. He has argued 15 cases before the U.S. Supreme Court. Mr. Estrada, who received his J.D. *magna cum laude* from Harvard Law School, served as a law clerk to the Honorable Anthony M. Kennedy in the U.S. Supreme Court and to the Honorable Amalya L. Kearse in the U.S. Court of Appeals for the Second Circuit.

Mr. Estrada has devoted much of his career to public service. He served as Assistant to the Solicitor General of the United States from 1992 to 1997, and previously served as Assistant U.S. Attorney and Deputy Chief of the Appellate Section in the U.S. Attorney's Office for the Southern District of New York. While in private practice, he has spent considerable time on *pro bono* matters, including his representation of a death row inmate in a challenge to his conviction and sentence, and an incarcerated defendant who was seeking *habeas* relief from his state conviction.

P.O. Box 1011 · Washington, D.C. 20013-1011 · (202) 388-4990 · hbadc@hbadc.org

Everyone we interviewed, including Mr. Estrada's former opponents, spoke very highly of him. One former opposing counsel stated that when Mr. Estrada was in the Solicitor General's Office, he "carried the mantle of a government lawyer in the best tradition." Others described him as "one of the smartest people I've ever met" and "one of the most amazing lawyers I've ever seen." One former co-counsel said that Mr. Estrada is "extremely easy to get along with, friendly, open, ethical, and knowledgeable about the law." Others echoed this point, stating that "he has a love for the law that few individuals have."

Mr. Estrada also has received bipartisan support, including support from several of his former colleagues at the Department of Justice who served under President Clinton. A prominent example is Randolph Moss, who worked with Mr. Estrada in the Department when Mr. Moss was Deputy Assistant Attorney General (he later became Assistant Attorney General) in the Office of Legal Counsel. As you know, Mr. Moss wrote to your Committee strongly supporting Mr. Estrada's nomination and noting that Mr. Estrada "is widely, and deservedly, regarded as an extraordinary legal talent" with an "abiding respect for the law," who will "quickly earn a reputation as one of the finest appellate judges in the Nation." Similarly, Robert Litt, who served as Deputy Assistant Attorney General in the Criminal Division, has said that Mr. Estrada is "an absolutely brilliant lawyer" and a "talented and responsible advocate."

Mr. Estrada, who came to the U.S. from his native Honduras at age 17, would be the first Hispanic to sit on the D.C. Circuit. President Bush's groundbreaking nomination highlights the often overlooked pool of talented Hispanics in the legal profession. Mr. Estrada's appointment will be a historic moment for the D.C. Circuit and an important development for the Hispanic legal community. For all the reasons stated herein, we endorse Mr. Estrada's nomination.

Sincerely,

Jessica R. Herrera
President,
Hispanic Bar Association of
the District of Columbia

cc: The Honorable Orrin G. Hatch
The Honorable Alberto R. Gonzales
Hispanic Bar Association Endorsements Committee

HISPANIC BAR ASSOCIATION OF VIRGINIA
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Teresa Meninez
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Committee Chair

November 14, 2001

The Honorable Patrick J. Leahy
Chairman, Senate Judiciary Committee
SD-224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy:

On behalf of the Hispanic Bar Association of Virginia (HBA-VA), it is my pleasure to inform you that we have endorsed Miguel Estrada for his judicial nomination to the United States Court of Appeals for the District of Columbia Circuit. At its most recent meeting, the HBA-VA Board voted to endorse Mr. Estrada after a thorough review of his qualifications, achievements and credentials. Due to the fact that approximately two-thirds of Hispanic residents in the Commonwealth of Virginia live in the metropolitan Washington D.C. area, we feel that the choice made of judges in the District of Columbia Circuit will have a formidable impact upon our constituency. Accordingly, we hope that our endorsement will further assist Mr. Estrada in his nomination.

In our view, Mr. Estrada has a lengthy list of qualifications that make him a excellent addition to the District of Columbia Circuit Court. Mr. Estrada received his *Juris Doctorate* from Harvard Law School, where he graduated *magna cum laude* and served as an editor of the Harvard Law Review. He served as a law clerk to the Honorable Anthony M. Kennedy in the United States Supreme Court and to the Honorable Amalya L. Kearse in the United States Court of Appeals for the 2nd Circuit. In addition, Mr. Estrada has argued before the United States Supreme Court 15 times in his appellate practice, having lost only four of those arguments. He is currently a partner at the prestigious firm of Gibson, Dunn, and Crutcher, L.L.P. in Washington, D.C.

Mr. Estrada's practice has also included a significant amount of time as a public servant. From 1992 to 1997, Mr. Estrada served as an Assistant to the Solicitor General of the United States. In the Southern District of New York, Mr. Estrada also served as an Assistant United States Attorney as well as Deputy Chief of the Appellate Section.

It is our hope that your committee will move forward with Mr. Estrada's nomination. Mr. Estrada is both a excellent jurist and a role model for the Hispanic community. Given the fact that the District of Columbia Circuit has never had a Circuit Court Judge of Hispanic descent, we feel that Mr. Estrada is an ideal choice to break this new ground. On behalf of HBA-VA, we endorse Mr. Estrada's nomination and respectfully ask that this committee vote in favor of his nomination as soon as possible. If your committee wishes any further information, please do not hesitate to contact me directly at (703)989-0840.

Very truly yours,

John L. Machado
President, Hispanic Bar Association of Virginia

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website: ***www.hbrt.org***

July 17, 2001

The Honorable Orrin Hatch, United States Senator
Ranking Member
Committee on the Judiciary
224 Dirksen Building
Washington, DC 20510

RE: Support for Miguel Estrada's Nomination as United States Court of Appeals Judge for the District of Columbia Circuit

Dear Senator Hatch:

On behalf of The Hispanic Business Roundtable, I am writing to express my support for Miguel Estrada's nomination as United States Court of Appeals Judge for the District of Columbia Circuit. Mr. Estrada is a brilliantly talented and accomplished attorney who will make an outstanding addition to the prestigious DC Circuit.

From his humble beginnings as an immigrant from Honduras who achieved a stellar academic career at Columbia University and Harvard Law School, to his varied and impressive achievements in the Justice Department and private firms, Mr. Estrada has shown himself to be of superior talents and accomplishments.

I am confident that this first Hispanic member of the DC circuit will continue to lead a distinguished career with thoughtful and fair decisions. I urge you to expeditiously attend to his confirmation.

Thank you for your attention.

Sincerely,

Mario Rodriguez
President

Hispanic Chamber of Commerce of Greater Cincinnati
creating opportunities . . . and partnerships

July 1, 2002

The Honorable Patrick J. Leahy
Chairman, Senate Judiciary Committee
433 Senate Russell Office Building
Washington, DC 20510

Dear Mr. Chairman:

I am writing to convey my support for Miguel A. Estrada for the position of United States Circuit Judge for the District of Columbia.

Mr. Estrada, who came to the United States from his native Honduras at age 17, has an impressive background. He is currently a partner with Gibson, Dunn & Crutcher LLP, where he is a member of the firm's Appellate Constitutional Law Practice Group and its Business Crimes and Investigations Practice Group and has argued 15 cases before the U.S. Supreme Court.

Mr. Estrada has spent most of his professional career in public service. He served as Assistant to the Solicitor General of the United States and as Assistant U.S. Attorney and Deputy Chief of the Appellate Section in the U.S. Attorney Office for the Southern District of New York.

Mr. Estrada served as a law clerk for the Honorable Anthony M. Kennedy, Supreme Court of the United States. He attended Harvard Law School, where he was editor of the Harvard Law Review and received a J.D. degree magna cum laude in 1986 and graduated from Columbia College in New York with an A.B. magna cum laude.

If confirmed, Mr. Estrada would be the first Hispanic to sit on the D.C. Circuit Court. The confirmation of this historic appointment will help open doors for more Hispanic judges. I strongly urge the Senate Judiciary Committee to schedule a hearing and support the nomination of this outstanding Hispanic to the U.S. Court of Appeals for the District of Columbia.

Very Truly Yours,

Edgar E Loyd

Edgar E. Loyd
Board of Directors, Hispanic Chamber of Commerce of Greater Cincinnati

PO BOX 2593 • Cincinnati, Ohio 45201 • voice mail (513) 929-2723
Website: www.hispanicccgc.com • Email: president@hispanicccgc.com

HISPANIC CHAMBER OF COMMERCE OF GREATER KANSAS CITY
1125 GRAND BLVD. SUITE 1803, KANSAS CITY, MISSOURI 64108
816-472-6767 FAX: 816-472-1252

July 12, 2001

The Honorable Orrin Hatch, United States Senator
Ranking Member
Committee on the Judiciary
224 Dirksen Building
Washington, DC 20510

RE: Support for Miguel Estrada's Nomination as United States Court of Appeals Judge for the District of Columbia Circuit

Dear Senator Hatch:

On behalf of the Hispanic Chamber of Commerce of Greater Kansas City, I am writing to express my support for Miguel Estrada's nomination as United States Court of Appeals Judge for the District of Columbia Circuit. Mr. Estrada is a brilliantly talented and accomplished attorney who will make an outstanding addition to the prestigious DC Circuit.

From his humble beginnings as an immigrant from Honduras who achieved a stellar academic career at Columbia University and Harvard Law School, to his varied and impressive achievements in the Justice Department and private firms, Mr. Estrada has shown himself to be of superior talents and accomplishments.

I am confident that this first Hispanic member of the DC Circuit will continue to lead a distinguished career with thoughtful and fair decisions. I urge you to expeditiously attend to his confirmation.

Thank you for your attention.

Sincerely,

Michael L. Barrera
Chairman
Hispanic Chamber of Commerce

August 30, 2002

U.S. Senator Russ Feingold:
Transmittal by fax: 202-224-2725

Dear Senator Feingold:

The Hispanic Chamber of Commerce of Wisconsin (HCCW) along with a vast number of your Wisconsin constituents strongly recommend and encourage the confirmation of Miquel A. Estrada, a candidate for United States Circuit Judge, District of Columbia.

Mr. Estrada who immigrated to the United States from his native Honduras at age 17 has an illustrious history in public service that I am sure you are quite familiar with. His strong and outstanding credentials, well-rounded professional background makes him the superb candidate.

Our changing demographics makes it vitally important to fill Judicial vacancies with qualified individuals who possess not only expertise and capabilities but who also possess a keen sense of understanding and sensitivity to current issues, needs and concerns of a diverse population.

If confirmed, Mr. Estrada would become the first Hispanic to sit on the D.C. Circuit Court. The confirmation of this historic appointment would most assuredly pave the way for others. A path paved by a highly qualified, competent and principled Hispanic.

Ethnicity aside, the HCCW has every confidence that Miquel A. Estrada would carry out the responsibilities of an U.S. Circuit Judge with effectiveness and distinction. Mr. Estrada is a sterling candidate and as such merits your strong consideration. At the same time, I respectfully request that you use your significant influence to convince others involved in the confirmation process as to the exceptional merits of his appointment.

The opportunity to comment is appreciated. On a personal note, my fondest regards

Sincerely,

Maria Monreal-Cameron
President & CEO

CC: U.S. Senator Patrick Leahy, Judiciary Committee Chairman – 202-224-3479
U.S. Senator Orrin G. Hatch, Ranking Republican – 202-228-1698

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Hispanic Contractors of America, Inc.

July 12, 2001

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The Honorable Orrin Hatch, United States Senator
Ranking Member
Committee on the Judiciary
224 Dirksen Building
Washington, DC 20510

RE: Support for Miguel Estrada's Nomination as United States Court of Appeals Judge for the District of Columbia Circuit

Dear Senator Hatch:

On behalf of the Hispanic Contractors of America, Inc., I am writing to express my support for Miguel Estrada's nomination as United States Court of Appeals Judge for the District of Columbia Circuit. Mr. Estrada is a brilliantly talented and accomplished attorney who will make an outstanding addition to the prestigious DC Circuit.

From his humble beginnings as an immigrant from Honduras who achieved a stellar academic career at Columbia University and Harvard Law School, to his varied and impressive achievements in the Justice Department and private firms, Mr. Estrada has shown himself to be of superior talents and accomplishments.

I am confident that this first Hispanic member of the DC Circuit will continue to lead a distinguished career with thoughtful fair decisions. I urge you to expeditiously attend to his confirmation.

Thank you for your attention.

Sincerely,
Hispanic Contractors of America, Inc.

Paul Rodriguez
Chairman

PR/jb

HISPANO CHAMBER de COMMERCE de LAS CRUCES

July 13, 2001

The Honorable Orrin Hatch, United States Senator
Ranking Member
Committee on the Judiciary
224 Dirksen Building
Washington, DC 20510

RE: Support for Miguel Estrada's Nomination as United States Court of Appeals Judge for the District of Columbia Circuit

Dear Senator Hatch:

On behalf of Hispano Chamber of Commerce de Las Cruces, I am writing to express my support for Miguel Estrada's nomination as United States Court of Appeals Judge for the District of Columbia Circuit. Mr. Estrada is a brilliantly talented and accomplished attorney who will make an outstanding addition to the prestigious DC Circuit.

From his humble beginnings as an immigrant from Honduras who achieved a stellar academic career at Columbia University and Harvard Law School, to his varied and impressive achievements in the Justice Department and private firms, Mr. Estrada has shown himself to be of superior talents and accomplishments.

I am confident that this first Hispanic member of the DC Circuit will continue to lead a distinguished career with thoughtful and fair decisions. I urge you to expeditiously attend to his confirmation.

Thank you for your attention.

Sincerely,

Jenny Segura
Executive Director

MISSION STATEMENT
The Hispano Chamber of Commerce de Las Cruces, through its diverse membership, seeks to promote and enhance economic growth, community service, and cultural awareness.

(505) 523-2681 • (505) 523-4639 Fax • 301 W. Amador • P.O. Box 1964 • Las Cruces, New Mexico 88004

September 24, 2002

Dear New Yorkers:

I am a former New York State Court of Claims Judge and the first Latina candidate for New York State Attorney General.

I write to urge you to lend your support to former New Yorker Miguel Estrada, Esq., who is currently a nominee to the Federal Court of Appeals for the District of Columbia Circuit. Mr. Estrada is a widely respected attorney who has a record deserving of appointment to the Federal bench. There is a dire shortage of Judges for the D.C. Circuit, and it is critical to the administration of justice that United States Senate confirm Mr. Estrada immediately.

Mr. Estrada's personal story is one of achievement. In his youth, he immigrated to the United States from Honduras. Notwithstanding the fact that he spoke little English when he arrived, Mr. Estrada succeeded in graduating *magna cum laude* and *Phi Beta Kappa* from Columbia College. He then graduated from Harvard Law School, where he was Editor of the Harvard Law Review. He went on to clerk for the Hon. Amalya Kearse of the U.S. Court of Appeals for the Second Circuit and for the Hon. Justice Anthony Kennedy of the United States Supreme Court.

As an Assistant U.S. Attorney and Assistant Solicitor General, Mr. Estrada earned a reputation for thoroughness and preparation. He is an accomplished trial and appellate lawyer who has argued 15 times before the United States Supreme Court. It is not surprising that the American Bar Association gave Mr. Estrada a High rating.

More importantly, Mr. Estrada takes a non-partisan approach to the law. Though he worked for the U.S. Attorney's office, he represented a death row inmate *pro bono* before the United States Supreme Court. He also represented an incarcerated defendant seeking *habeas corpus* relief from a State conviction. Indeed, Mr. Estrada and the National Organization of Women convinced the United States Supreme Court that a federal law prohibiting the use of violence should apply to anti-abortion protestors. Clearly, Mr. Estrada is capable applying the law without the interference of politics.

I must admit that I have a personal interest in Mr. Estrada's confirmation. It has long been my goal to improve the representation of qualified Hispanics in all branches of government, and I worked diligently toward that end as President of the Association of Judges of Hispanic Heritage in New York. That is partly why I am running for Attorney General. It is also why I accepted an appointment to the New York Court of Claims, the first Hispanic woman to do so. **Once confirmed, Mr. Estrada will be the first Hispanic Judge appointed to the D.C. Circuit.** Therefore, his appointment will not only add a qualified Judge to the bench, it will also add desperately needed diversity.

Unfortunately, Mr. Estrada will likely face partisan opposition. This will be an insult to Mr. Estrada's record of bi-partisan service, and a major setback for the advancement of well qualified Hispanic jurists. Mr. Estrada served in both the Clinton and Bush administrations. He has even received the support of former Gore and Clinton officials. President Clinton's own Solicitor General praised Mr. Estrada's advocacy. His record is simply above partisan reproach.

I fear that Mr. Estrada's most formidable partisan opponent will be our own U.S. Senator Charles Schumer. According to the *Associated Press*, Senator Schumer believes that politics matter in the judicial selection process. (*AP* 5/19/02) In fact, Senator Schumer tolerates a *status quo* in which the Senate confirms nominees for "purely political reasons, instead of looking for the best nominee." (*AP* 9/19/02) My suspicion is that the Senator will ignore Mr. Estrada's qualifications and vote against his confirmation.

The Hispanic community must rally to the defense of this highly qualified candidate. We must tell Senator Schumer that his objection to Miguel Estrada will be taken as a personal insult to our community.

Miguel Estrada's confirmation should transcend such political pettiness. I urge you to call Senator Schumer at (212) 486-4430 or (202) 224-6542, and tell him to confirm the first Hispanic nominee to the D.C. Circuit.

Thank you for your consideration to this matter.

Very truly yours,

Dora L. Irizarry

THE LEGAL AID SOCIETY
FEDERAL DEFENDER DIVISION
52 Duane Street - 10th Floor, New York, NY 10007 (212) 417-8700 Fax (212) 571-0392

Executive Director and Attorney-in-Chief
Daniel L. Greenberg

Attorney-in-Charge Federal Defender Division
Leonard F. Joy

September 16, 2002

The Honorable Patrick J. Leahy
Chairman, Senate Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington DC, 20510-6275

Re: **Miguel Estrada**

Dear Senator Leahy:

I am writing you in support of the nomination of Miguel Estrada as a Circuit Judge in the District of Columbia. I am the head of the Federal Defender Division of The Legal Aid Society, which is the community defender organization appointed to represent indigent defendants in the United States District Courts for the Southern and Eastern Districts of New York, as well as the Second Circuit Court of Appeals. I have been the head of the office for the past 12 years and for 13 years before that I was a staff attorney in the Division.

Miguel and I met while he was an Assistant United States Attorney in the Southern District of New York. We had a number of cases together where he represented the government and I the defendants, including one case which went to trial and a number of others that were resolved by guilty pleas before trial. In addition to myself, the other lawyers in my office dealt with him in cases of their own. We all were tremendously impressed with his intellect and extraordinary memory, and he clearly was one of the smartest attorneys in an office which prides itself in attracting the best and the brightest. Yet throughout he was eminently practical in the judgments he made and he had a down-to-earth approach to his cases. I found him to be a fair and straightforward prosecutor who did not treat defendants unduly harshly.

Over Miguel's tenure in the United States Attorney's Office we became good friends and frequently had lunch together. He has a good sense of humor and never had an ivory tower approach to life. It is fair to say that all the lawyers in my office liked him. Many of them are liberal in their politics and it is a credit to Miguel that he was able to get along with people who may have had different views than he.

The Honorable Patrick J. Leahy
Chairman, Senate Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington DC, 20510-6275

September 16, 2002
Page Two

Re: **Miguel Estrada**

I think Miguel would make an excellent Circuit Court Judge. He is as fine a lawyer as I have met and, on top of all his intellectual abilities and judgment he would bring to bear, he would bring a desirable diversity to the Court. I heartily recommend him.

Sincerely,

Leonard F. Joy
Attorney-in-Charge
Tel.: (212) 417-8738

LFJ/ies

cc: The Honorable Orrin G. Hatch
Ranking Minority Member
Senate Committee on the Judiciary
SD-153 Dirksen Senate Office Building
Washington DC, 20510

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Arkansas Family Council
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Catholic Alliance
Center for Individual Rights
Center for New Black Leadership
Christian Action Network
Christian Coalition
Citizens Against Violent Crime
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Concerned Women for America
Coral Ridge Ministries
Defenders of Property Rights
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Eagle Forum
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Family Research Council
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Individual Rights Foundation
Judicial Watch
Kansas Conservative Union
Landmark Legal Foundation
Law Enforcement Alliance of America
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National Family Legal Foundation
National Law Center for Children and Families
National Legal Foundation
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National Tax Limitation Committee
New Yorkers for Constitutional Freedoms
Oklahoma Family Policy Council
Organized Victims of Violent Crime
Pennsylvania Landowners Association
Pro-Life Action League
Southeastern Legal Foundation
Students for America
Texas Public Policy Foundation
Traditional Values Coalition
United Seniors Association
U.S. Business and Industrial Council
Utah Coalition of Taxpayers

May 8, 2002

The Honorable Patrick J. Leahy, Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
United States Senate
Washington, D.C. 20510

Dear Senator Leahy:

We represent more than a million Americans deeply concerned about the vacancy crisis in the federal judiciary. As the first anniversary of President Bush's initial nominations to the federal judiciary approaches, we urge you to end the delays and allow a hearing and a vote for the eight nominees who have been waiting nearly a year for you to act.

Miguel Estrada, John Roberts, Terry Boyle, Priscilla Owen, Jeffrey Sutton, Deborah Cook, Michael McConnell, and Dennis Shedd were each nominated on May 9, 2001. Your months of delay since then have been disappointing given your public commitment to treat judicial nominees fairly.

On the day President Bush announced their nominations, you praised his choices saying: "Had I not been encouraged, I would not have been here today. I will continue to work with the President." Yet now, one year later, you have allowed the Senate to act on only three from that original group, leaving these eight men and women waiting. We urge you to work with the President as you said you would and allow these nominees a hearing and a vote.

Several times during 2000, you supported then-Gov. Bush's call for the Senate to act quickly on nominations. In October, you said: "I have said on the floor, although we are different parties, I have agreed with Gov. George Bush, who has said that in the Senate a nominee ought to get a vote, up or down, within 60 days." These eight long-standing nominees have been waiting 364 days for you to give them a hearing and an up or down vote.

When there were 50 vacancies on the federal bench, you spoke of "a judicial vacancy crisis" that was "plaguing so many federal courts." There are nearly 90 empty judgeships today, and while the vacancy rate has remained at 100 or higher during seven of your 11 months in charge of the Judiciary Committee, you have not acted to fill these eight vacancies, half of which have been designated judicial emergencies.

In a letter to President Bush on March 16 of last year, you and Senator Charles Schumer referred to the American Bar Association's evaluation of nominees as "the gold standard by which judicial candidates are judged." Under that standard, all of these nominees have been deemed either qualified or well-qualified for judgeships on the U.S. Court of Appeals, yet your committee has not held a single hearing to review their qualifications, temperament, commitment to upholding the law.

In fact, these are well-respected attorneys and sitting judges with stellar credentials who will make excellent additions to the federal judiciary. They deserve a hearing before your committee, and they deserve an up or down vote before the Senate.

Senator Leahy, you have spoken of a need to end the vacancy crisis. You have said that nominees should receive a vote within 60 days. You have recognized the ABA rating as "the gold standard." Any you announced that you were "encouraged" by these nominations while committing yourself to work with the President.

In all these things, Senator, you have set forth a standard for fairness – but after nearly a year of delays, it is not fair to keep these eight nominees waiting any longer. We therefore urge you to apply your own fairness standard to the May 9 nominees, lift the blockade, and allow these men and women the opportunity to be confirmed.

Sincerely,

Adirondack Solidarity Alliance
Alabama Policy Institute
American Association of Christian Schools
American Center for Law & Justice
American Conservative Union
American Council on Economic Security
American Council for Immigration Reform
American Decency Association
American Family Association of Arkansas
American Family Association of New York
American Family Defense Coalition

American Freedom Crusade
American Policy Center
American Pro-Constitutional Association
American Renewal
American Reformation Project
American Values
Association of New Jersey Rifle and Pistol Clubs
California Public Policy Foundation
Campaign for Working Families
Capitol Hill Prayer Alert
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Coalition on Urban Renewal & Education
Concerned Women for America
Concerned Women for America of Virginia
Connecticut Association of Christian Schools
Conservative Victory Committee
Coral Ridge Ministries
Council for America
Eagle Forum
Eagle Forum of Alabama
Eagle Forum of Arkansas
Eagle Forum of Indiana
Eagle Forum of Massachusetts
Eagle Forum of Rhode Island
Evergreen Freedom Foundation
Family Policy Network
Family Research Council
Florida Eagle Forum
Free Congress Foundation
Freedom Alliance
Frontiers of Freedom
Georgia Sport Shooting Association
Government is Not God – PAC
Gun Owners' Action League
Gun Owners of America
Human Life Alliance
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Independent Women's Forum

Judicial Watch
Kansas Taxpayers Network
Life Issues Institute
Ludwig von Mises Institute
Maine Right to Life Committee
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Massachusetts Family Institute
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National Abstinence Clearinghouse
National Federation of American Hungarians
National Legal Foundation
National Taxpayers Limitation Committee
New Jersey Christian Coalition
New Jersey Policy Council
New Yorkers for Constitutional Freedoms
New York Eagle Forum
Oklahomans for Children and Families
Oklahoma Family Policy Council
Ohio Conservative Alliance
Old Dominion Association of Christian Schools
Organized Victims of Violent Crime
Parents for Control
People Advancing Christian Education
Project 21
Republicans United for Tax Relief
Republican Women of Whatcom County
Restore America
60 Plus Association
Smith Center – California State University
Teen-Aid
Tennessee Christian Coalition
Tennessee Eagle Forum
Texas Justice Foundation
The Center for Arizona Policy
The Christian Alert Network
The Family Foundation of Kentucky
The National Center for Home Education
The National Center for Public Policy Research
The Southeastern Legal Foundation
Tradition, Family, Property
Traditional Values Coalition
United Seniors Association
U.S. Business and Industry Council
Utah Eagle Forum
Watchdogs Against Government Abuse

O

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January 16, 2002

OUR FILE NUMBER
600,000-012

WRITER'S DIRECT DIAL
202-383-5317

WRITER'S E-MAIL ADDRESS
rklain@omm.com

The Honorable Patrick Leahy
Chairman
U.S. Senate Committee on the Judiciary
SD-224, Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy:

When we talked recently, I told you that I was supporting the nomination of Miguel Estrada to be a Judge of the U.S. Court of Appeals for the District of Columbia Circuit. Given that I did not have, at that time, a chance to explain the basis for my position in depth, I thought I might put my views in writing for your consideration.

At the outset, let me be clear that I write this letter with mixed emotions. Not mixed emotions about Miguel: if President Bush is to fill this seat on the D.C. Circuit, I believe Miguel is an outstanding candidate who merits confirmation. Rather, I think it is unfortunate that this vacancy exists at all due to the Senate's failure to confirm two outstanding, and well-qualified candidates for this court nominated by President Clinton. In this case, that unfairness is particularly ironic, as I met both Elena Kagan – President Clinton's nominee for this position – and Miguel Estrada – President Bush's nominee -- when we were all law students. The federal judiciary would be better off if the Senate had confirmed Professor Kagan last year – and then, with a subsequent vacancy arising during the Bush administration, Mr. Estrada were nominated and confirmed. But unfortunately, that is not the way that things worked out.

That said, I would hope that Miguel Estrada would gain your support for confirmation this year. I believe that Miguel is a person of outstanding character, tremendous intellect, and with a deep commitment to the faithful application of precedent. I have known Miguel for 15 years, and have seen him in a variety of contexts and circumstances. Though Miguel is politically conservative, I support his confirmation for three reasons that go beyond those factors that are obvious on their face; *i.e.*, three reasons that go beyond his outstanding credentials, his intellect, and his incredible record of achievement as a lawyer.

First, Miguel is a serious lawyer who takes the law very seriously. Yes, Miguel has passionate views about legal policy and can be a strong advocate in a debate. But I have no doubt that, on the bench, Miguel will faithfully apply the precedents of his court, and the Supreme Court, without regard to his personal views or his political perspectives. His belief in the rule of law, in a limited judiciary, and in the separation of powers is too strong for him to act otherwise. He will not be one of those "conservatives" who gives speeches about judicial restraint, but then becomes an unabashed judicial activist on the bench. He will do his job as the law, the Constitution, and his duty requires. I do not think we can ask more of a judge on an intermediate appellate court.

Second, Miguel will rule justly toward all, without showing favor to any group or individual. When I worked on the Judiciary Committee staff, one of your colleagues once said to me, "Adversity in youth can affect potential judges one of two ways: it can make them compassionate towards those in need – feeling empathy for their plight – or it can make them cold-hearted – feeling as if 'I made it without help, so you can, too.'" Miguel is one of those individuals who falls firmly in the first category: the challenges that he has overcome in his life have made him genuinely compassionate, genuinely concerned for others, and genuinely devoted to helping those in need. In the political arena, Miguel favors very different policies than you and I do to achieve these ends. But his commitment to them is without question – and the fact that he would bring this commitment with him to the bench, in the dispensation of justice to all, is also without question. Those without means or without advantage will get a fair hearing from Miguel Estrada.

Third, Miguel will bring an independent streak to his judging, that may serve to surprise those who have nominated him – and I think will give every litigant, from any point of view, a fair chance to persuade Miguel of the rightness of his or her case. Make no mistake about it, Miguel is conservative, and in cases where those sorts of labels matter, is more likely to rule "that way" than the judges nominated to the D.C. Circuit by President Clinton. Miguel Estrada will not be "the David Souter" of the D.C. Circuit. But I do think that Miguel will be more independent, more open-minded, more likely to "break ranks" than other potential nominees of this conservative President. Miguel is a rigorous skeptic – and I have seen him be as skeptical about conservative shibboleths as liberal ones. He will ask tough questions of both sides, and give both sides a chance to win him over. This powerful intellectual quality is not unhinged from a compassion for people – rather, it is harnessed by Miguel in service of that compassion. It is a quality that will make Miguel a very fair judge.

In closing, I appreciate your consideration of this letter and the views expressed here. I wish you the best in trying to untangle the difficult mess that the confirmation process has become. And I hope you will see fit to support Miguel Estrada's confirmation when the Committee acts on that nomination.

With best wishes,

Sincerely,

Ronald A. Klain
of O'MELVENY & MYERS LLP

RK:csm

cc: Bruce Cohen
Helaine Greenfeld

DC1:496124.2
01/16/02

U.S. SENATE COMMITTEE ON THE JUDICIARY

HEARING ON THE NOMINATION OF MIGUEL ESTRADA
TO THE U.S. COURT OF APPEALS FOR THE D.C. CIRCUIT

~~OCTOBER~~ Sept. 26, 2002

STATEMENT OF SENATOR KYL:

Senator Schumer suggested in his opening statement at this hearing that this Committee should be particularly wary of Mr. Estrada – or any Republican nominee to the D.C. Circuit – because of the importance of maintaining "balance" on that court. The D.C. Circuit is currently staffed by four Republican-appointed judges and four Democratic appointees. Senator Schumer's argument appears to be that the confirmation of one of President Bush's nominees to any of the four vacancies on that court would "tip" this precarious balance, and compromise the court's operation. I would suggest that, apart from the fact that judges don't decide cases by their political party affiliation, it is hard to see how *any* appointment in this "tie" situation would be deemed neutral by those consumed with the notion of political "balance."

Apart from this rather obvious point, I would note that if Senator Schumer is concerned about "balance" on the U.S. Courts of Appeals, there are other circuit courts that more urgently call for his attention.

What About the Other Circuits?

In his focus on the Estrada nomination, Senator Schumer neglects the Second and Ninth Circuits. These two courts have jurisdiction over our nation's two largest cities, New York and Los Angeles. The Ninth Circuit is also the largest of the thirteen federal circuits, with appellate review over federal district-court judgements for nine Western States – including my home State of Arizona. Together, the nine States of the Ninth Circuit account for one-fifth of the U.S. population. No one can question the importance of these two federal courts of appeals.

Yet, were Senator Schumer to apply the Ninth and Second Circuits the same standard that he suggests for the D.C. Circuit today, he would surely be horrified by what he would find. Democratic judicial appointees to the Ninth Circuit now constitute a 17-7 majority on that court. On the Second Circuit, judges appointed by just one Democratic President – former President Clinton – now have an absolute 8-4 majority – even after this month's confirmation of Bush nominee Reena Raggi. Simply put, by Senator Schumer's standard, there is a severe 2-to-1 "imbalance" on the Second Circuit – and an even greater "imbalance" on the Ninth Circuit.

I would note that this state of affairs was not produced by forces beyond this Committee's control. Indeed, Democratic appointees' absolute dominance of the Ninth and Second Circuits is the direct result of judicial nominations that were confirmed while the Senate and this Committee were controlled by the Republican Party. In the years 1998 and 1999 alone, President Clinton

was allowed to appoint five judges to the U.S. Court of Appeals for the Second Circuit – allowing him to ultimately fill 8 of the 13 seats on that court. On the Ninth Circuit, in the year 2000 – an election year – President Clinton was allowed to appoint 4 additional judges to that court. By the end of his Presidency, President Clinton had appointed fourteen judges to the Ninth Circuit Court of Appeals. That court also still has three active Carter appointees who show no signs of retiring any time soon. As a result, the addition of those last four Clinton appointees – in the lame-duck year of the Clinton Presidency – virtually guaranteed that judges appointed by Democratic Presidents will enjoy a large majority on the Ninth Circuit for at least a decade to come.

Who's Afraid of the D.C. Circuit?

It has been asserted that the D.C. Circuit is the most important of the federal courts of appeals. That court does indeed play an important role. For example, it bears primary responsibility for determining whether regulations issued by federal agencies comply with the Administrative Procedures Act, and with other requirements for agency rulemaking.

In a press release issued today, Senator Schumer's office suggests that Republican appointees to the D.C. Circuit have been using that court to block environmental regulations. Senator Schumer's release offers us a "sneak peak" at "some pretty striking numbers," though without revealing the underlying data. According to the release, these data indicate that in industry challenges to EPA regulations, industry prevails 80% of the time when the panel is all Republican-appointed judges, and 20% of the time when the panel is all Democratic appointees.

These data are indeed striking – particularly when compared to data offered by one of Senator Schumer's own witnesses at a hearing that he chaired earlier this week. Professor Christopher Schroeder, of Duke Law School, had "looked at all challenges brought against EPA's national rules in the 1990s." He found less Democratic deference to EPA rules than Senator Schumer's "sneak peak" suggests: Professor Schroeder's study concluded that "Democratic judges voted to reverse in 33% of industry challenges." And Democratic deference to EPA absolutely melted away when challenges were brought by environmental groups – Democratic judges voted to reverse the EPA in 48% of such cases.

Of course, while reversal rates are interesting, they do not tell us the whole story. Even a high reversal rate may be the correct outcome if an agency has failed to follow the law. If Democratic appointees are more deferential to EPA – at least when industry brings the challenge – it may mean that Republican appointees are being too strict with the agency – or it may mean that Democratic appointees are rubber stamping bad rules.

The only actual D.C. Circuit decision that Senator Schumer mentions or cites in support of his theory of Republican-appointee activism is *American Trucking Association v. EPA*, 175 F.3d 1027 (1999). Senator Schumer hints, in the press release that he issued today, that in that decision, because "the EPA's actions [in issuing a new rule] were going to improve air quality

but cost businesses money," a "majority Republican panel on the DC Circuit reversed the EPA's ruling." Senator Schumer goes on to condemn the court for "rel[ying] on an arcane and long-dead concept know as the 'non-delegation doctrine.'" He characterizes the court's decision as a "a striking moment of judicial activism", which was "ultimately reversed by a unanimous Supreme Court."

If the D.C. Circuit decision of the last two decades that Senator Schumer most strongly disagrees with is *American Trucking*, then he has very little to complain about with regard to that court. Senator Schumer appears to misread the Supreme Court decision that he cites; according to the federal high court, rumors of the nondelegation doctrine's death are greatly exaggerated. As that court noted in its 2001 *American Trucking* decision, the Constitution's text vests "all legislative Powers herein granted in a Congress of the United States." *American Trucking*, 121 S.Ct. at 912 (quoting Article I, § 1). The Court then emphasized, "*This text permits no delegation of those powers.*" *Id.* (emphasis added). Therefore, "we repeatedly have said that when Congress confers decisionmaking authority upon agencies Congress must 'lay down by legislative act an intelligible principle to which the person or body authorized to act is directed to conform.'" *Id.* (quoting *J.W. Hampton, Jr., & Co. v. United States*, 276 U.S. 394, 409 (1928)) (emphasis deleted). The court went on to reaffirm its prior precedents striking excessive delegations, and again emphasized that whether a "statute delegates legislative power is a question for the courts." *Id.* This portion of the court's opinion was joined by seven justices. Although the Supreme Court disagreed with the D.C. Circuit as to whether the nondelegation doctrine was violated in that case, it is Senator Schumer's flat rejection of nondelegation limits – not the D.C. Circuit's effort to apply the doctrine in *American Trucking* – that would appear to fall "outside the mainstream."

Finally, Professor Schroeder – Senator Schumer's witness at last Tuesday's hearing – also offered an important reminder that the D.C. Circuit's reversals of agency rules are, for the most part, procedural. A "reversal" of an agency rule generally does not prevent that agency from regulating in the area, but simply requires the agency to do it right – and to follow proper procedures. Professor Schroeder described a study by another Professor that "traced sixty-one rules that had been remanded by the D.C. Circuit during a ten year period between 1985 and 1995." That study concluded "that in approximately 80% of these cases agencies have successfully implemented their original policies by making minor modifications to the original proposals or finding a different approach that was as effective as the original."

Insisting on proper procedures no doubt adds to delay in implementing an agency rule. But that is a trade off that Congress no doubt considered when it enacted the Administrative Procedures Act. Overall, the evidence suggests that Senator Schumer has little to fear from the D.C. Circuit.

What's in a Party Label?

To be sure, I do not take entirely seriously Senator Schumer's argument that we should be

concerned about maintaining a 50-50 balance on all – or on any – of the federal courts of appeals. My view is that an excellent judge is always an excellent judge, and that a good candidate will always put aside his personal views and follow the law, regardless of which President appointed him to the bench.

I would suggest to Senator Schumer that, were he to examine the records and actual opinions issued by the four current Republican appointees to the D.C. Circuit, he would find that they are all excellent judges. Although they are Republican appointees, and are probably politically conservative, each has demonstrated an ability to set aside personal views when deciding cases and to reach the result compelled by the law – even when that result can be described as liberal. Before Senator Schumer becomes settled in the view that the labels "Republican" and "Democrat" tell you how the judge will decide the case, I would urge him to examine the following D.C. Circuit decisions, and to ask himself if he can predict the political party of the author of these opinions:

- *Atlas Air, Inc. v. Air Line Pilots Association*, 232 F.3d 218 (2000), holding that an employer's termination of employees' participation in a profit-sharing plan for the sole reason that they voted for union representation violates the employees' right under Section 2, Third and Fourth, of the Railway Labor Act to organize and select representatives "without interference, influence, or coercion."

- *In re North*, 16 F.3d 1234 (1994), upholding the authority of the Independent Counsel to issue a full report of his investigation over the objections of the subjects of the Iran/Contra investigation.

- *In re North*, 10 F.3d 831 (1993), denying the motion of former President Reagan to terminate the Office of Independent Counsel Lawrence Walsh.

The author of these opinions? Judge David Sentelle, appointed to the D.C. Circuit in 1987 by President Reagan.

- *Appalachian Power Co. v. EPA*, 208 F.3d 1015 (2000), holding that the EPA guidance that authorizes States to alter monitoring provisions in federal air emissions standards when issuing permits to stationary sources under the Clean Air Act impermissibly alters the Act's monitoring regulations without engaging in required rulemaking procedures.

The author: Judge A. Raymond Randolph, appointed in 1990 by President Bush.

- *Toledo Typographical Union No. 63 v. NLRB*, 907 F.2d 1220 (1990), reinstating – over the NLRB's objection – a union challenge to a collective bargaining clause that allowed a company to exclude the union from talks over retirement issues. The court ruled that the NLRB's decision prevented the union from representing its members.

- *National Steel and Shipbuilding Co. v. NLRB*, 156 F.3d 1268 (1998), holding that a determination that an employer interfered with protected employee activities in violation of the National Labor Relations Act is sufficiently supported by evidence that the employer videotaped employees at a union-sponsored rally outside the workplace.

- *United States v. Microsoft Corp.*, 165 F.3d 952 (1999), holding the unless necessary to protect trade secrets, federal law requires that depositions taken in the federal government's antitrust action against Microsoft must be open to the public.

The author of these opinions: Judge Douglas H. Ginsburg, who was appointed to the D.C. Circuit in 1986 by President Reagan.

- In *Willner v. Thornburgh*, 928 F.2d 1185 (1991), a majority of the court upheld against Fourth Amendment challenge a Justice Department requirement that government employment applicants submit to urine tests. One judge argued in dissent that the majority erred, and that these test should only be allowed when drug use by the employee might endanger others.

The author of this dissenting opinion? Judge Karen LeCraft Henderson, appointed to the D.C. Circuit in 1990 by President Bush.

I think that Senator Schumer would find these decisions difficult to reconcile with the view that the party of the appointing President determines how a judge will decide cases. An excellent judge will decide cases based on the law, not his own political views. By this standard, Judges Sentelle, Randolph, Ginsburg, and LeCraft Henderson are all excellent judges. Senator Schumer need not worry that the appointment of Miguel Estrada – or any other Bush nominee – to the D.C. Circuit will send that court into an ideological tailspin.

A Better Measure of Problems: Supreme Court Reversal Rates

If Senator Schumer is looking for circuit courts whose actions raise concerns about ideology and balance, I suggest that he direct his attentions to the U.S. Court of Appeals for the Ninth Circuit. As I mentioned previously, that court has a 17-7 Democratic-appointee majority. During the U.S. Supreme Court's October 1996 term – in the middle of the Clinton Presidency – the Supreme Court found it necessary to review 28 cases decided by the Ninth Circuit. These cases made up approximately one-third of the Supreme Court's docket, despite the fact that the Supreme Court also has jurisdiction over 12 other federal circuits, and over federal questions decided in the courts of all 50 states. Of those 28 Ninth Circuit cases, the Supreme Court reversed 27. And lest anyone suggest this was simply the result conservatives on the Supreme Court disagreeing with the Ninth Circuit on close questions, I would note that most of these reversals were unanimous. In fact, six of the reversals were summary reversals – the Supreme Court did not even request briefing or oral argument, and simply reversed the Ninth Circuit on the basis of the petition for certiorari.

Since the 1996 term, this lopsided pattern of Ninth Circuit reversals has continued. Senator Schumer might be interested to know how the Ninth Circuit's reversal rate compares to that of the D.C. Circuit. These numbers may indicate to Senator Schumer that he is directing his concerns about balance and ideology at the wrong court:

- In 1997, of those cases decided by the Supreme Court in a full opinion, the Supreme Court reversed or vacated four cases from the D.C. Circuit, and affirmed five. In that same year, the high court affirmed three cases from the Ninth Circuit – and reversed or vacated fourteen.

- In 1998, the Supreme Court affirmed one case from the D.C. Circuit, vacated one case, and reversed no D.C. Circuit cases. The Ninth Circuit was affirmed four times that year – and reversed or vacated fourteen times.

- In 1999, the Supreme Court affirmed three D.C. Circuit cases, and reversed or vacated no cases from that court. The Ninth Circuit was reversed or vacated nine times that year – and affirmed once.

- In 2000, the D.C. Circuit was reversed once – the only case from that court to go up to the Supreme Court that year. The Ninth Circuit was affirmed four times, and reversed or vacated thirteen times.

I believe that these numbers speak for themselves. Since Senator Schumer has committed himself to guarding against ideological imbalance on the federal courts of appeals, I trust that he will work with me to ensure that all of President Bush's nominees to the Ninth Circuit are promptly confirmed by this Committee. I would note that despite the 17-7 "imbalance" on that court, President Bush has so far been allowed to only appoint one judge to the Ninth Circuit, despite the presence of four vacancies on the court. One Bush nominee to the Ninth Circuit has been pending since May of this year, and another has been pending since June – *of last year*. Immediate action on these nominees would still leave the Democratic appointees an eight-seat majority on that court, but would surely alleviate some of the concerns that Senator Schumer has expressed.

Justice Thomas

Finally, I would close by commenting on a statement made in a press release that Senator Schumer's office issued today. That press release stated that when Supreme Court Justice Clarence Thomas appeared before this committee over a decade ago, his responses to Senators' question "wasn't a confirmation conversion, it was a confirmation subversion."

The implication in this statement that Justice Thomas misled the Judiciary Committee is absurd. Justice Thomas properly refrained from commenting on issues that were likely to come before him on the Supreme Court. Not only was his refusal to commit himself to particular

positions entirely appropriate, it obviously furnishes no basis to complain that Justice Thomas subsequently did not decide cases as he was "supposed to."

During his decade on the Supreme Court, Justice Thomas has demonstrated a truly admirable devotion to the rule of law. His judicial opinions consistently reflect adherence to the principle that it is legislatures and constitutional conventions that set policy, and it is the courts' role to effectuate those choices. The courts' proper function is only to "say what the law is" – to apply, in actual cases, the law as it was reasonably understood when it was enacted. It is only this view of the courts' role that keeps the enormous power inherent in judicial review consistent with the principle that all just power derives from the people and their elected representatives. For his respect for the rule of law, Justice Thomas deserves to be commended by this Committee. Some may object to the policy results of particular decisions that Justice Thomas reaches. I would suggest, however, that these critics' quarrel is not with Justice Thomas, but with the laws and the Constitution that he upholds.

I look forward to this Committee's confirmation of the outstanding nominee who is before us today.

August 28, 2002

The Honorable Patrick J. Leahy
Chairman, Senate Judiciary Committee
224 Senate Dirksen Office Building
Washington, DC 20510
(202) 224-4242 - (202) 228-3479 (Fax)

Dear Mr. Chairman:

On behalf of LA AMISTAD, I am writing to call on the Senate Judiciary to have a hearing for Miguel A. Estrada for the position of United States Circuit Judge for the District of Columbia.

Mr. Estrada, who came to the United States from his native Honduras at age 17, has an impressive background. He is a currently a partner with Gibson, Dunn & Crutcher LLP, where he is a member of the firm's Appellate Constitutional Law Practice Group and its Business Crimes and Investigations Practice Group and has argued 15 cases before the U.S. Supreme Court.

Mr. Estrada has spent most of his professional career in public service. He served as Assistant to the Solicitor General of the United States and as Assistant U.S. Attorney and Deputy Chief of the Appellate Section in the U.S. Attorney Office for the Southern District of New York.

Mr. Estrada served as a law clerk for the Honorable Anthony M. Kennedy, Supreme Court of the United States. He attended Harvard Law School, where he was editor of the Harvard Law Review and received a J.D. degree magna cum laude in 1986 and graduated from Columbia College in New York with an A.B.magna cum laude. Could we ask for a more qualified nominee? Even the American Bar Association has given him a well-qualified rating.

If confirmed, Mr. Estrada would be the first Hispanic to sit on the D.C. Circuit Court. The confirmation of this historic appointment will help open doors for more Hispanic judges.

We strongly support Mr. Miguel A. Estrada and urge you to support the nomination of this outstanding Hispanic to the U.S. Court of Appeals for the District of Columbia.

Sincerely,

Rev. V. Martin Garcia
Executive Regional Director

100 S. Anaheim Blvd., Suite 350, Anaheim CA 92805 (714) 520-0300 Fax (714) 520-9602
An Affiliate of Traditional Values Coalition

McKenna & Cuneo, L.L.P.
Attorneys at Law

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July 6, 2001

Charles G. La Bella
619-595-8080
charles_labella@mckennacuneo.com

The Honorable Patrick J. Leahey
United States Senator
Chairman Senate Judiciary Committee
SR-433 Russell Senate Office Building
United States Senate
Washington, D.C. 20510-4502

Dear Senator Leahey:

I understand that my former colleague, Miguel Estrada, is being considered for a position on the Court of Appeals for the District of Columbia. I worked with Miguel as a prosecutor in the Southern District of New York for several years. In my judgment he would be a fine addition to the bench.

I cannot comment on Miguel's political views because frankly his views never played any part in the discharge of his duties as a prosecutor. However, I can tell you that in all of my dealings with Miguel, he demonstrated the integrity, professionalism and moral compass the public has a right to expect from its public servants. As a trial lawyer Miguel exercised judgment and balance in his prosecutions. As a member of the office's appellate section, he willingly shared his judgment and skills with the other lawyers in the office. His legal skills and command of the law were of the highest caliber.

I understand that there have been some negative comments concerning Miguel's nomination. I can tell you that as a former prosecutor and now as a defense attorney, Miguel has the qualities that you expect in a Federal Judge. I trust that after your committee finishes its review, it will conclude that Miguel will be a superb addition to the appellate bench.

McKenna & Cuneo, L.L.P.
Attorneys at Law

If you have any questions or I can be of any further assistance, please do not hesitate to contact me.

Very truly yours,

Charles G. La Bella

CGL/rlr

22077109.1

THE LATINO COALITION

September 16, 2001

The Honorable Orrin G. Hatch
Ranking Member, Senate Judiciary Committee
United States Senate
Washington, DC 20510

Dear Senator Hatch:

Today we celebrate the beginning of Hispanic Heritage Month in the U.S. On this day, and on behalf of the Board of Directors and members of The Latino Coalition (TLC) and the Hispanic Business Roundtable (HBR) **we urge you to support the nomination of Miguel Estrada**, nominated by President Bush to serve on the U.S. Court of Appeals for the District of Columbia Circuit. We call on you to put aside partisan bickering and give Latinos what has long been overdue: representation in this prestigious Court.

Miguel A. Estrada brings to the court a distinguished legal record based on his many years of work in the public and private sector. He also brings **a unique perspective and human experience understood only by those who have migrated to a foreign land as a teenager not knowing the language.** It is for this cultural depth and his unique legal qualifications that TLC and HBR urges the Senate Judiciary Committee and all members of the U.S. Senate to put partisan politics aside so that Hispanics are no longer denied representation in one of the most prestigious courts in the land.

Mr. Estrada, born in Honduras, graduated *magna cum laude* from Columbia College and magna cum laude from Harvard Law School. He served as a member of the editorial board of the Harvard Law Review and is currently a member of the National Board of Directors of the Center for the Community Interest.

We are delighted to finally see a President appoint a Hispanic to this Court. It's been long overdue. No one can seriously question the integrity and the qualifications of Miguel Estrada. He served as a successful prosecutor in the Southern District of New York, as Assistant Solicitor General in the Clinton Administration, and as a distinguished private attorney in Washington, DC. **There is no reason why partisan bickering should keep Estrada from serving on this court.**

To call Miguel Estrada controversial is simply preposterous. The only controversy here is that Mr. Estrada is of Hispanic descent. **We call on you to support this extremely qualified judicial nominee**. To deny Latinos, the nation's largest minority, one of our own to serve on this Court in our nation's capital, simply for partisan politics, is irresponsible and unforgivable. The 35 million Hispanics in this country can no longer be ignored. History would not treat inaction kindly.

Sincerely,

Robert G. de Posada
President, The Latino Coalition

Mario Rodriguez
President, Hispanic Business Roundtable

* *Attached please find a list of signature from Latino community leaders*

725 MASSACHUSETTS AVENUE N.E. WASHINGTON, D.C. 20002
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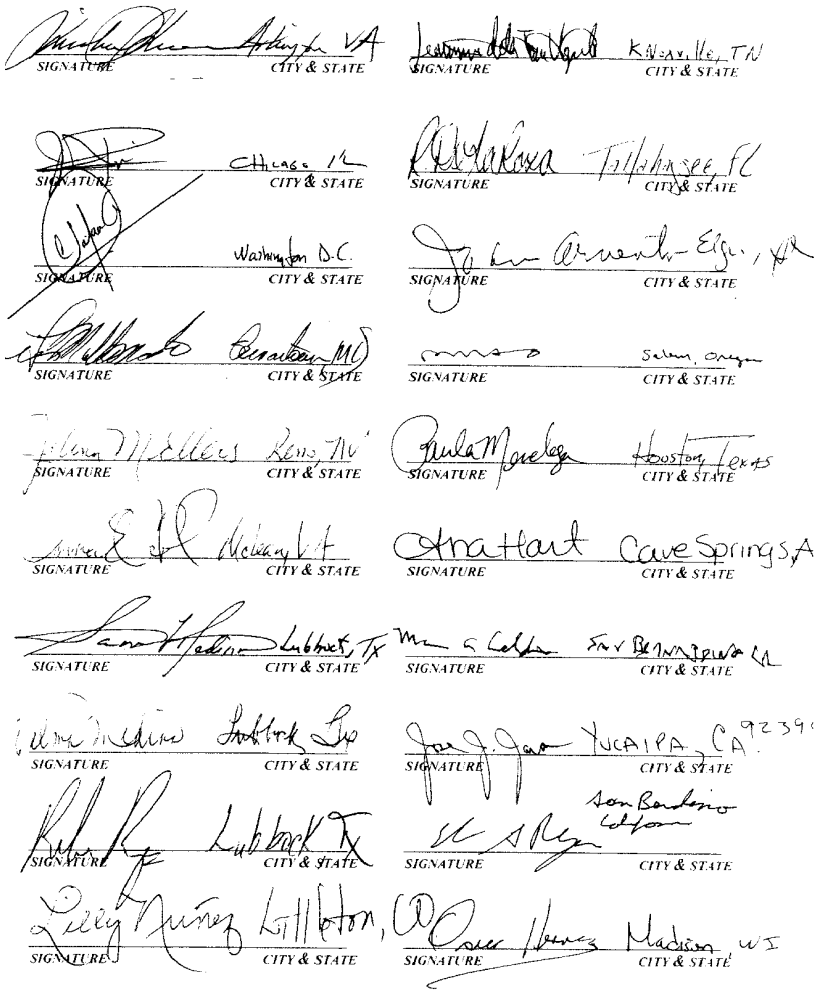
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Yucaipa, CA 92399
San Bernardino California
Gilbert, AZ
Madison, WI

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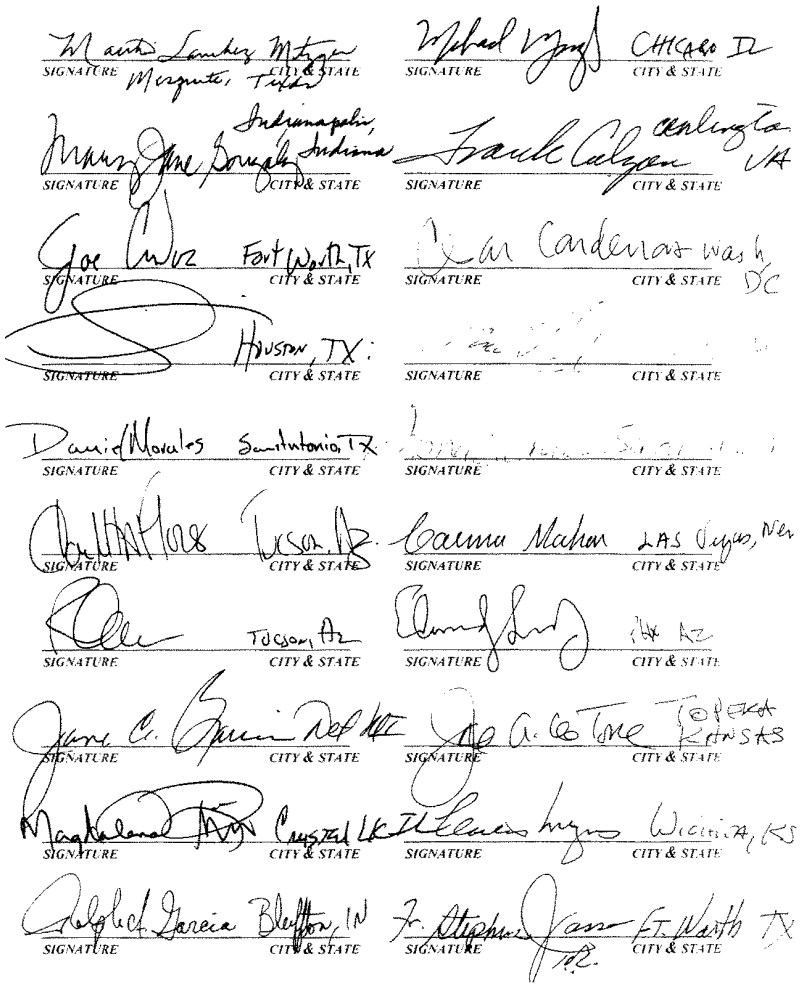
M. G. Moore El Paso, TX
Miss Esperanza Jackson, MS
Laredo, TX.
Lakeville
New York City, NY
Rolando Mayorga Wichita, KS
Jorge S. Ramos Citi OH
Grand Junction, Co
Adrianne Ramos Dayton OH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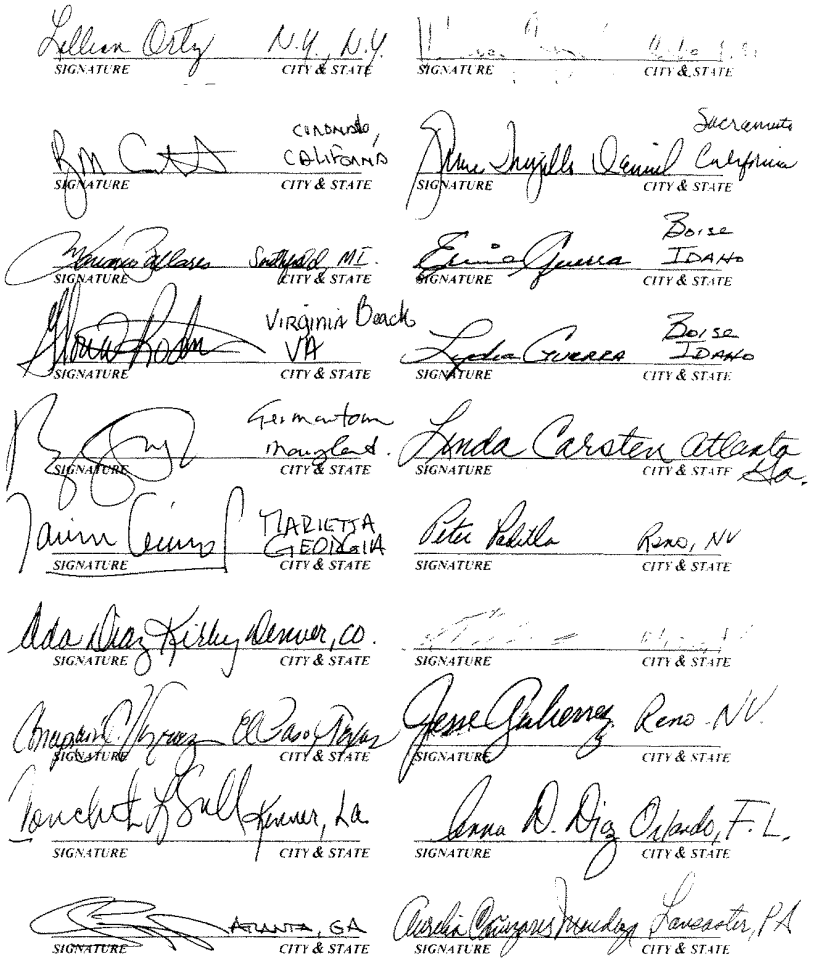
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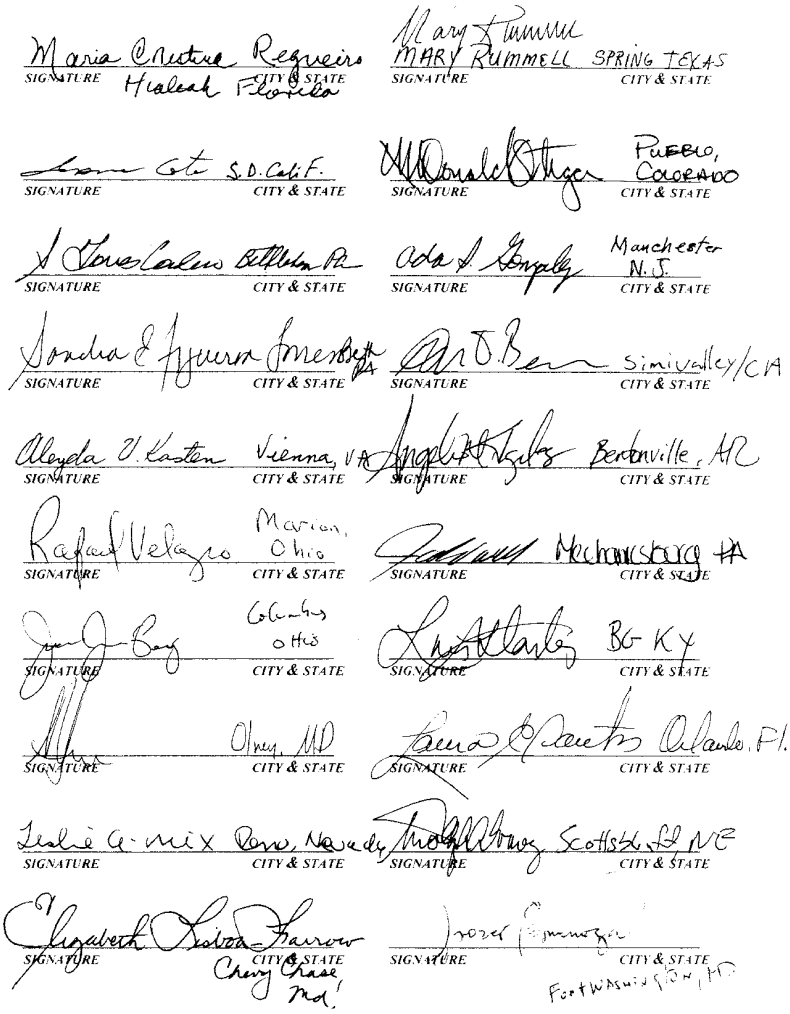
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MARY RUMMELL
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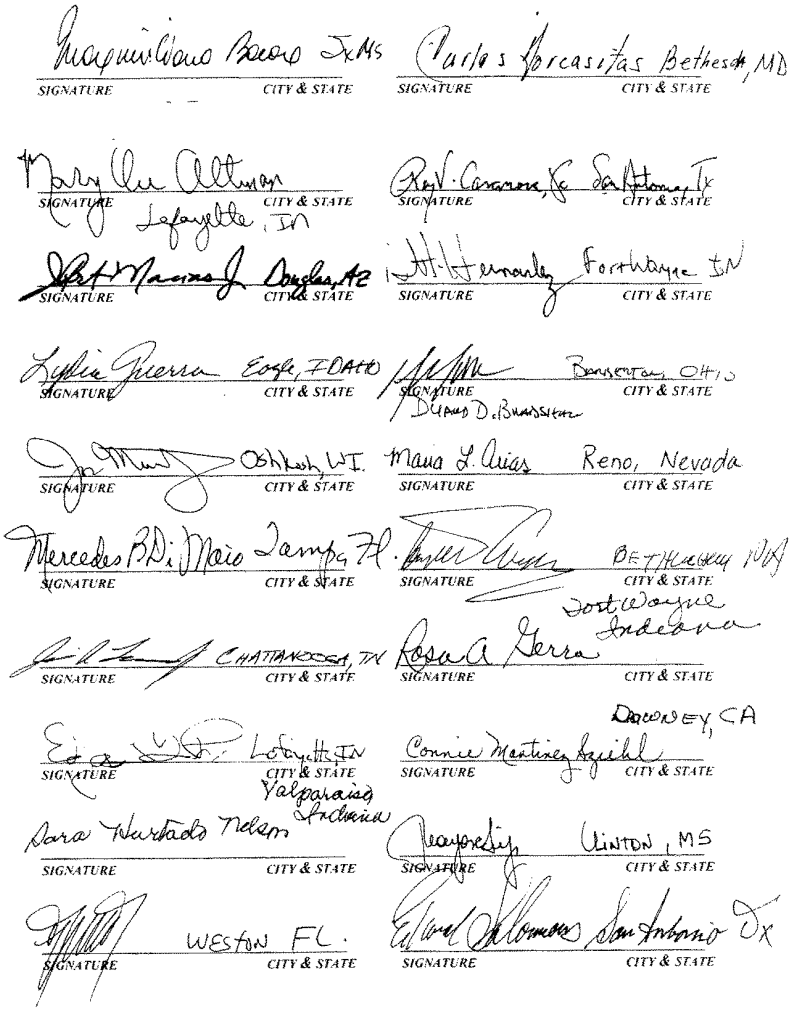
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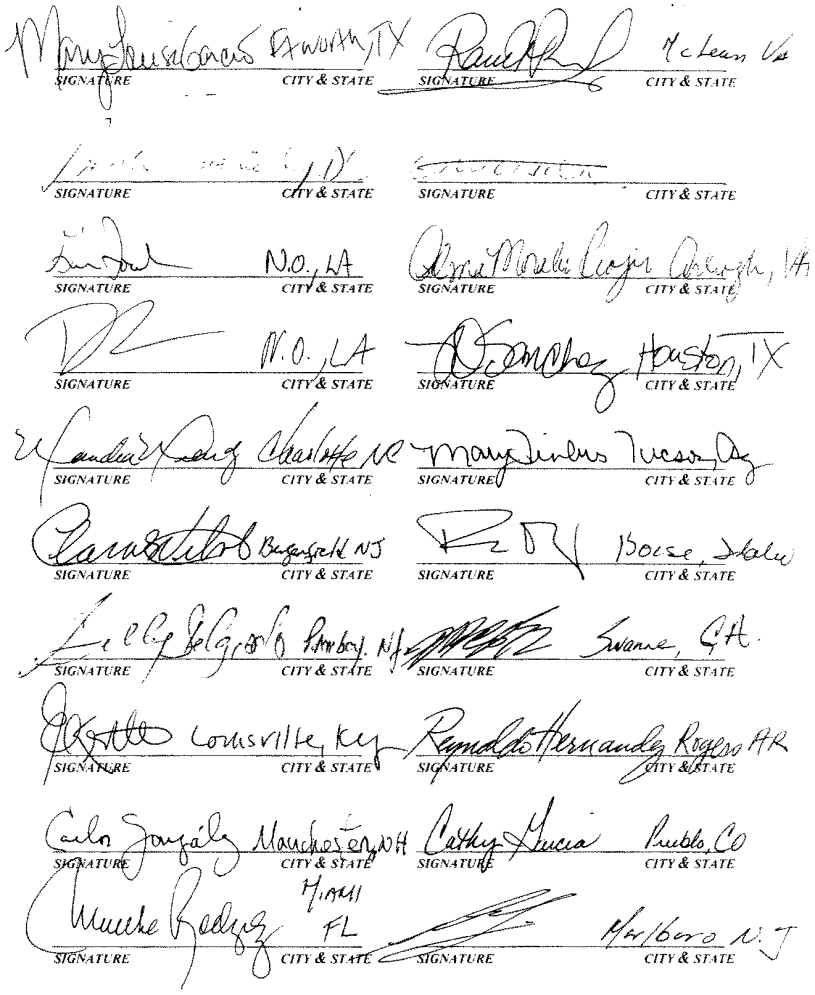
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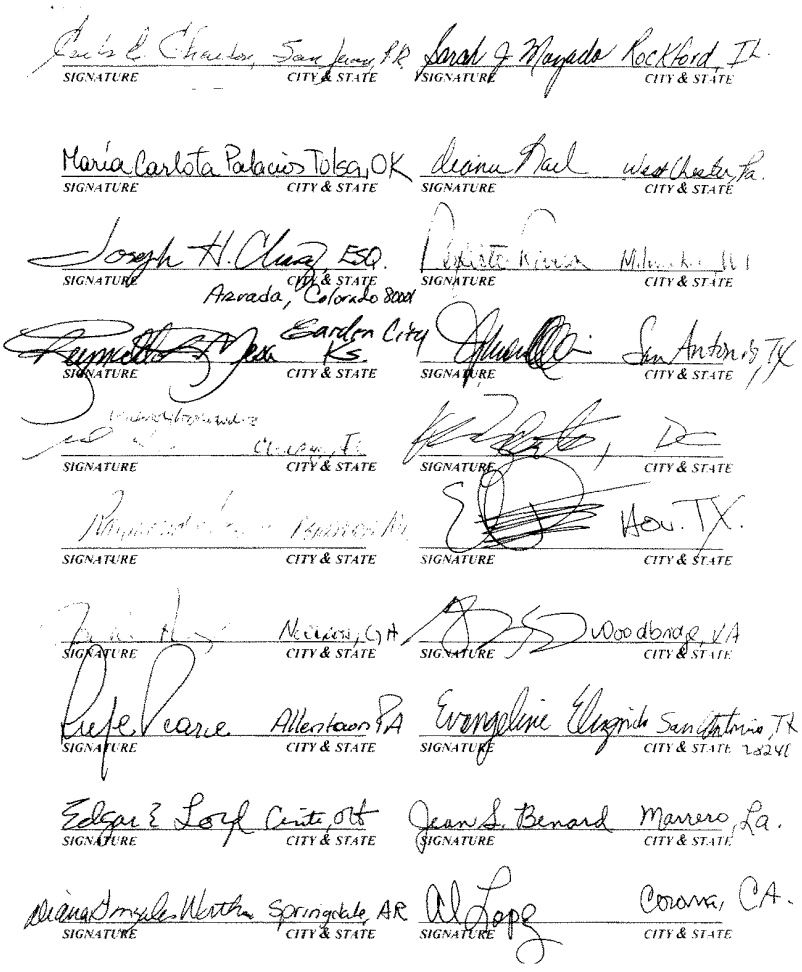

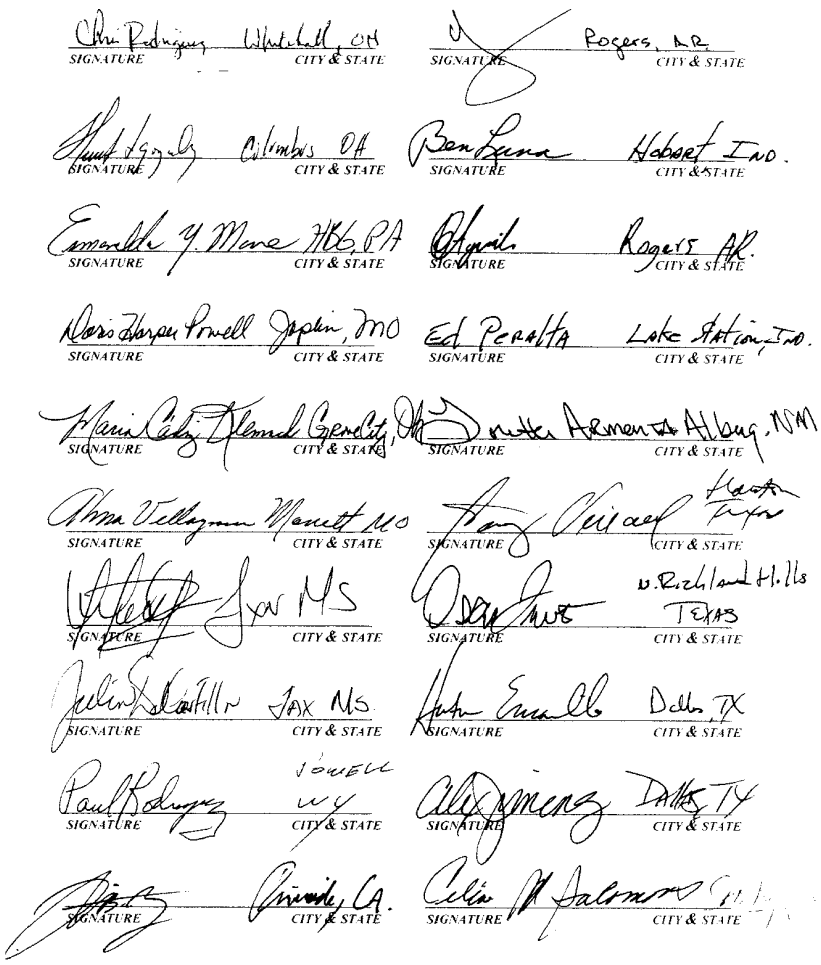
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Ramon Palomares
Texas
Walter Tejada
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July 3, 2001

The Honorable Orrin Hatch
United States Senate
104 Senate Hart Office Building
Washington, DC 20510

Dr. Senator Hatch:

On behalf of the League of United Latin American Citizens (LULAC), the nation's oldest and largest Hispanic civil rights organization, I write to express our strong support for the confirmation of Mr. Miguel A. Estrada for the position of United States Circuit Judge for the District of Columbia Circuit.

As one of the leading Hispanic attorneys in the United States, Mr. Estrada is extremely well qualified for this position. His experience with appellate and constitutional law will prove invaluable to the District of Columbia Circuit as will his experience in arguing 15 cases before the U.S. Supreme Court. His experience as Assistant to the U.S. Solicitor General and Assistant U.S. Attorney gives him a strong background with jury trials and appeals. Finally, his work as a partner with Gibson, Dunn & Crutcher LLP and earlier as an attorney with Wachtell, Lipton, Rosen & Katz gives a solid understanding of private practice.

Few Hispanic attorneys have as strong educational credentials as Mr. Estrada who graduated magna cum laude and Phi Beta Kappa from Columbia and magna cum laude from Harvard Law School, where he was editor of the Harvard Law Review. He also served as a law clerk to the Honorable Anthony M. Kennedy in the U.S. Supreme Court making him one of a handful of Hispanic attorneys to have had this opportunity. He is truly one of the rising stars in the Hispanic community and a role model for our youth.

Mr. Estrada's distinguished experience in law and his strong educational credentials make him an outstanding candidate for this position. His confirmation would also help to address the chronic underrepresentation of Hispanic judges in US circuits including the extremely important District of Columbia Circuit—an issue that you have supported LULAC on in the past.

We are confident that Mr. Estrada will fulfill the duties of United States Circuit Judge for the District of Columbia Circuit with fairness, intelligence and commitment to the ideals of the United States. We urge you to support Mr. Estrada's confirmation and to do what you can to ensure that the Senate Judiciary Committee acts quickly on his nomination.

I thank you for your attention to this important matter, and I look forward to your response.

Sincerely,

Rick Dovalina
LULAC National President

2000 L Street, NW, Suite 610 • Washington, DC 20036 • (202) 833-6130 • FAX (202) 833-6135 • http://www.LULAC.org

League of United Latin American Citizens
Office of the Florida State Director

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State Director
Pablo Acosta
Deputy State Director
Anita Cordova
Deputy State Director
Of Women's Activities
Jose A. de la Lama
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For Youth
Amada L. Valdez
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Political Action
Committee
Martha C. Pomar
Young Adults

June 25, 2001

The Honorable Patrick J. Leahy
United States Senate
Washington, DC

Dear Senator Leahy:

On behalf of the League of United Latin American Citizens (LULAC) State of Florida, I am writing to convey our strong support for Miguel A. Estrada for the position of United States Circuit Judge for the District of Columbia Circuit.

I have followed the career of Mr. Estrada since he clerked for the Hon. Anthony M. Kennedy, Supreme Court of the United States in the late 1980's through his appointment to the United States Department of Justice, Solicitor General's Office as Assistant to the Solicitor General as well as Assistant U.S. Attorney for the Southern District of New York and have always considered him to be one of the brightest stars in a growing field of talented young Hispanic attorneys today.

I am confident that Mr. Estrada will fulfill the duties of Circuit Judge with intelligence, even-handedness and a strong commitment and respect for the laws of this great nation. Without a doubt he is an excellent representative of the Hispanic Community. As such, we strongly urge your favorable consideration of his nomination.

Sincerely,

Armando V. Pomar
LULAC Florida State Director

AVP:map

PO Box 654503 Miami, Florida 33265 - 4503 Tel.:(305) 261-5348 * Fax (305) 267-6200

U.S. SENATOR PATRICK LEAHY

CONTACT: David Carle, 202-224-3693 VERMONT

Opening Statement Of Senator Patrick Leahy,
Chairman, Senate Judiciary Committee
Hearing For
Miguel Estrada to be a United States Circuit Judge on the D.C. Circuit
Judge Stanley Chesler to be United States District Judge for the District of New Jersey
Daniel Hovland to be United States District Judge for the District of North Dakota
Justice James Kinkeade to be United States District Judge for the Northern District of Texas
Judge Linda Reade to be United States District Judge for the Northern District of Iowa
Judge Freda Wolfson to be United States District Judge for the District of New Jersey
September 26, 2002

I would like to welcome all of the nominees and their families to today's judicial nomination hearing. This is the 25th hearing for judicial nominees since the change in majority in the summer of 2001. Today, the Committee considers six more judicial nominees, which will bring to 96 the number of district and circuit court nominees for whom the Committee has held hearings in the last 14 months. Miguel Estrada is the 20th Court of Appeals nominee for whom we have held a hearing in this time, which is approximately double the pace at which the Republican majority considered President Clinton's nominees.

We will also hear from five United States District Court nominees with judicial experience: two United States Magistrate Judges from New Jersey, Judge Stanley Chesler and Judge Freda Wolfson; two state court judges, Judge James "Ed" Kinkeade of Texas and Judge Linda Reade of Iowa; as well as Administrative Law Judge Daniel Hovland of North Dakota.

Since the summer of 2001, we have held more hearings for more judicial nominees and more hearings for circuit court nominees than in any 14-month period of the six and one-half years in which Republicans last controlled the Committee. The Judiciary Committee has likewise voted on more judicial nominees, 83, and on more circuit court nominees, 17, than in any comparable 14-month period of prior Republican control. The Democratic-led Senate has already confirmed 78 of the judicial nominations of President George W. Bush. In so doing, we have confirmed more judicial nominees in 14 months than were confirmed in the last 30 months that a Republican majority controlled the Senate. We have done more in half the time. We have achieved what we said we would by treating President Bush's nominees more fairly and more expeditiously than President Clinton's nominees were treated.

We have also worked tirelessly to address the judicial vacancies we inherited. In the six and one-half years of Republican control, before the reorganization of the Committee last summer, vacancies on the Courts of Appeals more than doubled from 16 to 33 and overall vacancies rose from 65 to 110. In addition, 44 new vacancies arose since last summer. The facts will not stop partisan critics but may inform those who care to know the truth.

As Senator Feinstein noted two weeks ago, our historic record of giving hearings and votes shows that this Committee "is alive and well," because we are fulfilling our responsibilities to evaluate the President's judicial nominees. As Senator Biden has observed, a federal judgeship "inures to no one by birth, no one by right, and no one as a consequence of nomination by the President of the United States."

The burden of proof for entrusting someone, for life, with these weighty responsibilities over the lives of millions of Americans and non-citizens rests on the nominee. Our freedoms are the fruit of too much sacrifice to fail to assure ourselves that the judges we vote to confirm have a commitment to upholding the Constitution, following precedent, and listening to claims without fear or favor. When a President is nominating individuals to tip the balance, stack the deck, or to pack the courts with ideologues, the Senate would be abdicating its responsibilities to ignore the very criteria that led to selection of such a nominee.

Under our Founders' design, the political branches share the power of appointment: the President has the power to nominate or propose judges, but the Senate has a corresponding power to confirm or reject those nominations. That is one of the ingenious checks and balances of our federal system. If a nominee's record, or lack of a record, raises doubts, these are matters for thorough scrutiny by the Members of this Committee who are entrusted to review all of the information and materials relevant to a nominee's record relating to fairness, impartiality, bias, experience, or other matters. Unlike elected officials, these are lifetime jobs, so the Senate Judiciary Committee must undertake an inquiry to be assured that a nominee should be confirmed to high office. When there is no judicial experience to look to, it is all the more critical that the Committee inquire fully into a nominee's experience, record, views and understanding of our fundamental rights.

Today, the Senate Judiciary Committee will hear from five district court nominees with experience as judges as well as advocates for their clients. We will also hear from a nominee to the nation's second highest court, the D.C. Circuit. This appellate court is also known as the Nation's circuit court because it plays a uniquely significant role in evaluating certain decisions of federal agencies, such as the Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA), among others.

Today's hearing on a nominee for the D.C. Circuit is also significant because it is the first hearing for a nominee to this Court in five years. The last person confirmed to this Court was Judge Merrick Garland, who was nominated in 1995 and was not allowed by Republicans to be confirmed until 1997. For the next four years, Republicans blocked any and all nominees to the D.C. Circuit. Republicans blocked the nominations of both Elena Kagan and Allen Snyder.

Mr. Snyder was allowed a hearing in May 2000 but then never accorded a Committee vote.

They did not even give Professor Kagan a hearing during the 18 months her nomination was pending. Republicans refused to consider any and all nominees to the D.C. Circuit since 1997. In contrast, Mr. Estrada will receive a hearing and have an opportunity to address concerns that have been raised about his controversial nomination to our Nation's second-highest court.

Mr. Estrada is the only Latino nominated by President Bush to any of the 41 vacancies that have existed on the 13 Circuit Courts of Appeals. Hispanics have not been nominated to any of the six vacancies in the Ninth Circuit, which includes California and Arizona; the four vacancies in the Tenth Circuit, which includes New Mexico and Colorado; the three vacancies in the Fifth Circuit, which includes Texas; the three vacancies in the Second Circuit, which includes New York; or any of the three vacancies in the Third Circuit, which includes New Jersey and Pennsylvania. In my statement last week on Hispanic judicial nominees, I noted how few Latino nominees this President has sent to the Senate and detailed how quickly we have proceeded to consider and confirm Judge Christina Armijo of New Mexico, Judges Phillip Martinez and Randy Crane of Texas and Judge Jose Martinez of Florida. Just last week, we held a hearing for Magistrate Judge Alia Ludlum. Now that we have a completed file on the nomination of Jose Linares of New Jersey, we will work to provide him with a hearing. We do not yet have an ABA review on the nomination of Judge James Otero of California. Unlike the preceding six and one-half years, Hispanic nominees need not fear that their nominations will be subjected to extra delay or scrutiny; each of these district court nominees has been given a prompt hearing.

Of the 10 active appellate judges in the federal courts who are Latino, eight (or 80 percent) were appointed by President Clinton. Some of these Clinton nominees were denied Senate consideration for years during the period of Republican control of the Senate. For example, the confirmation of Judge Richard Paez to the Ninth Circuit took over 1,500 days. It was delayed by Republicans for almost five years and 39 Republicans voted against him. I recall how the nomination of Judge Sonia Sotomayor to the Second Circuit was stalled from Senate consideration for months by anonymous holds because Republicans were concerned that she might be nominated to the Supreme Court. Although she received a unanimous "Well Qualified" rating from the ABA and was first named to the federal bench by President Bush, 29 Republicans voted against her confirmation.

Other circuit court nominees of President Clinton never received hearings or votes, such as Jorge Rangel and Enrique Moreno of Texas, who were both nominated to the Court of Appeals for the Fifth Circuit and Christine Arguello of Colorado who was nominated to the Tenth Circuit. Scores of the last President's judicial nominees were never given hearings or votes and many of them were qualified Hispanic, African American or female nominees.

Democrats have restored fairness to the judicial confirmation process. We have endeavored to responsibly address the vacancy crisis we inherited as a result of the delay and obstruction of judicial nominations, particularly circuit court nominations, during the prior six and one-half years of Republican control of the Senate.

I noted last week that diversity is one of the great strengths of our nation and that diversity of background should be reflected in our federal courts. Race or ethnicity and gender are, of course, no substitutes for the wisdom, experience, fairness, and impartiality that qualify someone to be a

federal judge entrusted with a lifetime appointment. White men should get no presumption of competence or entitlement. Hispanic and African American men and women should not be presumed to be incompetent. All nominees should be treated fairly. We must carefully examine the records of all nominees to high offices but we know the benefits of diversity and how it contributes to achieving and improving justice in America.

We look forward to learning more about the six nominees receiving a hearing today.

#####

ROBERT S. LITT
555 TWELFTH STREET, NW
WASHINGTON, DC 20004-1206

August 28, 2002

Hon. Patrick Leahy
Chair, Committee on the Judiciary
United States Senate
The Capitol
Washington, DC 20510

Hon. Orrin Hatch
Ranking Member, Committee on the Judiciary
United States Senate
The Capitol
Washington, DC 20510

Re: Miguel Estrada

Dear Chairman Leahy and Senator Hatch:

I understand that questions have been raised concerning Miguel Estrada's nomination to the United States Court of Appeals for the District of Columbia Circuit, and in particular whether the legal views he expressed while serving in the Solicitor General's office were politically motivated.

I had the opportunity to work with Mr. Estrada on a number of matters during my service as Deputy Assistant Attorney General, Criminal Division and Principal Associate Deputy Attorney General in the last Administration. I came away from these encounters with the highest respect for Mr. Estrada's legal abilities. He is an outstanding, indeed brilliant scholar and writer, and one of the best oral advocates I have ever observed. As sometimes happens among attorneys charged with formulating the government's position with respect to important and novel legal issues, I disagreed with Mr. Estrada on a number of the issues that we faced, but I have no doubt that his positions were sincerely held and honestly advocated. Perhaps more importantly in light of the charges that I understand have been made, I never felt that the arguments he made were in any way outside the scope of legitimate legal analysis.

While I may disagree with some aspects of Mr. Estrada's legal philosophy, I believe that he is eminently qualified to serve on the Court of Appeals, and I hope that he will be confirmed.

Very truly yours,

Robert S. Litt

Statement of Senator Mitch McConnell
Nomination Hearing of Miguel Estrada
Senate Judiciary Committee
September 26, 2002
"The Democrats' 'Mainstream' Judges"

My Democrat friends have said they want "mainstream" judges. I would think that Mr. Estrada would fit this category.

- He has received the ABA's highest rating: unanimously well-qualified. As part of its rating, the ABA considers judicial temperament.

- He has donated over 400 hours, *pro bono*, defending an individual in a capital case.

- He has received glowing letters of recommendation from prominent Democrats, including former Solicitors General under President Clinton, Walter Dellinger and Seth Waxman, and former Chief of Staff to Vice President Al Gore, Ron Klain.

But "mainstream" is, of course, a relative term. At this point, it is clear that what Republicans think is "mainstream" is quite different from what Democrats think is "mainstream."

I thought that Priscilla Owen, for example, was in the mainstream.

- She was rated unanimously well-qualified by the ABA.
- She was endorsed by the past 16 Texas State Bar Presidents, both Democrats and Republicans.
- She was twice elected to statewide judicial office in Texas, the last time receiving 84% of the vote.

Yet my Democrat colleagues killed her nomination because of her interpretation of a Texas law saying minor girls cannot freely get abortions behind their parents' backs. On this subject, well over 80% of Americans agree with Justice Owen. So I was astounded that Democrats would conclude she was not in the "mainstream."

I thought that the best way to determine who, in my colleagues' view, is in the "mainstream" is to look at decisions of some of the 377 Clinton judges whom my Democrat colleagues strenuously supported and argued were "in the mainstream."

"Clinton Class of '94": Judge Shira Scheindlin: "Get out of jail free card for terrorist-witnesses."

Federal agents did their job by detaining a material witness to the attacks of 9/11, a Jordanian named Osama Awadallah. Osama Awadallah knew two of the 9/11 hijackers and met with one at least forty times. His name was found in the car parked at Dulles Airport by one of the hijackers of American Airlines Flight 77. And photos of his better-known-namesake–Osama bin Laden–were found in Osama Awadallah's apartment.

Under the law, a material witness may be detained if he has relevant information and is a flight risk. DOJ thought that Osama Awadallah met both those tests–really going out on a limb there. While detained, Awadallah was indicted for perjury.

But Judge Shira Scheindlin, "Clinton class of '94," dismissed the perjury charges and released Mr. Osama Awadallah on the street. Her reason? She ruled that the convening of a federal grand jury investigating a crime was not a "criminal proceeding" and therefore it was unconstitutional to detain Mr. Awadallah.

This was quite a surprise to prosecutors, who for decades had used the material witness law in the context of grand jury proceedings, for everyone from mobsters to mass murderer Timothy McVeigh. So much for following well-settled law.

If you want to read a good article about this, I'd recommend the *Wall Street Journal*'s editorial from June 4, entitled "Osama's Favorite Judge." It concludes by saying "Mr. Awadallah is out on bail. We wonder how he's spending his time."

"Clinton Class of 95": Judge Jed Rakoff: "No death penalty for mass murderers."

One of Judge Scheindlin's colleagues, Judge Jed Rakoff, from the "Clinton Class of '95", has ruled that the federal death penalty, in all applications, is unconstitutional. Some of my Democrat colleagues share this position, but that position is at odds with the views of the majority of Americans. It's also a very clear failure to follow Supreme Court precedent.

Indeed, Judge Rakoff's ruling was so brazenly violative of precedent that even the *Washington Post,* which is against the death penalty as a policy matter, came out against his decision as gross judicial activism. In an editorial entitled, "Right Answer, Wrong Branch," the *Post* noted that the Fifth Amendment specifically contemplates capital punishment three separate times. It then noted that

> "[T]he Supreme Court has been clear that it regards the death penalty as constitutional . . . . The High Court has, in fact, rejected far stronger arguments against capital punishment . . . . Individual district judges may not like this jurisprudence, but it is not their place to find ways around it. The arguments Judge Rakoff makes should, rather, be embraced and acted upon in the legislative arena.

> The death penalty must be abolished, but not because judges beat a false confession out of the Fifth Amendment."

I note another editorial from the *Wall Street Journal* entitled "Run for Office, Judge." With respect to Judge Rakoff's moderation and fidelity to precedent, the *Journal* says,

> "It hardly advances th[e] highly-charged debate [on capital punishment] to have a federal judge allude to Members of Congress who support capital punishment as murderers. If Judge Rakoff wants to vote against the death penalty, he ought to resign from the bench and run for Congress or the state legislature, where the Founders thought such debates belonged."

On Tuesday, another Clinton judge, William Sessions of Vermont, "Clinton Class of '95" issued a similar ruling. The rulings of Judges Rakoff and Sessions would prevent the application of the death penalty against mass murderers like Timothy McVeigh or Osama bin Laden.

As an aside, I note that the Second Circuit, which reviews the rulings of Judges Scheindlin, Rakoff, and Sessions, has a 2:1 ratio of Democrat judges to Republican judges. So for my colleagues who are so concerned about a party having a single-seat advantage on the D.C. Circuit, I assume they recognize the need for some commonsense conservatives to balance-out the Second Circuit.

<u>"Clinton Class of '94": Judge Robert Henry : "Constitutional Right to Transsexual Therapy"</u>

When Professor Tribe appeared before this Committee, he implied that a conservative's view of the Eighth Amendment's proscription against cruel and unusual punishment was confined to protecting against the lopping-off of hands and arms. Well, Judge Robert Henry of the

Tenth Circuit, "Clinton Class of '94," has held that it is far broader than that.

Specifically, a transsexual inmate, Mr. Josephine Brown, brought a 1983 action against the State of Colorado alleging that by not providing female estrogen therapy, Colorado had, in fact, punished him–and that its punishment was of such a cruel and unusual nature as to violate the Eighth Amendment to the Constitution. Now, as Judge Henry noted in his opinion, the Tenth Circuit, along with the majority of courts, had held that it was not an Eighth Amendment violation to deny an inmate estrogen.

The law of the circuit did not, however, stop Judge Henry. Although Mr. Brown had thrice told the lower court that it was the denial of estrogen that was the gravamen of his complaint–and had contended on appeal that it was the denial of estrogen specifically that deprived him of the equal protection of the laws–Judge Henry and two Carter appointees re-wrote the complaint and reinstated it. So much for judicial restraint and following precedent.

Various Ninth Circuit Clinton Appointees: "Finding the Right to Long-Distance Procreation for Prisoners."

My friends on the other side believe very strongly in a "living and breathing" Constitution, and that the rule of law should not be confined to the mere words of the document and the framers intent. I was truly surprised, however, to read what a panel of the Ninth Circuit had tried to breath into the Constitution.

Three-time felon William Geber is serving a life sentence for, among other things, making terrorist threats. Unhappy with how prison life was interfering with his social life, Mr. Gerber alleged he had a constitutional right to procreate via artificial insemination.

A California district court rejected Mr. Gerber's claim. A split-decision of the Ninth Circuit, though, reversed. Judge Stephen Rhinehardt, joined President Johnson's appointee, Myron Bright, and they concluded that yes, the framers had intended for the right to procreate to survive incarceration.

In his dissent, Judge Barry Silverman–a Clinton appointee who was recommended by Senator Kyl–wrote that "This is a seminal case in more ways in one" because "the majority simply does not accept the fact that there are certain downsides to being confined in prison." One of them is "the interference with a normal family life." Judge Silverman noted that while the Constitution protects against forced sterilization, that hardly establishes "a constitutional right to procreate from prison via FedEx." The Ninth Circuit, *en banc*, reversed this decision, but only barely. And it did so against the wishes of Clinton appointees Tashima, Hawkins, Paez and Berzon, who dissented from the *en banc* ruling.

If anyone wants to read more about this case, I'd recommend George Will's piece entitled, "Inmates and Proud Parents." If there ever was a circuit in need of some moderation, balance, and ideological diversity, it is the Ninth Circuit–home of the now infamous "One Nation Under God" decision. It is made up of 17 Democrat appointees, but only 7 Republican appointees.

It is the Nation's largest circuit, covering 9 states and 51 million people. It is also reversed far and away more than any other circuit. Indeed, it is reversed so often–from 1996-2000, the Supreme Court reversed it 77 out of 90 times–it is known as a "rogue" circuit. This has forced its representatives to introduce legislation to allow their States to secede from the Ninth Circuit.

But one commonsense nominee to the Ninth Circuit, Carolyn Kuhl, won't even get a hearing. It's too bad. The ABA–as it has with many of

the President's nominees–has rated her "well qualified." The Ninth Circuit desperately needs re-balancing. For my friends who are concerned about a single-seat margin on the D.C. Circuit, they should look at the gross imbalance on the Ninth Circuit.

Conclusion

If these Clinton judges represent the "mainstream" to my Democrat colleagues, I hope that Mr. Estrada is not in it. Unlike these judges, I am confident that Mr. Estrada is committed to following precedent, whether it is a precedent that my colleagues admire, such as *Roe v. Wade,* or a precedent that they dislike, such as *Buckley v. Valeo*. I am confident that he will not have a cafeteria-style commitment to precedent, like some of the judges I mentioned. The Senate should expeditiously confirm him.

JSP:CLA:js
T. 12-3-74
DJ 169-45-1

DEC 4 1974

MEMORANDUM FOR THE SOLICITOR GENERAL

Re: United States v. School District of Omaha, State of Nebraska, C.A. No. 73-0-320, Omaha, Nebraska

I recommend that the United States appeal the order of the district court dismissing our complaint after trial.

STATUS

The order we wish to appeal was entered on October 15, 1974, and the last date for noticing an appeal is December 16, 1974. Plaintiff-intervenors have advised us that they plan to appeal.

QUESTION PRESENTED

Whether the district court's holding that defendants' racially segregative acts were not undertaken with segregative intent was based on:

(a) incorrect legal standards, and

(b) clearly erroneous findings.

STATEMENT

1. Procedural history

The United States brought suit on August 10, 1973, under Title IV of the Civil Rights Act of 1964, 42 U.S.C. 2000c-6, to desegregate the schools of Omaha, Nebraska.

cc: Records
Landsberg
Attwood
Barnett
Chrono
Education Section
File

In our complaint we alleged discrimination in the assignment of students to schools at all levels of school organization. One allegation was that, while the school district of Omaha professed to adhere to a neighborhood assignment policy, it had deviated from that policy in certain instances resulting in racial segregation throughout the school system. We also alleged that faculty were assigned by race, with the result that schools in Omaha were racially identifiable.

With the complaint, we filed a motion seeking a preliminary injunction enjoining the school district a) from failing to develop and implement a plan for opening the new Martin Luther King Middle School on September 4, 1973, as a desegregated school, and b) from continuing to operate its student transfer policy in a discriminatory manner.

A hearing on our motion for preliminary injunction was held on August 23, 24 and 27, 1973, and on August 31, 1973, the court issued its order denying our motion. 367 F. Supp. 179 (D. Neb. 1973). We determined not to appeal that order. Thereafter black students were permitted to intervene as class plaintiffs-intervenors.

Trial on our suit for permanent injunction was begun on March 4, 1974,and concluded on March 20, 1974. The matter was submitted to the court on June 5, 1974. On October 15, 1974, the court issued its opinion and order dismissing our suit.

2. The Trial

At trial, we presented evidence which demonstrated that Omaha presently operates a segregated school system. We also presented evidence to prove that the segregation was caused by actions of the school board which were taken with the purpose or intent to segregate.

and McMillan (36 percent black). Indian Hill Junior High is 19 percent black, and Hale, located northwest of Mann, is 10 percent black. The seven remaining junior high schools have enrollments which are less than 3 percent black. Tech Junior High, located in the Tech High School facility, was 91 percent black in 1971-72, its last year of operation.

The Defendants operate one middle school. Martin Luther King, which serves grades 5-7. The King School, which is located west of Adams Park in the central portion of the school district, was opened in September 1973 with an 82 percent black enrollment.

At the elementary level, 12 of the 73 elementary schools are over 50 percent black. Of these, 11 are over 75 percent black, including three (Kennedy, Lothrup and Conestoga) which are over 90 percent black. Four elementary schools are between 25-50 percent black, 6 are between 10-25 percent black, while 19 are between 1-10 percent black. Thirty-two elementary schools are either all white or less than 1% black.

b) Evidence of Segregative Intent

We presented evidence to demonstrate that the segregation in the school district was caused by actions taken by the school board with the intent to segregate. Our evidence primarily concerned

1. the student transfer policy;

2. Tech Senior High School;

3. Tech and Mann Junior High Schools;

4. the conversion from a kindergarten through grade 8 (K-8) to a kindergarten through grade 6 (K-6) system;

5. the creation of optional attendance zones;

6. the use of temporary classrooms and boundary changes in the elementary schools;

7. the discriminatory assignment of black faculty; and

8. the construction of new schools, including the Martin Luther King Middle School.

The intervenors introduced evidence concerning housing discrimination in Omaha.

We requested that the court order the school district to prepare an acceptable desegregation plan, but did not discuss relief in any particulars.

The School Board introduced evidence to prove that its decisions were not made with discriminatory intent.

3. The District Court's Findings of Fact and Conclusions of Law

The district court held that Keyes v. School District No. 1, Denver, Colorado, 413 U.S. 189 (1973), requfred the United States to prove (1) that there is a current condition of racial segregation in the Omaha schools, and (2) that this condition has been caused or maintained by intentional state action. The court held that we had fulfilled the first requirement of Keyes, stating "[n]or is it open to doubt that there is a substantial degree of racial imbalance within some of the Omaha Public Schools" (opinion, p. 2). The court held, however that we had failed to establish that any segregation was the result of intentional state action (e.g., id. at 8, 9, 21). The court held that in determining intent "the natural and foreseeable consequences of the defendants' actions are neither determinative nor immaterial, but rather constitute one additional factor to be weighed in evaluating the defendants' overall intent" (id., p. 3).

Applying the legal standards to the evidence presented the court made the following findings and conclusions:

a) The Student Transfer Policy (Opinion, pp. 28-38)

The court found that in 1963-64 the School Board initiated a student transfer policy which allowed substantial numbers of students at all levels of the school system to attend schools other than those in their neighborhood. Prior to 1963-64 students could transfer only upon a showing of health and hardship reasons. The new policy, still in effect, allowed any student to transfer to any school, if, (1) the student's achievement level was at least equal to the average achievement level of the school to which he wished to transfer; (2) the receiving school was not overcrowded; (3) the student's parents provided transportation; (4) the request was a formal one; and (5) permission was not to be granted until enrollments were ascertained (id. at 28).

The court found that some transfer requests which had been granted stated racial reasons for not attending school within the neighborhood attendance zone. However the court stated that because of the small number of such requests introduced into evidence, they were of little probative value (id. at 29).

The court found that under the Government's analysis of transfers 32.8 percent and 34.6 percent of transfer grants and denials in 1970-71 and 1971-72, respectively, were segregative, while 19.4 percent and 20.2 percent in 1970-71 and 1971-72 respectively were desegregative, and 47.8 percent and 45.2 percent in 1970-71 and 1971-72 respectively had no effect. 1/

1/ An example of a transfer with no effect would be one in which a black student transferred from one predominantly black school to another. We argued at trial that a proper evaluation of the data should only compare segregative transfers with desegregative transfers. For instance, in 1970-71, 1,316 transfer grants or denials were segregative, while only 778 were desegregative. This means that almost two-thirds of those transfer grants and denials which had an impact on the racial balance of schools were segregative.

segregation. 3/ The district court also found that the defendant's analysis showed that the transfer policy resulted in a slight decrease in the number of black students in schools with over 80 percent black enrollment. 4/ The court also found, based on the school board's analysis, that the transfer policy resulted in a slight increase in the percentage of black students at majority white schools. The court further found that the transfer option was used equally by blacks and whites, and that the administration did not discriminate against blacks in granting black students' transfer requests. 5/

3/ Under the school district's analysis all transfers which involved a move by a student to a school where his race constituted a higher proportion of the students than the school which the student left were "contributory. All other transfers (including those of a black from one predominantly black school to another) were counted as "non-contributory."

4/ Defendant's analysis did not show the effect on white enrollment at these schools. Our analysis demonstrated that at some schools as many as 75 percent of all white students at predominantly black schools transferred to predominantly white schools.

5/ In its opinion denying a preliminary injunction, however, the court stated that there was evidence that some black students were denied access to Lewis & Clark Junior High (predominantly white) for the year 1970-71 for the reason that it was overcrowded, while at the same time some white students were allowed to transfer from majority black schools to Lewis & Clark. 367 F. Supp. at 193.

Court of Appeals approved a similar transfer policy. The district court failed to mention, however, that in the next round of litigation concerning the Richmond schools, the School Board of Richmond "conceded that its previously implemented plan of integration, largely based on freedom of choice, which plan had been approved by the district court on March 30, 1966, was insufficient under Green v. School Board of New Kent County [391 U.S. 430 (1968)] to constitute a unitary school system." Bradley v. School Board of City of Richmond, Virginia, 462 F.2d 1058, 1061 (4th Cir. 1972), aff'd by an equally divided court 412 U.S. 92 (1973).

b) Tech High School (Opinion, pp. 22-28)

The district court made several findings of fact concerning Tech High School, which is the only predominantly black high school in the District:

Tech High School is located in a white neighborhood, close to the southern boundary of the black community in Omaha. It was opened in 1923 as an excellent vocational school which also offered a college preparatory program. From 1936 through 1945 Tech had the largest student body in the district. Tech and neighboring Central High School (college preparatory) were, and are, open schools, serving any high school student living anywhere in Omaha. However, high school students living within the Tech/Central attendance zone are required to attend one of the two schools. Prior to 1950, Tech High School was truly an open school - drawing students from all over the city - and it was predominantly white. From the 1930's through the 1950's Tech had the most advanced program of vocational education in the district. A substantial proportion of the students attending Tech did so because of this program.

Starting in 1950, the proportion of black students increased markedly. Between 1950 and 1963 black enrollment increased from 17 to 51 percent. Between 1963 and 1973 black enrollment increased from 51 percent to 96 percent. There has also been a steady decline in

enrollment. At the same time neighboring white high schools were at or above stated capacity. In 1973-74, only 710 students were enrolled at Tech High. The rapid increase in the proportion of black students, and the steady decline in total enrollment at the school were known to the administration of the school district. Starting in the 1950's, the Principal of Tech repeatedly notified the Superintendent of Schools and his staff orally and in writing that Tech was in danger of becoming all black.

The court also found that the success of open schools such as Tech is dependent upon the attractiveness of the school to students throughout the District. In the last 25 years fewer and fewer white students have been attracted to Tech.

The court found that during the mid-sixties, when the proportion of black students was increasing, the administration deleted courses in electronics and electricity from the curriculum, and added courses in culinary arts and auto body - courses which the administration felt more adequately fit the needs of black students (id. at 26). Courses in all foreign languages save Spanish, courses in Debate, and certain extra curricular activities were also eliminated during the period of growth of the black student population. The court found that at present much equipment is not in use. The court also found that in the 1960's, at the time the school was becoming predominantly black, special education classes were located at Tech. Tech was the only high school which had these classes for the first few years and as many as 200 students participated in any one year.

The court found that in 1971-72 Tech experienced "disruptions of an unspecified number and character." Many students at Tech were dissatisfied with the content and structure of courses, the manner of instruction, the treatment of Tech by the central administration and the physical plant. 9/ The court found that in response to

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9/ There was testimony at trial that in 1971-72, the building was infested with rats and the school was "ungovernable."

the actions of the students, the District made changes at Tech in 1971-72 including the repair and rennovation of the building, the change of faculty assignments, and the alteration of the curriculum to provide for more individualized education.

The district court concluded on the basis of these facts that the potential for an excellent vocational program at Tech has not in any way diminished. The court stated that equipment and facilities are present and are of high quality and equal to and in some areas superior to, those of any high school in the district. 10/ In conclusion, the court found that the operation of Tech does not disclose segregative intent but "shows a determination on the part of the defendants to upgrade both the physical plant and the quality of education at this school." 11/

c) The Junior High Schools (Opinion, pp. 9-22)

The court found that the establishment of junior high schools and the assignment of feeder elementary schools was racially neutral. The court found specifically that the school district's decisions concerning the location of junior high schools were consistently made on a geographical basis and that the race of the students expected to attend these schools was never a consideration, and that there was never a design that Tech Junior High and Mann should become black schools.

10/ However, as the court pointed out, see p. 11 supra, much of that equipment is not in use.

11/ Of course, as the court found, the attempts to improve the physical plant and to upgrade the curriculum did not occur until 1971-72, long after Tech had become a virtually all black school, and after the student body and community had become vocal in their criticism of conditions at Tech.

The court did find that Mann opened as a predominantly black school in 1959 and is now virtually all black. McMillan Junior High, northwest of Mann, was all white when it opened in 1958-59. The court also found that the "Near North Side Junior High School" 12/ referred to in official administration plans, was never built. 13/

The court found that Tech Junior High (located in the Tech High School building) opened in 1950 and received its feeders on a piecemeal basis thereafter. The feeders by the mid sixties included all elementary schools closest to Tech, with the exception of Yates and the possible exception of Walnut Hill and Saunders (all of these have been predominantly white elementary schools).

The court found that during the years of conversion from K-8 to K-6, the school board had in several instances deviated from its junior high school and its neighborhood assignment policies:

12/ There was uncontroverted testimony at trial that the term "Near North Side" is synonymous with the black community in Omaha.

13/ This finding is clearly erroneous. There was testimony from school administration officials that the "Near North Side Junior High School" was in fact built, named Mann Junior High School, and opened with a 71 percent black enrollment. All feeders designated for this school were black schools. No neighboring white elementary schools were made feeders to Mann. When Mann opened, the District for the first time assigned black faculty to a junior high school - they were all assigned to Mann.

i) Conversion from K-8 to K-6 (Opinion, 14-16)

The court found that by 1964-65, only seven elementary schools had not converted to K-6. Four of these were located closest to Tech Junior High (61 percent black in 1964-65). Two were located closest to Mann school (97 percent black in 1964-65). Only one was located closer to a junior high school other than the two predominantly black junior highs. All of the six K-8 schools ringing the Tech and Mann zones were predominantly white.

The court found that four of these K-8 schools converted to K-6 between 1964 and 1971. However three of these conversions involved deviations from the neighborhood school policy. As Mason, Walnut Hill, and Saunders Elementary Schools (all predominantly white) converted to K-6, the seventh and eighth grade students within those zones were given the choice of attending one of three junior high schools - Tech (predominantly black), or either of two other white junior high schools, both of which were located further from the elementary zone than Tech. The court found that evidence on the actual use of these options showed that white students overwhelmingly chose to attend the white junior high schools.

The court found that Yates (predominantly white) was converted to K-6 in 1970-71 and Yates' seventh and eighth graders were assigned to Tech. The court found that this conversion had been delayed one year because of parents' opposition to sending their children to a junior high school located in a high school building. 14/

14/ We introduced evidence that there were racial reasons expressed by parents. However the court chose to give this evidence little probative value. The court found also, that the fact that Yates was converted in 1970-71 heavily discounted any evidence of a segregative intent. However, the court failed to mention that although Yates' seventh and eighth graders were assigned to Tech in 1970-71

(Footnote cont'd on next page)

The court found that the three remaining K-8 schools were never converted to K-6. Two of these schools - Sherman and Pershing are located closest to Mann and Tech. The court found that Pershing and Sherman were geographically isolated from the rest of the district, making conversion difficult.

The court concluded that there was no evidence of segregative intent in the location of junior high schools or the initial assignment of feeder schools. The court also concluded that as to the process of conversion from K-8 to K-6, although it was not applied to all schools at the same time, and although exceptions were made to the neighborhood assignment policy which had the effect of increasing segregation at Mann and Tech Junior High Schools, the plaintiffs had not met their burden of proof on this issue.

The court held that the creation of optional attendance zones was a necessary and reasonable deviation from the neighborhood school policy (id. at 20). 15/

14/ (Cont'd from preceding page)

uncontroverted evidence shows that many white students from the Yates zone used the special transfer policy to avoid attending Tech.

The court also failed to mention that when Tech Junior High School was closed at the end of 1971-72, the Yates zone was divided in two portions. That portion north of Cumming Street, which was predominantly black, was assigned to Mann (98 percent black), the portion south of Cumming Street, which was predominantly white, was assigned to white junior high schools.

15/ The reasons for the creation of optional zones cited (Opinion, 20-21) by the court do not in fact explain the choice of optional zones.

In reaching this conclusion, the court relied heavily upon the school board's creation of an optional attendance zone in the Druid Hill Elementary School District (id. at 21-22). The court found that the creation of this optional zone had an integrative effect. This, the court said, would tend to disprove the allegation of an overall segregative policy. 16/

d) The Elementary Schools (Opinion, pp. 5-9)

The court found that the elementary schools are the heart of Omaha's neighborhood school policy. The district court then analyzed two practices of the School Board concerning elementary schools:

i) The adding of capacity (pp. 5-8)

The district court found that in the 1950's and early 1960's, the school board had resorted to a limited

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16/ The finding concerning the Druid Hill option is clearly erroneous. The option in question allowed students in one area of the Druid Hill zone to attend either McMillan (virtually all white) or Mann (predominantly black). The court does not mention that, prior to the creation of this option, all students in the Druid Hill zone attended McMillan Junior High. After the area turned majority black, the junior high students were given the option of attending the predominantly black Mann school. Thus, while it is true that the black enrollment at McMillan increased after the option was created, to attribute such an increase to the creation of the option is misleading, because the increase would have been more substantial, except for the district's creat the option of attending 97 percent black Mann.

extent to the restructuring of school attendance zones in order to relieve overcrowding in elementary schools. By the mid-1960's, the District emphasized the use of temporary classrooms as the primary measure for dealing with increased enrollments.

With respect to two schools, Franklin and Clifton Hill, the court found that during the 1960's there was a shift from predominantly white to predominantly black enrollments; that there was an accompanying increase in enrollments; and an accompanying increase in the use of temporary classrooms. At the same time there were adjacent predominantly white schools which were below capacity (id. at 7).

The court also found that some restructuring of attendance zones was possible, which would have resulted in less segregation at all of these schools and that, by continued restructuring over the years, a substantial degree of integration could have been maintained. The court found, however, that, at the time in question, restructuring was simply not a method used by the District to alleviate overcrowding. The court concluded that in using temporary classrooms the Board acted with no racial intent at all, and that any segregative effects of the use of temporary classrooms was not intentionally caused or maintained by the School Board.

ii) The Alteration of Attendance Zones (Opinion, 8-9).

The court found that in 1957-58 and 1958-59, the school board altered the attendance zones of Druid Hill (majority black) and Monmouth Park (all white) Elementary Schools. A majority white area of the majority black Druid Hill zone was moved to the predominantly white Monmouth Park zone. In 1965, when that area had turned majority black, a portion of the area was returned to the Druid Hill zone. The district court found that

these boundary adjustments were plausibly explained by the School Board and were devoid of any segregative intent. 17/

The court found that another boundary change did not even have a segregative effect. In 1957-58 and 1958-59 a white section of the Webster School zone (majority white) was added to Yates (predominantly white). In 1959-60, the remaining seventh and eighth grade students at Webster were assigned to Tech Junior High (majority white), while seventh and eighth grade students at Yates stayed there. The court found no explanation for this boundary adjustment although we argued that it was made so that white Webster seventh and eighth graders could avoid attending Tech Junior High, which in 1959-60 was almost majority black. The court found, however, that the change did not have a substantial segregative effect, if any (id. at 8-9).

e) The Hiring and Assignment of Black Faculty and Staff (Opinion, pp. 39-42)

The court found that the District hired its first two black teachers in 1940-41. Both were placed at a predominantly black elementary school. From 1940-41 to 1958-59 all black teachers employed by the district were assigned to majority black elementary schools. The first black junior high school teacher was hired in 1959-60, and assigned to Horace Mann, which opened in that year as a predominantly black school. Between 1959-60 and 1971-72, the large majority of black junior high school faculty was assigned to the two majority black junior high schools. In 1963-64, the first black was assigned to teach high school. Two were assigned

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17/ The testimony upon which the court relied indicated that the first boundary adjustment was made in order to permit students in the affected area to attend school and go home for lunch without having to cross railroad tracks. The transfer of the affected area back to Druid Hill occurred when Druid Hill's cafeteria was completed in 1965, thus allowing students to eat lunch at school. However, as we pointed out at trial, not all of the area separated from Druid Hill by railroad tracks was assigned to Monmouth Park in 1957-58. This, we argued, tended to disprove the defendant's explanation of the purpose for the zone alteration.

to Tech (51 percent black) and one to North High School (9 percent black).

Based on this evidence, the court found that "through the early 1960's, the School District had a policy of placing black faculty members solely in schools with majority black enrollments" (id. at 40), and a policy of refusing "to place qualified black secondary teachers at the secondary level" (id.). The court found, however, that there was "insufficient evidence to show an intentionally racially discriminatory" hiring policy (id.).

The court found that in 1963 the school board began active recruitment of minority faculty and discarded its practice of assigning on the basis of race. The court found that substantial progress has been made since that time. 18/

The court also found that the district had held a good faith belief that "having successful black role models was important for black children," (id. at 42), and that this fact was entitled to some weight in any ultimate conclusion regarding segregative intent on the part of the School District.

18/ However, the statistics cited by the court itself indicate that as of 1971-72, 70 percent of all black faculty were assigned to majority black schools. In 1972-73, over half of all black faculty were assigned to majority black schools, although only 8% of the faculty was black.

This fact indicates a violation of Section 204(d) of the Equal Education Opportunities Act of 1974, 20 U.S.C. 1703(d) which prohibits "discrimination by an educational agency on the basis of race ... in the ... assignment to schools of its faculty...."

f. General Construction (Opinion, pp. 42-44)

The court found that between 1951 and 1973, 39 new school buildings or additions were erected, of which 37 opened with predominantly white or predominantly black enrollments. Twenty-one of these were built between 1964 and 1973, and all of them opened either predominantly white or predominantly black. The court found that the school district did know, or should be charged with knowing the racial composition of these schools.

The court also found that these new schools could have opened with substantially less polarized racial enrollments if the School District had taken affirmative action in that regard. However the court concluded that there was no segregative pattern, and that absent that, the placement of new schools and additions was entirely consistent with the school board's neighborhood school policy. The court held that failure to take affirmative action is not evidence of segregative intent.

Martin Luther King Middle School

The court made no findings or conclusions concerning the King School in this opinion. However, in its opinion denying a preliminary injunction, the court found that the planning for King was begun six years ago and the final decision to build King was made two years ago. The stated purpose for the construction of King was to relieve overcrowding at Franklin and Clifton Hill Elementary schools, which were predominantly black schools. It was estimated that King would open with a 65 percent black enrollment. 19/ Opposition in the black community to the construction of a segregated school was repeatedly communicated to the School Board and administration.

19/ In fact, it opened with an 82 percent black enrollment.

The court found that Clifton Hill seventh graders had traditionally attended Monroe Junior High (majority white). The assignment of Clifton Hill as a feeder to Monroe was made when both schools were 100 percent white. As a result of the construction of King, Clifton Hill seventh graders (predominantly black) would attend a predominantly black school rather than the majority white Monroe. Thus, the construction of King had a segregative effect on Monroe and on these Clifton Hill students.

The court found that some whites live closer to King than some blacks, yet those whites are assigned to a predominantly white school while blacks living farther away are required to attend King. 20/

The court found that King will relieve overcrowding at Franklin and Clifton Hill, but that it may become a predominantly black school. The court also found that "there may well be a question presented with reference to the validity of the neighborhood school concept and policy as advanced by the district". 367 F. Supp. 186

20/ This finding indicates a violation of Section 204(c) of the Equal Educational Opportunities Act of 1974, 20 U.S.C. 1703(c), which provides that no state shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin by

> the assignment by an educational agency of a student to a school, other than the one closest to his or her place of residence within the school district in which he or she resides, if the assignment results in a greater degree of segregation of students on the basis of race, color, sex, or national origin among the schools of such agency than would result if such student were assigned to the school closest to his or her place of residence within the school district of such agency providing the appropriate grade level and type of education for such student....

In its opinion dismissing our case, the court never referred to these findings.

g. Housing (Opinion, pp. 44-46)

The court found that the incidents and practices of governmentally sanctioned residential segregation were not of sufficient probative value to permit the court to conclude that the individual or combined actions of the city, state, and federal governments have been a substantial factor in causing current residential segregation. Such evidence was therefore of no value in establishing intent to segregate.

h. Conclusion (Opinion, pp. 46-49)

The court concluded that the record did not justify a determination that the school authorities intentionally discriminated against minority students by practicing a deliberate policy of racial segregation.

DISCUSSION

Although we believe that the district court made several clearly erroneous findings of fact,[21] and that those findings should be attacked on appeal, we believe that the central errors of the court below were those of law.

The court's evidentiary findings make out a strong case of intentional segregative action by the school authorities. The court found deliberate segregation of teachers until 1963; it found that defendants deviated from its self-avowed neighborhood school policy by adopting the special transfer rule and optional zones and that these unexplained deviations had a racially segregative effect; its findings show that these deviations from the neighborhood school policy, as well as deviations from other policies (such as the maintenance of K-8 white schools near black junior high school zones and the curtailment of the normal high school curriculum at Tech) coincided in time with the growth of the black population and that defendants were fully aware of the racial consequences of their actions. While asserting that segregative intent may legally be inferred from objective facts without any accompanying direct statements of racial animus by the defendants, the district court followed a subjective standard of proof which allowed it to recite the strongest evidence of deliberate unjustified segregative action and still conclude that the evidence does not warrant a finding of "a deliberate policy of racial segregation."

1. The district court erred in failing to shift the burden of proof to the school board to prove that its actions substantially furthered legitimate purposes and were not taken with an intent to segregate.

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[21] Those which we feel are most crucial are indicated in our description of the court's opinion.

The district court correctly held that the Supreme Court's decision in Keyes v. School District No. 1, Denver, Colorado, 413 U.S. 189 (1973), requires a court to determine that school segregation was the result of state action taken with segregative intent in a school system which never operated under a legislatively mandated dual system. The court also correctly held that intent must be inferred from objective actions of the defendants. The Court went on to hold that the "burden of proof on this issue lies upon the plaintiff and the intervenors to show an intentionally segregative policy practices in a meaningful or significant portion of the school system" (id. at 2). We believe that when the plaintiff establishes clear patterns of action taken by a school board which deviate from normal racially neutral policies and have the effect of increasing segregation, establishes that the school board knew or should have known that the effects of its actions were segregative, and establishes that there were alternatives which would not have had a segregative effect, the burden shifts to the school board to prove that racial segregation was not among the reasons for the actions taken, and that its actions substantially furthered legitimate purposes.

In Berkelman v. San Francisco Unified School District, 501 F.2d 1264 (9th Cir. 1974), the Court of Appeals held that a racially neutral admissions policy in a San Francisco open school was constitutionally permissible in spite of the fact that the admissions policy had an adverse impact on black and Spanish American students. In so holding the court articulated the standard to be used in determining whether such a policy violates the Constitution:

> [I]f an admission standard operates in fact to exclude a disproportionate number of blacks and Spanish American

> students from Lowell, the court has a duty to test the constitutionality of that standard. Where a nonsuspect classification (past academic achievement) is alleged to operate to the detriment of a disadvantaged class or classes (black and Spanish American students), neither "strict" nor "minimal" scrutiny provides useful guidance as a standard of review. The task is to examine the school district's assertion that the standard of past academic achievement substantially furthers the purpose of providing the best education possible for the public-school students in the district. If the past-achievement standard does substantially further that purpose, then the district has not unconstitutionally discriminated in its Lowell admission policy.

A similar standard should be applied to the proof in this case. In this case, we presented substantial evidence of school policies and procedures which are racially neutral on their face, but which consistently further racial segregation. 22/ The court also found that many of these procedures were deviations from the stated neighborhood assignment policy. We also presented evidence, and the court so found, that the school board knew or could be charged with knowing that such policies and procedures resulted in increased segregation and that less segregative alternatives existed. In those circumstances it becomes incumbent upon the

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22/ The court also found school policies and procedures which were clearly racial in nature. See p. 27, infra.

school board to assume the burden of proving that its policies and procedures "substantially further" legitimate purposes. [23]/

Although no court has adequately articulated the allocation of the burden of proof in school desegregation cases such as this one, it is evident that most courts have placed the burden of justifying policies and procedures which have a segregatory effect, upon the school board. See Keyes v. School District No. 1, Denver, Colorado, 303 F. Supp. 289 (D. Colo. 1969), reversed in part on other grounds, 413 U.S. 189 (1973); Booker v. Special School District No. 1, Minneapolis, 351 F. Supp. 799 (D. Minn. 1972), Davis v. School District of City of Pontiac, 309 F. Supp. 734 (E.D. Mich. 1970), affirmed, 443 F.2d 573 (6th Cir. 1971); and United States v. Board of Commissioners of City of Indianapolis, 332 F. Supp. 655 (S.D. Ind. 1971), affirmed 474 F.2d 81 (7th Cir. 1973), cert. den., 413 U.S. 920 (1973). The reason for placing this burden upon the school board is clear. As one appellate court noted, " . . . there are very few cases of school segregation today in which defendants admit that they had an improper intent." United States v. Board of School Commissioners of Indianapolis, Indiana, 474 F.2d 81 (7th Cir. 1973), cert. den., 413 U.S. 920 (1973). Such intent must therefore be inferred; and one of the crucial bases for such an inference is the failure of the school board to present substantial evidence of non-racial motivation, and evidence that its policies do indeed substantially further legitimate goals.

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[23]/ At one point in its opinion the court appears to adopt this standard. When discussing the student transfer policy the court states that the policy "is . . . a deviation from the announced neighborhood school policy and thereby is subject to close scrutiny." However, it is evident from the court's conclusions that it did not, in fact, apply this standard.

The standard articulated by the district court makes little sense. The court states that

> the burden of proof here is upon the plaintiffs and intervenors to show an intentionally segregative policy practiced in a meaningful or significant portion of the school system. Only then does it become incumbent upon the defendant to prove that their actions or non-actions were not motivated by segregative intent.

Obviously, if plaintiffs prove segregative intent, then it is logically impossible for the defendants to disprove that intent. All that the plaintiff need do is prove that practices and policies of the school board have resulted in segregation and that the board knew or should have known that segregation would result. Once that fact is established, defendants must prove that these policies were justified and not racially motivated. The school board here did not meet that burden.

2. The district court erred in concluding that plaintiffs had not established discriminatory intent, where it found that the school board had intentionally discriminated in the assignment of black faculty.

Although the court found that the school district had assigned faculty on the basis of race from 1940-1963, (the evidence indicates that this practice continued at least through 1970), the court did not conclude that the school district had operated in any way a de jure segregated system. In Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 18 (1973) the Supreme Court

stated that:

> Independent of school assignment, where it is possible to identify a "white school" or a "Negro school" simply by reference to the racial composition of teachers and staff, the quality of school buildings and equipment, or the organization of sports activities, a prima facie case of violation of substantive constitutional rights under the Equal Protection Clause is shown. 24/

Thus the court erred as a matter of law in concluding that the school district did not intend to segregate its schools when it found discriminatory faculty assignment patterns. Under Keyes v. School Dist. No. 1, supra, the intentional segregation of the faculty "creates a presumption that other segregated schooling within the system is not adventitious." 413 U.S. at 208. The district court failed to apply that presumption.

3. The district court erred in isolating particular practices of the school board and ruling on the purpose and effect of each practice rather than considering the practices as a whole.

In finding that the high schools, junior high schools, and elementary schools were not segregated as

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24/ See also Kelly v. Guinn, 456 F.2d 99, 107 (9th Cir. 1972) where the court of appeals stated that

> [t]he almost completely black composition of the teaching staffs of Westside schools . . . established a prima facie case of violation of substantive constitutional rights.

Accord, Davis v. School District of Pontiac, Inc., 443 F.2d 573, 576 (6th Cir. 1971).

a result of intentional district action the court did not discuss the effect of the special transfer policy and faculty assignments on the racial composition of the schools. This we can argue is a variant of the error found by the Supreme Court in the lower court decisions in Keyes v. School District No. 1, 413 U.S. 189 (1973). There, the lower courts considered various areas of the school system in isolation from other parts of the system where school officials had been found to have practiced purposeful segregation. Here, the district court isolated particular practices of the school board and ruled on the purpose and effect of each individual practice rather than considering the practices as a whole. Where, as in our complaint, the allegation is that the various practices of defendants over a number of years show a policy or scheme to segregate students on the basis of race, such an isolated treatment of individual practices does not fairly confront the issue. In rejecting such an approach in an antitrust conspiracy case, the Supreme Court stated the rule which we believe should be applicable here:

> In cases such as this, plaintiffs should be given the full benefit of their proof without tightly compartmentalizing the various factual components and wiping the slate clean after scrutiny of each. . . . The character and effect of a conspiracy are not to be judged by dismembering it and viewing its separate parts, but only by looking at it as a whole.

Continental Ore Co. v. Union Carbide & Carbon Corp., 370 U.S. 690, 698-699 (1962). Likewise, the character and effect of a school board's policy of student and faculty assignment cannot be judged by viewing the individual practices of the board in isolation.

CONCLUSION

We believe that an appeal of the district court's decision in this case is essential in order to develop the law on the issue of proof necessary to establish a showing of intent to segregate in a northern school system. Under the district court's apparent standard, it would seem virtually impossible to establish a prima facie case of de jure segregation in a school district which never operated under a legislatively mandated dual system, absent direct evidence of segregative intent tantamount to a confession. As the court of appeals in United States v. Board of School Commissioners of Indianapolis, Indiana, 474 F.2d 81 (7th Cir. 1973), cert. den., 413 U.S. 920 (1973), pointed out " . . . there are very few cases of school segregation today in which the defendants admit that they had an improper intent." The district court's refusal here to infer such intent from the overwhelming and largely uncontradicted evidence should not go unchallenged.

This case, of course, differs from Keyes in that there is not here, as there was there, a finding, undisturbed on appeal, that the schools of at least a portion of the school district had been segregated by deliberate school board policy. See 413 U.S. at 192-195. Nevertheless, appeal is here appropriate unless an impossible burden of proof is to be imposed in non-dual system school cases, particularly when at least two violations of the Equal Educational Opportunities Act of 1974 are demonstrated (see nn. 18 and 20, supra).

Of course, difficult questions of remedy will have to await a remand, following articulation by the court of appeals of the proper standard of determining liability.

For the foregoing reasons, I recommend that authorization to appeal be granted.

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

Department of Justice
Washington, D.C. 20530

December 2, 1976

MEMORANDUM FOR THE SOLICITOR GENERAL

RE: Participation in the Supreme Court in Vorchheimer v. School District of Philadelphia, No. 76-36

I recommend that the United States file a brief as amicus curiae in this case in support of petitioners.

STATUS

The Supreme Court granted the petition for writ of certiorari on October 18, 1976. Petitioner's brief on the merits is due on December 2, 1976.

QUESTION PRESENTED

Whether the exclusion of females from an all male public high school violates the Equal Protection Clause of the Fourteenth Amendment, where the all male high school has superior facilities, reputation, and prestige when contrasted with the all female high school.

INTEREST OF THE UNITED STATES

Congress has declared the policy of the United States to be that "all children enrolled in public schools are entitled to equal educational opportunity without regard to race, color, sex, or national origin." 20 U.S.C. 1701 (the Equal Education Opportunities Act of 1974). Congress found that "the maintenance of dual school systems in which students are assigned to schools solely on the basis of race, color, sex, or national origin denies to those students the equal protection of the laws guaranteed by the Fourteenth Amendment." 20 U.S.C. 1702. The Act provides that no state shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin by, inter alia,

Pottinger
Turner
Dunbaugh

Landsberg ✓
Attwood
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> (c) the assignment by an educational agency of a student to a school, other than the one closest to his or her place of residence within the school district in which he or she resides, if the assignment results in a greater degree of segregation of students on the basis of race, color, sex, or national origin among the schools of such agency than would result if such student were assigned to the school closest to his or her place of residence within the school district of such agency providing the appropriate grade level and type of education for such student.

20 U.S.C. 1703(c). The Act provides for civil suits in federal court by individuals denied equal educational opportunity as defined in the Act (20 U.S.C. 1706), for suits by the Attorney General on behalf of such individuals (id.), and for intervention by the Attorney General in suits instituted by individuals (20 U.S.C. 1709). Thus, the United States has an interest in cases which define the right to equal educational opportunity as it relates to sex discrimination.

In addition, Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq., prohibits discrimination on account of sex in programs and activities conducted by public high schools receiving federal assistance. On July 21, 1975, Title IX regulations went into effect which provided, inter alia, that a local educational agency receiving federal assistance may not, on the basis of sex, exclude any person from admission to:

> (b) Any other school or educational unit operated by such recipient [other than vocational schools], unless such recipient otherwise makes available to such person, pursuant to the same policies and criteria of admission, courses, services, and facilities comparable to each course, service, and facility offered in or through such schools.

45 C.F.R. 86.35 (See 40 Fed. Reg. 24141, June 4, 1975). Thus, to the extent that local school districts which receive federal assistance operate single-sex schools which are not in every respect equal, Title IX regulations are applicable.1/

Finally, the United States has an interest in improving the scientific education of women, an area in which the district court and the court of appeals found Central High (for boys) to be superior to Girls High School.2/ The National Science Foundation, which is an independent federal agency,3/ administers the Women in Science Program, which provides grants to institutions to identify barriers to careers in science for women, and to design methods of overcoming such barriers in an effort to increase the flow of female students into science.4/

STATEMENT

Procedural History

On March 29, 1974, Susan Lynn Vorchheimer, by her parents, filed a class action in the United States District Court for the Eastern District of Pennsylvania under 42 U.S.C. 1983 for declaratory and injunctive relief against the School District of Philadelphia.5/ Plaintiff alleged

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1/ Title IX does not cover single-sex admission practices of public high schools per se. See 20 U.S.C. 1681(a)(1).

2/ Pet. App. 3a, 45a.

3/ See 42 U.S.C. 1861.

4/ In F.Y. 1975, expenditures under the program totalled $400,000. See Hearings on National Science Fouundation before the Subcomm. on HUD and Independent Agencies of the House Comm. on Appropriations, 94th Cong., 1st Sess., 677-78 (1975).

5/ Plaintiff also alleged violation of the Equal Rights Amendment of the Pennsylvania Constitution. However, the court declined pendent jurisdiction over this claim, since the state courts had not yet clearly defined the applicability of the amendment to the field of education.

that the school district had deprived her of equal protection of the laws by denying her admission to Central High School of Philadelphia on account of her sex. Trial was held on May 28-30, 1975, and on August 7, 1975, the district court (Newcomer, J.) entered findings of fact and conclusions of law and an order enjoining defendants from refusing to admit plaintiff or other members of her class to Central High School solely on the basis of sex. On March 16, 1976 the Court of Appeals for the Third Circuit reversed that opinion and order.6/

Facts

The School District of Philadelphia operates 22 senior high schools. Two of those schools - Central High School and the Philadelphia High School for Girls - are "academic" high schools, for which specific admission standards must be met. At the time the suit was brought, students were required to score no lower than the 82nd percentile in a national achievement test and present a superior junior high school record. The only difference in admission criteria between the two academic high schools is that Central accepts only male and Girls only female students.

Central and Girls are the only schools that draw their student bodies from the entire city. Students who attend "comprehensive" high schools (i.e., schools offering industrial and commercial, as well as college preparatory, courses) generally attend the comprehensive school located in their own neighborhoods. Two of the comprehensive schools are all-male and one is all-female.

In 1974 petitioner applied for admission to Central. The parties stipulated that if plaintiff were a boy, she would have been qualified for admission to Central.7/ However, her application was rejected, solely because of her sex.

6/ Gibbons (J.) filed a dissenting opinion.

7/ Upon graduation from junior high school Ms. Vorchheimer received the school's awards in English, history, science, and geometry, the American Legion Award for citizenship and scholarship and the most outstanding student award.

At trial the parties presented testimony regarding the history and educational merits of Central and Girls High Schools, as well as evidence regarding the merits of single-sex and co-education.

The District Court's Opinion

The district court found that the scientific facilities at Central High School are superior to those at Girls, but that in other respects the academic facilities of Central and Girls High are comparable, and the courses offered at Girls are similar and of equal quality to those offered at Central.8/ The court also found that since it was founded "Central has consistently maintained a reputation for academic excellence...."9/ The court stated that:

> During the nineteenth century members of [Central's] faculty were nationally known physicists and English stylists. Its graduates have risen to the top of the business world, the professions, politics, and academia.
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> ***
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> 19. Many men who are currently prominent in the professional, political, and cultural life of the city and state are graduates of Central. Central has a deserved reputation for training men who will become local and national leaders in all fields of endeavor.10/

The court noted that Central's academic standing and reputation as "a training ground for community leaders" has attracted the attention of national figures including Presidents, Attorney General Robert Kennedy, and Vice-President Hubert Humphrey.11/

8/ Pet. App. 45a.

9/ Pet. App. 42a.

10/ Pet. App. 42a-43a.

11/ Pet. App. 43a-44a.

Central High school has an active and loyal alumni association which, according to the court, "is an influential group in Philadelphia, both because of its activities as a group and the individual positions held by its members."12/ Central is also the only high school in Philadelphia with a substantial private endowment.13/

The district court found that the number of Girls High graduates who have become influential in the community does not approach the number who have graduated from Central, but that Girls has had a large number of graduates of note in the field of business and the professions, including three local judges and the first vice-president of the American Medical Association.

The district court held that the existence of a single-sex school for girls did not diminish petitioner's claim that she had been discriminated against on account of sex. The court stated that, if viewed in its totality, the classification at issue discriminated in favor of single-sex institutions and against coed ones, not in favor of men against women, and the exclusion of males from Girls would cancel out the effect of the exclusion of a female from Central. However, the court reasoned, plaintiff challenged only that portion of defendants' policy that related to Central, from which she was rejected solely because of her sex. "In this sense, defendants' classification is undeniably a sexual one."14/ The court found that the harm suffered by plaintiff and the class she represented was the denial of the opportunity to attend a coeducational, academically superior public high school. "We believe that this denial is significant enough, in light of plaintiff's express wishes and the evidence of her performance since her rejection, to justify the conclusion that it has an adverse impact on her and on other women."15/

12/ Pet. App. 44a.

13/ Pet. App. 45a.

14/ Pet. App. 82a, n. 8.

15/ Pet. App. 83a.

The court stated that "the fact that the education available at Girls is substantially equal to that available at Central takes this case out of the realm of Brown v. Board of Education, 347 U.S. 483," and expressly rejected plaintiff's argument that, given Central's history, prestige and long list of notable graduates, the exclusion of women from Central created a sense of inferiority in female students which rose to the level of a constitutional violation. The court noted that no evidence was presented to show that such a feeling of inferiority exists.16/

The district court ruled that, based upon recent Supreme Court decisions regarding sex discrimination,17/ the proper test to be applied to the school district's actions was whether the sexual classification involved bore a "fair and substantial relationship" to the School Board's legitimate interests. The court concluded that it did not.

The Court of Appeals' Opinion

A panel of the court of appeals (one judge dissenting) reversed. The court viewed the case as presenting the issue whether

> ...the Constitution and laws of the United States require that every public school, in every public school system in the Nation, be coeducational? Stated another way, do our Constitution and laws forbid the maintenance by a public school board, in a system otherwise coeducational, of a limited number of single-sex high schools in which enrollment is voluntary and the educational opportunities offered to girls and boys are essentially equal?18/

16/ Pet. App. 58a and n. 1.

17/ See, e.g., Stanton v. Stanton, 421 U.S. 7 (1975); Weinberger v. Weisenfeld, 420 U.S. 636 (1975); Schlesinger v. Ballard, 419 U.S. 498 (1975); Kahn v. Shevin, 416 U.S. 351 (1974); Frontiero v. Richardson, 411 U.S. 677 (1973); and Reed v. Reed, 404 U.S. 71 (1971).

18/ Pet. App. 2a.

The court of appeals answered the questions, so framed, in the negative. The court stated that a fair summary of the parties' positions was that, among other things, "the schools for boys and girls are comparable in quality, academic standing, and prestige...", and that "the deprivation asserted is that of the opportunity to attend a specific school, not that of an opportunity to obtain an education at a school with comparable academic facilities, faculty and prestige."19/ The court also found that petitioner did not allege deprivation of a an education equal to that which the school board makes available to boys.20/ The court of appeals also concluded that the district court's finding "that Girls and Central are academically and functionally equivalent establishes that the plaintiff's desire to attend Central is based on personal preference rather than being founded on any objective evaluation."21/

The court of appeals concluded that the regulations establishing admission requirements to Central and Girls High School based on gender do not violate federal law and do not offend the Equal Protection Clause of the United States Constitution.22/ The court found 20 U.S.C. 1701 et seq. inapplicable to the facts of this case:

> We do not here face an attempt by a school board to assign "a student to a school other than the one closest to his or her place of residence within the district in which he or she resides...," 20 U.S.C. §1703(c).
>
> We conclude the legislation is so equivocal that it cannot control the issue in this case.23/

The court then turned to the constitutional question. The court noted that the benefits and detriments of the sex segregated system "fall on both sexes in equal measure." The court found that Sweatt v. Painter, 339 U.S. 629 (1950) and Brown v. Board of Education, 347 U.S. 483 (1954) were inapplicable to this case because "[r]ace is a suspect classification under the Constitution, but the Supreme Court has declined to so charac-

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19/ Pet. App. 5a.

20/ Pet. App. 12a.

21/ Id.

22/ Pet. App. 16a.

23/ Pet. App. 10a-11a.

terize gender."24/ Instead, the court gave great weight to the Supreme Court's summary affirmance of Williams v. McNair, 316 F. Supp. 134 (D.S.C. 1970), aff'd, 401 U.S. 951 (1971), in which a three judge court ruled South Carolina's exclusion of men from one of its several state colleges permissible under the Equal Protection Clause of the Fourteenth Amendment. The court concluded that it did not matter whether the sex classification involved here were measured by the rational basis test or the "fair and substantial relationship" test applied by the district court, because under either standard the exclusion of female students from Central High School was constitutionally permissable.

In dissent, Judge Gibbons argued that the Equal Educational Opportunity Act of 1974 prohibited sex segregated public schools such as Central (App. 19a-26a). He also urged that such schools are prohibited by the Equal Protection Clause of the Fourteenth Amendment.

DISCUSSION

Introduction

We believe that there are both statutory and constitutional grounds for reversing the opinion of the court of appeals in this case. We are aware that time is very short on this case, and that there may be disagreement as to which grounds for reversal to argue. Therefore perhaps it would be possible to approve participation if one of our suggested grounds for participation is acceptable, and leave further discussion of the other issue for preparation of a brief on the merits.

In our view, neither the district court nor the court of appeals reached decisions required by the facts in this case. The district court ruled that petitioner had been denied a constitutional right to a superior, coeducational, education. The court of appeals, in reversing the lower court, mistakenly ruled that it must decide in this case whether there is a constitutional barrier to single-sex public education per se, and concluded that there is no such barrier. The court of appeals was not required to resolve, and the Supreme Court need not reach, the troubling question whether sex-segregated educational facilities are inherently unequal within the meaning of the Equal Protection Clause of the Fourteenth Amendment, for here there is a statute prohibiting the policy at issue. In addition,

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24/ Pet. App. 13a.

if the Court reaches the constitutional question, the evidence established that petitioner's class is not accorded equal treatment. We therefore believe that petitioner made out a case of illegal and unconstitutional sex discrimination by showing: (1) that she was, on account of sex, afforded treatment different from that accorded similarly situated males, and (2) that this denial was illegal under the appropriate standard of review.

1. The court of appeals ruled[25]/that the Equal Educational Opportunities Act of 1974, 20 U.S.C. 1701-1758 (Supp. 1976), did not forbid the sex segregation of Central and Girls high schools. We disagree. In Section 1701(a) Congress declared

> . . .it to be the policy of the United States that. . .
> (1) all children enrolled in public schools are entitled to equal educational opportunity without regard to. . . sex. . . .

Congress found (20 U.S.C. 1702(a)(1)) that:

> . . .the maintenance of dual school systems in which students are assigned to schools solely on the basis of. . .sex. . .denies to those students the equal protection of the laws guaranteed by the fourteenth amendment. . . .

The statute further provides that:

> No State shall deny equal educational opportunity to an individual on account of his or her. . .sex . . . by . . .
> (c) the assignment by an educational agency of a student to a school, other than the one closest to his or her place of residence within the school district in which he or she resides, if the assignment results in a greater degree of segregation[26]/ of students on the basis of. . . sex. . . among the schools of such agency than would result if such student were assigned to the school closest to his or her place of residence within the school district of such agency providing the appropriate grade level and type of education for such student. . . .

25/ Pet. App. 7a-11a.

26/ "segregation" is defined as the "operation of a school system in which students are wholly or substantially separated among the schools of an education agency on the basis of . . . sex." 20 U.S.C. 1720(c).

20 U.S.C. 1703(c). The Act also provides:

> [T]he assignment by an educational agency of a student to the school nearest his place of residence which provides the appropriate grade level and type of education for such student is not a denial of equal educational opportunity or of equal protection of the laws unless such assignment is for the purpose of segregating students on the basis of . . . sex . . .

In our view these provisions apply to the facts of this case, and prohibit the operation of Central High School on a sex segregated basis.27/

Central and Girls are the only academic high schools in the Philadelphia school system. Although the two schools are located in very close proximity to one another, some young women who wish to obtain a rigorous academic education must pass Central High School in order to attend Girls. Similarly, some young men must pass Girls High in order to obtain a rigorous academic education at Central High. Therefore, the assignment of students to academic high schools solely on the basis of sex results in a "greater degree of segregation of students on the basis of . . . sex . . ." than would result if male and female students were assigned to the academic high nearest their places of residence. This fact would seem to establish a clear violation of the statute.

Moreover, in an analogous race case the Department would not hesitate to argue that such an arrangement constituted racial segregation. For example, if a school system operated two "open enrollment" schools, which any students in the district could attend, and the enrollment at one school was all, or nearly all, black, while the enrollment at the other school was all, or nearly all, white, and black students passed the white school to attend the black school, we would argue that such "voluntary" assignment violates Section 20 U.S.C. 1703(c). Although some provisions of the Equal Educational Opportunity Act of 1974 do not apply to distinctions based upon gender, although they apply to distinctions based upon race, color, or national origin.28/ Section 1703(c) does not differentiate

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27/ Similarly, the statute would forbid the sex segregated operation of Girls High School.

28/ Section 1703(a) prohibits segregation "among or within schools" on account of race, color or national origin. Section 1703(e) prohibits "the transfer by an educational agency, whether voluntary or otherwise, of a student from one school to another if the purpose and effect of such transfer is to increase segregation of students on the basis of race, color, or national origin among the schools of such agency. . . ."

between assignments based upon race and sex. A narrow reading of this provision in the context of sex segregated school assignments is inappropriate where such a reading of the same provision in the context of a race case would be totally inappropriate.

The majority of the court of appeals panel ruled that the Equal Educational Opportunities Act of 1974 did not apply to this case, based upon what the dissent characterizes as a "novel and impermissible use of legislative history."29/ The court noted that when Congress passed Title IX of the Higher Education Act of 1972, 20 U.S.C. 1681 et seq., which generally forbids discrimination in education on account of sex, single sex public primary and secondary institutions were specifically exempted. 20 U.S.C. 1681(a)(1).30/ The bill passed by the House would have required all single-sex schools to become coeducational. The Senate proposal, which was enacted, was amended to exempt the admissions policies of certain institutions. Senator Bayh, who offered the amendment, stated:

> As my colleagues know, a similar amendment on the House side was the center of some controversy because many felt that the admissions policies of too many schools were covered without sufficient study and debate. Because of the time pressures on the House side, long preparation was not possible. One result of the House approach is that all single-sex elementary and secondary institutions of education--both public and private--would be required to become coeducational. While this may be a desirable goal, no one even knows how many single-sex schools exist on the elementary and secondary levels or what special qualities of the schools might argue for a continued single-sex status. 118 Cong. Rec. 5804 (February 28, 1972).
>
> In any event, I believe specific hearings are needed to answer these questions which had not been raised at the time of the 1970 hearings. Since there are also a number of high schools which are single sex, a similar study is needed on the question of requiring them to admit students of both sexes. I have been amazed to learn that the Office of Education does not even keep statistics on how many elementary and secondary schools--even public schools--are restricted in admis-

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29/ App. 25a.

30/ App. 6a.

> sions to one sex. After these questions have been properly addressed, then Congress can make a fully informed decision on the questions of which - if any--schools should be exempted. 118 Cong. Rec. at 5807 (February 28, 1972).

The court of appeals coupled Congress' failure to prohibit single-sex public secondary schools in 1972 with congressional silence on the subject during the debates on the Equal Educational Opportunities Act of 1974[31], and concluded that Congress did not mean to prohibit single-sex schools such as Central when it enacted Section 1703(c). This conclusion is erroneous because it is contrary to the plain meaning of the statutory provision. In addition, it is not the only possible conclusion to be drawn from the legislative history, for it might be inferred that although Congress was not prepared to forbid single-sex public schools in 1972, because it felt there was a lack of relevant data, it was prepared to do so, and did so, in 1974. We believe that Judge Gibbons, in his dissent, properly concluded that single-sex high schools such as Central are prohibited by the Equal Educational Opportunities Act of 1974.

. The district court found that petitioner was denied admission to Central High School solely on account of her sex.[32] The court also found that "the education available to the female students at Girls is comparable to that available to the male students at Central."[33] However, the district court's opinion catalogues a variety of attributes of Central High School which set it apart from, and make a diploma from it superior to, Girls High.

The district court[34] and the court of appeals[35] agreed that Central has scientific facilities superior to those found at Girls. Central possesses the first classroom planetarium built in any high school in the country, and a student built cyclotron.[36] Girls has neither. Thus, in

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31/ The debates focussed almost entirely upon the subject of busing.

32/ Pet. App. 42a.

33/ Id. at 45a.

34/ Id.

35/ Id. at 3a.

36/ Testimony of R.D. Keen, transcript at p. 70.

this aspect of their programs, it is clear that Central and Girls are not equal 37/ Other distinctions between the two facilities are more subtle, but, in our view, no less critical. The district court found that Central has a "deserved" reputation for training men who will become local and national leaders in all fields of endeavor 38/ The Central Alumni Association is an influential group in Philadelphia, "both because of its activities as a group and the individual position held by its members." 39/ The district court did find that persons of note also had graduated from Girls, but stated that "the number of Girls High graduates who have become influential in business, professional, or academic affairs does not approach the number who have graduated from Central...." 40/ The record indicates that Girls High has an alumni association whose members contribute financially to the school, however, "Central High is the only high school in Philadelphia with a substantial private endowment." 41/ The district court also found that the dedication and loyalty of Central's alumni, "whether measured by financial contributions or day-to-day participation in matters related to the school,

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37/ The record also reflects a sharp difference in the libraries available to the students at the two schools. There was testimony that the Central library contains over 50,000 volumes (R.D. Keen, transcript at 70), whereas the library at Girls only contains 30,000 volumes (R.M. Klien, transcript at 223). These inequalities would appear to constitute a violation of Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et. seq. as interpreted by the Title IX regulations which were implemented after trial was held in this case. The regulations, see p. 2, supra, require that if an educational unit such as the Philadelphia School District, provides sex-segregated facilities the "courses, services, and facilities" at the two schools be comparable. 45 C.F.R. 86.35. This apparent violation of Title IX was not addressed either in the district court or on appeal.

38/ Pet. App. 43a.

39/ Id. at 44a.

40/ Ibid.

41/ Id. at 45a.

equals the loyalty of many college alumni to their alma mater."42/ The court made no such finding with regard to Girls High. While Presidents have visited Central,43/ no President has even visited Girls High.44/

Thus, although the district court held that the education provided students at Girls is comparable to the education available to students at Central, the court's opinion also makes clear that there are crucial, if intangible differences between the two schools. The court expressly noted that "in light of Central's history and reputation" it was not frivolous for a female student to desire admission there.45/ Implicit in this finding is the conclusion that something more than the difference in the gender of the students distinguishes Central from Girls.

These intangible differences are sufficient to support petitioner's claim that she was denied her constitutional rights when she was denied admission to Central. In Sweatt v. Painter, 339 U.S. 629 (1950), and McLaurin v. Oklahoma State Regents, 339 U.S. 637 (1950), the Supreme Court recognized that segregating graduate and professional students on the basis of race denied black students the intangible benefits that accrue to students who attend a long-established and prestigious school, i.e., "those qualities which are incapable of objective measurement but which made for greatness in a ... school." Sweatt v. Painter, supra, 339 U.S. at 634. The court continued:

42/ Id. at 44a.

43/ Id. at 43a.

44/ R.M. Klein, transcript at 223. Dr. Klein, principal of Girls did testify that Senators, mayors, and one person who later became a governor, had spoken at Girls. Id.

45/ Pet. App. 82a-83a. Emphasis supplied.

> Such qualities to name but a few, include reputation of the faculty, experience of the administration, position and influence of the alumni, standing in the community, traditions and prestige. It is difficult to believe that one who had a free choice between these law schools [the University of Texas Law School and the Law School of the Texas State University for Negroes] would consider the question close.
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> It may be argued that excluding petitioners from [the University of Texas Law School] is no different from excluding white students from the [Law School of the Texas State University for Negroes]. This contention overlooks realities. It is unlikely that a member of a group so decisively in the majority, attending a school with rich traditions and prestige which only a history of consistently maintained excellence would command, would claim that the opportunities afforded him for legal education were unequal to those held open to petitioner.

The court of appeals rejected petitioner's reliance upon Sweatt and Brown:

> Those cases are inapplicable here. Race is a suspect classification under the Constitution, but the Supreme Court has declined to so characterize gender. We are committed to the concept that there is no fundamental difference between races and therefore, in justice there can be no dissimilar treatment. But there are differences between the sexes which may, in limited circumstances, justify disparity in law.46/

46/ Pet. App. 13a.

In our view, the court below improperly rejected the teachings of Sweatt. However, it apparently reached the conclusion that Sweatt and Brown should not be applied to this case on the mistaken assumption that a diploma from Girls is equivalent in all respects to a diploma from Central.47/ The court of appeals stated as its premise that it is the parties' position that "the schools for boys and girls are comparable in quality, academic standing, and prestige,..."48/ As the district court's findings demonstrate, the schools are not equal in reputation and prestige. The court of appeals did not rule these findings clearly erroneous, and therefore erred in ignoring them. Further the court of appeals itself states that petitioner "prefers to go to the boys' school because of its academic reputation and her personal reaction to Central."49/ The court there apparently has acknowledged that in reputation, at least, Central is superior to Girls.50/

If, on the other hand, the court's rejection of the reasoning of the Sweatt case is based upon the assumption that the Constitution will now tolerate according inferior educational opportunities to women, although the Constitution does not allow such discrimination on account of race, we submit that the court erred.

47/ In fact Central does not give out diplomas, but, based upon an early grant of power from the State legislature to confer academic degrees "upon graduates of the Central High School in the City of Philadelphia and the same and like power to confer degrees, honorary and otherwise, which is now possessed by the University of Pennsylvania" (Act of April 2, 1849), confers a Bachelor of Arts degree upon its graduates. Although the degree is the equivalent of a high school diploma, it is symbolic of the special standing of Central High.

48/ Pet. App. 5a.

49/ Pet. App. 5a.

50/ As we mentioned above, the court of appeals also acknowledged that Central's science facilities are superior to those at Girls. Pet. App. 3a. The court made no attempt to square this finding with its assumption that the schools are of "comparable...quality, academic standing, and prestige..." Id.

Although petitioner and her class may enjoy the benefits of classes and instructors that are on a par with those at Central, they are receiving an education which is not, in fact "equal" in all respects to that received by similarly situated males. Thus, we need not decide here whether the holding of Brown, that racially segregated schools cannot be made "equal", applies to schools segregated by gender.

2. The court of appeals ruled that under either the "rational basis" or "fair and substantial relation" test, the exclusion of petitioner and members of her class from Central High School did not violate the Equal Protection Clause.51/ Therefore it chose not to decide which test is applicable to this case. However, if, as we argue, the court below erred in ruling that petitioner had not demonstrated that she and her class were discriminated against on account of their sex, the Supreme Court will be required to decide the proper standard by which to measure this discrimination.

Although the Supreme Court cases involving classifications based on sex have not yet provided a definitive standard for such cases, they do indicate that something more than a rational basis is required in order to sustain some sex-based classifications. Whatever the standard may be where the sex-based classification falls equally on both sexes, practices which have the effect of excluding one sex from a more desirable activity should be subject to stricter scrutiny than the rational basis test. The more complete the exclusion and the greater the gap between the desirability of the activities available to men and those available to women, the stricter the required scrutiny should be.

In Reed v. Reed, 404 U.S. 71 (1971), the Court, in invalidating a statutory preference for males as estate administrators, stated at 404 U.S. 76-77:

51/ Pet. App. 16a.

> A classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.' Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920).... By providing dissimilar treatment for men and women who are thus similarly situated, the challenged section violates the Equal Protection Clause.

The Court found that the state's objective of eliminating the necessity for hearings to decide disputes between potential administrators was "not without some legitimacy." 404 U.S. at 76. Nevertheless, the Court held the statute unenforceable.

In Frontiero v. Richardson, 411 U.S. 677 (1973), four of the justices, in a plurality opinion, concluded that classifications based on sex were inherently suspect and, therefore, subject to strict judicial scrutiny. Of particular interest is the plurality's recognition that Congress in passing the Equal Pay Act of 1963,52/ Title VI,53/ and the Equal Rights Amendment to the Constitution,54/ had concluded that classifications based on sex are inherently invidious, "and this conclusion of a coequal branch of Government is not without significance to the question presently under consideration." 411 U.S. at 687-88. Title IX of the Education Amendments of 197255/ and the Equal Educational Opportunities Act of 197456/ are additional indications -- explicitly in the area of public education -- that Congress has determined that sex-based classifications are not to be lightly countenanced.57/

52/ 29 U.S.C. 206(d).

53/ 42 U.S.C. 2000e et seq.

54/ H.R.J. Res. No. 208, 92nd Cong., 2d Sess. (1972).

55/ 20 U.S.C. 1681 et seq.

56/ 20 U.S.C. 1701 et seq.

57/ See p. 23, supra.

In Kahn v. Shevin, 416 U.S. 351 (1974), and Schlesinger v. Ballard, 419 U.S. 498 (1975), the Court upheld statutes, against allegations of sex discrimination, which were reasonably designed to compensate women for past inequalities. In Weinberger v. Wiesenfeld, 420 U.S. 636 (1975), the Court, although applying a rational basis test, held that it must look at the real purpose of a classification and determine whether that purpose was actually being served. "[T]he mere re citation of a benign, compensatory purpose is not an automatic shield which protects against any inquiry into the actual purposes underlying a statutory scheme." 420 U.S. 648[58]/ As the Court noted:

> This Court need not in equal protection cases accept at face value assertions of legislative purposes, when an examination of the legislative scheme and its history demonstrates that the asserted purpose could not have been a goal of the legislation.

Id. at n. 16.

Lower federal courts have also held that sex-based classifications may only be sustained by proof of something more than mere rationality. Thus, in Berkelman v. San Francisco Unified School District, 501 F.2d 1264 (9th Cir. 1974), the court held that the school district failed to prove that its policy of applying higher admission standards to girls than to boys at an academic high school in order to maintain a balance of the sexes actually furthered the goal of better education. The court held that Reed and Frontiero required that a stricter standard than the rational basis test should be applied. The court also noted that in enacting Title IX, Congress intended to eliminate sex discrimination in educational programs designed to act as conduits to better university educations and hence to better jobs. 501 F.2d at 1269. In Eslinger v. Thomas, 4765 F.2d 225 (4th Cir. 1973), the court of appeals, in invalidating a state law prohibiting women from serving as pages in the South Carolina senate, held that Reed prescribed a "fair and substantial relation" test:

58/ See Gunther, "Foreward: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection," 86 Harv. L. Rev. 1, (1972), in which the author suggests that the Court is moving away from the traditional rational basis test to one which determines whether the actual legislative purpose of a classification is actually being furthered.

> A classification based upon sex is less than suspect; a validating relationship must be more than minimal. What emerges is an 'intermediate approach' between rational basis and compelling interest as a test of validity under the equal protection clause.

476 F.2d at 231 (citations omitted). See also Bray v. Lee, 337 F. Supp. 934 (D. Mass. 1972) (higher standards for girls for admission to Boston Latin School are illegal); Kirstein v. Rector and Visitors of the University of Virginia, 309 F. Supp. 184 (E.D. Va. 1970) (three-judge court) (University of Virginia may not exclude women in light of the lack of equal facilities elsewhere in the state).

Although there may be justifications for subjecting racial classifications to a stricter scrutiny than sexual classifications,[59] there are sufficient similarities between sexual and racial classifications to lift sexual classifications out of the categories of classifications subject to the traditional rational basis test. E.g., sex, like race and place of birth,[60] is an ascribed characteristic over which the individual has no control. Moreover, lines drawn on the bases of sex and race are often the reflection of historic prejudices and stereotypes rather than legislative rationality.[61] As Justice Brennan wrote in Frontiero, supra, 411 U.S. at 680:

> There can be no doubt that our Nation has had a long and unfortunate history of sex discrimination. Traditionally, such discrimination was rationalized by an attitude of 'romantic paternalism' which, in practical effect, put women not on a pedestal, but in a cage....Throughout much of the 19th Century the position of women in our society was, in many respects comparable to that of Blacks under the pre-Civil War slave codes....

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[59] E.g., most sexual classifications have not grown out the sense of acrimony that gave rise to many racial classifications, and some sexual classifications may take account of geniune differences between the sexes that do not exist between the races.

[60] See In re Griffiths, 413 U.S. 717 (1973).

[61] See San Antonio School District v. Rodriquez, 411 U.S. 1, 105 (Marchall, J., dissenting).

> It is true, of course, that the position of women in America has improved markedly in recent decades. Nevertheless, it can hardly be doubted that, in part women still face pervasive, although at times more subtle, discrimination in our educational institutions, on the job market and, perhaps most conspicuously, in the political arena....

Thus, the Supreme Court should apply something stricter than the traditional rational basis in this case.

Application of a standard stricter than "rational relationship" leads, we believe, to the conclusion that Susan Vorchheimer and members of her class have been excluded from Central High School in violation of their rights under the Equal Protection Clause.62/ The school district presented evidence to show that high school students would work harder and do better in single-sex schools than in coeducational schools. However, as the district court pointed out, if the district was trying to protect petitioner and her class from the disadvantages of coeducation, it could not justify its policy of committing the vast majority of female students to coeducational schools.63/ The district court also found that the evidence presented by the school district did not establish that coeducation at a high school such as Central would have a detrimental effect on female students, or that males who attend a single-sex school are more likely to be career achievers than

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62/ Although, as we mentioned above at p. 10, n. 29, the record and the opinions of the courts below indicate that there may be a violation of Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, et seq., we do not believe that this case could be dicided only on statutory grounds. The Title IX regulation require that the courses, services and facilities at sex segregated institutions be comparable. 45 C.F.R. 86.35(b). However, the regulations do not require on their face that such untangible factors as reputation and prestige be comparable. Thus, even if the Philadelphia school district improved the science and library facilities at Girls, in order to comply with Title IX, the other crucial, albeit less tangible, distinctions between the schools would remain. The hypothetical possibility that the school district might integrate Central rather than expend funds to upgrade Girls is not sufficient justification, in our view, to duck the constitutional issue raised.

63/ Pet. App. 83a.

those who attend coed schools.64/ The district court also held that maintenance of Central as an all-male school did not serve the Board's stated interest in offering students the alternative of single-sex education, since students who wished to attend an academic high school had no choice but to attend a single-sex school.65/ The court of appeals did not overturn these findings.

The Supreme Court does not have to reject the school district's claim to the right to establish schools which are different, which offer to students different options, and opportunities, in order to rule that the school district violated the Fourteenth Amendment rights of petitioner and her class. Certainly the Constitution does not require that all schools be the same. Thus, if the court of appeals had been correct in finding that an education at Girls is in all respects equivilent to one at Central and that the two schools are equivilent not only with regard to facilities and course offerings, but also in reputation and prestige, it is conceivable that there might not be a viable claim that petitioner's rights were violated. But these are not the facts of this case. The Constitution requires a school district such as Philadelphia to demonstrate that there is a fair and substantial relationship between its choice to exclude females from Central and its educational goals. This the school district has not done in this case, particularly in light of the finding of disparity in science facilities between the two schools.66/

CONCLUSION

For the foregoing reasons, I recommend that we participate as amicus curiae, urging reversal of the opinion of the court of appeals.

J. Stanley Pottinger

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

64/ Id. at 83a-84a.

65/ Id. at 84a-85a.

66/ Petitioner testified that she planned to become a Rabbi. That she possessed considerable scientific skill is evidenced by her awards in science and geometry. Pet. App. 41a.

cc: William H. Taft, IV

OPTIONAL FORM NO. 10
MAY 1973 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : The Solicitor General DATE: 3 December 1976

FROM : Frank H. Easterbrook FHE

SUBJECT: Vorchheimer v. School District of Philadelphia, No. 76-37, certiorari granted, October 18, 1976

TIME: Petitioner's brief was filed December 2, 1976. Any brief we file therefore already is out of time. We should inform counsel for respondents if you decide to authorize amicus participation.

RECOMMENDATIONS: The Civil Rights Division and I recommend AMICUS PARTICIPATION in support of petitioner.

DISCUSSION: Philadelphia has many high schools. Two of them are "academic" high schools, to which admission is limited. One of these two (Central High) is for boys only; the other (Girls High) is for girls only. Central High has a slightly better reputation; it has decidedly better science facilities. Susan Vorchheimer, who has an interest in science, applied to Central. It was stipulated that she met all of Central's admission requirements except for her sex. She was turned down. The court of appeals held that this was not forbidden, concluding that Central and Girls High were separate but equal.

I agree with the Civil Rights Division, for the reasons set out at pages 9-17 of Mr. Pottinger's memorandum, that we should participate in support of petitioner. The Court's decision in this case could affect federal enforcement proceedings under Title IX of the Civil Rights Act. It also appears to be inconsistent with the Esch Amendments, which declare the view of Congress to be that school systems should not be segregated by sex. Here, as in Lau v. Nichols, 414 U.S. 563, there are a wealth of fascinating constitutional problems that the Court need not explore. The statutory argument should be sufficient. Cf. Katzenbach v. Morgan, 384 U.S. 641.

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The Third Circuit rejected the statutory argument because it found snatches of the legislative history to indicate that Congress did not intend to ban one-sex schools. Civil Rights Division would make a "plain meaning" argument to overcome this. I would not make a "plain meaning" argument; we routinely resort to the legislative history, and we argued in Train v. Colorado Public Interest Research Group, Inc., No. 74-1270, decided June 1, 1976, that it is always appropriate to look behind a statute to its legislative history. The Court agreed. But even if some of the legislative history cuts against the position of the Civil Rights Division, there is a dispositive answer. The court of appeals assumed that the question here is whether all one-sex schools are forbidden; it answered "no." That answer, even if true, does not support its conclusion. Suppose that a city legitimately concluded that one-sex schools produced advantages for adolescents. It could avoid the problem it encountered here by offering three "academic" high schools: one for girls, one for boys, and the other coeducational, with facilities at least as good as those of the single-sex schools. We may concede that such a plan would not violate federal law. But Philadelphia did not follow such a plan, and the plan it did follow -- under which a student can attend a coeducational high school only by foregoing the benefits of attending an "academic" high school -- is not permissible.

If it is necessary to present some constitutional argument, it should be sufficient to argue that even if a "separate but equal" principle would be acceptable, the schools here are not equal. Only Central has advanced science facilities; that alone is enough to show inequality. Central also has a better reputation, and under Sweatt v. Painter, 339 U.S. 629, that, too, should be enough to establish inequality.

I would not make the argument Mr. Pottinger proposes at pages 18-22 of his memorandum -- that distinctions on account of sex must be subjected to especially intense scrutiny. Many federal statutes (espacially the Social Security Act) make sex distinctions, which we routinely defend with an argument that the distinctions are rationally related to the purpose of the statute. One (Mathews v. Goldfarb, No. 75-699) is now sub judice. Another (Mathews v. Webster, No. 76-457) is pending on a jurisdictional statement. There is no point in scuttling our arguments in these cases. Even petitioner argues that this case can be decided in her favor without holding that sex is a suspect classification (or even entitled to special scrutiny); there is no reason for the United States to make some more sweeping argument. (The court of appeals seemed to believe that, unless sex is a suspect classification, even cases like Sweatt do not apply. The court has an historical blind spot; sex did not become a suspect classification until Brown overthrew the "separate but equal" regime under which Sweatt had been decided. The court of appeals also appeared to place some reliance on the fact that boys could not attend Girls High. But the equal imposition of disabilities is no justification for a statute in a constitutional scheme that emphasizes the rights of individuals. Loving v. Virginia, 388 U.S. 1).

This memorandum has been written in haste because of the press of time. The contours of our argument should be worked out in the process of drafting the brief. I recommend, however, that you condition your authorization of filing on the submission of a draft brief by Civil Rights Division by December 17.

T. 1/6/77
JSP:TMK:BMD:pas
DJ 169-3-21

JAN 7 1977

MEMORANDUM FOR THE SOLICITOR GENERAL

Re: Lee and United States v. Demopolis City School System, C.A. No. 5945-70-H (S.D. Ala.)

I recommend that the United States appeal from the district court's denial of our motions requesting supplemental injunctive relief in the above-styled case.

STATUS

The order of the district court was entered on December 29, 1976. Under the time requirements of Singleton v. Jackson Municipal Separate School District, 419 F.2d 1211 (5th Cir. 1970) (en banc) for bringing appeals in cases such as this, our notice of appeal is due to be filed on or before January 13, 1977.

QUESTION PRESENTED

Whether the district court erred in refusing to order the Demopolis City School System to desegregate its two elementary schools - one black, one white - each of which retains the racial identity it had under the former de jure segregated system.

cc: Records
Chrono-7744
Landsberg-5740
Keeling-7724
Dougherty -7742
Trial File-7742
Hold-7740

STATEMENT

1. Procedural History

The proposed appeal arises out of a state-wide desegregation suit, Lee v. Macon County Board of Education, in which the United States has participated as plaintiff-intervenor. After numerous orders of state-wide applicability had been entered by the three-judge court sitting in this case, the court added the Superintendent and Board of Education of the Demopolis school system as parties defendant in this litigation on October 14, 1968.

Subsequent to proceedings on March 27 and June 19, 1970 at which the defendant's plans, the government's plans, and objections thereto were presented, the court issued an order on June 29 directing the implementation of a desegregation plan for the 1970-71 school year which assigned all students in grades 7-12 to one junior and one senior high school and assigned elementary students to two schools on the basis of geographic attendance zones. All black students in grades 1-6 who lived outside the city limits were assigned to the formerly white elementary school and all such white students to the formerly black school. 1/ The court further directed the school system to furnish written projections of student enrollment and faculty assignment, by race, by August 1 and to report the actual figures by September 30, 1970. None of the parties appealed this decision, and the case was transferred to the United States District Court for the Southern District of Alabama.

1/ The school district is coterminus with the city limits, but there was a long history of attendance in the city schools by county students.

On March 14, 1975, the district court entered an order directing the parties to show cause why the case should not be dismissed for want of prosecution. 2/ After an investigation revealed non-compliance with the present court order by school officials, we filed an Application for Order to Show Cause on July 14, 1975, alleging that the present plan of student assignment at the elementary school level in the Demopolis City School System did not meet current judicial standards as set out in Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971). We asked the court to order the Demopolis City School System to develop alternative desegregation plans for its elementary schools by July 30 and to implement a constitutionally acceptable desegregation plan for the 1975-76 school year. On August 6, the district court set the matter for an evidentiary hearing on August 22. The defendants submitted a response to our motion on August 21 asking, inter alia, for additional time to prepare its defense. At the hearing, the court heard only our evidence, and requested us to submit a brief to meet the burden it put on us to show how the school system could afford to provide transportation if it were necessary (1975 Transcript, p.63). We were thereby precluded from obtaining relief for the 1975-76 school year.

At that hearing, we introduced evidence sufficient to justify the court's granting us our requested relief - namely, that the two elementary schools, formerly part of the de jure segregated system, had never been desegregated. Evidence was also introduced showing that

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2/ The NEA and private plaintiffs had filed motions for supplemental relief in 1972 concerning matters other than the assignment of students. Counsel for those parties had conferred pursuant to order of the court and had largely resolved their conflicts, but had not reported this resolution to the court as it had directed.

Demopolis school officials had failed to ensure strict implementation of the court order by: (1) allowing white elementary students living in the predominantly black Eastside attendance zone to attend the predominantly white Westside School; (2) allowing white elementary students living outside the city to attend Westside School; and (3) allowing Marengo County to continue to transport black students living in the city to the county's all-black John Essex School (1975 Transcript pp. 35-36, 41-46). The court, from the bench, directed school officials to act to stop those violations (1975 Transcript pp. 47-49). However, by letter of September 15, 1975, the court suggested that the status quo in the Demopolis and Marengo County school districts be maintained (i.e., the violations allowed to continue) pending a determination on the merits of the Demopolis case. By agreement of the parties, an order to this effect was entered on January 14, 1976. 3/

The court entered an order on May 11, 1976, directing the defendant school board "to consider the feasibility of various alternative methods of student assignment whereby a greater degree of actual desegregation can be achieved" and directing that a subsequent hearing be held "to determine which alternative plan shall be implemented for the 1976-77 school year." The defendants filed a report on June 21, 1976 recommending that the present plan of student assignment be continued but also stating, in effect, that pairing the elementary schools was the only remedy that would make the system unitary.

3/ By letter of July 19, 1976 the court revoked the maintenance of the status quo and stated that both districts would have to comply strictly with their court orders for the 1976-77 school year.

In response to the court's direction, we filed a response to Demopolis' report on July 26 stating that the law required the pairing of the two elementary schools and requesting that a hearing be set as promptly as possible after the taking of depositions scheduled for August 9 and 10 in order to obtain relief for the start of the approaching school year. However, the court set the hearing for September 7, 1976, too late for any new plan to be implemented for the start of the 1976-77 school year. At the conclusion of the government's presentation of its case, the Court continued the hearing and requested the United States to submit a report setting forth the factual and legal considerations which underlay the three-judge court's April and June 1970 orders. 4/ We reported to the court orally at the December 7, 1976 continuation of the hearing and by letter of December 10 that nothing in those 1970 transcripts justified denial of Swann relief.

At the conclusion of the December hearing, we orally requested an immediate ruling granting us the relief we were requesting for the start of the coming school semester. The court effectively denied this motion by announcing that it would take the entire matter (including defendants' December 2 motion to dismiss) under advisement, and we promptly filed a motion requesting an immediate ruling. The order of the district court was entered on December 29, 1976.

2. Facts

Under the dual school system, Demopolis operated 4

4/ The court was apparently seeking to determine whether the three-judge court had reached a decision in this particular litigation on the basis of the constitutional principles articulated in Swann even though its orders pre-dated Swann by about one year.

schools - one grade 1-12 school for black students and three schools (grades 1-3, 4-6, 7-12) for white students. The court-ordered plan assigned all students in grades 7-12 to one junior and one senior high school and drew a zone line for the two elementary schools which closely followed the city's segregated housing pattern. The court hoped to desegregate the elementary schools by assigning white elementary students living outside the city to the formerly all-black school and all such black students to the formerly all-white school. However, large numbers of white county students stopped attending Demopolis schools and, as the record shows, school officials allowed white students to attend school out of zone at the predominantly white elementary school. Only the two elementary schools, Eastside and Westside, are at issue in this litigation.

The record shows that the Eastside School was operated as a school for black students under the state-enforced dual school system and has never been desegregated and that Westside School, which served white students, remains today virtually all-white. 5/ Demopolis officials have made no efforts to develop any alternative plans, and there is no evidence that continued operation under the present plan, particularly given the past failures of local officials to enforce it strictly, will effectively desegregate Eastside in the foreseeable future.

The schools are about 2.2 miles apart by road, a distance which takes approximately six minutes to drive.

5/ For enrollments at the two schools, see Attachment A hereto. Over 85% of Demopolis' black elementary students attend the virtually all-black Eastside School. The Superintendent, in his testimony at the December 7 hearing, estimated that about 30 white students attend Eastside this year; it is surely safe to assume that is a maximum figure.

There are no natural or man-made barriers or physical hazards between the two schools; indeed, under the dual system, all black students in Demopolis attended what is now Eastside Elementary; and, prior to 1970, there were no overlapping grades in the three white schools. Demopolis itself is a small city, and the record shows that virtually all the city's elementary students live within 5 miles and 10 minutes driving time of the two elementary schools.

Each elementary school has sufficient capacity to accomodate the students who would be assigned to it under a pairing plan whereby, for example, one served grades 1-3 and the other grades 4-6. 6/ Our transportation expert testified that transportation, if school officials deem it necessary, could be provided to all of the elementary students who would have to switch schools under a pairing plan with as few as two buses operating on a shuttle system between the two schools. 7/ The costs of any transportation program the school system might choose to operate would largely be borne by the State of Alabama. The state reimburses school districts for the purchase of new school buses at the rate of 15% of the average cost of a new bus per year for seven years (a total of 105% of the average cost). The state also reimburses school districts for the cost of transporting students who live more than two miles from the school they attend;

6/ School officials assign Westside a capacity of 555 and Eastside a capacity of 585.

7/ We also testified about other alternatives which would require 4 buses and drew hypothetical routes indicating a maximum traveling time of about 20 minutes under such plans.

while this state reimbursement does not cover the actual total cost of such transportation, it covers the major portion of it. 8/

3. The Opinion Below

The district court ruled, in essence, that the same facts were before the three-judge court with jurisdiction over this case in 1970 and that the desegregation plan that court mandated was sufficient to achieve a unitary school system in Demopolis. The court stated (Order, p.5):

> "The children of Demopolis have operated under the benefits of that desegregated system. The population has become acclimated to that operation. Further tampering by

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8/ We also suggested to the district court that the Marengo County School District could provide the necessary transportation because it has in the past, both before and after the 1970 court order in the Demopolis case, provided transportation to and from Demopolis in order to maintain the dual system in each school district. The record shows that Marengo County has for years provided transportation to Demopolis schools for students who live in the county (at the present time, it operates two buses doing this) and that, until the present school year, the county system sent buses into Demopolis to pick up black students who attended an all-black county school. The county superintendent has testified he will not provide transportation voluntarily, but we have suggested to the court that if Demopolis school officials determined that transportation could best be provided by the county, it would be appropriate for the court to so order in light of the county's past transportation practices.

> imposing new financial burdens upon an already tightly budgeted system, together with the potential loss of muchly needed tax revenue and the real probability of accelerated attrition with its concomitant loss of further revenue from the State, all for no appreciable net gain, seems to be poor justification for this Court to now agree with the 20-20 hindsight of a sometimes visitor from Washington . . ."

The Court went on to find "that the collective wisdom of Judges Rives, Johnson, and Grooms, is not so wide of the mark as would justify a finding that that judgment did not establish a unitary system." Finally, the Court "now specifically finds that the system in the City of Demopolis is a unitary system . . . ." (Order, p.6). 9/

In addition, the district court noted that the assignment of faculty to the elementary schools" does not appear . . . to reflect a proper assignment contemplated by the original decree . . . ." (Order, page 5). Accordingly, it directed the school board to report present teacher assignment figures and what steps are being taken "to more nearly equalize the faculty." Because of the system's declared unitary status, the court also directed the board to submit regular reports

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9/ The district court's order also contains several minor factual errors. First, it refers (at p. 1) to a motion filed by the United States in September, 1972; we filed no such motion. Secondly, the projected enrollments referred to by the court (at p.2) are in error. The three-judge court was sufficiently unsure of projected attendance under its plan to order projections to be submitted subsequent to its June 29, 1970 ruling. School board projections dated July 30, 1970 estimated 405 white and 45 black students at Westside and 87 white and 480 black students at Eastside.

of the type required by United States v. Hinds County School Board, 433 F.2d 611 (5th Cir. 1970) for three years so that a hearing could then be held "for the purpose of terminating all further proceedings in this cause." 10/

DISCUSSION

The desegregation plan under which the Demopolis schools have been operating since 1970 was implemented when Ellis v. Board of Public Instruction of Orange County, Florida, 423 F.2d 203 (5th Cir. 1970) (Ellis I) was the law in the Fifth Circuit, permitting "neighborhood" zones to be used in a desegregation plan even if some schools remained all-black or virtually all-black. However, in 1972, the court of appeals ruled that Swann superseded Ellis I. Ellis v. Board of Public Instruction of Orange County, 465 F.2d 878 (5th Cir. 1972) (Ellis II), cert. denied 410 U.S. 966 (1973). 11/ The three-judge court which decided this and other Lee v. Macon cases in 1970 customarily ordered neighborhood zoning for elementary schools. Other school districts, such as Dothan City and Anniston City, have been brought into line with Swann, and this is one of the few such Lee v. Macon district which remain in non-compliance with Swann.

10/We believe that it was appropriate for the court to take this action with regard to faculty assignments, but believe that issue will be mooted if the Fifth Circuit orders the schools paired. Similarly, we believe it would be appropriate for the appellate court to require the filing of annual Hinds County type of reports to help us monitor compliance, but that a determination of the district's unitary status should be held in abeyance.

11/The district court apparently sought to avoid the holding of Ellis II by stating that precisely the same facts were presented to it as were presented to the three-judge court in 1970. This statement is erroneous. For example, in 1970 the court planned to desegregate Eastside by assigning to it approximately 160 white students who live outside Demopolis. Very few of those students ever attended Demopolis schools subsequent to that order.

The facts in the present case are similar to those of several recent cases in which you approved our appealing denials of further relief to eliminate lingering racial identifiability - Hereford v. Huntsville Board of Education, 504 F.2d 875 (5th Cir. 1974), cert. denied 421 U.S. 913 (1975); United States v. Texas Education Agency (Richardson ISD), 512 F.2d 896 (5th Cir. 1975), cert. denied 423 U.S. 837 (1975); and United States v. Seminole County School District (M.D. Fla., June 7, 1976). In each of those cases, one or two schools remained all-black, or virtually so, because of the failure of white students living in the attendance zones they served to attend them, while the rest of the system was effectively desegregated. In each of those cases, the record showed that the schools in question could be desegregated by pairing or clustering them with neighboring schools. In the two cases decided on appeal, the court of appeals directed that the student assignment plans be modified, holding, in Huntsville, that the school in question had never been desegregated and, in Richardson, that school authorities had not met their burden of showing that the continued all-black enrollment was not the result of prior official acts of discrimination.

Similarly, in Demopolis, Eastside Elementary has remained virtually all-black primarily because of the failure of white students to attend it. The record convincingly demonstrates how simple it would be to effectively desegregate Eastside by pairing it with Westside. As the Fifth Circuit held in Flax v. Potts, 464 F.2d 865, 868 (5th Cir. 1972):

> "The tenor of our decisions is unmistakable. Where all-black or virtually all-black schools exist under a zoning plan, but it is practicable to desegregate some or all of the black schools by using the tool of pairing the tool must be used."

Demopolis presents the same issue as those cases, and requires the same result. Where, as here, schools built in a de jure segregated school system to serve black students have never been desegregated and feasible alternatives to desegregate them exist, Swann and subsequent decisions of the Fifth Circuit require them to do so. See, in addition to Ellis II, Huntsville, Richardson, and Flax; Boykins v. Fairfield Board of Education, 457 F.2d 1091 (5th Cir. 1972); Dandridge v. Jefferson Parish School Board, 456 F.2d 552 (5th Cir. 1972), cert. denied 409 U.S. 978 (1972) Miller v. Board of Education of Gadsden, Alabama, 482 F.2d 1234 (5th Cir. 1973); Weaver v. Board of Public Instruction of Brevard County, Florida, 467 F.2d 473 (5th Cir. 1972)

In light of such well-established precedent in the Fifth Circuit, the district court's finding that the Demopolis City School System is unitary is erroneous. As the Fifth Circuit stated in Thompson v. Madison County Board of Education, 496 F.2d 682, 686-87 (5th Cir. 1974):

> "If the journey from Brown to Swann and beyond has taught us anything, it is that integration does not occur merely when and because we say it should. The journey has been necessary because we have been concerned with conduct and action, not words."

In the present case, the district court chose to ignore the critical fact that the 1970 desegregation plan has not in actuality desegregated the Demopolis elementary schools as well as the repeated holdings of the Supreme Court that the true measure of a desegregation plan is its effectiveness. Green v. County School Board, 391 U.S. 430 (1969); Swann. Moreover, in its concern over possible white flight if the elementary schools were paired, the district court focused on a factor which has nothing to do with the question of whether a constitutional violation exists and which both the Supreme

Court and the Fifth Circuit have held may not properly be considered in desegregation cases. Brown v. Board of Education, 349 U.S. 294 (1955); Monroe v. Board of Commissioners, 391 U.S. 450, 459 (1968); United States v. Scotland Neck City Board of Education, 407 U.S. 484, 491 (1972); United States v. Hinds County School Board, 417 F.2d 852, 858 (5th Cir. 1969), cert. denied 396 U.S. 1032 (1970); Lee v. Macon County Board of Education, 465 F.2d 369 (5th Cir. 1972); United States v. Texas Education Agency (Austin ISD), 532 F.2d 380 (5th Cir. 1976), rev'd. on other grounds ____ U.S. ____ (1976).

It is difficult to conceive of any legally sufficient circumstances that would justify the continued existence of a virtually all-black elementary school when the only other elementary school in the district is virtually all-white and located only 2.2 miles away. The defendants' occasional claims that traffic along one street should prevent desegregation is not legally sufficient to justify a failure to desegregate. The law is clear that barriers which have in the past yielded to segregation, as our evidence here shows, should not now prevent desegregation. Davis v. Board of School Commissioners of Mobile County, 402 U.S. 33 (1971); Lee v. Macon County Board of Education (Calhoun Co.), 448 F.2d 746 (5th Cir. 1971). Similarly, while we have made no request that Demopolis transport students under a pairing plan, it has previously been held that defendants' bare assertions that they are unable to afford transportation is insufficient to justify continued operation of a dual school system and that if transportation is necessary to accomplish desegregation it must be provided. Brown v. Board of Education of the City of Bessemer, 464 F.2d 382 (5th Cir. 1972); United States v. Greenwood Municipal Separate School District, 460 F.2d 1205 (5th Cir. 1972).

The Supreme Court has repeatedly held that, in school systems like Demopolis, with a proven history of racial discrimination, the measure of any plan of desegregation is its effectiveness and that school

authorities have an affirmative duty, within the limits of feasibility, to achieve the greatest possible degree of actual desegregation. Green v. County School Board, supra; Swann v. Charlotte-Mecklenburg Board of Education, supra; Davis v. Board of School Commissioners, supra. Those decisions, requiring immediate remedy of the proven constitutional violation, required the district court to order into effect a constitutionally acceptable plan of student assignment for the Demopolis City elementary schools long ago. The district court in this case has unjustifiably failed to fulfill that obligation.

CONCLUSION

For the foregoing reasons, I recommend that we appeal from the district court's December 29, 1976 order and file a motion for summary reversal with directions to order implementation of a pairing plan for Demopolis City's elementary schools at the earliest possible date.

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

ATTACHMENT A

Demopolis - Elementary Student Enrollment

	Westside			Eastside		
Year	B	W	%B	B	W	%B
1970-71	45	466	9	528	29	95
1971-72	54	467	10	495	14	97
1972-73	47	453	9	448	6	99
1973-74	47	401	10	428	3	99
1974-75	58	398	13	403	0	100
1975-76	63	419	13	422	10	98

BOARD OF DIRECTORS

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Owner 52nd Street Markets

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Owner Roman's Market

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MARK GERAGOS
Geragos & Geragos
Legal Counsel

ASHLEY HALLSMAN
Hallsman Accounting
Certified Public Accountant

RAUL ESCAJEDA
Accounting

July 18, 2001

Honorable Orrin G. Hatch
Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Building
Washington, DC 20510

RE: Miguel Estrada, Presidential Nominee
United States Court of Appeals Judge
For the District of Columbia Circuit

Dear Senator Hatch,

On behalf of the 8,000 members of the Mexican American Grocers Association, I wish to convey our strong support for the Senate's rapid confirmation of President Bush's nomination of Miguel Estrada to serve as the first Hispanic on the prestigious DC Circuit.

Mr. Estrada is a brilliantly talented and accomplished attorney who is very familiar with the Federal Judiciary, having clerked for Supreme Court Justice Anthony M. Kennedy and Second Circuit Court of Appeals Judge Amalya L. Kearse.

From his humble beginnings as an immigrant from Honduras, who achieved a stellar academic career at Columbia University and Harvard Law School, to his varied and impressive achievements in the Justice Department and private firms, Mr. Estrada has shown himself to be of superior talents and accomplishments.

I am confident that this first Hispanic member will make an outstanding addition to the DC Circuit and will continue to lead a distinguished career with thoughtful and fair decisions. I urge you to expeditiously attend to his confirmation.

Sincerely,

Steven A. Soto
President & CEO

SAS:jvs

405 North San Fernando Road, Los Angeles, CA 90031 • (323) 227-1565 • Fax: (323) 227-6935
Visit our website **http://www.maga.org**

PlastiComm Industries, Inc.
1500 W. 47th Avenue
Denver, CO 80211
(303) 433-2333
(303 433-7133 Fax

July 16, 2001

The Honorable Orrin Hatch, United States Senator
Ranking Member
Committee on the Judiciary
224 Dirksen Building
Washington, DC 20510

Re: Support for Miguel Estrada's Nomination as United States Court of Appeals Judge For the District of Columbia Circuit

Dear Senator Hatch:

On behalf of the Hispanic Business Community, I am writing to express my support for Miguel Estrada's nomination as United States Court of Appeals Judge for the District of Columbia Circuit. Mr. Estrada is a brilliantly talented and accomplished attorney who will make an outstanding addition to the prestigious DC Circuit.

From his humble beginnings as an immigrant from Honduras who achieved a stellar academic career at Columbia University and Harvard Law School, to his varied and impressive achievements in the Justice Department and private firms, Mr. Estrada has shown himself to be of superior talents and accomplishments.

I am confident that this first Hispanic member of the DC Circuit will continue to lead a distinguished career with thoughtful and fair decisions. I urge you to expeditiously attend to his confirmation.

Thank you for your attention.

Sincerely,

Ronald E. Montoya
President/CEO and
Chairman Emeritus of the U.S. Hispanic Chamber

May 18, 2001

The Honorable Orrin G. Hatch
Chairman, Senate Judiciary Committee
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

Dear Chairman Hatch:

I write to express my strong support for the nomination of Miguel Estrada to the United States Court of Appeals for the District of Columbia. I have known Miguel for many years, dating back to the 1980s, when we served together as law clerks at the U.S. Supreme Court. We also worked together in the Justice Department during the Clinton Administration, where Miguel served as an assistant to the Solicitor General and I served as a Deputy Assistant Attorney General (and, after Miguel left the Department, as the Assistant Attorney General) in the Office of Legal Counsel. Although I am a Democrat and Miguel and I do not see eye-to-eye on every issue, I hold Miguel in the highest regard, and I urge the Committee to give favorable consideration to his nomination.

Miguel is widely, and deservedly, regarded as an extraordinary legal talent. He has a near-encyclopedic knowledge of the law, a powerful intellect, and an ability to bring coherence to even the most complicated legal doctrine. In the tradition of our greatest judges, Miguel wrestles with legal questions and is never satisfied until he has examined a question from every possible angle and made sense, wherever possible, of competing strands of the law. Even more importantly, he brings to this task an abiding respect for the law. As a matter of fundamental integrity, Miguel will follow a legal argument where it takes him and will not succumb to leaps of faith or lapses of logic to reach a desired result. Based on this same sense of integrity, moreover, I believe that Miguel will decide cases independently. I have never known Miguel to bend to pressure from others. He says and does what he believes is right, and in doing so is always honest and forthright.

In short, Miguel is a brilliant, dedicated, and principled lawyer. I firmly believe that Miguel will quickly earn a reputation as one of the finest appellate judges in the Nation. I strongly support his nomination.

Respectfully yours,

Randolph D. Moss

cc: The Honorable Patrick J. Leahy
Ranking Member

NATIONAL ASSOCIATION OF SMALL DISADVANTAGED BUSINESSES

July 12, 2001

The Honorable Patrick Leahy
United States Senator
Chairman Committee on the Judiciary
224 Dirksen Building
Washington, DC 20510

RE: Support of Miguel Estrada's Nomination as United States Court of Appeals Judge for the District of Columbia Circuit

Dear Senator Leahy:

The National Association of Small Disadvantaged Businesses (NASDB), is a trade association of approximately 300 minority-owned firms located throughout the United States. Our primary purpose is to enhance the ability of minority-owned firms to secure their fair share of the Federal procurement dollar. We do this primarily by educating these firms as to the things they're entitled to, by law, and informing them as to how to get what they're entitled to. At the same time, we attempt to make the Government agencies and major primes, who serve them, more aware of their responsibilities under these same laws.

The NASDB would like to add our support to those, much more distinguished than are we, in expressing our support for Miguel Estrada's nomination as United States Court of Appeals Judge for the District of Columbia Circuit. Mr. Estrada is a brilliantly talented and accomplished attorney who will make an outstanding addition to the prestigious DC Circuit.

While we do not dwell on symbolism, we feel that Mr. Estrada's appointment as the first Hispanic member of the DC Circuit, will be of benefit to us in further illustrating the wide range of talent in the minority communities, just waiting to be effectively and fully used. We urge you to expeditiously attend to his confirmation.

Respectfully submitted,

/Jack

Henry T. Wilfong Jr., MBA, CPA
President, NASDB

Current or Former Positions:
Pasadena, CA City Councilman
Associate Administrator MSB/COD, SBA
Member, National Council on Policy Review
Member, NASA Advisory Council
Chair, NASA Minority Business Resource Advisory Committee
Member, Presidential Task Force on International Private Enterprise
Member, Bush-Cheney Transition Team-SBA Advisory Group

P.O. Box 13603, Silver Spring, MD 20911 - Tel. # 301.588.9312 - email: hwilfongjr@aol.com

NATIONAL TROOPERS COALITION

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Howell, MI 48844
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Office/Fax: 810-227-1689
Cell: 517-719-5578
ntcchair@ismi.net

Michael F. Canning, *Director*
Government Relations Office
12 Francis Street
Annapolis, MD 21401
Phone: 410-269-4237
Fax: 410-269-7523
ntc@maniscanning.com

For Immediate Release
April 5, 2002
For Information Contact: Michael F. Canning
410-269-4237

The NTC Calls for the Prompt Confirmation of Miguel Estrada for the D.C. Court of Appeals

The National Troopers Coalition (NTC) is calling on the Senate to promptly provide a hearing for Miguel Estrada, and to confirm Estrada to the United States Court of Appeals for the District of Columbia Circuit. Mr. Estrada is exceptionally qualified to serve as a Judge on that Court and should be confirmed without further delay.

The NTC is composed of approximately 40,000 state troopers and highway patrol officers from 40 states throughout this country. The NTC and its members are particularly interested in a nominee's record on law enforcement issues, and support a nominee whose record shows respect for the rule of law, a clear understanding of the complexities of criminal law, an appreciation of the challenges faced by law enforcement officers, and respect for the rights of all who appear before our Nation's courts.

Miguel Estrada's record in these areas is truly impressive. While serving as Assistant to the Solicitor General of the United States from 1992 through 1997, Estrada argued numerous criminal law cases before the U.S. Supreme Court; cases, for example, involving search and seizure, RICO, admissions by suspects to law enforcement officers, and sentencing of criminal defendants. Previously serving as Assistant U.S. Attorney and Deputy Chief of the Appellate Section for the U.S. Attorney's Office for the Southern District of New York, Estrada argued many cases before the U.S. Court of Appeals for that circuit on a variety of criminal law issues. These included cases dealing with sentencing of defendants, post-conviction relief, firearms violations, mail and wire fraud, Miranda rights, and drug conspiracy. Based on the nominee's record, the NTC believes that Estrada has outstanding qualifications on law enforcement issues, and that his demonstrated respect for the rights of society, as well as those of individual defendants, makes it likely that he will be an outstanding appellate judge.

In addition to his experience with the U.S. Department of Justice, Mr. Estrada formerly served as Law Clerk to the Honorable Anthony M. Kennedy of the U.S. Supreme Court, and had graduated magna cum laude from Harvard Law School.

The NTC is proud to endorse the nomination of Miguel Estrada to the U. S. Court of Appeals and hopes that the U.S. Senate will promptly confirm him.

####

NEW HARVEST
CHRISTIAN FELLOWSHIP

September 3, 2002

The Honorable Dianne Feinstein
United States Senate
Senate Hart Office Building - 331
Washington, DC 20005
(202) 224-3841 – (202) 228-3954 (Fax)

Dear Senator Feinstein:

On behalf of New Harvest Christian Fellowship's association of churches, I am writing to call on the Senate Judiciary to have a hearing for Miguel A. Estrada for the position of United States Circuit Judge for the District of Columbia.

Mr. Estrada, who came to the United States from his native Honduras at age 17, has an impressive background. He is currently a partner with Gibson, Dunn & Crutcher LLP, where he is a member of the firm's Appellate Constitutional Law Practice Group and it's Business Crimes and Investigations Practice Group and has argued 15 cases before the U.S. Supreme Court.

Mr. Estrada has spent most of his professional career in public service. He served as Assistant to the Solicitor General of the United States and as Assistant U.S. Attorney and Deputy Chief of the Appellate Section in the U.S. Attorney's Office for the Southern District of New York.

Mr. Estrada served as a law clerk for the Honorable Anthony M. Kennedy, Supreme Court of the United States. He attended Harvard Law School, where he was editor of the Harvard Law Review and received a J.D. degree magna cum laude in 1986 and graduated from Columbia college in New York with an A.B. magna cum laude. Could we ask for a more qualified nominee? Even the American Bar Association has given him a well-qualified rating.

If confirmed, Mr. Estrada would be the first Hispanic to sit on the D.C. Circuit Court. The confirmation of this historic appointment will help open doors for more Hispanic judges.

We strongly support Mr. Miguel A. Estrada and urge you to support the nomination of this outstanding Hispanic to the U.S. Court of Appeals for the District of Columbia.

Sincerely,

Reverend Richard M. Salazar
Senior Pastor and President of N.H.C.F. Inc.

11364 East Imperial Highway • Norwalk, California 90650
562-929-6034 • Church Fax: 562-484-3260 • Executive Office Fax: 562-863-0924
www.newharvestoneighty.com

A Community Development Corporation / Rev. Luis A. Cortés, Jr., president

September 23, 2002

VIA FACSIMILE: (202) 228-1698

The Honorable Orrin Hatch
United States Senate
Washington, DC 20510

Dear Senator Hatch:

I write today to express our support for Miguel Estrada's nomination to the U.S. Court of Appeals for the D.C. Circuit. We urge you to give him a fair hearing and vote to confirm his nomination.

As the first Hispanic to be nominated to sit on the D.C. Circuit Court of Appeals, Mr. Estrada shows through his life that Hispanics in America enjoy every opportunity to realize the American dream. His example is critical as we search to motivated and inspire the 40% of Hispanic high school students who drop out of high before graduation.

Supporting Mr. Estrada's nomination is support for our community, for our people and the challenges we face everyday.

Thank you for your time and consideration.

Sincerely,

Bobbie Dunn Quintanilla

Bobbie Dunn Quintanilla	Glendale, California	
Name	City	State

ETHNOS Community Development
Organization

OTTO G. OBERMAIER
767 FIFTH AVENUE
NEW YORK, N.Y. 10153

July 11, 2001

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
433 Russell Senate Office Building
United States Senate
Washington, D.C. 20510

Re: Miguel Estrada

Dear Senator Leahy:

I write in support of the President's nomination of Miguel Estrada to the United States Court of Appeals for the District of Columbia Circuit, currently pending before the Judiciary Committee.

I know Mr. Estrada. While I was the United States Attorney for the Southern District of New York, I recommended his appointment to the Attorney General as an Assistant United States Attorney. My judgment was that he was intellectually given, his background gave him the judgment to perform the duties of an Assistant and he had an interest in public service. Attorney General Thornburgh accepted my recommendation and Mr. Estrada served as an Assistant United States Attorney until I received a request from then Solicitor General Starr asking for my permission to allow Mr. Estrada to join the Solicitor General's Office. I consented.

The United States Attorney's Office for the Southern District of New York is, in my view, the most prestigious prosecutor's office in the country. I and all of my modern predecessors ran the office on a non-partisan basis. At the time I recommended Mr. Estrada as an Assistant, I did not know (and frankly did not care) what Mr. Estrada's political affiliations were. His service as an Assistant United States Attorney confirmed my original judgment and was not in any way impacted by his personal political beliefs (whatever they might be). I understand the same was true in his service as an Assistant to the Solicitor General.

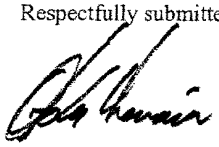
The Southern District of New York has a tradition of public service which I believe Mr. Estrada shares. Mr. Estrada served under two Chiefs of the Criminal Division whom I appointed. Both are now judges of

the United States District Court for the Southern District of New York. Both were appointed to that Court by President Clinton. I was an appointee of President George H. W. Bush.

It is in this tradition of the non-partisanship of the Southern District of New York that I without reservation urge you and your colleagues on the Judiciary Committee to speedily confirm Miguel Estrada as a Judge of the United States Court of Appeals for the District of Columbia Circuit.

I hold myself available to provide the Committee's staff with any additional information I am able to provide.

Respectfully submitted,



Otto G. Obermaier

OGO/ek

cc: Senator Orrin G. Hatch
Senator Charles E. Schumer

Republican National Hispanic Assembly

June 25, 2001

The Honorable Orrin G. Hatch
United States Senate
Washington, DC 20510

RE: Miguel A. Estrada, Esq.

Dear Senator Hatch:

On behalf of the Republican National Hispanic Assembly, it is with great pleasure that we endorse Mr. Miguel A. Estrada's nomination as Judge for the District of Columbia Circuit Court of Appeals. Please know that Mr. Estrada comes highly recommended.

The Republican National Hispanic Assembly (RNHA) is one of the nation's largest Hispanic membership organizations and represents the interests of over 7 million Hispanics nationwide. RNHA also plays a leading role in educating and developing leaders in Hispanic Communities across the country.

Our endorsement of Mr. Estrada comes from his hard work as a leading member of the Hispanic Community. Mr. Estrada is hailed as a role model among Hispanic youth across the country. Although he came to the United States at the age of 15 knowing little English, Mr. Estrada was able to overcome his disadvantaged background and succeed. Mr. Estrada's story is truly an American Dream; a dream that many Hispanic young people have not taken part in. As a Judge in the DC Circuit Court, Mr. Estrada will be in a position to positively impact the Hispanic Community, an impact that is greatly needed as the high school attrition rate among Hispanic youth steadily increases.

Moreover, Mr. Estrada's credentials are impeccable; a Harvard Law degree, a clerkship in the Federal Appellate Court, two years in the US Attorney's Office, and a clerkship in the US Supreme Court. Mr. Estrada will be an asset to the Circuit Court.

On behalf of the over 7 million Hispanics represented by RNHA, we strongly urge you to confirm Mr. Miguel A. Estrada's nomination expeditiously.

Sincerely,

Massey Villarreal
National Chairman

600 Pennsylvania Avenue, Southeast, Suite 300 • Washington, D.C. 20003 • (202) 544-6700 • FAX: (202) 544-6869
visit us at: **www.rnha.org**

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FAX (916) 927-7423

September 1, 2002

The Honorable Patrick J. Leahy
Chairman, Senate Judiciary Committee
224 Senate Dirksen Office Building
Washington, DC 20510
(202) 224-4242 – (202) 228-3479 (Fax)

Dear Mr. Chairman:

On Behalf of SACRAMENTO SPANISH MINISTRIES ASSOCIATION, we are writing to call on the Senate Judiciary to have a hearing for Miguel A. Estrada for the position of United States Circuit Judge for the District of Columbia.

Mr. Estrada who came to the United States from his native Honduras at age 17, has an impressive background. He is a currently a partner with Gibson, Dunn & Crutcher LLP, where he is member of the firm's Appellate Constitutional Law Practice Group and its Business Crimes and Investigations Practice Group and has argued 15 cases before the U.S. Supreme Court.

Mr. Estrada has spent most of this professional career in public service. He served as Assistant to the Solicitor General of the United States and as Assistant U.S. attorney and Deputy Chief of the Appellate Section in the U.S. Attorney Office for the Southern Distric of New York.

Mr. Estrada served as a law clerk for the Honorable Anthony M. Kennedy, Supreme Court of the United States. He attended Harvad Law School, where he was editor of the Harvad Law review and received a J.D. degree magna cum laude in 1986 and graduated from Columbia College in New York with an A.B. magna cum laude. Could we ask for a more qualified nominee? Even the American Bar Association has given him a well-qualified rating.

If confirmed, Mr. Estrada would be the first Hispanic to sit on the D.C. Circuit Court. The confirmation of this historic appointment will help open doors for more Hispanic Judges.

We strongly support Mr. Miguel A. Estrada and urge you to support the nomination of this outstanding Hispanic to the U.S. Court of Appeals for the District of Columbia.

Sincerely,

Ernesto Santillana H

REV. ERNESTO M. SANTILLANA
Chairman SSMA

REV. FATIMA ERAZO
Secretary-Treasurer

SOUTHWEST FLORIDA
HISPANIC
CHAMBER • OF • COMMERCE

June 11, 2002

The Honorable Patrick J. Leahy
United States Senate
Washington, DC 20510

Dear Senator Leahy:

On Behalf of the Southwest Florida Hispanic Chamber of Commerce, I am writing to convey our strong support for Miguel A. Estrada for the position of United States Circuit Judge for the District of Columbia Circuit.

Mr. Estrada is an honorable Hispanic immigrant leader who has a known and widely respected professional career. A leader that makes our fast-growing Hispanic community proud, Mr. Estrada has served our nation both in private practice and government service in a bipartisan manner. His distinguished and impressive career illustrates the promise and opportunity that America offers to all immigrants, especially Hispanic immigrants. Mr. Estrada's confirmation will break new ground for Hispanics in the judiciary.

I am confident that Mr. Estrada will fulfill the duties of Circuit Judge with intelligence and strong commitment and respect for the laws of this nation. The Hispanic community of Southwest Florida, which is over 120,000 residents and over 10,000 Hispanic-owned business leaders, will certainly welcome and appreciate a favorable consideration of Mr. Estrada's nomination.

Sincerely,

Leonardo Garcia
SWFLHCC Executive Director

10051 McGregor Blvd., Suite 204 • Fort Myers, FL 33919 • (941) 418-1441 • Fax: (941) 418-1475

Straight Path Ministries

P.O. Box 2985
Anaheim, CA 92814
Phone: 909-653-5937 Fax: 909-653-5977

Dr. Pascual Gonzalez
President

Rev. George Bandy
Secretary

Rev. Marta Martinez
Treasurer

Rev. Ralph Hernandez
Advisor

August 29, 2002

The Honorable Patrick J. Leahy
Chairman, Senate Judiciary Committee
224 Senate Dirksen Office Building
Washington, DC 20510
(202) 224-4242 – (202) 228-3479 (Fax)

Dear Mr. Chairman:

On behalf of Straight Path, I am writing to call on the Senate Judiciary to have a hearing for Miguel A. Estrada for the position of United States Circuit Judge for the District of Columbia.

Mr. Estrada, who came to the United States from his native Honduras at age 17, has an impressive background. He is currently a partner with Gibson, Dunn & Crutcher LLP, where he is a member of the firm's Appellate Constitutional Law Practice Group and its Business Crimes and Investigations Practice Group and has argued 15 cases before the U.S. Supreme Court.

Mr. Estrada has spent most of his professional career in public service. He served as Assistant to the Solicitor General of the United States and as Assistant U.S. Attorney and Deputy Chief of the Appellate Section in the U.S. Attorney Office for the Southern District of New York.

Mr. Estrada served as a law clerk for the Honorable Anthony M. Kennedy, Supreme Court of the United States. He attended Harvard Law School, where he was editor of the Harvard Law Review and received a J.D. degree magna cum laude. Could we ask for a more qualified nominee? Even the American Bar Association has given him a well-qualified rating.

If confirmed, Mr. Estrada would be the first Hispanic to sit on the D.C. Circuit Court. The confirmation of this historic appointment will help open doors for more Hispanic judges.

We strongly support Mr. Miguel A. Estrada and urge you to support the nomination of this outstanding Hispanic to the U.S. Court of Appeals for the District of Columbia.

Sincerely,

Dr. Pascual Gonzalez

Statement of
The Honorable Strom Thurmond
United States Senator
South Carolina

September 26, 2002

PRINTABLE VERSION

Mr. Chairman:

Thank you for holding this important hearing on judicial nominations. Today, we are considering the nomination of an extraordinary individual, Miguel Estrada, to the United States Court of Appeals for the D.C. Circuit.

Miguel Estrada is a great example of the American dream come true. He arrived in this country speaking very little English and has gone on to become one of America's best appellate lawyers. He is living proof that through hard work and determination, anyone in this great Nation can realize his or her potential.

Mr. Estrada has a very distinguished legal background. He graduated magna cum laude from Harvard Law School in 1986 and served as editor of the Harvard Law Review. He clerked for Judge Amalya L. Kearse of the Second Circuit Court of Appeals from 1986-1987 and for Supreme Court Justice Anthony M. Kennedy from 1988-1989. Mr. Estrada went on to serve for two years as Deputy Chief of the Appellate Section in the U.S. Attorney's Office in the Southern District of New York. From 1992 until 1997, he worked as Assistant to the Solicitor General of the United States.

At the office of the Solicitor General, Mr. Estrada honed his skills as a first-rate appellate lawyer. I would like to note that Seth Waxman, Solicitor General under President Clinton, who worked with Mr. Estrada from 1996 to 1997, has strongly supported his nomination, calling him "a model of professionalism and competence."

For the last several years, Mr. Estrada has been in private practice and has established himself as one of the Nation's finest appellate lawyers. In fact, he has argued 15 cases before the U.S. Supreme Court. This is a significant achievement and demonstrates his outstanding legal abilities and advocacy skills.

Despite these impressive credentials, some of Mr. Estrada's detractors argue that he is unqualified to be a Federal appellate judge because of his lack of judicial experience. This argument is without merit. In addition to Mr. Estrada's experience in appellate litigation and his demonstrated excellence, he has received a rating of "Well-Qualified" by the American Bar Association. It is also worth noting that of the 18 judges confirmed to the D.C. Circuit since President Carter's administration, only 3 had previous judicial experience. Furthermore, Chief Justice Rehnquist has argued that the Federal Judiciary should choose from a variety of professional backgrounds, noting that many fine judges have come from private practice.

Mr. Chairman, Miguel Estrada will be an asset to the United States Court of

Appeals for the D.C. Circuit, and I am happy to support his nomination. In all respects, he has demonstrated that he is an honorable man. He will be a judge who follows the law and adheres to established precedent. In short, there is every reason to believe that Mr. Estrada is eminently qualified and will be an excellent addition to the D.C. Circuit. Mr. Estrada is precisely the type of person that we should all welcome to the Federal appellate bench. He will serve our Nation well. I look forward to seeing him confirmed.

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ROBERT G. TORRICELLI
NEW JERSEY

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STATEMENT OF SENATOR ROBERT TORRICELLI
on the NOMINATIONS of FREDA WOLFSON and STANLEY CHESLER
FOR the U.S. DISTRICT COURT, DISTRICT OF NEW JERSEY
September 26, 2002

Thank you, Mr. Chairman and members of the Committee, for holding this hearing to consider the nominations of Freda Wolfson and Stan Chesler for the United States District Court in New Jersey. I am certain that after reviewing the qualifications of each of these fine individuals and after hearing from them today, you will be as confidant as I am that each will be a valuable addition to New Jersey's Court.

George Washington once said, "The Administration of Justice is the firmest pillar of government." Those words are never far from my mind when I review the qualifications of a judicial nominee because long after we all leave the Senate, those who sit on the Judiciary will continue to impact public policy and the lives of other Americans. I am confidant that both Freda Wolfson and Stan Chesler are well-suited to such great responsibility.

A graduate of SUNY-Binghamton and St. John's University School of Law, Stanley Chesler began his career as an Assistant District Attorney in the Bronx. He then joined the Justice Department's New Jersey Organized Crime Strike Force, eventually becoming the Deputy Chief. In 1987, he was appointed a U.S. Magistrate, a position he has filled with distinction. It is clear that his career has been distinguished by a solid record of public service. When you speak with those who have had the opportunity to work with Stan Chesler throughout his career, they universally praise his character and commitment to the law.

Freda Wolfson too currently serves as a Magistrate Judge in New Jersey. She is a graduate of Rutgers University and Rutgers-Newark Law School. As a fellow Rutgers graduate, I believe this alone speaks very well of her. After law school, she worked in private practice for six years, handling primarily commercial litigation and Casino Control Commission administrative hearings before being appointed to the Magistrate Court in 1986. She is widely respected by her colleagues and throughout the legal community for both her intellect and demeanor. She has consistently demonstrated that she is an accomplished attorney who has made a commitment to improving the quality of justice in our society.

That being said, I want to thank you again, Mr. Chairman, for holding this hearing. Senator Corzine and I look forward to working with you to see that these and the three other open District Court seats in New Jersey are filled as quickly as possible. The individuals nominated for these seats are each distinguished in their own right and together they represent the best of New Jersey's legal community as well as the geographic and gender diversity of the State. Mr. Chairman, I hope that Senator Corzine and I will be back before you in the near future to present the last of New Jersey's nominees. Thank you.

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JUSTICE TALKING

Gang Loitering
A Valid Police Tool or An Impediment to Freedom of Assembly

Harvey Grossman debates Miguel Estrada

ANNOUNCER: From Independence Mall in Philadelphia, this is Justice Talking.

WOMAN: Shots ring out and another person's killed. How often do your parents and your children have to be afraid to walk by a group of people?

WOMAN: That law is not going to just target the gang or who they think are gangs, it's going to target everybody and most people of color.

HARVEY GROSSMAN: Even those things that would be effective may, nevertheless, be against our moral grain.

MIGUEL ESTRADA: I am all with Harvey with the notion that it is great for members of the neighborhood to take control of the neighborhood but, that does not foreclose the notion of having government take up what should be its first duty, to ensure the safety of its citizens.

ANNOUNCER: Coming up on Justice Talking, Margot Adler hosts a debate on gang loitering laws.

MARGOT ADLER: Welcome to Justice Talking. I'm Margot Adler. Justice Talking takes an in-depth look at the cases and controversies that come before our nation's courts and challenge our nation's conscience. Each program grapples with free speech, religious liberty, racial equality, personal privacy and other issues that go to the heart of what it means to live in a democracy.

We're coming to you from Carpenters' Hall, home to the First Continental Congress, just steps away from the Liberty Bell, our national symbol of freedom.

In this edition, we ask how do we balance our need to feel and be safe in our communities with the individual's right to gather with friends on street corners and in public parks. That's the central question of a case that has come before the U.S. Supreme Court, Chicago vs Morales. Several years ago, Chicago enacted a law that allows police to order suspected gang members off the street. During the three years that the law was enforced, Chicago police engaged in periodic street sweeps, arresting tens of thousands of people who refused to follow orders and to disperse. Those arrested were mostly African American and Latino men.

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Coming up on Justice Talking, a debate between Harvey Grossman, an ACLU attorney, who challenged the anti-gang loitering law as unconstitutional, and Miguel Estrada, a former prosecutor, who defends the policy as a legitimate law enforcement tool. First, we go to Chicago for this background, from reporter Cheryl Corley.

CHERYL CORLEY: On a chilly, overcast April morning, the park benches at Kelvyn Park on Chicago's Northwest side are empty. Three small kids play near the swings, throwing rocks in a rain puddle. Forty four-year-old Sonya Torres has lived in the neighborhood for 13 years. She says before the city enacted its anti-gang loitering law in 1992, this park was controlled by gangs.

SONYA TORRES: Every bench that you see here, there'd be 7,8 gangbangers. On this side would be, I believe it was the Cobras, and the other side of the park would have somebody else, I forget what the gang names were, and they would constantly be antagonizing each other. So it's like anyone in their sane mind would not walk pass here because you didn't know what was going to happen.

CHERYL CORLEY: The park is located just about a half block from the neighborhood high school. Torres says she moved to the area thinking it was quiet and clean but, over the years, she says dope dealing and shootings by gang members petrified longtime residents.

SONYA TOREES: One time I was coming home from work and I took the other side, thinking, okay, that side will be safer than this side, it has less benches. And, I found myself in the middle of a confrontation right at the corner. I mean, the cars pulled up. They jumped out of the car and it was like, you know, 6 over here and 6 over here and I'm walking right in the middle and all I just like, oh, Lord please don't let them shoot.

CHERYL CORLEY: Torres and other neighbors organized a block club and they supported the controversial ordinance passed by the Chicago city council. The anti-gang loitering law allowed a police officer to clear an area if he or she reasonably believed someone in the group was a street gang member and it appeared they had gathered for "no apparent purpose."

The ACLU and the Cook County Public Defenders office successfully challenged the law. The U.S. Supreme Court ruled the law unconstitutional.

Chicago City attorney Larry Rosenthal defends the law. He says the gang loitering measure helped make neighborhoods safer by targeting potential troublemakers in a very precise and legal way.

LARRY ROSENTHAL: You cannot be arrested for loitering under this ordinance, you can be arrested for only one thing, disobeying a police order to disperse.

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It's targeted at a particular class of people and at a particular problem and it gives people fair notice of what they are expected to do, move on.

CHERYL CORLEY: The city stopped enforcing the ordinance in 1995 because of the lawsuit, but Leon McKinsey, a 23 year old youth organizer, says police continued to use the street clearing tactic anyway. He says he and a friend were simply standing near a Chicago restaurant and nightclub waiting for a party to begin, when police stopped and, using profane language, told them to move along.

LEON McKINSEY: The officers were, I don't care who you are, what you're waiting on, get out of here. If I come back around this corner in two, and you're still here, I'm going to arrest you. So, the officers jumped in the car and shot around the corner and within like five seconds, before I can even like grab my bag and start to walk, they were back, but, you're still standing here. Didn't I tell you MF...just very disrespectful and we didn't do anything. So. I said, officer why are you talking to me like I'm your son cause you're talking to me with disrespectfully. I didn't curse at you, I didn't say anything, why are you talking like that. They put the car in park, jumped out, oh, you guys, you're going to jail.

CHERYL CORLEY: During the three years the Chicago measure was in effect, police arrested about 43,000 people. Officials liked to boast that gang related killings dropped while the law was in force. However, the city's homicide figures show gang deaths actually increased every year the law was in effect except one and that drop came after an explosion in gang related homicides. Despite those statistics, more than 30 states and municipalities have filed legal briefs supporting Chicago's anti-loitering ordinance and community groups, which have worked together on a number of issues, found themselves on opposing sides of this issue.

At a recent community meeting held by the Chicago Alliance for Neighborhood Safety, young people, some of them former gang members, and community activists voice their support or opposition to the ordinance. Many of the youth, like this young man, called the anti-loitering law an assault on their rights, saying it told them:

YOUNG MAN: That I can't stand nowhere. I can't walk nowhere and you're trying to incarcerate me while I'm on the street, and I don't understand that. You know what I'm saying. Why would you tell somebody to come tell me to move out the way when I'm exercising my freedom by minding my own business? You're supposed to help me exercise my freedom. Not take my freedom away. Thank you.

WOMAN: Maybe you're not intimidated by anybody, by a group of people standing on the corner that you know are gang members. This group that I knew that specifically were sitting there, just in lawn chairs that you would think was nothing, were flashing gang signals, and shots ring out and another person's killed. How often do we have to go through that? How often do your parents and your children have to be afraid to walk by a group of people?

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WOMAN: These cops are getting out of hand. We don't need another ordinance to give them more powers over all of us. That law is not going to just target the gangs or who they think are gangs, it's going to target everybody and most people of color. My nephew is a known gang member. I talk to him all the time. Look brother, you need to get your act together. There are some more positive things you need to be out here doing with your time instead of just standing out here selling drugs. I talk to him on the street. Am I going to be arrested with him because I'm trying to tell him to do right?

CHERYL CORLEY: Critics also say that there are already enough laws on the books to deal with gang problems but they are not enforced, and Northwestern University Professor Jody Krutzman says Chicago's anti-gang loitering law works against efforts to create community safety.

JODY KRUTZMAN: Where communities have, in fact, put themselves back together, in terms of the relationships that neighbors have with each other and where communities have, in fact, decided that safety is their problem not the police's problem, right. That's, in fact, where you see safe communities being built. The police can be helpful but they are not the first source, it seems to me, of community safety. And, again, one of the problems with the anti-gang loitering law is that it turns to the police first as the sort of controllers of young people in a community rather than the residents of the community as the relaters to the young people.

CHERYL CORLEY: Barbara Sternik lives near Kelvyn Park and is a vice president of the Northwest Neighborhood Federation. She says she, Sonya Torres, and others have worked to include neighborhood kids in activities to make the area safer but, she says, that hasn't stopped gang members from gathering on street corners.

BARBARA STERNIK: I mean, so there has to be some other tool that we, as a community and the police, can use together to disperse the people to help us. We've done and we're still doing what we think we have to do. We're still planning lemonade stands. We're still marching. We still hold our meetings but, we still have this other problem that there is nothing to help us with.

CHERYL CORLEY: For Justice Talking, I'm Cheryl Corley reporting.

MARGOT ADLER: Are gang loitering laws Gestapo tactics that do little to control crime or are they an effective and legitimate way of making the streets safer for law-abiding citizens?

This is Justice Talking and I'm Margot Adler. We are joined today by two experienced advocates who have different views about the constitutionality of gang-loitering laws.

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Harvey Grossman is the legal director of the American Civil Liberties Union of Illinois. Mr. Grossman argued on behalf of the plaintiffs in Chicago vs Morales, the case at issue in today's program. In addition to developing and supervising the docket of civil liberties cases at the ACLU of Illinois, Mr. Grossman has served as counsel in a broad spectrum of constitutional litigation involving free speech and association, search and seizure, police practices and privacy rights.

Miguel Estrada is an attorney with the Washington, D.C. law firm of Gibson, Dunn and Crutcher where he concentrates on appellate litigation and white-collar crime. After graduating from Harvard Law School, Mr. Estrada clerked for U.S. Supreme Court Justice Anthony Kennedy. Mr. Estrada has prosecuted numerous criminal cases for the U.S. attorneys office in the Southern District of New York and has argued 15 Supreme Court cases as Assistant to the Solicitor General, the U.S. Government's representative to the High Court.

We're going to begin today's debate with brief opening statements from our guests, first, Mr. Grossman, who represented the Chicago residents who challenged the anti-gang loitering ordinance.

HARVEY GROSSMAN: Thank you. Chicago's ordinance is a law we can live without. It violates fundamental principles of civil liberties. It's ineffective in fighting crime and, ultimately, it's counterproductive.

In terms of its civil liberties violations and flaws, there are three prominent issues. The law, because it is defined as prohibiting people from gathering with "no apparent purpose," allows for arbitrary enforcement by a police officer. There is no objective test of wrongdoing. Second, the law criminalizes suspicion, it's antithetical to our most basic values. It takes a person who has not yet done something and seeks to incarcerate them, or banish them from the public way, because it presumes that they will do something if they are left on our city streets. Finally, it penalizes innocent association. The law is not directed simply at persons who are reasonably suspected of being gang members, but anyone who is with them, parents, siblings, loved ones, business associates, anyone who is with someone, who even looks like a gang member, is subject to banishment or arrest under this ordinance.

The law is clearly ineffective. There is no way that hardcore criminals who, every day, face sanctions under serious felony laws, will be deterred from criminal activity simply because they may spend a night in jail in violation of a city ordinance. But, in fact, every year since the ordinance has been enjoined, murder, gang-related homicides in the city of Chicago have decreased. In 1995, the last year that the ordinance was in effect, there were 210 gang-related homicides. This past year, three years after the ordinance was out of effect, there were only 174 gang-related homicides. I don't mean to minimize that number, but that's a 22% decline, just since the time that the ordinance has been out of use.

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Finally, the law is counterproductive. It is social cohesiveness within our community, which will have an impact on crime, not creating us and them. Them, those children, those kids on the corner, are our children. They are our relatives. They are our friends. They are our colleagues. There is no way that we can fight crime by creating two classes of persons within a single community.

MARGOT ADLER: Thank you, Harvey Grossman. Now Miguel Estrada, your opening remarks.

MIGUEL ESTRADA: Thank you, Margot. There is not a person in this country, I think, who reasonably can deny the seriousness of the gang problem in this country. There are entire sections of some of our large cities that are under the control of criminal gangs. And, those gangs are responsible for a large part of the crimes that occur in those cities from drug dealing to solicitation to gun violence, including drive by shootings that, not infrequently, result in the death of perfectly innocent bystanders.

It is important to understand that loitering is a key component of how gangs thrive and grow. It is through loitering that gangs are able to recruit new members and it is through loitering that they mark their turf and intimidate other members of the law abiding public as well as other members of rival gangs from entering the areas they seek to control. We know what the result of that is. Those who can afford to leave the city do, and those who cannot are forced to remain in their homes deathly afraid to walk the public streets that they should have a right to walk.

What the city of Chicago has done in this case, is a simple and reasonably effective solution to that problem. It ensures that citizens, who are law abiding, will have access to the streets by simply ensuring that gang members move along and the ordinance stops crimes before it occurs which, I think, everyone would agree is better than spending the public resources in trying to lock up our inner city youth after we wait to see if a crime is actually committed. And, the ordinance does that at, I think, a minimal burden to the liberty of every citizen. Merely being asked to move along does not impede the right of anyone to remain on the streets. People can congregate to talk about public issues, people can stroll, people can use the streets for their intended purpose but, above all, people can use the streets if they are law abiding and not be kept in their homes by the fear of gang violence and drive by shootings.

MARGOT ADLER: Thank you, Miguel Estrada, a former prosecutor and criminal law expert. Harvey Grossman, you've challenged the gang loitering law and I'm wondering who is Morales and who are your clients?

HARVEY GROSSMAN: Well, I along with the public defender of Cook County, represent 66 young men and women who were arrested under the ordinance during 1993 and 1994, six of the 66 defendants actually stood trial and were found guilty. The other 60 all had their cases dismissed by Circuit Court of Cook County judges who ruled that the ordinance was unconstitutional. Sixty of the 66 defendants are black or

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Hispanic. They were arrested in 28 different locations in the City of Chicago, including streets, parks, public housing developments, and they are not all gang members or even reputed to be gang members. Thirty-four of the 66 defendants were charged with being in the presence of persons who were gang members.

MARGOT ADLER: Miguel Estrada, I'm wondering what exactly is loitering, and how does it differ from standing on the corner smoking a cigarette or resting after you've jogged a few blocks?

MIGUEL ESTRADA: Well, the city takes the term loiter to mean staying in one place with no apparent purpose, and that indicates, I think, to most people, someone who is in a public place indefinitely, not doing anything that is immediately recognizable as an activity with any purpose. Under some circumstances, it is possible that standing on the street with a cigarette may be loitering, under others if you're outside a building and it's during the daytime hours and there are any number of other people outside the door also with a cigarette, you may infer that somebody is merely taking a smoking break and is going back to work soon. But in this area as in many others it is important to know what the context is.

MARGOT ADLER: Harvey Grossman, do you think there is a fundamental constitutional right to loiter?

HARVEY GROSSMAN: No, I don't think that that's really what's involved in this case either. I think that the question is, more precisely, whether a law enforcement officer can be relegated the unfettered discretion to determine who does or who does not have a purpose that is apparent. The command of the Chicago police department is that they are to make a determination based on conduct that is "immediately discernible to a police officer." No one can wait to look for context, as Mr. Estrada has suggested, and moreover, the city has advised officers that no inquiry can be made of the citizen. So that if the citizen has an explanation, I'm smoking in front of my own office building, that's irrelevant to the police officer. At least half of my 66 clients have advised that they were smoking in front of a building when they got arrested.

MARGOT ADLER: You're listening to Justice Talking. I'm Margot Adler. More ahead after this short break.

ANNOUNCER: To order tapes or transcripts of this program, call 312-640-5000 or get the entire show from the web at audible.com/justicetalking.

MARGOT ADLER: Welcome back to Justice Talking. In this edition, we're talking about a Chicago law that gives police the authority to disperse groups of young men hanging out on city corners if they suspect that one is a gang member. We're joined by Harvey Grossman, the legal director of the ACLU of Illinois, who has challenged Chicago's anti-gang ordinance on behalf of a group of young men arrested under the law.

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We're also joined by Miguel Estrada, a Washington, D.C. attorney who wrote a Supreme Court amicus brief in favor of the ordinance on behalf of U.S. mayors and governors.

Soon we'll have a chance to hear questions and comments from our audience, but first, I'd like to ask each of you to pose a question to your opponent, first, Miguel Estrada why don't you ask a question of Harvey Grossman?

MIGUEL ESTRADA: Now, Harvey, is there any loitering law that you would think is all right under our Constitution, for example, if I think it is a good idea to have a law that says that you may not loiter near a ATM so that I don't have someone at my elbow when I'm trying to get cash out of my ATM, is that law constitutional or unconstitutional?

HARVEY GROSSMAN: Well, I would say that the problem with that law, again, is the use of the term loitering. Probably in the example that you gave what you want to do is prevent people from engaging in certain kind of conduct, most preferably with a specific intent within a certain distance of an ATM. And, I think, that avoids the constitutional pitfalls because it prevents an officer from making an arbitrary decision as to who is and who is not loitering presuming that you're using the phrase loitering as Chicago did to mean a person with no apparent purpose. Your person has a purpose, that person is seeking to harass or seeking to menace or seeking to stand there with the intent of engaging in some additional conduct. Without that kind of specificity, I think, that what occurs is the grant of too much discretion to police officers to pick who to take action against, and who not to take action against.

MIGUEL ESTRADA: I take it then that your answer is that the law, as I outlined it, is not constitutional. I would have to show that the person has some intent to rob me or do something else that is independently unlawful and if he is, say two feet from the ATM, merely having his daily cigarette, for example, he would be okay under your book.

HARVEY GROSSMAN: I'd have to know where the ATM is. I suppose that if it is on private property, it raises different issues than if it's on public property. I suppose that if the ATM is in the middle of a park, it raises different issues than if it is on a busy street corner. But, you have to remember, that the law here deals with parks, streets, sidewalks, public places, private places, any place that an officer chooses to designate for enforcement.

MARGOT ADLER: And now, Harvey, why don't you ask a question of Miguel Estrada.

HARVEY GROSSMAN: Miguel, the city recognizes that people, when they stand on the public way, talk to each other, that the First Amendment protects communications in public places. I'd like you to help me understand what the city means, for example, the city has said, in its briefs before the Supreme Court, that if a person

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who's reasonably suspected of being a gang member, in fact, is a gang member, wishes to solicit charitable contributions to his gang on a street corner, that's permitted, but that, if they want to hold a street discussion on the question of the constitutionality of this ordinance, that's prohibited. I don't understand how a police officer could possibly make those distinctions nor do I understand the distinction myself. Can you explain it to me?

MIGUEL ESTRADA: The mere fact that there is speech going on in a social interaction does not mean that the First Amendment rights are implicated because, what is being targeted by the city is not the speech, but the conduct in which the gang members are engaging.

MARGOT ADLER: I'm wondering Miguel Estrada, in what way do you see that gang loitering deteriorates a neighborhood?

MIGUEL ESTRADA: Well, there is a common sense premise to these types of laws which starts with the proposition that there is less crime in orderly neighborhoods. The theory goes that, if you have a broken window in one house and it's left unrepaired, pretty soon there will be others next to it and, as the neighborhood continues to look unkempt and further goes in a downward spiral, the neighborhood becomes more and more unsafe. The law-abiding people flee who can afford to do so and the others retreat to their own houses leaving the public streets to the elements that are not law abiding.

MARGOT ADLER: This is Justice Talking, a program on how the constitution affects our daily lives. In this edition, we're debating the constitutionality of Chicago's gang loitering laws. Miguel Estrada, a trial and appellate attorney with the Washington D.C. law firm of Gibson, Dunn and Crutcher, supports the law. Harvey Grossman, the legal director of the ACLU of Illinois, is opposed. We now invite members of our audience here at Carpenters' Hall to join us in this discussion on Justice Talking.

MAN: This question is for Mr. Grossman. Do you feel comfortable walking down a street where there are gangs?

HARVEY GROSSMAN: I live in the City of Chicago and I've lived there for 20 years. I live in a changing neighborhood. I own my own home. I have a son that I'm raising in the city. In truth, I feel some level of discomfort, personally, whenever I see a group of young men, without regard to race and without regard to what emblems they're wearing. On the other hand, I'd be remiss if I didn't tell you also that I live in a neighborhood that has gangs, that I'm part of a neighborhood police watch, that I, on a regular basis, paint graffiti, gang graffiti included, off of my fences and garages, and that, unfortunately, a member of my own immediate family has been the victim of serious violent crime on two occasions in the last 20 years. Now, all of that said, I believe that my neighborhood is my problem. I'm part of solving those problems and I'm not willing to relegate to the police the decision of which one of the young men to sweep off the street.

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MARGOT ADLER: Don't residents of a community have a right to determine how their community will be policed? What do you do about a community that wants this?

HARVEY GROSSMAN: Well, I think that the question is what has the community been offered. Traditionally, the minority communities in the City of Chicago have been offered second-rate law enforcement. They have not been given the same kind of attention. They have not been given the same kind of resources that other areas of the city have and, as a consequence, no one went to the west and south sides of the City of Chicago, predominantly minority neighborhoods, and said, you have this alternative. They simply instituted the loitering ordinance and, I think, that it's very, very divisive within the community.

MARGOT ADLER: I'd like to go back to the audience. Yes, right over here.

WOMAN: My question is for Mr. Estrada. Do you believe that this law has different effects on minorities versus whites?

MIGUEL ESTRADA: That is a hard question because, if you mean by the effects, whether more members of the minority neighborhoods are taken into custody under the law, the answer is probably, yes. It is also true that most of the people that get the benefit from the law are the neighbors of the folks who are taken into custody, and that, therefore, in terms of the net effects of the law, they go also to the minority communities.

ANNOUNCER: You're listening to Justice Talking, a debate on gang loitering ordinances and crime control. Arguing in favor of this ordinance is Washington, D.C. attorney, Miguel Estrada.

MIGUEL ESTRADA: Merely being asked to move along does not impede the right of anyone to remain on the streets. People can use the streets for their intended purpose and not be kept in their home by the fear of gang violence and drive by shootings.

ANNOUNCER: Arguing against this ordinance is Harvey Grossman of the ACLU of Illinois.

HARVEY GROSSMAN: The law criminalizes suspicion. It takes a person who has not yet done something and seeks to incarcerate them or banish them from the public way because it presumes that they will do something if they are left on our city streets.

ANNOUNCER: We return now to Justice Talking and your host, Margot Adler.

MARGOT ADLER: I'd like to ask you, Miguel Estrada, whether you are troubled at all by the fact that it is primarily Latin American, Latino, African Americans that are being rounded up.

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MIGUEL ESTRADA: I guess I take exception somewhat, Margot, with the term rounded up. It seems to me that if you take the law as stating a standard of conduct that is binding on the white residents as it is on the Hispanic residents, I ought not to take exception to the fact that those who do not comply with the standard of conduct are taken into custody whatever their ethnic background may be. As I said earlier, the benefit of this type of law targets those areas of the city where many minority residents live, and it is they who are also, in many cases, largely African American or Hispanic who get the benefit in being able to have their children play in the park and to go down to the store without having a very high risk of a drive by shooting.

MARGOT ADLER: Harvey, do you want to respond to that?

HARVEY GROSSMAN: If I could. The Chicago Police Department, in a recently published journal produced by the Illinois criminal justice authority, identified criminal street gangs in Chicago as being 96% African American and Hispanic. So if this law were, in fact, carried out evenly across that population, it, by definition, would be targeted at an almost 100% ethnic and racially minority class of young men.

MARGOT ADLER: We'll go back to the audience now.

WOMAN: To follow up on what Mr. Grossman said, I have a question for Mr. Estrada. Does the ordinance provide any guidance for the police officers on what a gang member looks like or are we allowing them to use stereotypes to pick out what a gang member is or isn't?

MIGUEL ESTRADA: After the ordinance was passed, the Chicago PD issued a general standing order that gave guidance to officers on how to identify gang membership. The officer is not allowed to have a conclusion concerning gang membership unless he has reasonable cause to think that the person is indeed a member of a gang on the basis of objective criteria, such as, gang colors, and those do not include clothing that is purchased by the general public. In many of the cases that are in the Supreme Court now, the gang member himself proudly stated yes, I am a member of the Vice Lords or the Latin Kings or some other gang.

MARGOT ADLER: Harvey Grossman.

HARVEY GROSSMAN: I'd people to bear in mind as we have this discussion, that this ordinance has not been in effect in the City of Chicago for over three years now. And, there is no chaos that has occurred as a result of the non-enforcement of this ordinance. There are streets and parks in the hundreds that have been returned to people and that has not occurred through the enforcement of this ordinance. Where there are dangerous corners, where there are hot spots, where there's open air drug markets, the answer is to enforce the criminal laws against hardened criminals who are blatantly and openly violating those laws. The city now does that.

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MARGOT ADLER: Mr. Estrada, that brings up the question. Aren't there already enough laws on the books that make harassment, gang recruitment, intimidation, and drug dealing illegal, why do we need a different distinct law?

MIGUEL ESTRADA: Well, in the first place, because the City Council reasonably concluded that those laws, which we have had for a long time, are not working, and they are not working not because of any laziness on the part of the officers or anything of that sort, it is quite simply the fact that in order to make that type of reactive law enforcement work, you have to rely on witnesses, people in the neighborhood who are willing to go to court and swear out an oath and say, yes, that is him. And, in areas that have been intimidated by gang members, that is simply not going to happen. So, you have a dilemma here. This type of law has the virtue of not being reactive. It targets visible areas of danger and keeps them moving so that crime can be stopped before it occurs. I am all with Harvey on the notion that it is great for members of the neighborhood to take control of the neighborhood but that does not foreclose the notion of having government take up what should be its first duty, to ensure the safety of its citizens.

MARGOT ADLER: We'll go to more questions from our audience here on Justice Talking.

WOMAN: Hi, this question is for Miguel Estrada. If this was so good for the communities, do you have some hard statistics, property crime, burglary, muggings to show that this ordinance, when in place caused a huge drop and is there any surveys or proof that the residents felt safe walking the streets because of this ordinance?

MIGUEL ESTRADA: There are any number of numbers that have been placed in front of the Supreme Court in connection with this case. Mr. Grossman tries to spin them one way and obviously the city a different way but, I think the important point here is what it is that we, as a people, are allowed to do. Mr. Grossman had his hearing in the City Council and he expressed his views. He told his neighbors this was a bad idea. They thought something else was needed and, one of the things that we do as a society by reason of being a democracy is that we vote on what we think is a good idea, see if it works, and if it doesn't, then we can scrap it. But, what we do not do is to take the person that lost all of his arguments in the debate and try to bring the courts to trump on his side.

MARGOT ADLER: Harvey, do you want to respond to that?

HARVEY GROSSMAN: There is a fundamental question in our society about the means by which we choose to achieve our ends. And, even though things that would be effective may nevertheless be both unconstitutional, violate fundamental principles, and be against our moral grain. So, I have no doubt, at all, that the city could generate amazing statistics if it would just simply keep up its process of sweeping all young black

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and Hispanic men off the street every time it sees them. The earlier reference that Miguel made to the broken windows concept is an idea that has had great currency in our society but, in fact, there is almost no empirical evidence whatsoever to suggest that eliminating the broken window, the social disorder, actually results in a diminution of crime.

The only person who's been able, to the satisfaction of any of the social scientists, to generate that kind of empirical proof is a gentleman at Northwestern named Wes Skogin, who's very well known these days in law enforcement circles, and that data was published in 1990 showed only that robberies decreased in these five studies that had been conducted on this issue. So, we should not so readily accept what seems like a popular concept and I would suggest to you, one might reduce that concept to the sub-urbanization of our cities. If it looks clean, if it looks neat, if it looks nice, if it looks orderly, if it looks white, it's safe. And, I think we need to look much more closely at what a pluralistic society and its neighborhoods look like and how people choose to have neighborhoods.

MARGOT ADLER: More questions from the audience.

WOMAN: In response to the race issue and the criteria that's been given for gang members or what they look like, I would like to add a little bit of a twist from a personal experience. I'm also from a city environment and I, myself, as well as my other white friends, have been picked up for being in predominately black or Hispanic communities and I don't think I dress or look like a gangbanger or anything of the sort, and I don't know what justifies them picking me up. Every incident I've had with them has not been one of helpfulness, it's been one of harassment.

MARGOT ADLER: Any comments?

MIGUEL ESTRADA: The issue here today is whether there is enough that is good that is done by this ordinance that the citizens of the city are entitled to try it as a possible remedy, and, in our society, the way we deal with these things is by putting them to a vote. Our country generally goes on the notion that everyone is entitled to march to Hades under his own banner. I am yet to hear Harvey explain exactly what words of the Constitution, as opposed to his own inclinations, say that the city can't do this.

HARVEY GROSSMAN: Well, first, in response to your question, I think that you've hit the issues squarely. The question of being in the wrong place is what really happened to you. You were in the wrong place. You were in a place that a police officer determined you shouldn't be in. Perhaps because you are white, perhaps you were in a neighborhood that was predominately minority if that's what you're describing to me, and the officer did what police do all the time unless they're discretion is bounded and that is, he made a judgment call that you shouldn't be where you were, and that's how loitering laws have traditionally been enforced in America.

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We used to have people that we didn't call homeless, we called them bums, and they lived in places that we used to call skid rows, and if they came out of the area that was called skid row, they were arrested for vagrancy or they were arrested for loitering. After we got done limiting police officers discretion to do that, we then saw that those same laws were used primarily against black people who found themselves in white neighborhoods. Indeed the predecessor case to our case, the last loitering case before the U.S. Supreme Court was a 1982 case in which a gentleman who was African American decided to walk in to white neighborhoods in Los Angeles and was repeatedly arrested. So, you violated the principle of being in a place that you "shouldn't have been in" in the subjective view of a police officer. That's what's loitering is about.

MARGOT ADLER: I'm Margot Adler and you're listening to Justice Talking. Stay with us for more of our discussion on crime control and freedom of assembly after this short break.

ANNOUNCER: For more information on this case and other Justice Talking programs, visit our web site at www.justicetalking.org.

MARGOT ADLER: This is Justice Talking. I'm Margot Adler. We were interested to know how Americans view gangs and their reaction to attempts to remove people who loiter by arresting them and forcing curfews and the like. We've invited Vince Price, Editor of Public Opinion Quarterly to be with us. Price is also a faculty member at the Annenberg School for Communication at the University of Pennsylvania. What insights do we get from public opinion on this issue?

VINCE PRICE: Well, the public is concerned about crime generally and about gangs in particular, particularly in school settings. On the issue of searching people without strong cause for search, the public clearly weighs those kinds of procedures against their concern about crime and gang activity. A poll by Yankolovich Partners, in 1994, asked the following question: To respond to crime problems, do you favor or oppose allowing the police in your area to stop and search people for weapons if those people fit a criminal profile, even if the police have not seen anyone doing something illegal or suspicious? And, on this question, the public was evenly divided with about favoring and half opposing that kind of activity.

When it comes to school settings, approval for searches of this kind tends to jump. A sizeable majority is about 70% approve of school officials searching students belongings without a search warrant. So, the public is willing to tolerate a certain amount of surveillance and police intrusiveness to combat these problems of crime and gang activity.

MARGOT ADLER: At what point is the line drawn between the public's desire to do almost anything that will reduce crime and their fear and, the fear that they themselves may have some freedom curtailed?

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VINCE PRICE: Well, that's a very interesting question and some surveys conducted in the late 1980's found that majorities of the public agreed that the police should stop cars at random and search for drugs, even if that meant stopping people like themselves, that was actually included in the question. So, a majority of people do feel that even, they themselves, you know, might be subjected to search in an effort to combat this kind of illegal activity.

MARGOT ADLER: While we all know that there are white gangs, I think that the media image of gangs is generally either Latino, black or Asian and, I'm wondering how members of those minorities see...how they respond to this question.

VINCE PRICE: Well, they certainly express less confidence in the police generally. African Americans typically do report less support for the police and less confidence in the police and whites are readier to endorse police use of force. About three quarters of whites, for example, typically say there are situations where they would approve of a policeman striking an adult male citizen compared with fewer than half of African Americans who would endorse that.

MARGOT ADLER: Thank you so much for joining us on Justice Talking.

VINCE PRICE: Thank you.

MARGOT ADLER: Vince Price is the Editor of Public Opinion Quarterly.

This is Justice Talking, where we explore issues that come before our nation's courts and challenge our nation's conscience. Chicago's anti-gang loitering ordinance is the subject of today's debate between the ACLU's Harvey Grossman and Attorney Miguel Estrada.

Does the Chicago law give police too much power or is it an effective and legal strategy to prevent gang-related crime in our communities.

I'd like to take this constitutional argument in a different direction and ask Mr. Estrada, what you would feel if you, in fact, were standing on the street corner and you were sitting with some friends and the police came over to you, would you be offended if they asked you to move? Would you move? Would you obey the order? What would your own feelings be?

MIGUEL ESTRADA: I would probably follow the order of the officer. I don't know that we get very far in an argument of this type by trying to compare our experiences. For what it's worth, I have been stopped on a few occasions by officers while in my car and I have to report that they had been unfailingly civil and courteous to me. And I have never experienced anything that I could reasonably complain of as being disproportionate to the fact that I went through a yellow light or something like that.

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MARGOT ADLER: Let's got to the audience. There may be some other experiences here.

MAN: I'm a retired SEPTA executive, that's the transportation here. But I started at the bottom; I started as a trolley operator and a bus operator. In many instances I've seen police come after minority people for no reason at all. I recall one where I had to restrain a policeman physically from beating a young black man who had done absolutely nothing that I could discern. I've been stopped, too, like you were but, over the course of years, it was according to how I was dressed as to how I was received by the average policeman. If I had on dirty work clothes, I was not treated too favorably. If was dressed in a suit with a tie, I was. I was sir and they said excuse me and what not. But ,the matter of judgment here that we're talking about, seems to me, has to do with the right of assembly which is guaranteed by the First Amendment. And, probable cause, policemen seldom have probable cause to do what they do under your law.

MIGUEL ESTRADA: Well, they do have cause under the law. You may have a separate issue with whether the law should stand, but there is no question that this does not give them probable cause if the law is all right.

With respect to your earlier point, there is no question in my mind that the country has changed quite a great deal in the last 30 or 40 years and that we have somewhat fewer worries now about interracial interactions between members of a white PD and minority members of the public. I don't want to minimize your comment, but the fact remains that that's not the problem that brings us here. We have laws that deal with people who mishandle members of minority groups and, if someone has engaged in unlawful and abusive conduct, we have laws that will vindicate that. What we ought not to do is to give up on the entire enterprise of having laws that govern the conduct of everyone when we, as a people, think that it is a good idea to have those laws. That makes no sense to me.

MARGOT ADLER: I see Harvey raising his hand.

HARVEY GROSSMAN: I think the question is how much discretion do we give police officers. If we allow police officers to have unfettered discretion, if we write laws in such a subjective manner as to allow police officers to impart their own views and values as to what is or is not proper law enforcement, we are more likely to see discriminatory enforcement of the law. That is why the Supreme Court precedence on vague laws requires definiteness. If you pick up the front pages of any paper in America today, you ought to be reading about what's happened in New York City. That is an experiment in grand discretion, in extensive discretion being accorded to police officers in the Street Crimes Unit of Giuliani's police force. And the result is the universal recognition that black and Hispanic residents of the city of New York have been singled out, without cause, for stops, for searches, for pat downs. If you look at what's happening in New Jersey today, there is a front-page story that the attorney general and the governor of the state of New Jersey have recognized that racial profiling has been occurring in their state police force for the last seven or eight years. If you look at what's

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happening in Connecticut, in Maryland where there're targeting blacks on the highway, you know that a reality of life today, in America, is the potential for discriminatory law enforcement. These kinds of order maintenance laws that grant broad discretion to police officers allow that to occur.

MARGOT ADLER: At the same time that many black and Hispanic people in New York feel that way, tourists by the millions are coming to New York, feeling that New York City is safer than it has ever been before and they believe, whether rightly or wrongly, that one of the reasons that that is true is because of the same policing methods that you decry.

HARVEY GROSSMAN: Well, I think that one has to identify, I think, and isolate factors. It's almost impossible to do that, but there is reduced crime all over American today. It's been occurring since 1992 and it happens in places with the worst police departments in America.

MARGOT ADLER: Miguel Estrada, we've heard 45,000 people were arrested in some of these sweeps, under this law, in a three-year period. Shouldn't we be using the police, our judges and jails for more serious crimes?

MIGUEL ESTRADA: We should be using our courts and jails for the crimes that the members of the public who pay the taxes for those services feel will improve their quality of life. And if the people of the City of Chicago think that this is how their money is best spent, they have a right to do that, unless there is something that tells them that they definitely cannot. The second point is that, of course, part of the theory that underlies this effort is the notion that it is better to stop crime before it occurs than to put a member of the public, usually a member of a minority community, in jail for 10 or 20 years after the crime does occur. And, I think, a society reasonably can make the judgement that it is better to do the former than the latter.

MARGOT ADLER: I'd like to ask Harvey Grossman this question. There have been about 200 gang-related murders every year near Chicago, a little more, a little less, don't you think that the right to not be murdered, the right to not be intimidated by a gang member is more important than the right of assembly?

HARVEY GROSSMAN: I think that there are laws on the books that prevent coercing membership in a gang, intimidating people, harassing people, and that those laws ought to be enforced. And when there is high quality law enforcement that's provided in all neighborhoods in Chicago, people will be prosecuted for doing something instead of doing nothing.

MARGOT ADLER: Our time together is coming to an end. I'd like to ask both Harvey Grossman, who represented the plaintiffs in this case, and Miguel Estrada, who supports the law to make their final statements, first, Harvey Grossman.

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HARVEY GROSSMAN: All of the neighborhoods of our cities deserve the full measure of society's resources, not just tactical police officers sweeping at streets. Police do need to enforce those existing laws that prohibit the crimes that the city was initially concerned about when it passed its ordinance. Bu,t social cohesiveness in our neighborhoods, not law enforcement, is what inhibits crime. There is no us, there is no them. They are our children, our brothers, our sisters. Social outreach and inclusion, not law enforcement and exclusion, is the best way to get kids back into our neighborhoods, back into our lives, and back into being productive citizens.

MARGOT ADLER: Thank you, and a closing argument from Miguel Estrada.

MIGUEL ESTRADA: Thank you. The Chicago law is a modest but well conceived experiment that is aimed at giving the law-abiding members of the public back their streets. Those members, until now, have been terrorized into their homes or forced to flee the inner cities. It is an experiment that gets its aim done and accomplished without significantly burdening expressive or any other constitutional freedoms. It is part of the wisdom of our Constitution that it saves, for the people of our country, the right to engage in these sorts of experiments to deal with the problems of the day. And, this is a right that the people of the City of Chicago have a right to exercise and have exercised and should be upheld by the courts.

MARGOT ADLER: Thank you. I want to thank our audience, and our guests, Miguel Estrada, a trial and appellate attorney with the Washington D.C. law firm of Gibson, Dunn and Crutcher and Harvey Grossman, the legal director of the American Civil Liberties Union of Illinois.

And finally, we close tonight's program with this thought. A quote from David Saari's book *Too Much Liberty: Perspectives on Freedom and the American Dream*. He wrote:

> Do we understand the idea of freedom well enough to know with some practical certainty that we are examining the same idea? I think many thoughtful Americans would have a difficult time accepting the idea that they do not understand freedom well. We fought wars to protect and defend it from barbarians and enemies. We all seem to agree that we are in favor of freedom. Our basic documents, the Constitutions, both federal and state, and the Bills of Rights, both federal and state, offered enough guidance to get Americans through 200 years and these documents still stand in daily operation and are tested in courts by reasonably well educated people. Yet there is solid evidence that America is too free and not free enough. How could such a basic contradiction continue to exist in the minds of very sincere, intelligent, and well-meaning people if something fundamental is not missing from public discourse?

I'm Margot Adler. Thanks for listening to Justice Talking.
(Children reciting "We, the people...")

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October 23, 2001

Honorable Patrick Leahy
Chairman
Subcommittee on Antitrust, Business Rights and Competition
Subcommittee on Constitution, Federalism and Property Rights
433 Russell Senate Office Building
United States Senate
Washington, DC 20510

Dear Senator Leahy:

On May 9, 2001, President Bush announced his first 11 nominations to the United States Courts of Appeals at a ceremony in the White House's East Room. One of those nominees was Miguel Estrada, a judicial nominee for the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit Court).

Because the D.C. Circuit Court handles so many critical constitutional and administrative issues involving the federal government, it is often referred to as the second most historically important federal court in the Nation, after the Supreme Court. Indeed, as a sign of the Court's importance, three former judges from the D.C. Circuit are now on the Supreme Court: Justices Scalia, Thomas, and Ginsburg.

No Hispanic has ever served as a judge on the D.C. Circuit Court. Accepting the common description of the D.C. Circuit Court as the Nation's second most important federal court, Miguel Estrada will, if confirmed, unofficially become the highest-ranking Hispanic federal judge in American history. Estrada's nomination is therefore a historic event and represents one more important step in the breaking down of barriers that in the past made it difficult, if not impossible, for Hispanic lawyers to become judges.

Despite the historic significance of Estrada's nomination, over five months have now passed since the nomination, and the Senate Judiciary Committee has inexplicably failed to afford Estrada a hearing.

As a twenty-year District-based Hispanic business owner and the first Latina Chair of the DC Chamber of Commerce and the former Chair of the Greater Washington Ibero-American Chamber of Commerce, I strongly support Estrada's confirmation.

Estrada's qualifications are impeccable. He received a unanimous "well qualified" rating from the American Bar Association, which is the ABA's highest possible rating. Estrada's background and experience demonstrate why he received that "well qualified" rating -- and why he will be a superb judge and a credit to the Hispanic community.

Estrada was born in Tegucigalpa, Honduras, in 1961 and came to the United States as a teenager speaking virtually no English. In 1979, Estrada enrolled at Columbia College where he later graduated *magna cum laude*. Estrada then entered Harvard Law School where he served as an officer on the editorial board of the *Harvard Law Review* and in 1986 graduated *magna cum laude*.

After graduation from Harvard, Estrada earned a position as a law clerk for Judge Amalya L. Kearse, an influential and well-known judge on the U.S. Court of Appeals for the Second Circuit in New York. Then in 1988, Estrada was selected to serve as a law clerk to Supreme Court Justice Anthony M. Kennedy. A Supreme Court clerkship is one of the most prestigious positions a young lawyer can obtain. Estrada is one of only a handful of Hispanics ever to serve as a Supreme Court law clerk.

After clerking for Justice Kennedy, Estrada joined the U.S. Attorney's Office in Manhattan as an Assistant United States Attorney. He soon became Deputy Chief of the Appellate Section of the U.S. Attorney's Office. While at the U.S. Attorney's Office, Estrada tried approximately 10 cases in federal district court and argued 7 appeals on behalf of the United States before the U.S. Court of Appeals for the Second Circuit.

In 1992, Estrada returned to Washington where he served as Assistant to the Solicitor General at the U.S. Justice Department. The Office of Solicitor General represents the United States before the Supreme Court. Estrada served in that office from 1992 to 1997, in both the Bush and the Clinton Administrations. Estrada has now argued 15 cases before the U.S. Supreme Court, which is believed to be the most ever by a Hispanic lawyer. Justices of all ideologies on the Supreme Court have praised Estrada for his extraordinary intellect and the exquisite quality of his briefs and oral arguments.

In 1997, Estrada left the federal government and joined the Washington, D.C. law firm of Gibson Dunn & Crutcher. He is currently a partner at that firm. In private practice, Estrada has represented a variety of the firm's institutional clients in complex civil and criminal litigation, at the pre-trial, trial, and appellate stages. Estrada also has performed significant pro bono work. For example, Estrada represented pro bono an indigent death row defendant in a difficult capital murder case before the Supreme Court.

Given Estrada's superb qualifications and experience, it comes as no surprise that his nomination is supported by many prominent Democrat lawyers, including: Ron Klain, who was counsel to Vice President Gore; Bob Litt, who was head of the Department of Justice's Criminal Division under President Clinton; and Randy Moss, who was Assistant Attorney General for the Office of Legal Counsel under President Clinton.

As noted above, Estrada received a unanimous "well-qualified" rating from the American Bar Association. That is a particularly extraordinary rating given Estrada's forty years of age, but it accurately reflects his legal accomplishments and skill.

We unanimously endorse this nominee and strongly urge you to move on the confirmation of Miguel Estrada. As a judge, he will be a credit to the federal judiciary, the President, Hispanics, and all Americans.

Sincerely,

Elizabeth Lisboa-Farrow
Chair, Board of Directors, USHCC

cc: Able Guerra
Associate Director,
Office of the Public Liaison

GeorgeHerrera
President& CEO

September 9, 2002

The Honorable Senator Orrin G. Hatch
Senate Judiciary Committee
Fax # 202-224-6331

Dear Senator Hatch:

On behalf of the United States Hispanic Chamber of Commerce, I am writing to convey our support for Miguel A. Estrada for the position of United States Circuit Judge for the District of Columbia.

Mr. Estrada, who came to the United States from his native Honduras at age 17, has an impressive background. He is currently a partner with Gibson, Dunn & Crutcher LLP, where he is a member of the firm's Appellate Constitutional Law Practice Group and its Business Crimes and Investigations Practice Group and has argued 15 cases before the U. S. Supreme Court.

Mr. Estrada has spent most of his professional career in public service. He served as Assistant to the Solicitor General of the United States and as Assistant U.S. Attorney and Deputy Chief of the Appellate Section in the U.S. Attorney's Office for the Southern District of New York.

Mr. Estrada served as a law clerk for the Honorable Anthony M. Kennedy, Supreme Court of the United States. He attended Harvard Law School, where he was editor of the Harvard Law Review and received a J.D. degree magna cum laude in 1986 and graduated from Columbia University in New York with an A.B. magna cum laude.

If confirmed, Mr. Estrada would be the first Hispanic to sit on the D.C. Circuit Court. The confirmation of this historic appointment will help open doors for more Hispanic judges.

The United States Hispanic Chamber of Commerce strongly supports Miguel A. Estrada and urges the Senate Judiciary Committee to schedule a hearing and support the nomination of this outstanding Hispanic to the U.S. Court of Appeals for the District of Columbia.

Sincerely,

George Herrera

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June 25, 2002

The Honorable Patrick J. Leahy
Chairman, Senate Judiciary Committee
433 Senate Russell Office Building
Washington, DC 20510

Dear Mr. Chairman:

The U.S Hispanic Contractors Association strongly supports **Mr. Miguel Estrada for the position of United States Circuit Judge for the District of Columbia.** We urge the Senate Judiciary Committee to schedule a hearing that will afford this worthy and highly respected member of our community his due process.

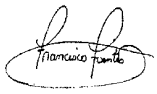
It can be best said that Mr. Estrada is the epitome of the American Dream. From his humble journey from Honduras at the tender age of seventeen to graduating Magna Cum Laude from Harvard Law School, Mr. Estrada is a testament of discipline, intelligence, and hard work. His accomplishments are America's accomplishments.

The time has come in our history to place such a distinguished and highly respected leader as Mr. Miguel Estrada in the position of U.S. Circuit Judge. Mr. Estrada has proven himself and his expertise in the matters of law by successfully serving as Law clerk to the Honorable Anthony M. Kennedy of the U. S. Supreme Court from 1988-1989, and to the Honorable Amalya L. Kearse of the U. S. Court of Appeals for the Second Circuit from 1986-1987.

Our association believes wholeheartedly, after much research and numerous interviews, that Mr. Miguel Estrada would perform his duties according to the letter of the law. We feel confident that Mr. Estrada would never deviate from the "word of the Law" to serve any personal or political agenda.

It is with great pride and honor that the U.SHispanic Contractors Association supports Mr. Miguel Estrada for a position on the United States Court of Appeals for the District of Columbia.

Respectfully,



Frank Fuentes,
HCA, Chairman

REVIEW & OUTLOOK

One Helluva Bender

Miguel Estrada appears today before the Senate Judiciary Committee, 512 days after President Bush nominated him for a seat on the D.C. Circuit Court of Appeals. This means that Senator Pat Leahy will resume adding to his legacy of turning a Senate committee into the kind of mud pit not seen for about 50 years.

Let Miguel Estrada confront his accuser.

Mr. Leahy has served as the ringmaster while a group of liberal special-interest lobbies pounced on and bloodied a succession of Bush judicial nominees. But the attacks on Charles Pickering, Priscilla Owen, D. Brooks Smith and Michael McConnell were all mere warm-ups for today's assault on Miguel Estrada, whom the liberal Democrats on Judiciary perceive as the Bush nominee most worth defeating. Senator Charles Schumer got in some whipwork Tuesday when he chaired a hearing on the importance of "ideology" in the D.C. Circuit.

Mr. Estrada's sin is not merely that he's conservative but that he's also young and brilliant —a "Hispanic Clarence Thomas," charge his detractors. Translation: The Democrats will do whatever it takes to prevent this President from sending the first Hispanic in the direction of the Supreme Court. But figuring out how to demolish Mr. Estrada presents a difficult dilemma for Democrats for two reasons.

First, his record as an Assistant Solicitor General from 1992-97. It's hard to paint someone who spent five years in the Clinton Administration as a right-wing threat. Nor does it help that a number of prominent Democrats—former Solicitor General Seth Waxman, Gore adviser Ron Klain—vie to outdo Republicans singing his praises.

Then there is the absence of an Estrada paper trail. Unlike nominees Owen, Smith and Pickering, who were serving on lower courts at the time of their nominations, or Mr. McConnell, who is a professor, Mr. Estrada doesn't have a long list of publications for the Democrats to dissect and distort. That was the reason for Mr. Leahy's obviously preposterous request last spring for the Justice Department to turn over all of Mr. Estrada's private legal memos from his tenure in the Solicitor General's office. The Justice Department said no to this unprecedented fishing expedition.

It's also the reason that much of the Democrats' case against Mr. Estrada now rests on the accusations of a single critic: Paul Bender, currently a professor at Arizona State and previously Mr. Estrada's superior for part of the time he worked at the Solicitor General's office.

Mr. Bender has said publicly that Mr. Estrada's conservative viewpoints would taint his work on the bench. He told the Washington Post earlier this year that Mr. Estrada "lacks the judgment and he is too much of an ideologue to be an appeals court judge." Even the American Bar Association, after listening to these accusations, awarded Mr. Estrada its highest rating of unanimously well-qualified.

Needless to say, none of this is going to stop Ralph Neas and the gang from chanting the Bender quotation ad nauseam. In the anti-Estrada material churned out by NOW, People for the American Way, Alliance for Justice and other liberal special-interest groups, Mr. Bender's opinion is accorded the kind of reverence usually reserved for Learned Hand.

So it's useful to contrast Mr. Bender's current opinion of Miguel Estrada's capabilities with his view of his work back in 1994-96, during those supervisory years. Start with the fact that the two performance reviews that bear the Bender signature both carry a rating of "outstanding" in every job category. Among Mr. Bender's comments on Mr. Estrada's work are the following:

"All dealings, oral and written, with the courts, clients, and others are conducted in a diplomatic, cooperative, and candid manner."

"Is constantly sought for advice and counsel. Inspires co-workers by example."

"Consistently flexible and creative in the performance of duties."

". . . states the operative facts and applicable law . . . with concern for fairness, clarity, simplicity, and conciseness."

". . . displays an exceptional understanding of the major factual and legal issues involved in appellate effort."

The Judiciary Committee doesn't normally call witnesses for hearings on appeals court nominees. But we suggest they make an exception in Mr. Estrada's case and ask Mr. Bender to explain why he has suddenly reversed himself and decided Mr. Estrada is an "ideologue" with "unbalanced" judgment. As Senator Joe Biden, then Chairman, said during Clarence Thomas's hearings, "The nominee has the right to be confronted by his accuser . . . This is not a star chamber."

But then again, for the "Hispanic Clarence Thomas," maybe it's been revived

STATEMENT TO THE JUDICIARY COMMITTEE ON THE NOMINATION
OF MIGUEL ESTRADA TO SERVE AS A JUDGE FOR THE UNITED STATES
COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT
SEPTEMBER 25, 2002

Chairman Leahy, and my other distinguished colleagues on the Senate's Judiciary Committee, during the 107th Congress, I have had the pleasure of introducing to you two well-qualified Virginians to serve on federal courts: Judge Roger Gregory and Judge Henry Hudson.

Judge Gregory now serves on the United States Court of Appeals for the Fourth Circuit. Judge Hudson now serves on the United States District Court for the Eastern District of Virginia.

I thank the Committee for confirming both of these nominees. Judge Gregory and Judge Hudson are both serving as fine jurists in Virginia.

Today, I am pleased to introduce to you another well qualified Virginian who has been nominated for a federal judgeship - Miguel Estrada. Mr. Estrada has been nominated to serve as a Judge on the United States Court of Appeals for the District of Columbia.

This is a court that I am most familiar with. Following my graduation from the University of Virginia Law School in 1953, I was privileged to serve as a law clerk to Judge E. Barrett Prettyman, on the United States Court of Appeals for the D.C. Circuit. Judge Prettyman later became Chief Judge of this important court.

As a result of the profound respect so many people, including myself, had for Judge Prettyman, I had the honor several years ago of sponsoring , and with the help of others, passing legislation to name the federal courthouse in DC after Judge Prettyman.

Now, almost 48 years after having served as a law clerk for Judge Prettyman on this federal appeals court, I am pleased to be here today to support the nomination of Miguel Estrada to the same court on which Judge Prettyman once served.

Mr. Estrada has received a ranking of "Well Qualified" by the American Bar Association. And, in my view, his record indicates that he will serve as an excellent jurist.

Mr. Estrada's resume is an impressive one. Born in Honduras, Miguel Estrada came to the United States at the age of 17. At the time, he was able to speak only a little English. But, just 5 years after he came to the United States, he graduated from Columbia College with Phi Beta Kappa honors.

Three years after he graduated from Columbia, Mr. Estrada graduated from Harvard Law School where he was an editor of the Harvard Law Review.

Mr. Estrada then went onto serve as a law clerk to a Judge on the United States Court of Appeals for the 2nd Circuit and as a law clerk to Judge Kennedy on the United States Supreme Court.

After his clerkships, Mr. Estrada worked as an Assistant United States Attorney, as an assistant to the Solicitor General in the Department of Justice, and in private practice for two prestigious law firms.

Throughout his career, Mr. Estrada has prosecuted numerous cases before federal district courts and federal appeals courts. And, he has argued 15 cases before the United States Supreme Court.

Without a doubt, Mr. Estrada's legal credentials make him well qualified for the position to which he was nominated. I am thankful for his willingness to resume his public service, and I am confident that he would serve as an excellent jurist.

I urge my colleagues on the Committee to support his nomination.

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September 17, 2001

Via Hand Delivery

Chairman Patrick J. Leahy
Senate Judiciary Committee
104 Hart Senate Office Building
Washington, DC 20510-0302

Senator Orrin G. Hatch
Senate Judiciary Committee
433 Russell Senate Office Building
Washington, DC 20510-4402

Re: Miguel Estrada

Dear Chairman Leahy and Senator Hatch:

During much of the year in which I served as Principal Deputy Solicitor General (1996-1997), Miguel Estrada and I were colleagues. I understand from published reports that my predecessor, Paul Bender, has criticized Mr. Estrada's professional conduct while in the Solicitor General's Office. I do not share those criticisms at all. During the time Mr. Estrada and I worked together, he was a model of professionalism and competence. In no way did I ever discern that the recommendations Mr. Estrada made or the analyses he propounded were colored in any way by his personal views—or indeed that they reflected any consideration other than the long-term interests of the United States. I greatly enjoyed working with Miguel, profited from our interactions, and was genuinely sorry when he decided to leave the office in favor of private practice.

Much has been said about Mr. Estrada's views regarding policy and social issues. I have never had a conversation with Mr. Estrada about either. To my mind—and I believe Mr. Estrada's as well—those views were entirely irrelevant to the work we had before us in the Solicitor General's office. I have great respect both for Mr. Estrada's intellect and for his integrity.

Yours sincerely,

Seth P. Waxman

NOMINATION OF ROSEMARY MAYERS COLLYER, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA; MARK EVERETT FULLER, NOMINEE TO BE DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF ALABAMA; ROBERT BYRON KUGLER, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY; RONALD BRUCE LEIGHTON, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF WASHINGTON; JOSE LUIS LINARES, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY; WILLIAM EDWARD SMITH, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF RHODE ISLAND; AND ROBERT GARY KLAUSNER, NOMINEE TO BE DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA

MONDAY, OCTOBER 7, 2002

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Committee met, Pursuant to notice, at 2:10 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Patrick Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy and Sessions.

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

Chairman LEAHY. Good afternoon. I am glad to see so many here. I thought before we began, before I made an opening statement, we have seven judges nominated by President Bush on the list. We have distinguished members of the Senate who wish to make opening statements, and following our normal tradition, we will do that, beginning with Senator Shelby, who is the most senior person here.

Senator Shelby, I know that you have talked with me about Mr. Fuller, both you and Senator Sessions have, so now this is our chance to find out if he is as good as you keep telling me he is.

[Laughter.]

Chairman LEAHY. He is sitting back there saying, "I hope so." [Laughter.]

Go ahead.

PRESENTATION OF MARK EVERETT FULLER, NOMINEE TO BE DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF ALABAMA BY HON. RICHARD SHELBY, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SHELBY. Mr. Chairman, I want to thank you and I also want to thank Senator Sessions. Senator Hatch is not here, but he is the ranking Republican, former chairman, and I want to thank him, too, for holding this hearing. Mr. Chairman, I want to especially thank you for coming back, because I know I talked with you a week or so ago and you had some things that you could have been doing in your home State of Vermont today and you had to put those off, so again, I am in your debt in that regard.

Mr. Chairman, I am here and I am very pleased to recommend Mark Fuller, who is here with us with his family today, for the Federal District Court for the Middle District of Alabama. He is currently the District Attorney and he is a practiced litigator in most criminal and civil matters. I believe that Mark Fuller has the dedication, the experience, and the judgment, Mr. Chairman, that is necessary to make an excellent Federal judge and will make a strong addition to the Middle District Court.

In addition, filling this vacancy in the Middle District of Alabama is very important at this time considering the workload there. I know it is late in the session, Mr. Chairman, but if you can get him through the committee and get him through the floor, you would have more than a thank you for me.

I recommend him without any reservation and I am pleased to be here with him to introduce him, along with Senator Sessions, who is a member of the committee.

Chairman LEAHY. Thank you very much, Senator Shelby.

Senator Sessions?

PRESENTATION OF MARK EVERETT FULLER, NOMINEE TO BE DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF ALABAMA BY HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SESSIONS. Thank you, Mr. Chairman. I, too, want to express my appreciation for your assistance in moving this nominee. Although we fuss about this or that nominee, we have had good success with Alabama District Judges. This will be the third Alabama District Judge that Senator Shelby and I have supported that will be confirmed and I am hopeful that we can do this before we recess. I thank you for taking time out of your schedule to move this nomination.

Mark Fuller is an outstanding Alabama lawyer. In my view, he has the necessary experience, temperament, and legal knowledge to quality for the Middle District of Alabama. It is a busy court, prob-

ably one of the top 24 courts in America today out of 500 in caseload per judge. So we do need to move this judgeship forward.

Let me just say a few words. He is a home-grown product, born and raised in Enterprise, Alabama, one of the great towns in the State. He graduated from the University of Alabama School of Law in 1985 and then returned home to practice with one of the truly outstanding litigation firms, Cassady, Fuller and Marsh.

After a successful stint in private practice, concentrating on corporate and insurance defense but also practicing in the areas of domestic relations and real estate, Mr. Fuller joined the District Attorney's office as Chief Assistant District Attorney. Since 1996, he has represented the people of Pike and Coffee Counties in the prosecution of all criminal matters, and he is currently the District Attorney for that office, having been appointed to the position in 1997 and elected to a 6-year term in 1998.

Mr. Fuller has been involved in over 5,000 cases and this experience has been balanced, with 56 percent being criminal and 44 percent civil. Even though his current position as District Attorney places additional emphasis on administration, he knows what it is like to be in the trenches because he continues to be involved in jury trials. This practical extensive trial experience has prepared Mr. Fuller for success on the Federal bench. It will allow him to hit the ground running, having the administrative knowledge that will allow him to manage the caseload as a Federal judge and the litigation knowledge that will help him understand the issues and problems faced by the lawyers, witnesses, and parties who appear before him.

He has been involved in the community substantially, being a founding member of SAVE, Students Against Violence in Education, and the Coffee County Teen Court, which is an innovative way to get teenagers involved in the community when dealing with juvenile crime. He has served on the Board of Directors of the Coffee County Habitat for Humanity for 4 years and has served as a member of FACE, Families and Child Educational Services, from 1997 to present.

His reputation as a lawyer is outstanding. In addition to being rated "qualified" by the ABA, he has an "AV" rating in Martindale-Hubbell. This indicates very high to preeminent legal ability and ethical standards. The people who know Mr. Fuller, including lawyers and judges, have seen him practice. They think very highly of him. He has served as Chairman of a Character and Fitness Committee for the Alabama State Bar, which is an important office and reflects the respect the bar has for him.

He has an outstanding academic career, including a degree in chemical engineering from the fine engineering school at the University of Alabama. As I mentioned earlier, he got his law degree at the University of Alabama, one of the top 50 law schools in America.

I believe his integrity, experience, and commitment to the rule of law are outstanding, Mr. Chairman, and I am pleased to join with Senator Shelby, who also knows Mr. Fuller well, who is strongly supportive of him, and I appreciate Senator Shelby's advice on this nomination. I thank you, Mr. Chairman.

Chairman LEAHY. Thank you very much.

I should also note before we go to Senator Chafee that we have statements by Senator Torricelli and Senator Corzine for Mr. Kugler. They were detained. Of course, as you probably know, the Supreme Court has now refused to take up the New Jersey Senate case, which is something that most assumed that they would not, so whether they will be here during this hearing or not, I do not know.

[The prepared statements of Senators Torricelli and Corzine appear as submissions for the record.]

Chairman LEAHY. Senator Feinstein and Senator Cantwell also had statements that they wished to introduce. A lot of people are getting delayed getting in here Monday afternoon from wherever they are coming. Those would be included in the record.

[The prepared statements of Senators Feinstein and Cantwell appears as submissions for the record.]

Chairman LEAHY. I know that Eleanor Holmes Norton planned to be here to introduce Rosemary Collyer, but she is now involved in the managing of a bill on the floor of the House, a schedule that she does not control.

I should note, for Mr. Smith, William Edward Smith, that Senator Chafee and I are both in the same building, in the Russell Senate Office Building, and we usually walk over to the chamber for a vote.

Incidentally, Senator Shelby, I know you have an Intelligence Committee matter. If you have to leave, please feel free. I do not mean to be holding you here.

Senator SHELBY. Thank you, Mr. Chairman.

Chairman LEAHY. Senator Chafee has, I do not know if it is coincidence or not, but Senator Chafee seems to have noted exactly what time I walk over for a vote and walk back, and he would come up and keep whispering Mr. Smith's name in my ear until I said, I think there is a hint here, and if we could possibly get him on and if I could rearrange my schedule to be back here, we would, and we have. Senator Chafee, I am delighted to have you here. I am delighted to serve with you.

PRESENTATION OF WILLIAM E. SMITH, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF RHODE ISLAND BY HON. LINCOLN CHAFEE, A U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator CHAFEE. Thank you, Mr. Chairman. I enjoy our walks over, to take a break from the subway and enjoy the outdoors before our votes.

I am here this afternoon to introduce the President's nominee for the U.S. District Court for the District of Rhode Island, William E. Smith. I have known Will Smith professionally and personally for about 10 years and I know that he will make a fine judge.

Will Smith was born and raised in Boise, Idaho. He graduated from Georgetown University, where he was a George F. Baker Scholar, and Georgetown Law Center, where he graduated cum laude and was a staff member of the American Criminal Law Review. After law school, Will and his wife Christine left Washington, D.C., and began a law practice and started a family, and they made

the wise decision to settle in Rhode Island, where Christine was raised.

Will began his career at Edwards and Angell, Rhode Island's largest and oldest continuing law firm. This is the firm, incidentally, where my father, Jack Reed, and Judge Ronald Lagueux, the judge whom Will has been nominated to replace, all practiced. In 1994, Will was selected partner.

Will Smith is widely regarded as one of the leading labor lawyers in Rhode Island. He was respected by his peers, judges, arbitrators, but most importantly, his adversaries. He is respected for his skill, integrity, high ethical standards, and work ethic.

I first came to know Will Smith as an attorney when I was elected Mayor of Warwick, our State's second-largest city, and selected Will and his firm to act as the City Solicitor after a competitive process. I had the opportunity not only to consult with Will on legal matters nearly every day, but to watch him in court, trying cases and arguing appeals. I know firsthand the kind of lawyer Will Smith is because our city benefited from his skill, creativity, and tenacity.

You have seen the many letters that have been written on Will's behalf. I will not repeat what these attorneys, community leaders, and clients have said about him. Union lawyers and even union leaders who have been on the other side of him in cases have written glowingly of his integrity and ability. They know that he will give fair treatment to every person who comes before the court.

He is also very active in civic endeavors. He has been a member of the board of Rhode Island Community Food Bank, the largest anti-hunger agency in Rhode Island, for 9 years and served as Chairman of the Board. He is currently Chairman of the Diocese of Providence Catholic School Board, which oversees 50 elementary schools and ten high schools.

Mr. Chairman, Will Smith is just the kind of person that we need on our Federal Courts. He possesses intelligence, integrity, and toughness, tempered with good humor and compassion. He puts his community and public service above personal gain. Above all, he is fair and honorable.

I thank the committee for scheduling this hearing and I urge his swift confirmation. Thank you, Mr. Chairman.

Chairman LEAHY. I thank you, Senator Chafee. I also know that you have all kinds of things scheduled and please feel free to leave. We will try to be expeditious with your nominee.

If somebody could just reset the table, I am going to soon welcome all the nominees up here. You may be interested to know, this is the 26th hearing for judicial nominees since I became chairman of the full committee in July of last year, and the seven that we will consider here today will bring to 103 the number of District and Circuit Court nominees we have held hearings on in less than 15 months.

I do not know if there is anybody here from the administration, because they are not aware of this, but one of you will be the 100th judicial nominee for whom the Senate Judiciary Committee has held a hearing since we reorganized last July. I mention this because there are some that have not been heard, and I understand that, but doing 100 in this short time is pretty significant, in less

than 15 months. I know of no time certainly—well, take a time, for instance, of six-and-a-half years before I became chairman. There was nothing equal to this. There certainly was not in the 15 months before I became chairman or, I guess, the 30 months before I became chairman. I think during the Republican-controlled Senate, for example, it took 33 months to hold hearings for 100 of President Clinton's, perhaps a coincidence, but there it is.

We will hear from Rosemary Collyer, nominated to the District Court in Washington; Mark Fuller, nominated to the Middle District of Alabama; Judge Robert Gary Klausner, nominated to the Central District of California; Magistrate Judge Robert Kugler, nominated to the District of New Jersey; Ronald Leighton, nominated to the Western District of Washington; Judge Jose Linares, nominated to the District of New Jersey; and William Smith, nominated to the District of Rhode Island.

I also might mention, in the Circuit Court nominees, we have held 20 during that time. It used to be an average of seven a year. We did 20 in 15 months and I hope we can do more. I will not go into all these numbers. I will put them in the record.

Actually, with today's hearings, we will have held hearings for 103 of the 110 eligible judicial nominees. That is those with complete files. So we are at about 94 percent, and the President's term is not over, so he has plenty of time to get the rest of them in.

I do not know why I happened to think about this, speaking of the President's record in this regard, but if somebody owned a baseball team, for example, they would be delighted to have a win ratio of that nature. Why that pops in my mind, I do not know.

I wonder if the nominees would be willing to come up. You can see where your names are, Ms. Collyer, Mr. Fuller, Mr. Kugler, Mr. Leighton, Mr. Linares, Mr. Smith, and Mr. Klausner. If you could all stand and raise your right hand, please.

Do you solemnly swear the testimony you will give in this matter today will be the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. COLLYER. I do.

Mr. FULLER. I do.

Judge KUGLER. I do.

Mr. LEIGHTON. I do.

Judge LINARES. I do.

Mr. SMITH. I do.

Judge KLAUSNER. I do.

Chairman LEAHY. Let the record show that all responded in the affirmative.

Before we begin, one, I am delighted to have you all here and I thank you for coming on relatively short notice, but if all goes well, you will have a lifetime to rearrange your schedule after that and it should be worth it.

Ms. Collyer, do you have friends or family here that you would like to introduce? I try to do this at the beginning of each hearing so that some day when you go back in your archives or whatever, you can note on the record just who was here.

STATEMENT OF ROSEMARY MAYERS COLLYER, OF MARYLAND, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA

Ms. COLLYER. Thank you very much, Senator Leahy, Mr. Chairman. Yes, my husband, Phil Collyer, is here with me, and our friends, Ched and Jenny Bradley and their daughter, Sarah, as well as some of my colleagues from Crowell and Moring. Unable to be here is my son, Tim Collyer. Thank you.

Chairman LEAHY. Would they please stand so we can all see them. It is good to have you here, and we will put all the names appropriately in the record. Thank you.

Mr. Fuller?

STATEMENT OF MARK EVERETT FULLER, OF ALABAMA, NOMINEE TO BE DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF ALABAMA

Mr. FULLER. Thank you, Mr. Chairman. I would like to introduce my wife, Lisa Fuller; my uncle, Dr. Theron Fuller, and our good friends, Dr. Jim Reese and his wife, Marci. Unable to be here are my daughters, Kailin and Meredith Fuller; my son, Everett Fuller; and my mother and father, Rebecca and Kenneth Fuller.

Chairman LEAHY. Thank you, and thank you very much for being here.

Judge Kugler?

STATEMENT OF ROBERT BYRON KUGLER, OF NEW JERSEY, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY

Judge KUGLER. My wife, Mary Colalillo, is here; my secretary, Marcy Golub; my law clerk, Amy Montemarano; and two former law clerks of mine have come today, Mike Kibler and Yolanda Goettsch. Unable to be here is my son, Douglas Kugler. I would like to introduce them. Thank you.

Chairman LEAHY. Thank you very much for being here.

Mr. Leighton?

STATEMENT OF RONALD BRUCE LEIGHTON, OF WASHINGTON, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF WASHINGTON

Mr. LEIGHTON. Mr. Chairman, here with me is my wife, Sally. Our two sons, Ben and Joe, were not able to make it.

Chairman LEAHY. How old are they?

Mr. LEIGHTON. Fourteen and 17.

Chairman LEAHY. They are probably tied up with school.

Mr. LEIGHTON. Football practice.

[Laughter.]

Chairman LEAHY. Football practice. It is that time of year. You have already got Senator Sessions' vote on that answer.

[Laughter.]

Judge Linares?

STATEMENT OF JOSE LUIS LINARES, OF NEW JERSEY, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY

Judge LINARES. Thank you for the opportunity to be here. I would like to introduce my wife, Gail, who is here with me today; my son, Joseph, who is 18 and a sophomore at Villanova; my daughter, Megan, the apple of my eyes; my little guy, Eric. I would also like to introduce my dad, Jose Luis Linares, Senior, who is here, and last, I also would like to introduce my uncle, Rafael Tejada, who is here on a special visa from Cuba to see this hearing today.

Chairman LEAHY. Fantastic.

Judge LINARES. Do you want to stand up, please?

Chairman LEAHY. We welcome you.

Judge LINARES. Mr. Chairman, at the risk of scaring a few folks, I do have an awful lot of family members here. I am just going to introduce them in mass, if they would stand up. I have the rest of my brothers, Luis Alberto Linares, Luis Arturo Linares, Luis Manuel Linares, and Marco Linares; my nieces, Luanne, Colleen, and Brittany Linares; my nephews, Artie and Ryan Linares; as well as my father-in-law, Ronald Blaha. That is half of the gallery back there.

[Laughter.]

Chairman LEAHY. You probably filled up Amtrak coming down here.

Judge LINARES. Amtrak was happy.

Chairman LEAHY. Amtrak was happy.

[Laughter.]

Afterwards, the staff will check with you to get all their names and make sure they are in here. Where in Cuba is your uncle from?

Judge LINARES. He is from Havana. It is a small town outside of Havana called Capdevila.

Chairman LEAHY. I have been there.

Judge LINARES. Is that so?

Chairman LEAHY. I have. That is why I asked. My wife is a nurse and we went down and traveled around some of the medical facilities in Cuba and did a lot of photography and went out in some of the areas around there. At that time of the year, it was very nice weather.

Judge LINARES. That is where I spent the first 12 years of my life, as well. Thank you.

Chairman LEAHY. You know the waterfront there. You know the waterfront in the Havana and you know the area, as well, then.

Mr. Smith?

STATEMENT OF WILLIAM EDWARD SMITH, OF RHODE ISLAND, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF RHODE ISLAND

Mr. SMITH. Thank you, Mr. Chairman, and thank you for having this hearing. With me is my wife, Christine; my daughter, Katie; and my daughter, Allison. Katie is 14 and Allison is nine. I would just like to acknowledge for the record my parents, who could not be here but may be listening to this hearing through the computer. They live in Idaho and my father is a retired State court trial judge

who has been a great inspiration to me. I would just like to acknowledge them for the record, Eileen and Walter Smith.

Chairman LEAHY. I bet they must be very proud.

Mr. SMITH. Yes, sir.

Chairman LEAHY. I remember my parents were fortunately with me the first few times I was sworn into the Senate, and I remember their pride in seeing that. It is always, I think, you are more proud of your children. I remember the day I stood in the Vermont Supreme Court and saw my oldest son get admitted to the bar. I found it probably a greater thrill than the day I got admitted to the bar, and that was a thrilling day for me.

Judge Klausner?

STATEMENT OF ROBERT GARY KLAUSNER, OF CALIFORNIA, NOMINEE TO BE DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA

Judge KLAUSNER. Mr. Chairman, thank you very much for having us here today. I would like to introduce my wife, my better half, Linda Klausner. Unfortunately, because of the time constraints and distance, our five children were not able to make it. One, I thought could make it today because he is in his last year of medical school at Georgetown, but the hospital would not let him off today. My children are Julie Bigelow, Rob Klausner, Kim Buckmaster and her husband David Buckmaster, Brian Klausner, and Scott Klausner.

Chairman LEAHY. Well, you know what we will do? We will get all their names and have them all referenced in the record, and I will do that with everybody here.

When you spoke of your daughter as being the apple of your eye, my wife and I have one daughter. It was once remarked that she is able to twist her father around her little finger and my response was, it is not so. It is just that everything she has ever asked for has been so reasonable.

[Laughter.]

Chairman LEAHY. I will go back to you, Ms. Collyer. You served as a precinct committeewoman for the Republican Party and appointed by President Reagan, as I understand, to the NLRB and the Federal Mine Safety and Health Review Commission, as have other nominees in other such positions. You can go into these positions and take party positions, obviously, as one would be a precinct committeewoman for the Republican Party. I fully expect you to, just as though you were a precinct committeewoman for the Democratic Party, to take your party's position.

But on the bench it is different, and the question I always ask myself before I vote on a nominee, can I be assured that if I walked into that nominee's court that it would make no difference what my color was, what my religion was, what my political affiliation was, whether I was plaintiff or defendant, whether I was rich or poor, and that whatever the political or philosophical goals of the nominee had been prior to going on the bench, that he or she would set that aside and realize the value of the lifetime appointment is that everybody has to be treated the same.

Are you convinced you can do that?

Ms. COLLYER. Thank you, Mr. Chairman, for the opportunity to respond to that question. I believe that I can do that and I think that my prior opportunities for public service have demonstrated that.

I was, indeed, a precinct committeewoman for the Republican Party back in the early 1980's and quite proud of my participation in that. But in both of my prior positions as Chairman of the Mine Safety and Health Review Commission and as General Counsel at the NLRB, I needed to take an entirely different approach to the job, which is what I did, and I feel very lucky that coming out of each of those positions, people who appeared before me and worked with me have been very supportive of this nomination, which encourages me to the fact that I was trying to be exactly as you described, fair, balanced, and not partial for the reasons that you described.

So I feel that I was not only trying, but was successful in that effort, and I can commit to you that if I am confirmed by the Senate, I will approach my duties as a District Court Judge with the same level of balance and fairness and high ethics.

Chairman LEAHY. Could you tell me, because you know yourself in your civil litigation, when you go into a courtroom, you carry enough burden having to win, or trying to win your client's case and all, but you do not want to have to win the judge, too. I realize this can cut both ways. That is why I raise that, and it is something I think that a judge has to ask themselves when they come forward.

Those of us in elective office and partisan elective office have a joy certainly on certain political issues to be able to take a party position or something like that, and that is fine and fully expected and is right, although the number of times that Senator Sessions and I have ended up voting for the same thing, we figure out that back home, one of us is in trouble.

[Laughter.]

Chairman LEAHY. Either it is a very good piece of legislation or one of us did not understand it.

[Laughter.]

Chairman LEAHY. And there are, of course, those areas. But as a judge, you do not even have that luxury. You have got to be straightforward.

Incidentally, most of your experience has been in civil litigation, and, of course, where you are going, you are going to have, fortunately or unfortunately, you are going to have a big criminal docket. Our Federal Courts are getting more and more that way every day. We wish it was not that way, but it is. How do you do that? How do you move? How do you prepare yourself to do the criminal docket?

Ms. COLLYER. Well, Mr. Chairman, when I was Chairman of the Mine Commission, I was doing administrative adjudication as an administrative court of appeals, if you will. When I was general counsel, I was a prosecutor. I was the nationwide prosecutor of unfair labor practices. In private practice, I have been an advocate.

If I am confirmed and serve on the District Court, I will be the trial judge for both civil and criminal, as you point out. To prepare for the criminal side of this bench, which is quite active, I have

spent some time in the courts already, in these courts, observing the judges as they carry out their duties, preparing in terms of procedure and other issues of law that appear before these courts, this court, and working with the chief judge and the other judges on the bench to be prepared in order to, as another person testifying here today said, in order to be able to hit the ground running. And I have every intention of dedicating myself to that effort so that I can hit the ground running.

Chairman LEAHY. You know there will be plenty to do. You know that there will be plenty to do.

Ms. COLLYER. Oh, yes, sir. Yes, sir, I do. Thank you.

Chairman LEAHY. Mr. Fuller, you served as a litigator in private practice, and incidentally, correct me if I am wrong on any of these numbers, private practice for around 11 years. You were a State prosecutor for a little more than 6 years, is that correct?

Mr. FULLER. That is correct, Mr. Chairman.

Chairman LEAHY. You have been in State courts a lot. You have not had a lot of experience in Federal Court. You tried only six cases in Federal Court, so that is about 4 percent of the cases you tried to a verdict or a judgment.

I know you have had a lot of experience on criminal cases as the District Attorney and both Senator Sessions and I, as former prosecutors, know that you get a lot of experience there, too. But the District Court to which you have been nominated has one of the largest case loads in the country. In fact, one of the reasons your nomination kind of moved up out of order is that both Senator Sessions and Senator Shelby have told me about that enormous number of civil cases, the fourth largest number of civil filings in the country. Did you know that?

Senator SESSIONS. I did not know that figure.

Chairman LEAHY. I did not, either.

Senator SESSIONS. It should have been in that package. It was not in that package.

Chairman LEAHY. I think I am right on that, the fourth largest number of civil filings in the country. So how do you get up to speed? It is sort of the other side of what I asked Ms. Collyer, because you are going to have some very, very complex civil cases. Already among those that are filed, I would be willing to guess, if you have got that large of a number, you are going to have a lot of them that are pretty complex. How do you get up to speed on that?

Mr. FULLER. Well, I think, Mr. Chairman, I believe that the best opportunity I can use to explain this is I have had the benefit of being both on the civil and criminal side and I have had the opportunity of being associated with the judges who have been active in the Middle District of Alabama for quite a number of years. I have met with all of the judges, both of the senior judges and both of the active District Judges now, and working with them to gain both valuable experience and insight from them and their staff to assist me in getting up to speed and, obviously, in handling the caseload that is in the courts.

Chairman LEAHY. Over the last few years, many very prominent Americans have begun raising concerns about the death penalty. Some are current or former supporters of capital punishment. Actu-

ally, a lot of people who strongly support capital punishment have been raising concerns. For example, in a speech last summer, Justice O'Connor of the Supreme Court said there were serious questions about whether the death penalty is fairly administered in the U.S. She said, "The system may well be allowing some innocent defendants to be executed."

Now, you successfully prosecuted several high-profile capital cases, including several very brutal murders. I am very concerned about a significant number of cases in this country where it is not a question of whether under State law capital punishment applied or not, or under Federal law, capital punishment applied or not, but the question was, did they get the right person? The obvious problem is, what if you have got the wrong person on death row? That is a terrible tragedy in and of itself. But it also means the person who committed the crime is out free to do it again.

So do you believe that the death penalty is fairly administered, and if not, what changes do you think are warranted in either Alabama or on the Federal level?

Mr. FULLER. Mr. Chairman, I believe my position, if I should be so fortunate as to pass through this committee and be confirmed, would be in a position of applying the principles of stare decisis and adopting the principles that have been set down by the U.S. Supreme Court. I am committed to doing that. Whether I believe that the death penalty is fair in its application, with all due respect, I do not believe has any purpose in what my feelings may be.

Chairman LEAHY. Do you really mean that, Mr. Fuller, because I am not talking about the stare decisis. The Supreme Court has upheld the constitutionality of the death penalty, provided the evidence is presented in a certain fashion and so on and so forth. But there are a lot of things that do not come into stare decisis, not the least of which is the question of providing defense counsel.

Now, we have had cases, for example, death penalty cases where it has turned out the lawyer slept through much of the case. In fact, one of those went up on appeal to the Texas Supreme Court and they said, well, the Constitution requires you to have a lawyer but it does not require the lawyer to stay awake. Of course, eventually, as most of us would expect, it was overturned, but you must have some feelings about who gets assigned as counsel if it is an indigent counsel case, don't you?

Mr. FULLER. Yes, sir, and I certainly feel that——

Chairman LEAHY. That does not fall under stare decisis as such.

Mr. FULLER. No, sir, and I must have misunderstood your question. I apologize. I do feel very strongly that a defendant, be they fortunate enough to be able to hire their own counsel or be indigent and be appointed counsel, should be appointed qualified counsel and should have the opportunity to be represented by competent counsel, because there is nothing harder that I have done in my legal career than to try a man and ask for his or her life, and I think that it ought to be that difficult and I believe that our Supreme Court has set procedures in place that, hopefully, will preserve each person's right to liberty in their life and to give them an opportunity to be represented fairly.

Chairman LEAHY. As a Federal Judge, you would have a role in making sure it is balanced, would you not?

Mr. FULLER. Yes, sir. I certainly would hope that I would try to do that.

Chairman LEAHY. Let me ask you this. When you were a District Attorney, did you find in the long run, keeping in mind you do not want to just win a case, but you want to have it preserved on appeal, which would you prefer, an incompetent counsel on the other side or a darn good counsel on the other side?

Mr. FULLER. I would prefer the best counsel that is available.

Chairman LEAHY. Actually, I found that——

Mr. FULLER. It makes the case a whole lot easier.

Chairman LEAHY. It also gives you some assurance that if you win the case at the trial level, you are probably going to win at the appellate level.

Mr. FULLER. Absolutely.

Chairman LEAHY. I cannot think of anything worse for a prosecutor than to have to retry a case seven or 8 years later.

Mr. FULLER. And as a prosecutor, one of the worst things I can think of is to have an innocent person in prison, too.

Chairman LEAHY. So you do not have any problem in the concept of the Federal Judge, trial judge, has a duty in making sure in these criminal cases that there is a balance in representation, I mean, a balance in this sense, that the rights are being protected, both of the State and of the defendant?

Mr. FULLER. I would not try to venture into speculation on what you may be asking, but I do agree that the judge does have a place in trying to ensure fairness, not only in criminal cases but also in civil cases.

Chairman LEAHY. That is what I was asking.

Mr. FULLER. Yes, sir.

Chairman LEAHY. Now, you are a founding member of the Coffee County Teen Court, which is described as a juvenile diversion for first offenders who recognize the error of their ways. You were a founding member of Students Against Violence in Education. Last week, we passed the first juvenile justice bill in decades. There is a debate that goes on whether the purpose of the system is rehabilitation or retribution of those who are convicted.

What do you think in juveniles? I mean, just give us some of your philosophy, and I realize, again, of course, you are bound by whatever the court rules or anything else, but you spent some time on some of these pro bono and other things. What is your philosophy when it comes to juvenile justice?

Mr. FULLER. Being a father, my wife and I have three children and the oldest is 15 and the youngest is seven, so juvenile justice has a unique meaning right now in our lives. I think, Mr. Chairman, that if we are going to make a change in this country, that young people is the best opportunity that we can. I think if we can stop crime at an early age. we can prevent larger social problems and also lessen the burden on overcrowding in our prisons. I mean, we are never going to—if we face reality, we are never going to eliminate crime. But if we can provide programs and provide adults who can provide guidance and leadership to young people, maybe we can avoid some of those problems in the future.

Chairman LEAHY. Now, you provide legal services on a pro bono basis throughout your career. You served as appointed counsel to indigent criminal defendants. You represent individuals in children's rights or domestic relations cases where the client could not pay. You provided assistance to victims of flood, tornadoes, and other large natural disasters as part of the Alabama State Bar Task Force on Disaster Relief. I talked about some of the other things you have done.

Do me a favor. When you are asked to speak to bar groups, and you will be more than you like, tell the lawyers, do some pro bono work. Tell them that some day, they may even be up here and they will find if I am still chairman or ranking member of this committee, there is nothing that I find more encouraging than to find lawyers who have done pro bono work, and I mention that and commend you for what you have done. Urge them to. Lawyers have a privileged place in society, and as a result, they should do something to help.

Mr. FULLER. It would be my privilege, Mr. Chairman.

Chairman LEAHY. Thank you. I have been taking a lot of time. I am just trying to go down through this, but Jeff, you feel free.

Senator SESSIONS. Do you want to go through the list of all first? I could come back. With Mr. Fuller, I do know that he is challenged with a tough case load. Of course, most lawyers have some sort of degree like political science or something. He had an undergraduate degree in chemical engineering, and we have discussed that some. But the discipline, the management skills that it takes to be a good Federal Judge today, and I say this to all of you, is real significant. The workload is going. You have to learn to use magistrates and law clerks and manage that docket and manage the clerk staff. It is a pretty big job just in management.

I guess I will ask you publicly what I asked you, Mr. Fuller. Are you willing to work at it to make sure you are as productive as possible, to render your rulings timely and on a fair basis?

Mr. FULLER. I assure you I am, Senator Sessions.

Senator SESSIONS. I think you are going to a great court there in Montgomery. Quite a number of great judges are there today. Of course, it was a district for Judge Frank M. Johnson, one of the great judges in the country who served there recently. So it is an important bench and I believe this nominee is going to do very well, Mr. Chairman. I know Senator Shelby has also worked hard to review his background and abilities and he is strongly convinced, likewise, that he will do a superb job and we thank you for moving that nomination.

Mr. FULLER. Thank you.

Chairman LEAHY. Thank you.

Senator SESSIONS. Ms. Collyer, I would just mention, you know, I know you believe as I do that being politically active is not bad. I have had nominees come before me and say, well, I am just wonderful. I have never been involved in politics.

[Laughter.]

Senator SESSIONS. And I never miss a chance to say, well, you do not care about your country? You are not engaged?

Chairman LEAHY. I do not want you to think by asking that question—I have also asked the same, almost verbatim, the same

question of Democratic nominees when they were allowed to have a hearing in the last 6 years.

[Laughter.]

Chairman LEAHY. No, but I have asked the same thing. I have asked the same thing of nominees of both President Clinton and of President Carter and I have asked exactly the same question.

Senator SESSIONS. You have, and I know you understand that. We had State party chairmen and campaign chairmen and others who have been involved in politics come through here in the last five-and-a-half years I have been here, mostly Democrats, but that is all right. That is what makes our system work, that lawyers and citizens get involved and a precinct chairman, that is particularly good. You were not even counsel to some special group. So I would commend you. But the chairman is correct. You go on that bench, there is no Republican and no Democrat. You call it like you see it.

Chairman LEAHY. If it wasn't for some of those precinct chairmen, Jeff, you and I would not be here.

Senator SESSIONS. You are so right.

[Laughter.]

Chairman LEAHY. Mr. Kugler, you served as a Federal Magistrate Judge for the U.S. District Court of the District of New Jersey for, what, 10 years now?

Judge KUGLER. In 2 weeks, it will be 10 years, Mr. Chairman.

Chairman LEAHY. So I do not have to ask you if you know your way around a District Court. You obviously do. What are some of the things that come first to your mind if you went from being the magistrate to being the District Judge?

Judge KUGLER. The workload will be slightly different. The only thing different that I will face will be trial of felony cases. In the District of New Jersey, magistrate judges do all but try felony cases. They do all other responsibilities for the District Court, management of all cases, trial of civil cases, the——

Chairman LEAHY. Do you do preliminary hearings and things like that?

Judge KUGLER. Yes, we do.

Chairman LEAHY. Motions to suppress?

Judge KUGLER. In some cases we do, sir, yes, sir. We probably—I would probably try more civil cases than I presently try now and we will probably have more dispositive motions than I currently do. But I have had experience in all of those matters.

Chairman LEAHY. Now, you also served on the Third Circuit Task Force on Equal Treatment, specifically the Commission on Race and Ethnicity, and you co-chaired the investigation into judicial nominees. I glanced through the final report presented to the Judicial Council in 1997. It found a significant lack of representation of races and ethnicities in certain areas, namely judicial officers, law clerks, judicial staff, court adjunct appointments. What did they recommend, in general, be done to change that?

Judge KUGLER. Well, ours was more of an informational gathering, Mr. Chairman, just to let all the judges and personnel in the Third Circuit know what we found and hope that the individual District Courts or the circuit or whomever it might be take action

as they deemed fit. We really had no statutory authority to do much else.

Chairman LEAHY. How would you feel yourself? You are going to be in a position to appoint clerks and magistrate court staff and all. You come from a State which has a sort of a diverse ethnic/racial background. Do you feel that that is something that should be looked at in your own appointments?

Judge KUGLER. It should——

Chairman LEAHY. Obviously, you look at quality, first and foremost, but is this something you should be looking at?

Judge KUGLER. And I do, Senator. I am committed to that in my personal staff over the years and I will continue to be so.

Chairman LEAHY. Do you believe there is a constitutional right to privacy?

Judge KUGLER. I believe the Supreme Court has found such a constitutional right to privacy in the *Griswold* case and I think part of the *Roe* v. *Wade* decision.

Chairman LEAHY. Do you have any doubt in your mind that you would follow stare decisis in cases both from your circuit and from the U.S. Supreme Court?

Judge KUGLER. Mr. Chairman, I have no doubt whatsoever. We take an oath as judges to follow the law and the Constitution of the United States and I will do that.

Chairman LEAHY. Thank you very much.

Mr. Leighton, you are a trial attorney. You have expertise in some very complex litigation in Federal Court, including tort litigation. I looked at your list of ten most significant cases. You include four personal injury or product liability cases. In three of them, you represented the plaintiff. You have been an active member of organizations for defense counsels, such as the Washington Defense Trial Lawyers, the International Association of Defense Counsel.

If you go on the bench and now you have somebody who is in there bringing strong claims against corporate interests, can they stand there and think a Judge Leighton is going to set aside his views he may have had as a plaintiff's attorney or as a defense attorney and treat us based on the merits?

Mr. LEIGHTON. Absolutely, Your Honor.

[Laughter.]

Mr. LEIGHTON. I knew I would be the first one to do that, Mr. Chairman.

Chairman LEAHY. If you knew the number of times people have done that. I consider it an honor. But also, I came here directly from being State—we call our District Attorneys State's Attorneys—I came here directly from being State's Attorney. Two months after I came here, I was on a farm bill. I was asked to testify and the chairman asked me a question and I said, well, Your Honor. I was so used to being in court, so everybody does it. But please, go ahead.

Mr. LEIGHTON. That was my way of saying, subliminally, that I would be more comfortable if I were in court right now.

[Laughter.]

Senator SESSIONS. That is an indication you have been in court and you know your way around.

Chairman LEAHY. As I say, we have all done it.

Mr. LEIGHTON. I have been in court a lot, Mr. Chairman, and I think one of the skills that marks a good trial lawyer is the ability to detach their own personal views, whether it has to do with individuals and corporations or political issues, to make judgments in favor of providing the best representation you can for your client, to not allow your own personal views to cloud your judgment.

And so, again, I think the ability to stand back and look at a case on its merits is a hallmark of a good trial lawyer. Hopefully, I have been a good trial lawyer, and I do not have any doubt that if I am fortunate enough to be confirmed, I will be able to take that skill to the bench.

Chairman LEAHY. Mr. Leighton, as sort of a variant on this, and I would remind every one of the nominees of something that Senator Thurmond, for the nearly quarter of a century I have been on this committee, a question he has always asked when he has been here, or not so much a question but a statement he has made to nominees, remember, when you go in that courtroom, you are the most powerful man or woman in the courtroom and that power is not just the power of administrating justice, but you can humiliate a litigant or an attorney with impunity. You can, by showing bias to one side or another—it is something that when you read the record, it may not show. The raised eyebrows may not show. The tone of voice may not show. But you can sway the case one way or the other.

What Senator Thurmond said is, please remember—and there is nothing we can do to stop that once you are there, but you can do it and you can make sure that it does not happen. In turn, you make a better court and you make better litigants.

Please, everybody understand, I am addressing this to all of you. If Senator Thurmond was here, he would do that, and I told my friend, Senator Thurmond, that I intend as long as I am on this committee to at least make sure that the Thurmond statement is made.

You have advised and represented plaintiffs bringing tort cases. You have defended corporations. Do you support efforts to cap noneconomic and punitive damages or to limit defendants' liability to their percentage of fault rather than joint and several liability?

Mr. LEIGHTON. I have not supported such efforts in our own State in the past and have not participated in any legislative efforts on a Federal level to do so. As a judge, if I were fortunate enough to be confirmed, I would apply whatever law Congress enacts on that subject, recognizing that there is a strong presumption of constitutionality at the time the Congress enacts such laws.

Chairman LEAHY. Thank you. You also state that you worked on a pro bono basis since 1980, representing members of the local Cambodian American community. I see you helped with the purchase of land from a municipality, defended a complaint before the Human Rights Commission. That is over 20 years of work. I commend you for that, and I will say the same thing I said before. We have an advantage. I mean, you have had a good career. Financially, you, like so many lawyers, are in a good position. I suspect that a lot of these people you represented certainly do not understand what it is to be financially secure, so I commend you for that.

Now, you are going to have, like others, you are going to go from a civil practice primarily to, if your court is the same as everybody else's around the country, a significant criminal practice. How do you plan to get up to date on that?

Mr. LEIGHTON. Mr. Chairman, what I have done since the time of my nomination is that I have talked to the chief judge of our district and the sitting judges and have received on a weekly basis their dockets, and when criminal cases have come up, I have gone over there if it was a hearing on—a suppression hearing or a revocation hearing or a short criminal trial short to finish. They have then invited me back into the chambers to discuss what the issues were that they were dealing with, how they were looking at a particular case. So I have been trying to bring myself up to speed as best I can during the time that I have had available to me.

Chairman LEAHY. And there are, as you know, there are programs for new judges——

Mr. LEIGHTON. And I will take full advantage of those, one starting tomorrow, I think.

Chairman LEAHY. You do want us to get you confirmed first, though, I suppose.

[Laughter.]

Mr. LEIGHTON. I would appreciate it.

Chairman LEAHY. I have got to tell you, in our State, because we are so small, we have two Federal Judges, District Judges, and one Court of Appeals Judge. For a number of reasons, they all basically became vacant at the same time, because one District Judge took senior status. The other District Judge went up to the Second Circuit. Now there are two new District Judges.

One got confirmed about 2 months ahead of the other one, and you hear the expression, after the "baby judge school," as they call it, obviously all esteemed judges, and he comes in and the first meeting they said, now, if the chief judge of your district called you up and said such and such, what would you do? He said, "Well, I am the Chief Judge."

[Laughter.]

Chairman LEAHY. And he is there in his first week.

Judge Linares, you have devoted a lot of time—again, to followup on the pro bono, as I said to Mr. Leighton, let me go to you. You have devoted a lot of time to the Hispanic community and the disadvantaged. You represented many clients pro bono, you said a total of about five to 10 percent of your time during 20 years.

You have spoken to law students and attorneys about the importance of role models in the Hispanic community. You have received the Latin American Law Student Association's Outstanding Attorney and Role Model Award. I want to get this on the record, because you deserve praise in that. You have helped disadvantaged children. You have served as counsel to the Hispanic Chamber of Commerce, past President of the Hispanic Bar Association. That took a lot of your own time, and there must have been some times you were wondering when you were going to practice law in between there.

I commend you for that. Again, it goes back to, I mean, you have the advantage in your own background, coming to this country,

doing well in this country, but giving a lot back to others and I commend you for it.

Judge LINARES. Thank you, sir.

Chairman LEAHY. What would you say is the most important lesson you have taken from your experience providing legal services to the Hispanic community? What are you going to remember about that when you go on the Federal bench?

Judge LINARES. Well, Mr. Chairman, I think that, first of all, what I would take with me is the very strong impact that good role models can make within the Hispanic community, and any community, regardless of their ethnic background. I think that as I did this work, and if you look at my resume, a lot of it had to do in the education process, having sat on the board of the county college and the high school board and dealing with the mentor programs and so forth.

And I think that by involvement with those kinds of organizations, you bring about a sense of accomplishment that the younger members of the Hispanic community can take with them, that it can be done, that if you work hard and do the right things, you can accomplish great things in this country. Having said that, also, I have brought with me to the State bench a recognition that a lot of these people oftentimes do not have a say in a lot of things and they need the participation of folks like us to bring it to the forefront. So that is what I would bring with me.

Chairman LEAHY. Would I be safe in assuming that there probably will be more than one occasion, if you are talking to bar associations, that you might encourage pro bono work on the part of lawyers?

Judge LINARES. Sir, it is—Mr. Chairman, it was one of my favorite topics. I often talk—I do talk before the bar association and I have talked in front of law schools and the Hispanic Heritage organizations, as well as the Hispanic Bar Association, of which I am a past President. I always encourage them to do pro bono work, especially the type of pro bono work that involves you with specific segments of the community that need it the most, as I indicated in my previous answer.

Chairman LEAHY. Well, you must sort of see that on the court you sit on now.

Judge LINARES. Yes, I do. I think we should see more of it. I think we are, indeed, privileged to have—well, when I was a lawyer, and I was a lawyer not too long ago, we are very privileged to have a law license, which is a tremendous privilege, and part and parcel being able to or having the privilege to exercise your profession should be to give back and pro bono work is part of that. I think that I do see it in my court from time to time. I do not think we see enough of it, but I think it is changing.

Chairman LEAHY. Thank you. And what you said about role models is very important. Again, all of us have a responsibility there, those of you, those of us who are fortunate enough to get elected to this body. I believe we do, too. I appreciate that.

Mr. Smith, you served as a municipal court judge in the town of West Warwick, Rhode Island. I have been in West Warwick, I want you to know.

Mr. SMITH. That is hard to believe.

Chairman LEAHY. A long time ago, a long time ago.

[Laughter.]

Chairman LEAHY. Actually, Rhode Island, you get a number of places, but also one of my classmates at Georgetown was from Cranston, Rhode Island, a man named Paul Bazzano. But when I was a prosecutor, we had two or three different cases, extradition matters, and one actually brought me down very briefly to West Warwick.

Your father was a judge in Idaho. You indicate you often worked on his campaign. You probably saw a little bit of difference in the topography and the distances in traveling around. That was a short time on the municipal bench, but what would you take from that in going on the Federal bench?

Mr. SMITH. Well, one of the, I think, the advantages of serving in a court like a municipal court, Mr. Chairman, is that it really is a place where average citizens get maybe their only opportunity to observe what the judicial system is about. So while the matters may seem minor to those of us sitting here in the Senate and having this hearing, they are very important to the people that were there and from my point of view, it was an opportunity to show those folks that their matter was an important matter and that what they got out of the municipal court was going to be a good, fair hearing and a good, just result, and hopefully, they left there with the feeling that—a little bit better feeling about the judiciary in general. And it may be for most of those folks the only opportunity they have to see a court in action.

So I would like to think that I would take the same attitude about handling matters to the Federal bench, and that is to say that so many individuals who come into contact with the courts may do it as a juror or they may do it as a defendant or they may be there as a victim. But in all of those situations, you want to make sure that they feel that the process is fair, that it is even-handed, that it is efficient, and I hope that I can bring that attitude to the job.

Chairman LEAHY. You also, I noticed in going through your background, and I appreciate that because when you are practicing law, you get so used to going from court to court to court and say, well, it is municipal court, now it is the State Court, now it is the Federal Court. If you are the person who has a case before there, you are right, that is your one and only case and that kind of overwhelms you. It is like going into what might be routine surgery. It is a lot different if you are the surgeon or you are the patient.

Mr. SMITH. That is right.

Chairman LEAHY. The patient, it is your one time there. If you are the surgeon, you may be one of five that day.

You have also done a lot representing private and public entities and institutions of higher education in both labor negotiations and arbitration proceedings. You were a member of the Chief Justice's Task Force on Alternate Dispute Resolution. No District Court Judge can try all the cases before them, and encouraging settlement is sometimes a good thing to do. How do you approach that, though, because, obviously, you have to be careful that you do not decide a case not yet heard in your efforts to settle, but how do you

feel about that? How do you feel about a judge at least nudging the parties toward a settlement?

Mr. SMITH. Well, first of all, Mr. Chairman, I think that alternative dispute resolution is an important aspect of all of our courts, including the Federal Courts, and we are fortunate in Rhode Island that we have a very good ADR system. We utilize private attorneys on a panel as well as the magistrates for that purpose. The chief judge has recently scheduled an ADR seminar for the District Judges just along the lines of what you are saying, the theory that some cases need the involvement of the District Court Judge.

I think that in terms of actually engaging in the process, first of all, I think it depends on whether it is a bench trial or a jury trial, and I think it is possible to be maybe a little more involved if you are not going to be deciding the facts, that is, in a jury trial situation. Then the party is, I think, going to have to want you to engage . But I think nudging them along is a good idea. I think we need to—that has been one of the benefits of being a labor lawyer, frankly, is finding creative solutions to difficult problems is a central part of that practice, because you do not want to be fighting all the time between labor and management. Solving your problems is important to having a good, productive, continuing relationship.

So I feel very strongly about it and I am hopeful that if I am confirmed, I can be productive in that regard.

Chairman LEAHY. I found in my experience in trying cases, every so often, you would have cases where neither side—and both sides may know it is something that should be settled, but neither side wants, for tactical reasons or otherwise, to make the first move, and getting a call from the judge saying this is coming up on the docket, I would really appreciate you both sitting down and seeing, one, if there are areas you can stipulate on or to negotiate out or something like that, and you are delighted to have the opportunity just to conduct it. Now, neither one loses face by sitting down and they can sit down and start working, and also, of course, if you go to trial, if you can stipulate a lot of it, it is going to be a lot quicker.

On your questionnaire, you said when Senator Chafee met with you, you talked about a number of things, including judicial philosophy. How do you consider your judicial philosophy?

Mr. SMITH. Well, I think——

Chairman LEAHY. I am not asking you how you are going to decide various cases, but how would you describe yourself?

Mr. SMITH. When I think about the topic of judicial philosophy, Mr. Chairman, I really think about how should a judge behave on the bench and how should he or she decide the cases, and I would—so I would say that I think my philosophy would be to be even-tempered, to be patient but also to be efficient, to try to stick to the law as it has been written by Congress as closely as possible. I think that the job of the judge is not to try to write the law but to try to apply the law that you in Congress have given us, and to apply the precedents of our circuit and our Supreme Court and to not engage in trying to create new precedents or ignoring those governing precedents.

In that sense, I think we lend a sense of predictability and consistency to our work, and if we can be predictable and consistent,

I think we are doing a good thing by the litigants and by the attorneys that appear before us, so that is how I would describe my philosophy.

Chairman LEAHY. Thank you.

Judge Klausner, I notice you preside over a busy criminal docket at the Superior Court of Los Angeles. I have actually gone into some of those Superior Courts over the years. I wonder how one totally maintains their sanity afterward, but we will note for the record you have.

[Laughter.]

Chairman LEAHY. Many of your decisions are neither in writing or published, but one of your rulings was considered by the California Court of Appeals. That raised an interesting question, *Jackson* v. *Superior Court*. You ordered a criminal defendant to be incarcerated for failing to appear in your courtroom on time, but it turned out the reason he was late was the sheriff was late getting him there. The Court of Appeals granted a writ of mandamus and ordered you to dismiss the charges against him, one, because the sheriff's failure to bring him on time and your tardiness policy were not the result of your defendant. So have you changed that policy?

Judge KLAUSNER. Mr. Chairman, first of all——

Chairman LEAHY. Or have I stated it wrong, and please feel free to give your——

Judge KLAUSNER. Mr. Chairman, I must confess that that—I have been on the bench for 25 years. That had to be probably ten to 15 years ago, I would think, when I was in criminal——

Chairman LEAHY. Eleven years ago.

Judge KLAUSNER [continuing]. And I do not recall the specific facts of that case, so I really—I cannot address that particular case. I cannot imagine if it was the sheriff's fault for not having the defendant appear that the defendant would be punished for that.

Chairman LEAHY. Well, as I read the case, the Court of Appeals said, no, they cannot be.

Judge KLAUSNER. I agree.

Chairman LEAHY. Do you feel it is important for the judge to make sure the defendant in a criminal case, the defendant's rights are protected? Does the judge have any responsibility in protecting the rights of a defendant in a criminal case, or is that something up to the litigant solely?

Judge KLAUSNER. In the area of criminal law, the judge has much more of an obligation than they do in civil law, particularly in the area of protecting the rights of the defendant, and I say that guardedly because those rights and those protections are really established by legislature and by case law. In criminal law, as opposed to civil law, the judge has the obligation not only to make sure that the litigants are fairly treated, but that the rights of the defendant are also protected.

Chairman LEAHY. Now, I understand you have been available to the press to discuss matters related to your position as a Superior Court Judge. Is that any different when you are a Federal Judge? What should be the guideline for a Federal Judge in discussing or commenting on cases or controversy or court administration?

Judge KLAUSNER. Again, Mr. Chairman, when I was available to the press during that period of time that I was on the bench is

when I was in an administrative role. There are several years when I was Presiding Judge of the Los Angeles Superior Court, and when you are in that position, you are not in a position of handling any cases individually but you are talking about the administrative role of the court and discussing that with the press and that was your obligation.

I do not see much of a need when you are a trial judge. In fact, I think that there are problems with discussing with the media anything that pertains to the case.

Chairman LEAHY. You currently serve on the Response to Judicial Criticism Committee. What are some of the criticisms of courts, in general, that you hear? Is there anything we can do to help you?

Judge KLAUSNER. Mr. Chairman, how long do we have?

[Laughter.]

Chairman LEAHY. We have been wise enough not to have such a committee about the Congress.

[Laughter.]

Senator SESSIONS. That is a good question, Your Honor.

Chairman LEAHY. What are the types of those things that you feel—things that you feel are legitimate criticisms where things can be done to make changes?

Judge KLAUSNER. Let me try to address that for you, Mr. Chairman. We have in California what is called the Commission on Judicial Performance and their obligation is to—as a disciplinary body, if the judge does anything that is inappropriate. There are a lot of instances that fall short of that, such as temperament on the bench, that may not be raised to the level of being called before the Commission on Judicial Performance but might affect the perception of the court, et cetera.

We have set up a committee in, first of all, in our court that encourages the attorneys, before they have to go public or take it to a disciplinary committee, to come to the court and we, as judges, particularly the administrative judges, will talk to the judge about their deficiency if it comes to temperament, how they handle cases, whether they are rushing them too fast, if they have a lack of civility, and try to encourage the judge to change. We have no authority to take disciplinary action over the judge, but many times, just bring it to their attention helps quite a bit.

And the other part of the committee is to help judges respond to inappropriate criticism. When somebody is criticizing in the newspaper, et cetera, a judge's decision because it is an unpopular decision, how to support that judge and work with that judge.

Chairman LEAHY. Knowing that the judge usually cannot go out and speak out in their own behalf.

Judge KLAUSNER. That is correct. That is correct.

Chairman LEAHY. My last question, in this court, you are apt to, as you would in any State, face the possibility of having death penalty cases. Are you concerned, as Justice O'Connor has said, that there are cases around this country where the death penalty cases have not been administered fairly? Is that a concern? Is that something you worry about?

Judge KLAUSNER. Well——

Chairman LEAHY. I am not asking whether you are for or against the death penalty. That——

Judge KLAUSNER. I understand that, Mr. Chairman.

Chairman LEAHY. It is constitutional. It is there. But——

Judge KLAUSNER. No, I understand that, Mr. Chairman, and I guess my response would be this, that I think that that is a very important question to ask and be addressed. I think it has to be addressed, first of all, at the legislative level. Second of all, it has to be addressed through the Supreme Court in their interpretation of the Constitution. I do not think there is any question that that is an extremely significant area and must be addressed, yes. I am not—that is not to say that the individual trial judge should be addressing that.

Chairman LEAHY. But would you say that an individual trial judge has, to take at least one area, has an obligation to make sure that a defendant in a capital crime case is adequately represented, and by adequate, not just somebody showing up?

Judge KLAUSNER. That is correct, and that all the protections that are afforded to that defendant by way of the Constitution and the laws of this State or the laws of the Nation are applied and that the defendant has the protection of all those rights that he or she is afforded.

Chairman LEAHY. Thank you.

Judge KLAUSNER. Not to create new——

Chairman LEAHY. I am sorry?

Judge KLAUSNER. Not to create new protections.

Chairman LEAHY. I understand.

Judge KLAUSNER. Yes.

Chairman LEAHY. I thank all of you. I thank especially all the people who sat here listening, and I would make it even more starting at the youngest up through, because even with family members here, for some of the young people who are here, this must be about as exciting as watching paint dry, but trust me, it is important. It really is. I thank you all for doing that.

Senator Sessions, did you want to——

Senator SESSIONS. Just briefly.

Chairman LEAHY. Please understand, what we normally do, we go back and forth on this, and I did speak with Senator Sessions before we started and told him to jump in at any point he wanted.

Senator SESSIONS. Thank you, Mr. Chairman. This is a fine panel. I would just congratulate each of you. In a sense, I guess there are two opportunities for the American people to be involved in your lifetime appointments. One, I suppose, is the elected President submitting your nomination, and the other one is your elected Congressional representatives voting on it. So it is an important step.

I would just note for your friends and family and for the public in general that a lot more work has been done by the chairman and the President and the FBI and all on your backgrounds before you got here, so if you had any real problems, we would have heard about them before now or you would not be on the panel. So you passed a lot of tests. You have gone through a lot of hurdles. I congratulate you for that and I wish you the very best.

I only ask one question of all of you. I know the chairman, as a former prosecutor, understands this, and that is your Federal prosecutors that appear before you—I used to be one for almost 15

years, and I learned one thing important, and that is that if the judge rules against a prosecutor, the prosecutor cannot appeal. If he rules against the defendant, the defendant can always appeal.

Sometimes on close calls, I do not know if it is prosecutorial paranoia or reality, sometimes you think, well, the judge just ruled against the prosecutor because he thinks, or she does, that I will win the case anyway and do not need this evidence, and it might be error and I might get reversed if I rule the other way. So on close calls, sometimes I have observed that judges might choose to just rule against the prosecutor.

I would advocate to you that the prosecutor is entitled to a fair trial, too. Would you all agree with that?

[Chorus of yeses.]

Senator SESSIONS. Entitled to the same respect that any other attorney has in the courtroom and there will be no chance for that lawyer to appeal, so he or she really deserves the respect that any other litigant does—no more, but at least that much.

I thank all of you for coming. There were a lot of good issues raised here. Judge Kugler, as a Magistrate, I will ask you if you could just briefly share with these other judges-to-be how they should treat and utilize the Magistrate Judge in the district.

Judge KUGLER. Well, I think they should follow what we do in New Jersey, which is to use the Magistrate Judges to manage all the civil cases, try civil cases, do all the preliminary criminal work, as much as possible so that the District Judges can concentrate on trials, felony criminal trials, and dispositive motions. It has worked very well in our district and I commend it to all the other districts.

Senator SESSIONS. I would agree. We have had tremendously capable Magistrate Judges in the Southern District of Alabama, where I practiced. The bar respected them. By giving them broad responsibility, do you think that helps attract good Magistrate applications and helps you attract more talented people?

Judge KUGLER. Absolutely. When we have a vacancy in the District of New Jersey for a Magistrate Judge, we typically get 100 or more applications for that vacancy.

Senator SESSIONS. That is the same as I have observed in our district, because it is a prestigious position. So I would just suggest to all of you that you do not need to erode the constitutional prerogatives of a Title III judge, but there are many things that a good Magistrate can do to help you accomplish your goal of producing justice in an expeditious and fair manner.

Thank you, Mr. Chairman, for bringing this large number forward. It is a good hearing and I appreciate your leadership.

[The biographical information of Rosemary Collyer, Robert Kugler, Ronald Leighton, Jose Luis Linares, William Smith, and Robert Klausner follow:]

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY, UNITED STATES SENATE

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

   Rosemary Mayers Collyer (Rosemary Elizabeth Mayers)

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

   Judge, U.S. District Court, District of Columbia

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

   Crowell & Moring, LLP 1001 Pennsylvania Ave N.W. Washington D.C. 20004 202-624-2500
   Maryland

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

   11/19/45 Port Chester, New York

5. **Marital Status**: *(include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please also indicate the number of dependent children.*

   Married to Philip L. Collyer. Spouse is retired. No dependent children. Our son is 27.

6. **Education**: *List in reverse chronological order, listing most recent first, each college, law school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.*

   - University of Denver College of Law 9/74 – 6/77 J.D., June 1977
   - Trinity College Washington D.C. 9/64 – 6/68 B.A., June 1968

7. **Employment Record**: *List in reverse chronological order, listing most recent first, all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.*

   - Crowell & Moring LLP, Partner, 1001 Pennsylvania Ave N.W. Washington, D.C. 20004, April 1989 to present
   - National Labor Relations Board, General Counsel, 1099 – 14th St N.W. Washington DC 20570, October 1984 – April 1989
   - Federal Mine Safety and Health Review Commission, Chairman, 1730 K Street NW, Washington, D.C., October 1981 – October 1984

- Sherman & Howard, Associate, 3000 First Interstate Tower, 633 17th Street, Denver, CO 80202, July 1977 – October 1981
- Dawson, Nagel, Sherman & Howard, Law Clerk, 3000 Interstate Tower, 633 17th Street, Denver, CO 80202, September 1976 – December 1976
- Univ. of Denver College of Law, Research Assistant, 100 Olive Street, Denver, CO 80220, September 1975 – September 1976
- Eldy Sales Corp./Personnel Predictions & Research, Inc., Sales Representative, 250 Fillmore Street, Denver, CO, September 1973 – September 1974
- Pennington & Richard Assoc., Creative Director, Denver CO, September 1972 – September 1973
- Manlius-Pebble Hill School, Director of Public Relations, Jamesville Road, DeWitt, New York (Manlius Campus), April 1971 – August 1972
- The Canadian Register, Reporter, 15 Toronto Street, Toronto, Ontario, Canada, November 1969 – December 1970
- Bloomingdale Bros., Sales, Broad Street, Stamford Conn., June 1969 – August 1969
- Presto, Inc., Sales Representative, Lawton, OK, March 1969 – June 1969
- U.S. Catholic Conference, Press Relations, 3211 4th St. N.E., Washington, D.C., September 1968 – March 1969
- Pitney-Bowes Inc., Credit and Collection, Stamford, CT, July 1968 – September 1968

- Host Marriott Services Corporation, Member, Board of Directors, 6600 Rockledge Drive, Bethesda, MD 20817

8. **Military Service**: *Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge received.*

None

9. **Honors and Awards**: *List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.*

College of Labor and Employment Lawyers
Fellows of the American Bar Foundation
Named "Best Lawyer" by Corporate Counsel magazine 2002
Best Lawyers in America (1997-98, 1998-99, 1999-2000, 2001-2002)
John Phillip Linn Labor Law Award
J.D. with honors
Order of St. Ives
B.A. with honors

10. **Bar Associations**: *List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.*

- Bar of the District of Columbia (1990 – present)
- Denver Bar Association (1977 – present)
- Colorado Bar Association (1977 – present)

- American Bar Association: Labor and Employment Law Section; Committee on Developing Labor Law (1977 – present)
- Task Force of the District of Columbia Circuit on Gender, Race and Ethnicity, Special Committee on Race and Ethnicity (1994-95)
- Committee on Admissions and Grievances of the District of Columbia Circuit (1994-96)
- Fellows of the American Bar (1989 – present)
- College of Labor and Employment Lawyers (1996 – present)

11. **Bar and Court Admission**: *List each state and court in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.*

Colorado 1977
District of Columbia 1990
U.S.D.C. D.C. 1992
U.S. Supreme Court 1996
U.S. Court of Appeals for the D.C. Circuit 1995
U.S. Court of Appeals for the Ninth Circuit 1991
U.S. Court of Appeals for the Seventh Circuit 1995
U.S. Court of Appeals for the Sixth Circuit 1997
U.S. Court of Appeals for the Fifth Circuit 1995

12. **Memberships**: *List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, charitable, or other organizations since graduation from college, other than those listed in response to Questions 10 or 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion - either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.*

Leadership Washington – fully diverse
Tenley Sport and Health Club – fully diverse
City Club [restaurant]– fully diverse
Smithsonian Associates – fully diverse
National Institute of Trial Advocacy (Hofstra Law School)
Faculty 1980-83 – fully diverse

13. **Published Writings**: *List the titles, publishers, and dates of books, articles, reports, or other material you have written or edited, including material published on the Internet. Please supply four (4) copies of all published material to the Committee, unless the Committee has advised you that a copy has been obtained from another source. Also, please supply four (4) copies of all speeches delivered by you, in written or videotaped form over the past ten years, including the date and place where they were delivered, and readily available press reports about the speech.*

- Collyer and Springer, "Federal Contractors Face Daunting Diversity Rules," National Law Journal, at B12 (2001)

- Collyer, "Rights of Mine Access to Nonemployee Representatives of Miners," Eastern Mineral Law Foundation Eleventh Annual Institute (1990) (Matthew Bender & Co.).

- Collyer and Klise, "Rights of Mine Access for Miners' Representatives: Has a Walk Around the Mine Become a Run Around the Law?," 95 West Virginia Law Review 617 (1993).

- Collyer, "NLRB Update: Today's Changing Practice Before the Agency," Labor Law Developments 1996 (Matthew Bender & Co.)

- Collyer, NLRB Update: Dico Ergo Est," Labor Law Developments 1997 (Matthew Bender & Co.)

- Collyer, NLRB Update: "Significant Decisions . . . The Year in Waiting," Labor Law Developments 1998 (Matthew Bender & Co.)

- Collyer, "Pre-Employment Medical Testing: An Overview," Human Resource Management, American Society for Personnel Administration (Summer 1989).

Speeches as General Counsel
1985-1989 (No Copies Available)

1985	Labor Relations Seminar, Region 19, Seattle, WA
1/8/85	Alabama Chapter of IRRA, Birmingham, Alabama Dinner Speaker
1/31/85	Washington, D.C. Int'l. Association for Personnel Women, Hyatt at Key Bridge
2/5-9/85	ABA Santa Domingo
2/27/85	Washington IRRA Luncheon Speaker
3/26/85	Syracuse, IRRA, G.C. Speech
4/12/85	New York State Bar Association/NLRB Regional Office Conference
4/14/85	Field Examiners Conference, New Orleans, LA
4/20/85	Little Rock, AR, Arkansas Labor Law Seminar
5/2-5/85	University of Denver
5/16/85	Speech – The Brookings Institute, Washington, D.C.
6/13/85	National Insulation Contractors Association, Alexandria, VA
6/19/85	Association of General Merchandise Chains, Key Bridge Marriott
7/85	ABA Developing Labor ALRA
7/22-24/85	Portland, MO
8/12-13/85	UFCW Attorney's Conference, Colorado Springs, CO
9/11/85	Cincinnati IRRA
10/3/85	Panelist Southern Methodist University, Shoreham Hotel, Washington, D.C.
10/3-6/85	1985 Coal Lawyers Conference, Wesley Chapel, FL
10/13-14/85	New York State Bar Meeting, Bermuda
10/17/85	Southwestern Legal Foundation, Dallas, TX
10/20/85	Marco Island
10/25/85	Labor Law Conference, Newark, NJ
10/27/85	UAW Human Resource Center, Washington, D.C.

10/29/85	Labor Relations Seminar, Pittsburgh, PA
11/6-7/85	Sherman & Howard Labor Department Seminar, Denver, CO
11/13/85	ORC Meeting, Marriott Crystal Gateway Hotel
11/15/85	R-24 and Association of Labor Relations Practitioners, San Juan, Puerto Rico
11/21/85	Boston Bar & Massachusetts Bar Association, Boston, MA
11/26/85	Minnesota Bar Labor & Employment Law, Minneapolis
12/4/85	Maryland Chamber of Commerce Luncheon Speaker, Baltimore, MD
12/11/85	50th Anniversary Conference, Regions 20, 32, 28
1/30/86	Council of Engineers & Scientists Organization, Washington, D.C.
2/1/86	Stetson College of Law & Florida Bar & RIZ Conference, Tampa, FL
2/10/86	Atlanta Bar Association, Atlanta, GA
2/13/86	UAW-GM Paid Educational Leave (PEL) Seminar, Washington, D.C.
2/16-22/86	Practice and Procedure ABA, Palm Springs
12/16/85	ABA Meeting
3/1-6/86	ABA Developing Labor, Phoenix, AZ
4/17/86	Conference on Plant Openings, Milwaukee, WI
4/25/86	University of Louisville, Louisville, KY
5/1/86	Fifth Annual Labor & Employment Seminar, Cleveland, OH
5/8-9/86	Pacific Coast Labor Law Conference, Seattle, WA
5/20/86	Metropolitan Bar Association of St. Louis, St. Louis, MO
6/12/86	Georgetown University Law Center CLE (Luncheon Speaker)
6/17/86	ALI-ABA and ABA Labor, Law Section Program on Advanced Law
7/13-15/86	1986 ALRA Conference, St. Paul, MN
9/8-11/86	UFCW Attorneys' Conference, Pebble Beach, CA
9/26-27/86	College of Law, University of Wyoming, Laramie, WY
10/7/86	American Boiler Manufacturers Association, Arlington, VA
10/10/86	North/South Carolina Labor & Employment Law Sections Joint Bar CLE
10/15/86	Region 13 – Institute of Industrial Relations, Chicago, IL
10/16-17/86	Southwestern Legal Foundation, Dallas, TX
10/17/86	Memphis Mid-South Chapter of Federal Bar Association, Memphis, TN
11/6/86	Maryland State Bar Association Section of Labor Law, Baltimore, MD
11/19-20/86	Rocky Mountain Chapter IRRA, Denver, CO
12/12/86	National Organizing Committee, American Federation of Labor
12/16/86	Machinery & Allied Products Institute, Washington, D.C.
1/7/87	NAM – Labor Law Subcommittee, Washington, D.C.
1/30/87	New York Bar Association – Marriott Marquis, New York, NY
2/18-19/87	Stetson University College of Law Conference, Tampa, FL
3/18/87	Washington Metropolitan Area Corporation Counsel Association, Washington, D.C.,
3/26/87	Retirement Dinner for Arthur Eisenberg
4/1-2/87	Trial Advocacy Institute Conference, St. Louis, MO

4/13-14/87	University of North Dakota Law School, Grand Forks, ND
4/22/87	IRA of Philadelphia, Philadelphia, PA, 7 p.m. (Speaker)
4/29/87	Long Island Indust. Rel. Research Association, Westburg, Long Island
5/1/87	Master Printers of America – Arlington Crystal City Sheraton
5/3-7/87	Division of Administration Conference, Virginia Beach, VA
5/3-8/87	Supervisor's Conference, Williamsburg, VA
5/14/87	North Texas Chapter of IRRA, Dallas, TX
6/1/87	Adm. Conference of the United States, Washington, D.C.
6/4/87	Speech – Colle, Crystal Gateway Marriott, Alexandria, VA
6/9/87	Stanford University, Stanford Law School
8/10-12/87	ABA Annual Meeting, San Francisco, CA
9/14-15/87	AAIM Management, Ass'n of St. Louis, Clayton, MO
9/16/87	Michigan State Bar, Grand Rapids, MI
9/18-19/87	AGC Collective Bargaining Committee, Boston, MA
9/29/87	Dayton-Springfield IRRA, Dayton, OH
10/9-10/87	1987 Coal Lawyers' Conference, Amelia Island, FL
10/13-14/87	IRRA, Hollywood, CA
10/14-15/87	Southwestern Legal Foundation Institute on Labor Law, Dallas, TX
11/2/87	UFCW Attorney's Conference, Tarpon Springs, FL
11/4/87	U.S. Chamber of Commerce, Washington, DC
11/4/87	Labor and Employment Seminar, Washington, DC
11/10/87	Columbus IRRA, Columbus, OH
12/2/87	DC Bar Labor Law Section, Washington, DC
12/10/87	Labor Arbitration Advocacy Program, Silver Spring, MD
1/12/88	American Baker's Association, Washington, DC
1/14/88	Speech on Immigration Law, ABA Labor and Employment Law Section
1-26-29/88	ABA Midwinter Meeting, Maui, HI
2/18/88	Stetson University College of Law, Tampa, FL
2/25/88	NAM Labor Lawyers' Advisory Committee
3/8/88	Federal Women's' Program, Subcommittee of EEO Comm. Cincinnati, OH
3/21/88	National Federation of Independent Unions, Washington, DC
3/29-31/88	University of Arizona, Tucson, AZ
4/1/88	Federal Bar Association, Phoenix, AZ
4/8-9/88	Arkansas Labor Law Conference, AR
4/22/88	D.C. Bar/Labor Law Section, Washington, DC
5/5/88	BNA Conference, Washington, DC
5/16/88	Executive Enterprises Employment Law Conference, Washington, DC
5/20/88	Eastern Mineral Law Foundation Annual Institute, Lexington, KY
6/8-9/88	NYU's 41st National Conference on Labor, NYC
8/7-10/88	ABA Annual Meeting, Toronto, Canada
9/19-20/88	Mountain State Employer Council Meeting, Denver, CO
10/4/88	Associated Employers of Illinois, Chicago, IL
10/12-13/88	Southwestern Legal Foundation Steering Committee, Dallas, TX

10/24/88	Labor and Employment Law Conference, NYC
10/27/88	Business & Industry Council, Bridgeport, CT
10/28/88	Labor Policy Association, Inc., Washington, DC
11/3-4/88	Boston Bar, Region 1 and Federal Bar Labor Law Conference, Boston, MA
11/17/88	Edison Electric Institute, Chicago, IL
12/2/88	University of Pennsylvania, Philadelphia, PA
2/27-29/89	ABA Practices & Procedures Committee Meeting, Hawaii
2/14-16/89	ABA Labor Law Meeting, St. Thomas, Virgin Islands

Undated

IRRA, Union-Management Debate

Hofstra University Conference on Reagan Presidency, Highlights of the Reagan Administration's Labor Policies

Association of Labor Relations Agencies, Panelist on Future of Collective Bargaining, Burlington, VT

Summer 1989

Pre-Employment Medical Testing: An Overview, American Society for Personnel Administration Legal Report, Summer 1989 (article provided)

6/5-9/89

American Greetings Today and Tomorrow, 1989 Human Resources Managers Conference, American Greetings Corporation (paper provided, co-authored with Thomas P. Gies, Esquire, Crowell & Moring LLP)

10/89

Recent Developments under the National Labor Relations Act: A Primer for 1992, Speech at 1989 Coal Lawyers' Conference

NLRB Deferral to Arbitration, ABA Program on Labor Arbitration Advocacy (article provided)

10/5/89

Speech at ASPA-South 1989

10/12-13/89

Recent NLRB and Court of Appeals Decisions and Developments in the Office of the General Counsel, Southwestern Legal Foundation 36th Annual Institute on Labor Law, October 1989, Dallas, TX (paper provided)

10/26-27/89

Indiana & Michigan Electric, The Terrain for Post-Expiration Arbitration, Midwest Labor Law Conference, Cincinnati, OH

1/90

Union Access: Developments Since Jean Country, 1990 Midwinter Meeting of Committee on Development of Law under the NLRA (paper provided)

4/90

Miner's Rights – The Employer's View, Special Institute on Mine Safety and Health Law, Eastern Mineral Law Foundation, Denver, CO (paper provided)

5/90

Rights of Mine Access to Non-Employee Representatives of Miners, Eastern Mineral Law Foundation, Cincinnati, OH (paper provided)

An Update on Bargaining Obligations and Consequences of Strike Activity Under the NLRA, 1990 Wisconsin State Bar Annual Convention, May 1990 (paper provided)

Union Access: Developments Since Jean Country, article submission to The Labor Lawyer

6/90

Get Ready for the American With Disabilities Act, Personnel Law Update 1990, Washington, DC (paper provided)

8/6/90

Impact of Government Regulations on Collective Bargaining Agreements – Practical and Legal Considerations, ABA Labor and Employment Law Section Meeting (paper provided)

8/9-12/90

Faculty at National Institute for Trial Advocacy, Hofstra

11/90

The Role of Women in the Work Force and its Impact on Family Life, Dr. Andrew R. Cecil Lectures on Moral Values in a Free Society, Dallas, TX (paper provided)

12/90

IRRA Annual Meeting, Washington, DC, Panel Participant

1991

Labor Legislation Update: More Rights for Employees, More Risks for Employers, National Coal Association, 1991 Coal Lawyers' Conference (paper provided)

May 1991

The NLRB Today, ARCO Industrial Relations and Legal Conference, Newport Beach, CA

10/24-25/91

Wither Preemption? The Case for Preemption of State and Local Employee Protection Initiatives, 1991 Midwest Labor Law Conference (paper provided)

7/22/92

Preemption, Bellcore 1992 Labor Lawyers' Conference

10/92

Perspectives on the Rule of the NLRB in the Future Evolution of American Labor Policy, NLRB-Orange County IRRA 1992 Labor Law Conference, Anaheim, CA

10/15-18/92

Sexual Harassment in the Mines: Where It Starts and Stops, National Coal Association, 1992 Coal Lawyers Conference, Scottsdale, AZ (paper provided)

10/16/92

Construction Industry "Collective Bargaining" Through the Political Process, Crowell & Moring's Ounce of Prevention Seminar, Newport Beach, CA (paper provided)

11/5/92

Contract Administration and Enforcement: Stranger and Stranger, 1992 Midwest Labor Law Conference (paper provided)

1/27/93

Presentation of speech at National Association of Manufacturers on Electromation

2/7-10/93

Presentation of speech on Boston Harbor at the ABA Midwinter Meeting of Section on Developing Labor Law

3/29/93

Presentation of speech at Miles P. Romney Spring Meeting of the Industrial Relations Committee of American Mining Congress

Spring 1993

Rights of Mine Access for Miners' Representatives: Has a Walk Around the Mine Become a Run Around the Law, W.Va. Law Review, Volume 95, No. 3, pp. 617-661

5/13/93

Presentation of speech at Southwestern Legal Foundation Short Course on Labor Law

5/20/93

Union Organizing and Labor Law Reform in the 90's: A Management Perspective, Pacific Coast Labor Law Conference (paper provided)

6/10-11/93

Attendance at Judicial Conference of the D.C. Circuit; participation in panel on "Civility"

10/5/93

Presentation at Rhone-Polenc re Legislative Update

8/10/94

Issues of Employee Participation in the Workplace, Statement of Rosemary M. Collyer on behalf of National Association of Manufacturers before the Commission on the Future of Worker-Management Relations (paper provided)

10/94

Sick Leave Administration, Society for Human Resource Management Publication, 10/94 (article provided)

Winter 1994

Remaking Labor-Management Law, DC Bar 1994 Winter Convention

12/94

Prospects for change at the NLRB: A new role for section 10(j)?, CCH Insight Labor Law Reports, No. 433, Issue 99/Part 2 (article provided)

2/95

The Board's Use of § 10(j) Injunctions: When Should the General Counsel Seek and Injunction, and What Must He Prove In Order to be Successful?, ABA Mid-Winter Meeting of Committee on Development of Law under the NLRA, February 1995 (paper provided)

5/95

The Great Debate, The NLRA 60 Years Later, ABA Section of Labor and Employment Law (paper provided)

5/15/95

Developments in the General Counsel's Office, NY State Bar Association

6/95

Speech on Labor Law for the American Trucking Association (paper provided)

10/95

NLRB Update: Today's Changing Practice Before the Agency, Southwestern Legal Foundation, October 1995 Meeting, Dallas, TX (paper provided)

11/95

Purchase or Sale of a Business: WARN, NLRA and ERISA, 1995 Midwest Labor Law Conference (paper provided)

3/7-8/96

Labor Hot Spots: Current Health Care Union Issues, Blueprint for the Future: Labor and Employment Law Symposium for American Hospital Association (paper provided)

4/96

Washington Developments, 1996 Romney Spring Meeting

5/96

Hearings and Trials: Preparation, Settlement and Conduct: NLRB Hearings and Trials, Evidence; Witnesses; Opposing Parties; Settlement Modes and Techniques; Effective Advocacy, Southwestern Legal Foundation 34th Annual Short Course on Labor Law and Labor Arbitration, Dallas, TX (outline provided)

10/96

NLRB Update – DICO ERGO EST, Southwestern Legal Foundation, October 1996 Meeting, Dallas TX (paper provided)

10/97

NLRB Update – Significant Decisions . . . The Year in Waiting, Southwestern Legal Foundation, October 1997 Meeting, Dallas, TX (paper provided)

Fall 1998

Article on pre-trial discovery for Labor Law Monograph, printed by National Legal Center for Public Interest, Fall 1998 (article provided)

5/99

NLRB Interviews of Former Managers, Southwestern Legal Foundation Short Course on Labor Law, May 1999, Dallas, TX (paper provided)

10/99

Practice Before the NLRB Today – Significant Board and Court Decisions, Southwestern Legal Foundation 46th Annual Institute on Labor and Employment Law, October 1999, Dallas TX (paper provided)

Beyond Y2K – What Will Happen in Employment Law This Year, American Trucking Association Forum for Motor Carrier General Counsels

2/00

Video-Taping – A Dual Standard: Rights and Obligations of Unions and Employers, Mid-Winter Meeting of Committee on Development of the Law under the NLRA, February 2000 (paper provided)

10/00

Beware! An Update on How the NLRA Applies to Non-Union Employees, Southwestern Legal Foundation 47th Annual Institute on Labor and Employment Law, October 2000, Dallas TX (paper provided)

New OFCCP Initiatives: Audit and Compliance Issues, PowerPoint slides used for FedPubs presentation, Washington, DC, October 2000 (slides provided)

10/01

The NLRB in 2001: It's Found in the Representation Cases, Center for American and International Law (formerly Southwestern Legal Foundation) 48th Annual Institute on Labor and Employment Law, October 2001, Dallas TX (paper provided)

14. **Congressional Testimony**: *List any occasion when you have testified before a committee or subcommittee of the Congress, including the name of the committee or subcommittee, the date of the testimony and a brief description of the substance of the testimony. In addition, please supply four (4) copies of any written statement submitted as testimony and the transcript of the testimony, if in your possession.*

February 8, 1995. House Committee on Economic and Educational Opportunities, Subcommittee on Employer-Employee Relations. "Removing Impediments to Employee Participation/*Electromation.*"

September 27, 1995. House Committee on Economic and Educational Opportunities, Subcommittee on Employer-Employee Relations. "Pursuit of Injunctive Relief Under Section 10(j) of the National Labor Relations Act"

Copies attached.

15. **Health**: *Describe the present state of your health and provide the date of your last physical examination.*

I am in general good health. I have epilepsy, which is controlled by medication. My last physical examination was in 2002.

16. **Citations**: *If you are or have been a judge, provide:*

From October 1991 to October 1993, I served as Chairman of the Federal Mine Safety and Health Review Commission ("Mine Commission"). The 5-member Commission serves as an administrative court of appeals to review decisions of specialized Administrative Law Judges who adjudicate cases dealing with mine safety, health and discrimination claims under the Federal Mine Safety and Health Act of 1977. The Solicitor of Labor, on behalf of the Secretary and the Mine Safety and Health Administration ("MSHA"), prosecutes cases before the Commission and its judges. The Commission holds open meetings to decide the cases before it and majority decisions are drafted in the first instance by its Office of the General Counsel (for this reason, I have included cases in which I dissented and wrote the dissents). Appeal from the Mine Commission is to the Federal Courts of Appeals and the Supreme Court. The Commission does not actively participate in review of its decisions by the federal courts.

(a) a short summary and citations for the ten (10) most significant decisions you have written.

1. *Secretary of Labor v. Phillips Uranium Corporation*, 4 FMSHRC 549, 553 (April 1982) ("The Secretary's decisions to continue against [the mine operator rather than the independent contractor] were not consistent with the purposes of the Act and must fail.").

2. *Elias Moses v. Whitley Development Corporation*, 4 FMSHRC 1475 (August 1982)
(mine operator violated Mine Act when it discharged miner on erroneous belief that he had reported an accident to MSHA and when it coercively interrogated and harassed him based on mistaken belief that he had reported accident).

3. *United Mine Workers of America v. Secretary of Labor*, 5 FMSHRC 807 (May 1983) (miners and representatives of miners do not have standing to initiate review of citations issued by MSHA through filing a notice of contest).

4. *Secretary of Labor v. Monterey Coal Company*, 5 FMSHRC 1010, 1029 (June 1983) (Collyer and Backley, dissenting) ("MSHA is not bound to follow the guidelines in Table 6.6 [that govern water impoundments]. . . . But when MSHA does follow Table 6.6 and when it requires Monterey to follow Table 6.6, it must do so rationally and correctly within the terms of the Table. MSHA has broad discretion in regulating coal refuse impoundments through the plan approval process. But that discretion can be abused. We must dissent because such an abuse took place in this case.").

5. *Secretary of Labor v. Jones & Laughlin Steel Corporation*, 5 FMSHRC 1209 (July 1983) (statutory construction to determine pre-shift inspection requirements for coal-carrying conveyor belts).

6. *Secretary of Labor v. Emery Mining Corporation*, 5 FMSHRC 1391 (August 1983) (mine operators must pay for new-miner training and cannot avoid the cost by restricting hiring to only those new miners who have received and paid for the training prior to hire); *enforcement denied*, 783 F/2d 155 (10th Cir. 1986) (finding that applicants are not "miners" and operator imposed lawful hiring qualifications).

7. *Secretary of Labor v. Callanan Industries, Inc.*, 5 FMSHRC 1900, 1901 (August 1983) ("[W]e conclude that economic as well as technological factors must be taken into account in determining whether a noise control is 'feasible' under the standard.")

8. *Secretary of Labor v. Peabody Coal Company*, 6 FMSHRC 183 (February 1984). (An authorized MSHA inspector does not need a search warrant to require the mine operator to produce records required to be kept by the statute.)

9. *Council of Southern Mountains, Inc. v. Martin County Coal Corporation*, 6 FMSHRC 206, 209 (February 1984). ("[W]e conclude that there must be a persuasive nexus between that which is stated in a statute and that which is inferred from it. Ambitious inference all too easily becomes amendment. . . . [I]t bears restating that the Commission is an independent adjudicatory agency that exists to provide administrative trial and appellate review. The Commission is in no way part of MSHA or the Department of Labor. Our statutory mandate does not include amendment of the Act or promulgation of legislative regulations implementing it. . . . We do not discern a persuasive nexus between the Mine Act and this asserted private avenue to enforce its training provisions.")

10. *Secretary of Labor v. Kitt Energy Corporation*, 6 FMSHRC 1596 (August 1984) (statutory construction interpreting Section 104(d)(2) relating to withdrawal orders).

11. *Secretary of Labor v. Roy Glenn*, 6 FMSHRC 1583, 1586 (July 1984). ("[W]e hold that a corporate agent in a position to protect employee safety and health has acted 'knowingly', in violation of section 110(c) when, based upon facts available to him, he either knew or had reason to know that a violative condition or conduct would occur, but he failed to take appropriate preventive steps.")

12. *Allied Chemical Corporation v. Secretary of Labor*, 6 FMSHRC 1854, 1864 (August 1984) (Collyer, dissenting)("[T]he majority introduces into the cited standard a 'general duty' concept applicable well beyond loading, hauling and dumping. The decision ignores the nature of underground mining systems and turns identical or similar standards within other Subparts into surplusage.

It ignores the clear legislative history declining to adopt a general duty concept. It also ignores the relevant roof control standard which is applicable.").

13. *Secretary of Labor v. Old Dominion Power Company*, 6 FMSHRC 1886, 1906 (August 1984) (Collyer, dissenting) ("Whatever the merit to the Secretary's decision that it would be less complex and, thus, more administratively convenient to consider all independent contractors as operators, that convenience cannot legally override Congress' express distinction between those contractors who can be cited as operators (contractors 'providing services or construction' with a 'continuing presence') and those who cannot ('all others').").

(b) a short summary and citations for all rulings of yours that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court.

Munsey v. Federal Mine Safety and Health Review Commission, 701 F.2d 976 (D.C. Cir. 1983) (reversing that portion of Mine Commission decision that had refused to award attorney's fees for period of time miner was represented for free by staff counsel at his union).

Donovan v. Stafford Construction company, 732 F.2d 954 (1984) (reversing the Mine Commission's decision that a bookkeeper who told employer that she would not lie to MSHA, but who was never interviewed by MSHA, had not engaged in protected activity).

Donovan v. Carolina Stalite Company, 734 F.2d 1547 (D.C. Cir. 1984) (reversing the Mine Commission's decision that the Carolina Stalite facility was not a "mine").

Pyro Mining Company v. Federal Mine Safety & Health Commission, 785 F.2d 310, 1986 WL 16388 (6th Cir. 1986) (unpublished) (sustaining Mine Commission's finding of a violation and reversing and remanding for reconsideration of penalty assessment).

Brock v. Cathedral Bluffs Shale Oil Co., 796 F.2d 533 (D.C. Cir. 1986) (reversing the Mine Commission's dismissal of a citation that was inconsistent with MSHA's published guidelines).

(c) a short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions.

None

If any of the opinions or rulings listed were in state court or were not officially reported, please provide copies of the opinions.

17. **Public Office, Political Activities and Affiliations**:

List chronologically any public offices you have held, federal, state or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or nominations for appointed office for which were not confirmed by a state or federal legislative body.

- General Counsel, National Labor Relations Board, 10/84 – 4/89, nominated by former President Ronald Reagan and confirmed by the Senate

- Chairman, Federal Mine Safety and Health Review Commission, 10/81 – 10/84, nominated by former President Ronald Reagan and confirmed by the Senate

(1) 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.

- Precinct Committeewoman, Republican Party, Denver, CO 1980 Presidential Campaign (mostly get-out-the vote activities; overseeing distribution of campaign materials)

18. **Legal Career**: *Please answer each part separately.*

(a) Describe chronologically your law practice and legal experience after graduation from law school including:

(1) whether you served as clerk to a judge, and if so, the name for the judge, the court and 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 affiliated, and the nature of your affiliation with each.

- 7/77 – 10/81: Sherman & Howard, 633 Seventeenth Street, Denver, CO, Associate in the labor and employment law group (general representation of management in labor and employment law matters, including mine safety)

- 10/81 – 10/84: Chairman, Federal Mine Safety & Health Review Commission, 1730 K Street N.W., Washington, D.C. (administrative court of appeals reviewing decisions of administrative law judges and adjudicating mine safety and health cases; executive officer of the agency)

- 10/84 – 4/89: General Counsel, National Labor Relations Board, 1099 – 14th Street N.W., Washington, D.C. (nationwide prosecutor of labor-law violations, oversight of election processes, representation of NLRB before state and federal courts, oversight of agency personnel and budget)

- 4/89 – present: Crowell & Moring LLP, 1001 Pennsylvania Avenue N.W., Washington, D.C. (labor and employment law representing management; first woman to Chair the firm's Management Committee)

(b) (1) Describe the general character of your law practice and indicate by date if and when its character has changed over the years.

- 6/77 – 10/81: private practice in labor and employment law, representing management
- 10/81 – 10/84: government service, head of independent federal agency, administrative adjudication as an administrative court of appeals, direction of agency personnel and budget
- 10/84 – 4/89: government service, prosecutor with unreviewable discretion at independent federal agency, direction of agency personnel and budget
- 4/89 – present: private practice in labor and employment law, representing management

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

Specialization is in labor law (collective bargaining and labor-management relationships) and employment law (discrimination laws, affirmative action, executive agreements and compensation, etc.)

- Typical labor law clients are small-to-large sized companies with represented employees in the service, transportation, production, manufacturing, or hospitality businesses
- Typical employment-law clients include both those for whom we do labor-law representation and also small-to-large companies with the full range of employment-law issues in the service, transportation, production, manufacturing, hospitality and healthcare industries
- Typical affirmative action clients are federal contractors with annual revenues of $50,000 or more from work for the federal government
- Typical clients on executive agreements can be the employer or executive

(c) (1) Describe whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe each such variance, providing dates.

I have appeared in federal district courts and in federal circuit courts occasionally. I have appeared before the bankruptcy courts very occasionally. I have appeared once before the Superior Court in the District of Columbia.

(2) Indicate the percentage of these appearances in

(1) federal courts; 99%
(2) state courts of record; 1%
(3) other courts.

(3) Indicate the percentage of these appearances in:

(1) civil proceedings; 100%
(2) *criminal proceedings.* 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.

None

(5) Indicate the percentage of these trials that were decided by a jury.

None

(4) Describe your practice, if any, before the United States Supreme Court. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the U.S. Supreme Court in connection with your practice.

I have filed two petitions for *certiorari* and one *amicus* brief in the Supreme Court. Copies are enclosed.

(5) Describe legal services that you have provided to disadvantaged persons or on a pro bono basis, and list specific examples of such service and the amount of time devoted to each.

Crowell & Moring has adopted a practice of encouraging each of our lawyers to accept the challenge of the local courts and to provide a minimum of 40/hours/year (now 50/hours/year) on a *pro bono* basis. In the main, my *pro bono* efforts have been directed to providing employment counseling to non-profit organizations that need professional assistance and cannot afford it. Most of these representations are on-going. *Pro bono* hours were 77 in 1999, 75 in 2000 and 59.75 in 2001. Representative *pro bono* clients include:

- DC Public Schools (labor and employment law advice)
- Institute for Family-Centered Care (labor and employment law advice)
- The Barker Foundation (labor and employment law advice)
- Lowell School (labor and employment law advice)
- Lawyers' Committee for Civil Rights (screening potential EEO claimants)
- Youth Services America (labor and employment law advice)
- Episcopal Diocese of Washington (labor and employment law advice)
- World Federalist Association (labor and employment law advice)
- Food Research and Action Center (labor and employment law advice)
- Individuals needing representation on EEO claims, severance negotiations, employment agreements or non-competition agreements

19. **Litigation**: *Describe the ten (10) most significant litigated matters which you personally handled, and for each provide the date of representation, the name of the court, 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. In addition, please provide the following:*

(1) the citations, if the cases were reported, and the docket number and date if unreported;

(2) a detailed summary of the substance of each case outlining briefly the factual and legal issues involved;

(3) the party or parties whom you represented; and

(4) describe in detail the nature of your participation in the litigation and the final disposition of the case.

1. ***In re Greyhound Lines, Inc.*** Case Nos. 90-00985-B-11 (Bankruptcy S.D. TX). 1990-91 (Bankruptcy Judge Schmidt). Co-counsel (bankruptcy counsel): Oscar R. Cantu, Weil Gotshal & Manges LLP, 701 Brickell Avenue, Suite 2100, Miami, FL 33131, 305-577-3110. Opposing counsel: Benjamin Mandelman, Region 7, National Labor Relations Board, 310 West Wisconsin Ave., Milwaukee, WI 53202, 414-297-3861 (representing NLRB), and Jeffrey Freund, Bredhoff & Kaiser, 805 – 15th Street NW, Washington, D.C. 20005, 202-842-1888 (representing Amalgamated Transit Union).

This matter involved a strike at Greyhound Lines, which forced the company to file a petition for protection under Chapter 11 of the Bankruptcy Code while it reorganized. The General Counsel of the National Labor Relations Board ("NLRB" or "Board") issued complaint asserting that the strike was an unfair labor practice strike because Greyhound allegedly implemented its final contract proposal before impasse in negotiations with the Amalgamated Council of Greyhound Local Unions. The General Counsel filed a proof of claim in the bankruptcy court, seeking to have the court require Greyhound to set aside $143M in cash for an eventual remedy in four years after the administrative case were tried to conclusion and appeal. The bankruptcy court held a litigated estimation proceeding to determine the size of the government's claim. The court ruled that it was

likely that the Board would find an impasse so that Greyhound's implementation would likely be found to be lawful; he set the value of the claim at $32M, an amount small enough to allow the company to reorganize and emerge successfully from bankruptcy. I was the primary labor lawyer representing Greyhound on the case. I worked with co-counsel from Weil, Gotshal to prepare its presentation and witnesses, authored the supporting brief, and presented the closing argument at the conclusion of the hearing.

2. ***Chamber of Commerce v. Bragdon***, 64 F.3d 497 (9th Cir. 1995) (Judges Hug, Fletcher, Brunetti). Co-counsel: Ellen M. Dwyer, Crowell & Moring LLP, 1001 Pennsylvania Ave N.W., Washington, D.C. 20004-2404, 202-624-2500. Opposing counsel, Michael Gottesman, Georgetown University Law Center, 600 New Jersey Avenue, N.W., Washington, D.C. 20001, 202-662-9482.

This matter involved a challenge to an ordinance passed by Contra Costa County, CA, as preempted by the National Labor Relations Act, the Employee Retirement Income Security Act, and the Due Process Clause of the U.S. Constitution. The ordinance would have required all private sector construction in the County to be performed at the wages and terms of union contracts. I was primary labor counsel on the case, representing members of the Chamber of Commerce of the United States. I developed the arguments, oversaw the drafting of the briefs, and argued orally before the District Court and the Ninth Circuit. On cross-motions for summary judgment, the District Court ruled that the ordinance was preempted by the NLRA and issued an injunction against it. That decision was sustained by the Ninth Circuit.

3. ***Ormet Corporation v. Proctor***, Case No, C200 341 (S.D. Ohio) (2000) (King, Magistrate Judge). Co-counsel: Terence F. Flynn, Crowell & Moring LLP, 1001 Pennsylvania Ave NW, Washington, D.C. 2004-2404, 202-624-2500. Opposing counsel: Robert L. Schlatter, Asst. Atty Gen., 37 W. Broad St., Columbus, OH (State defendants) and Timothy F. Cogan, Cassidy Meyers Cogan Voegelin, 1413 Eoff St., Wheeling, W. VA 26003, 304-232-8100 (intervenor)

This matter involved a challenge to permits issued by the Ohio Department of Transportation during a collective-bargaining dispute. The permits allowed a union to construct buildings on property for which ODOT had an easement but that was held in fee simple by the employer. We argued that ODOT's actions were contrary to the employer's rights under the NLRA and State law and therefore preempted. After discovery, including depositions, cross motions for summary judgment were filed. The State of Ohio and the employer thereafter came to a satisfactory settlement. I devised the strategy, oversaw the filing of the suit, prosecution of discovery, and drafting of briefs, and negotiated the settlement.

4. ***Davon, Inc. v. Shalala***, 75 F.3d 1114 (7th Cir. 1996), *cert.denied sub nom Templeton Coal Co. v. Shalala*, 519 U.S. 808 (1996) (Judges Cummings, Cuhady, Kanne). Co-counsel: J. Michael Klise, Crowell & Moring LLP, 1001 Pennsylvania Ave NW, Washington, D.C. 20004-2404, 202-624-2500. Opposing counsel: Peter Buscemi, Morgan, Lewis & Bockius, 1800 M Street NW, Washington, D.C. 20036, 202-467-7190, and John Mooney, Mooney, Green, Gleason, Baker, Gibson & Saindon, 1920 L Street NW, Washington, D.C. 20036, 202-783-0010.

This matter involved a constitutional challenge to the Coal Industry Retiree Health Benefits Act of 1992 (the "Coal Act"). We represented four companies that had ceased mining coal in the years between 1952 and 1964 but had suddenly been assigned fiscal responsibility for lifetime healthcare for hundreds of retired coal miners who had been their employees decades ago. We initially obtained a temporary injunction but the injunction was dissolved by the District Court and thereafter we were unsuccessful in persuading the courts that the extreme retroactivity of the Act was unconstitutional. Our petition for *certiorai* was denied but the Supreme Court granted a later *cert* petition for another client on the same points and law and ruled that the Act was unconstitutional just as we had argued in *Templeton*. I led a team on this case, devised the legal theories, drafted the complaint, conducted discovery, drafted motions and argued before the District Court and Seventh Circuit Court of Appeals.

5. ***Atkinson v. Occidental Chemical Company, Inc.*** Civil No. 2-94-1065 (S.D.W. VA. 1994-95) (Judge Knapp). Opposing counsel: Gregory Mooney, 10736 Jefferson Blvd., #279. Culver City, CA 90230, 310-952-6040 [formerly, General Counsel, Oil, Chemical & Atomic Workers International Union] and Lisa Walker McBride, Region 9, National Labor Relations Board, John Weld Peck Federal Building, 550 Main Street, Cincinnati OH 45202, 513-684-3686

This was an injunction proceeding initiated by the NLRB to prevent a plant closing that was allegedly due to union animus. I represented the employer before the District Court in West Virginia. After a number of appearances before the court in which it became clear that an injunction would not issue, the union and the company negotiated a mutually satisfactory settlement and the unfair labor practice charges were withdrawn. I was the only labor lawyer on this matter and argued against the injunction to the court. I also negotiated the settlement with the union.

6. ***Don Lee Distributors v. NLRB***, 145 F.3d 834 (6th Cir. 1998), *cert den*, 525 U.S. 1102 (1999) (Judges Boggs, Norris, Moore). Co-counsel: Terence F. Flynn, Crowell & Moring LLP, 1001 Pennsylvania Ave NW, Washington, D.C., 202-624-2500. Opposing counsel: Samuel C. McKnight, Klimist, McKnight, Sale, McClow & Canzano, 400 Galleria Officentre, Suite 117, Southfield, MI, 48034-8460, 248-354-9650 and Linda Dreeben, Deputy Assistant General Counsel, National Labor Relations Board, 1099 14th St. N.W., Washington, D.C. 20507, 202-273-2977.

This matter was an enforcement proceeding after administrative litigation before the National Labor Relations Board in which we were not involved. On appeal to the Sixth Circuit, we argued that the employers had engaged in lawful bargaining and that the complaint was time barred. The issues concerned the differences between "coordinated bargaining" and "multi-employer bargaining" and the application of Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 160(b). I directed the development of a defense, briefed the case, and argued before the circuit court. We were unsuccessful before the Sixth Circuit and the Supreme Court denied *certiorai*.

7. ***Kerr-McGee Coal Corporation v. Federal Mine Safety and Health Review Commission***, 40 F.3d 1257 (D.C. Cir. 1994) (Judges Silberman, Sentelle, and Rogers). Co-counsel Thomas C. Means and J. Michael Klise, Crowell & Moring LLP, 1001 Pennsylvania Avenue, N.W., Washington, DC 20004-2595, (202) 624-2500. Opposing Counsel: Colleen A. Geraghty, Esquire, Office of the Solicitor, U.S. Department of Labor, 4015 Wilson Boulevard, Arlington, VA 22203. (703) 235-1383.

This case involved the rights of non-employee miner representatives to accompany inspectors from the Mine Safety and Health Administration (MSHA) on mine inspections without permission from the mine operator to enter the property. We filed an *amicus* brief on behalf of the American Mining Congress and the National Coal Association which analyzed employee representatives' rights under the Federal Mine Safety and Health Act of 1977 and the National Labor Relations Act in light of the mine operators' private property rights and the public purpose of the statutes. The court sustained the Mine Commission's decision that non-employee miner representatives have a right to participate in MSHA inspections over the mine operator's objections.

8. ***King v. Booz-Allen & Hamilton***, Civil Action No. 94-263-A (D.C.E.D. VA 1994) (Judge Ellis). Co-counsel: Mark E. Baker, (then at Crowell & Moring LLP), McGuinness & Williams, 15th Street N.W., Washington, D.C., 20004, 202-789-8670. Opposing counsel: Kip Schwartz, Graham & James, 2000 M Street, Washington, D.C. 20036

This matter involved claims of sexual harassment and raised undecided issues of an employer's potential liability for alleged misconduct directed against an employee of a federal contractor by a civilian employed by the Navy. After full discovery, it was settled on mutually satisfactory terms. I was in charge of the matter and oversaw the discovery and conducted the settlement negotiations.

9. ***Building and Construction Trades Council of the Metropolitan District v. Associated Builders and Contractors of Massachusetts/Rhode Island, Inc.***, 507 U.S. 218 (March 8, 1993). Co-counsel Clifton S. Elgarten and Ellen B. Moran, Crowell & Moring, 1001 Pennsylvania Avenue N.W., Washington, D.C. 20004, 202-624-2500, and Stephen A. Bokat, Robin S. Conrad and Mona C. Zeiberg of the National Chamber Litigation Center, 1615 H Street N.W., Washington, D.C. 20062, 202-463-5337.

This matter involved a preemption challenge to a state mandate that contractors on the Boston Harbor project sign a project labor agreement. I was the primary labor lawyer in filing an *amicus* brief for the Chamber of Commerce of the United States of America in support of the respondents. The Court ruled that the mandate was not preempted by the NLRA.

10. ***Greyhound Lines, Inc.***, 319 NLRB 554 (1995). (Chairman Gould, Members Browning, Cohen, Truesdale). Co-counsel Lawrence McNamara, Locke, Liddell; & Sapp LLP, 2200 Ross Avenue, Dallas TX 75201, 214-740-8000. Opposing counsel: Benjamin Mandelman, Region 30, National Labor Relations Board, 310 West Wisconsin Ave., Milwaukee, WI 53202, 414-297-3861 and Martin Burns (deceased), Jacobs, Burns, Orlove, Stanton & Hernandez, 300 W. Washington St., Chicago, IL 60606, 312-372-1646.

This matter involved the administrative litigation of unfair labor practice charges and a 250 page complaint issued by the General Counsel against Greyhound, arising out of the collective bargaining and a strike in 1990. When the company filed for bankruptcy protection, I was retained to represent it in dealings with the Creditors' Committee. Thereafter, the company's lawyer became ill and retired from practice and I became the primary and lead labor lawyer handling the matters. The trial before Administrative Law Judge Robert A. Giannasi of the NLRB continued (2 weeks on/2 weeks off) for the better part of 18 months. I led the trial team and oversaw all post-trial briefing. Thereafter, I represented the Company when we negotiated a settlement of the NLRB cases and all ancillary litigation (a RICO suit against the union, injunction proceedings for union violence, and a new collective bargaining agreement). The case citation relates to one part of the case that the parties were unable to settle at the time.

20. **Criminal History**: *State whether you have ever been convicted of a crime, within ten years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and disposition and describe the particulars of the offense.*

None

21. **Party to Civil or Administrative Proceedings**: *State whether you, or any business of which you are or were an officer, have ever been a party or otherwise involved as a party in any civil or administrative proceeding, within ten years of your nomination, that is reflected in a record available to the public. If so, please describe in detail the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings in which you were a guardian ad litem, stakeholder, or material witness.*

None

22. **Potential Conflict of Interest**: *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.*

My withdrawal from Crowell & Moring LLP will cause repayment of my capital contribution over a period of three or four years. During that time period and for an appropriate period thereafter, I will recuse myself from any cases in which the firm is representing a party or otherwise appearing. I will also recuse myself from all cases that

have been in the firm during my tenure. In addition, I will follow the guidelines of the Code of Judicial Conduct in addressing any other potential conflicts of interest.

23. **Outside Commitments During Court Service**: *Do you have any plans, commitments, or arrangements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.*

None

24. **Sources of Income**: *List sources and amounts of all income received during the calendar year preceding the nomination, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500. 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, attached.

Statement of Net Worth: *Complete and attach the financial net worth statement in detail. Add schedules as called for*

See Statement of Net Worth, attached with schedules.

25. **Selection Process**: *Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?* NO

(1) If so, did it recommend your nomination?

No selection commission

(2) Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.

I was contacted by the Office of the Counsel to the President in the White House and invited to interview for this position. Thereafter, I met with representatives of the White House Counsel's Office and spoke with representatives of the Department of Justice. I was notified some weeks later that the President intended to nominate me. Thereafter, I filled out forms for the Federal Bureau of Investigation, which conducted a full-field background investigation. I was nominated on August 1, 2002.

(3) 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 or seeking a commitment as to how you would rule on such case, issue, or question? If so, please explain fully.

None

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
Collyer, Rosemary M.	District Court - Washington D.	8/2/02

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 08/01/1902 ___ Initial ___ Annual ___ Final	01/01/2001 to 07/31/1902

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.
Crowell & Moring LLP 1001 Pennsylvania Ave., NW Washington, DC 20004	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	Crowell & Moring LLP
2		
3	Trustee	Leon Zebroski Irrevocable Insurance Trust

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

☐ NONE (No reportable agreements)

	DATE	PARTIES AND TERMS
1	04/89	Crowell & Moring LLP Partnership Agreement (Capital Account repayable in 4 years)
2		
3		

II. 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	Crowell & Moring	495,000
2	2001	Crowell & Moring LLP	944,000
3	July 200	Crowell & Moring LLP	460,000
4			

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Collyer, Rosemary M.	8/2/02

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

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

	SOURCE	DESCRIPTION
X	NONE (No such reportable reimbursements.)	
1		
2		
3		
4		
5		
6		
7		

V. GIFTS

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

	SOURCE	DESCRIPTION	VALUE
X	NONE (No such reportable gifts.)		
1			
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: Collyer, Rosemary M.

Date of Report: 8/2/02

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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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 VRTX (IRA)		None	J	T					
2 Schwab Money Market Fund Account (IRA)	A	Interest	J	T					
3 Fidelity Agressive Growth Fund	A	Dividend	K	T					
4 Sequoia Fund	D	Dividend	N	T					
5 Fidelity Spartin US Equity Index Fund	A	Dividend	J	T					
6 Fidelity Puritan Fund	A	Dividend	K	T					
7 Fidelity Diversified International Fund	A	Dividend	K	T					
8 Fidelity Managed Income Portfolio II (Stable Value	A	Dividend	J	T					
9 BRKB - Common Class B		None	N	T					
10 Fidelity Money Market Mutual Fund	A	Interest	J	T					
11 UST Inflation Index Notes 3.375% 1/15/12 TIPS	B	Interest	M	T					
12 AFC - Common		None	J	T					
13 ADRX - Common		None	K	T					
14 BRKA - Common Class A		None	M	T					
15 CMGI - Common		None	J	T					
16 Fidelity Real Estate Investment Fund	B	Dividend	K	T					
17 INTC - Common	A	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: Collyer, Rosemary M.

Date of Report: 5/27/02

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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(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 MSFT - Common		None	K	T					
19 PFE - Common	A	Dividend	K	T					
20 ING Asia Pacific Equity Class A Fund	B	Dividend	K	T					
21 Fidelity Spartin Maryland Mun Fund	A	Dividend	J	T					
22 Fidelity Spartin Mun Money Mkt Fund	A	Dividend	J	T					
23 Massachusetts Muni Bonds	B	Interest	J	T					
24 King Co WA Muni Bonds	B	Interest	J	T					
25 NY Urb Dev Muni Bonds	B	Interest	J	T					
26 Hopkins, MN Muni Bonds	B	Interest	J	T					
27 MD Gen Obl Muni Bonds	B	Interest	K	T					
28 Anne Arundel Co MD Muni Bonds	B	Interest	K	T					
29 Balto MD Const Pub Imp Muni Bonds	B	Interest	K	T					
30 MD Health&Higher Ed Facs Muni Bonds	B	Interest	K	T					
31 Fidelity Core Account (Cash)	C	Interest	M	T					
32 APHT - Common (IRA#2)		None	K	T					
33 ELN - Common (IRA#2)		None	J	T					
34 HGSI - Common (IRA#2)		None	J	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: Collyer, Rosemary M. | Date of Report: 8/2/02

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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
						If not exempt from 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.)									
35 IVX - Common (IRA#2)		None	K	T					
36 MTSX - Common (IRA#2)		None	J	T					
37 MLNM - Common (IRA#2)		None	K	T					
38 NBIX - Common (IRA#2)		None	L	T					
39 ELGX - Common (formerly RADX) (IRA#2)		None	K	T					
40 Schwab Money Mrkt Fund (IRA#2)	A	Dividend	J	T					
41 UST Inflation Index Notes 3.375% 1/15/12 TIPS	A	Interest	K	T					
42 Merrill Lynch CMA	A	Dividend	L	T					
43 Citibank	A	Interest	L	T					
44 CMGI - Common		None							
45 GLW - Common	A	Dividend							
46 CYBA - Common		None							
47 ITWO - Common		None							
48 NT - Common	A	Dividend							
49 SUNW - Common		None							
50 MYL - Common	A	Dividend							
51 Columbia S&L - Common (IRA#2)		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

Name of Person Reporting: Collyer, Rosemary M.

Date of Report: 8/2/02

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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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 SEPR - Common (IRA#2)		None							
53 GNSS - Common (IRA#2)		None							
54 INMR - Common (IRA#2)		None							
55 CRA Common		None							
56 TYC - Common	A	Dividend							
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
	Collyer, Rosemary M.	8/2/02

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 Rosemary M Collyer Date 8/2/02

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

1360

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 (000)					LIABILITIES (000)				
Cash on hand and in banks		2	5	8	Notes payable to banks-secured			3	8
U.S. Government securities-add schedule					Notes payable to banks-unsecured				
Listed securities-add schedule	1	6	6	3	Notes payable to relatives				
Unlisted securities-add schedule					Notes payable to others				
Accounts and notes receivable:					Accounts and bills due			2	4
Due from relatives and friends					Unpaid income tax				
Due from others			8	8	Other unpaid income and interest				
Doubtful					Real estate mortgages payable-add schedule		6	1	3
Real estate owned-add schedule	1	2	6	0	Chattel mortgages and other liens payable				
Real estate mortgages receivable					Other debts-itemize:				
Autos and other personal property			7	2					
Cash value-life insurance									
Other assets itemize:									
Capital Account/Crowell & Moring LLP		1	9	7					
					Total liabilities		6	7	5
					Net Worth	2	8	6	3
Total Assets	3	5	3	8	Total liabilities and net worth	3	5	3	8
CONTINGENT LIABILITIES					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									

Schedule

Residential Real Estate Owned

	Current Value	Mortgage Payable
Residence #1	760,000	268,000
Residence #2	500,000	345,000

SUMMARY OF INVESTMENTS

	SYMBOL/ CUSIP	NO. OF SHRS.	RECENT PRICE	PRE-TAX VALUE
IRA #2				
Aphton	APHT	1,700	8.900	15,130
Elan	ELN	2,000	10.330	20,660
Human Genome Sciences	HGSI	800	17.960	14,368
Ivax	IVX	2,000	13.300	26600
Metal Storm Ltd.	MTSX	1,000	13.320	13320
Millennium Pharmaceuticals	MLNM	2,000	17.950	35900
Neurocrine Biosciences	NBIX	2,000	35.070	70,140
Radiance Medical Systems	RADX	15,000	1.280	19,200
Schwab Money Market Fund	SWMXX	18,340	1.000	18,340
IRA #1				
Vertex Pharmaceuticals	VTRX	620	21.450	13,299
Schwab Money Market Fund	SWMXX	687	1.000	687
Keogh Retirement Plan				
Fidelity Aggressive Growth	FDEGX	2,264	14.810	33,534
Sequoia Fund	SEQUX	2,256	135.080	304,790
Fidelity Spartan US Equity Index	FUSEX	141	38.900	5,502
Fidelity Puritan	FPURX	1,872	17.860	33,433
Fidelity Diversified International	FDIVX	2,454	20.440	50,163
Stable Value Fund		1,479	1.000	1,479
Berkshire Hathaway Class B	BRKB	100	2512.000	251,200
Celera Genomics Group	CRA	400	14.890	5,956
Fidelity Money Market Mutual Fund	FDRXX	123,835	1.000	123,835
Allmerica Financial Corp.	AFC	171	48.500	8,294
Andrx	ADRX	1,000	45.990	45,990
Berkshire Hathaway Class A	BRKA	2	76100.000	152,200
CMGI Inc.	CMGI	300	0.900	270
Fidelity Real Estate Investment	FRESX	1,817	19.880	36,129
Intel	INTC	803	29.390	23,614
Microsoft	MSFT	500	54.820	27,410
Pfizer	PFE	935	36.200	33,840
ING Asia Pacific Equity Class A	PMAAX	4,339	4.290	18,613
Tyco International	TYC	600	24.370	14,631
Spartan MD Mun Income	SMDMX	1,169	10.620	12,419
Spartan Municipal Money Market	FIMXX	1,240	1.000	1,240
MA Muni Bonds	575826KH4	10	1049.410	10,494
King Co WA Muni Bonds	495242UD9	10	1074.300	10,743
NY Urb Dev Muni Bonds	650033R54	10	1040.370	10,404
Hopkins, MN Muni Bonds	439881CQ4	10	1008.970	10,090
MD Gen Obl Muni Bonds	574192GN4	20	1051.000	21,020
AnneArundelCo, MD Muni Bonds	035881SC6	15	1037.110	15,557
MD Gen Obl Muni Bonds	574192JE1	20	1053.830	21,077
Balto,MD Const Pub Imp Muni Bonds	059185Q76	15	1101.210	16,518
MD Hlth & Higher Ed Facs Muni Bonds	574216BL0	10	1033.270	10,333
MD Hlth & Higher Ed Facs Muni Bonds	574216ET0	15	969.440	14,542
Fidelity Core Account (Cash)	FCASH	90,072	1.000	90,072

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY, UNITED STATES SENATE

AFFIDAVIT

I, Rosemary M. Collyer, being duly sworn, hereby state that I have read and signed the foregoing Questionnaire for Nominees Before the Committee on the Judiciary and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

Rosemary M Collyer

SUBSCRIBED AND SWORN TO before me this 2nd day of August, 2002.

Johnetta D. Jackson
Notary Public

Johnetta D. Jackson
Notary Public, District of Columbia
My Commission Expires 11-30-04

QUESTIONNARIE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY, UNITED STATES SENATE

1. **NAME:** Full name (include any former names used).

   Mark Everett Fuller

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

   United States District Judge for the Middle District of Alabama

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

   98 N. Edwards Street, Enterprise, AL 36330
   (334) 347-1142

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

   December 27, 1958
   Enterprise, Alabama

5. **MARITAL STATUS:** (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.

   Married

   WIFE'S MAIDEN NAME:

   Boyd

   WIFE'S OCCUPATION:

   Homemaker

   NUMBER OF DEPENDENT CHILDREN:

   Three (3)

6. **EDUCATION:** List in reverse chronological order, listing most recent first, each college, law school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1983 – 1985 **University of Alabama School of Law**
Juris Doctorate – May, 1985

1982 – 1982 **Cumberland School of Law**
Transferred University of Alabama School of Law

1977 – 1982 **University of Alabama**
Bachelor of Science in Chemical Engineering – May, 1982

7. **EMPLOYMENT RECORD:** List in reverse chronological order, listing most recent first, all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

1997 – Present **Office of the District Attorney, 12th Judicial Circuit, State of Alabama, 98 N. Edwards Street, Enterprise, Alabama 36330**

Position held: District Attorney

1996 – 1997 **Office of the District Attorney, 12th Judicial Circuit, State of Alabama, 98 N. Edwards Street, Enterprise, Alabama 36330**

Position held: Chief Assistant District Attorney

1989 – Present **Doss Aviation, Inc.**
3320 W. Carefree Circle, Colorado Springs, Colorado 80917

Position held: Chairman & CEO

1985 – 1996 **Cassady, Fuller & Marsh**
203 E. Lee Street, Enterprise, Alabama 36330

Position held: Partner & Associate

1985 – 1985 **Sirotte, Permutt, Friend, Friedman, Held & Apolinsky**
2222 Arlington Avenue, Birmingham, Alabama 35255

Position held: Law Clerk

1984 – 1984 **Cassady, Fuller & Marsh**
203 E. Lee Street, Enterprise, Alabama 36330

Position held: Law Clerk

1983 – 1983 **Hogan, Smith & Alspaugh**
1000 City Federal Building, Birmingham, Alabama 36352

Position held: Law Clerk

Part-time Position:

1997 - 2001 **WXUS**
703 North Daleville Avenue, Daleville, AL 36322

Position Held: Part-time Radio Broadcaster

8. MILITARY SERVICE: Identify any service in the U. S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge received.

None

9. HONORS AND AWARDS: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Dean's List – Undergraduate and Law School

Omega Chi Epsilon – Chemical Engineering Honor Society

Bench and Bar Legal Honor Society

Who's Who Among American Law Students (1983 – 1985)

Outstanding Young Men of America

Who's Who in American Law

Strathmore's Who's Who in American Business

AV Rating Martindale-Hubbell Law Directory

Recipient "Miriam Sheehan" Award

10. **BAR ASSOCIATIONS:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Alabama State Bar Association – (September 1985 – Present)

American Bar Association – (1985 – 2000)

Member of Character and Fitness Committee - Alabama State Bar (1992-1999)

Chairman of Panel V of Character and Fitness Committee
Alabama State Bar (1999-Present)

Member of the Task Force on Disaster Response
Alabama State Bar (1992-1993)

11. **BAR AND COURT ADMISSION:** List each state and court in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Alabama State Bar Association
September 1985 - Present

United States District Court for the Middle District of Alabama
September 1985 – Present

United States District Court for the Northern District of Alabama
November 9, 1993 - Present

United States Court of Appeals, 11th Circuit
November 1, 1990 - Present

12. **MEMBERSHIPS:** List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, charitable, or other organizations since graduation from college, other than those listed in response to Questions 10 or 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

Founding Member of S.A.V.E. (Students Against Violence in Education)

Founding Member of Coffee County Teen Court

Member of the Board of Directors for the Coffee County Habitat for Humanity (1998-2002)

Member of the Board of Directors for AUSA (1999-2001)

Member of the Board of Directors for F.A.C.E.S. (Family and Child Educational Services) (1997-Present)

Member of the Enterprise Chamber of Commerce Board of Directors (1994-1996)

Trustee with the Coffee County Baptist Association (1994-1996)

Member and Deacon of First Baptist Church of Enterprise (Secretary 1996)

Member of Enterprise Lions Club
(3rd Vice President – 1994-1995; 2nd Vice President – 1995-1996; President – 1996-1997)

Coffee County Commission/Countywide Strategic Planning Task Force

Member of State of Alabama Republican Executive Committee (1992-1998)

Alabama District Attorney's Association (1997-Present)

Chairman of the Technology Committee for the Alabama District Attorney's Association (2000-2001)

Member of the Board of Directors for Enterprise Realty, Inc. (1990-1993)

Member of the Board of Directors for the Enterprise Country Club, Inc. (2000-2001)

Board of Directors for Enterprise Quarterback Club (1995-Present)

Member of Ethics Committee for Medical Center Enterprise (1992-1996)

Member of Enterprise Water Board (1994-2002)

Member of the Board of Directors for the Coffee County Arts Alliance (1990-2000)

Member of the Alabama Defense Lawyer Association (1985 – Present)

Member of the American Bar Association Defense Research Institute (1992 – 1996)

Appointed by Governor Guy Hunt to the Alabama Beautification Board (1989)

Board of Directors for Doss Aviation, Inc. (1989 - Present)

To the best of my knowledge none of the Boards of Directors I have served on have discriminated against any person or persons during the time I served as a Director or while I was involved as a member.

13. PUBLISHED WRITINGS: List the titles, publishers, and dates of books, articles, reports, or other material you have written or edited, including material published on the Internet. Please supply four (4) copies of all published material to the Committee, unless the Committee has advised you that a copy has been obtained from another source. Also, please supply four (4) copies of all speeches delivered to you, in written or videotaped form over the past ten years, including the date and place where they were delivered, and readily available press reports about the speech.

There are no published writings; however, in the course of my position as District Attorney for the State of Alabama, 12th Judicial Circuit, I have made several speeches both in seeking the position of District Attorney and while serving therein. All speeches have been extemporaneously made and to my knowledge no written copies of any speech exist as well as any audio or video tapes of any speeches.

14. CONGRESSIONAL TESTIMONY: List any occasion when you have testified before a committee or subcommittee of the Congress, including the name of the committee or subcommittee, the date of the testimony and a brief description of the substance of the testimony. In addition, please supply four (4) copies of any written statement submitted as testimony and the transcript of the testimony, if in your possession.

None

15. HEALTH: Describe the present state of your health and provide the date of your last physical examination.

Last Physical Examination: September 19, 2001

Absent minor aches and pains due to the normal aging process, I would consider my general health as good.

16. CITATIONS: If you are or have been a judge, provide:

(a) a short summary and citations for the ten (10) most significant opinions you have written;
(b) a short summary and citations for all rulings of yours that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court; and

(c) a short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions.

If any of the opinions or rulings listed were in state court or were not officially reported, please provide copies of the opinions.

None – Not Applicable

17. PUBLIC OFFICE, POLITICAL ACTIVITIES AND AFFILIATIONS:

(a) List chronologically any public offices you have held, federal, state or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or nominations for appointed office for which were not confirmed by a state or federal legislative body.

(b) 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.

1. **I was appointed to the position of District Attorney by Governor Fob James (January 1997)**

   I was elected to the position of District Attorney for the 12th Judicial Circuit of Alabama to serve a term of six (6) years (November 1998)

   I am a member of the Executive Committee for the Alabama Republican Party (1992-1998)

2. **I was chairman of the Coffee County Committee to re-elect Governor Guy Hunt (1990)**

   Responsibilities: Organize general public information campaign in an effort to turn out the vote for Governor Guy Hunt

   I am chairman of the Terry Everett for Congress Committee (1993-Present)

   Responsibilities: Involved in an advisory capacity to Congressman Everett on re-election efforts.

   Since graduation from college I have participated, as a volunteer, in numerous political campaigns, but held a position in only those listed above.

18. **LEGAL CAREER:** Please answer each part separately.

(a) Describe chronologically your law practice and legal experience after graduation from law school including:

(1) whether you served as clerk to a judge, and if so, the name for the judge, the court and 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 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 affiliated, and the nature of your affiliation with each.

Cassady, Fuller & Marsh
203 E. Lee Street, Enterprise, AL 36330

Office of the District Attorney, 12th Judicial Circuit
98 N. Edwards Street, Enterprise, AL

Following my graduation from law school, I began employment immediately with the law firm of Cassady, Fuller & Marsh in Enterprise, Coffee County, Alabama. While employed with Cassady, Fuller & Marsh I sat for the Alabama State Bar in July, 1985 and was successful in receiving my license to practice law in the State of Alabama on September 27, 1985. I continued as an associate with the firm of Cassady, Fuller & Marsh in Enterprise, Alabama and made partner in October, 1986 where I remained in private practice until July 1, 1996.

The firm of Cassady, Fuller & Marsh is a small preeminent litigation firm with a history of approximately one hundred (100) years in southeast Alabama. The firm is engaged in the general practice of all aspects of a small, rural practice that has established a reputation as a successful litigation firm in all aspects of state and federal court.

On July 1, 1996 I accepted the position as Chief Assistant District Attorney for the 12th Judicial Circuit and held that position until I was appointed District Attorney for the 12th Judicial Circuit by former Governor Fob James on January 1, 1997. I continued to hold the position of District Attorney and was subsequently elected to a full six-year term in November, 1998.

(b) (1) Describe the general character of your law practice and indicate by date if and when its character has changed over the years.

The general character of the law I practiced following my graduation from law school in 1985 has been divided between my experience in private practice at the firm of Cassady, Fuller & Marsh and my position in public service with the District Attorney's Office for the 12th Judicial Circuit. From 1985 through June 30, 1996, I maintained my practice with Cassady, Fuller & Marsh in the general practice of law and with a concentration in litigation, primarily corporate and insurance defense. My practice also included a general office practice which would involve handling domestic relations matters, general real estate practice, corporate practice and pro bono work through the appointment of criminal defense cases and assisting clients in general legal matters.

Beginning in August, 1987 through August, 1992 and approximately February, 1995 through June, 1996 I was appointed as a part-time Assistant District Attorney for the 12th Judicial Circuit. I had the opportunity of representing the people of Pike and Coffee Counties in various criminal matters ranging from capital murder trials through juvenile and district court cases.

Beginning July 1, 1996 through the current date, my practice has consisted of representing the State of Alabama, more particularly, the citizens of Pike and Coffee Counties in the prosecution of all criminal matters. Since becoming District Attorney, my practice has evolved into more of a managerial function in overseeing the general operation and practice of the District Attorney's Office, to include a great emphasis on administration. I stay involved in larger litigation cases and frequently try criminal cases during regular jury terms of court.

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

The typical client that I represented while in private practice would be the average, hard-working resident of our rural community. Typically these clients would be insured through your larger insurance companies and corporations and I would represent the client's interest in any proceeding filed against them for which I was retained. I would also represent larger corporations when they were parties to a civil action, primarily in the areas of contract disputes, bad-faith, products liability defense, fraud and misrepresentation. While my roles in the Office of District Attorney have varied from a part-time Assistant to a full-time public servant in the position of District Attorney, the client I would have typically represented has remained the same. It is my privilege and responsibility to represent the citizens of the State of Alabama who have been victimized by those who have chosen to violate the criminal code.

(1) Describe whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe each such variance, providing dates.

My legal career has provided me with the opportunity to appear in court frequently and has allowed me the opportunity to be involved in a variety of cases. Since I have always enjoyed litigation, my practice, both in civil and criminal cases has allowed me the opportunity to be in court several times per week on a fairly consistent basis since September, 1985.

(2) Indicate the percentage of these appearances in:

(A) federal courts;
(B) state courts of record;
(C) other courts.

The cases that I have handled both while I was in private practice and while serving as a District Attorney have been numerous; however, the majority of my litigation practice has been in State courts. I have divided my litigation experience into four (4) categories; total trials, jury trials – civil, jury trials – criminal and federal trials. Of all of the jury trials I have tried, 4% of all cases I have tried to a verdict or judgment have been in federal court. My litigation experience by category is as follows:

Total Trials:	**5,160**
Jury Trials – Civil:	**58**
Jury Trials – Criminal:	**82**
Federal Trials:	**6**

(a) The percentage of cases I have handled in criminal court is 56% of all cases tried before a jury or settled just shy of a jury trial.
(b) The percentage of cases I have handled in civil proceedings is 44%.
(c) None.

(3) Indicate the percentage of these appearances in:

(A) civil proceedings;
(B) criminal proceedings

After great effort, I have been able to estimate the total number of State civil and criminal jury trials I have handled as well as federal jury trials and they are as follows:

Jury trials – civil:	**58**
Jury trials – criminal:	**82**
Federal:	**6**

(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 acted as sole counsel or chief counsel in the vast majority of all of the criminal trials and State civil trials and as co-chief counsel or associate counsel in each of the cases tried in federal court. In providing the statistics I have included in this response, I have tried to limit my response to those cases which were tried before a jury to verdict; however, a small percentage of these cases may have settled or pled during the trial process or were settled on the eve of trial. The total percentage of both civil and criminal cases that were decided by jury in the 146 cases I have broken out from my litigation experience is greater than 70%.

(5) Indicate the percentage of these trials that were decided by jury.

Greater than 70%.

(d) Describe your practice, if any, before the United States Supreme Court. Please supply four (4) copies of any briefs , amicus or otherwise, and, if applicable, any oral argument transcripts before the U.S. Supreme Court in connection with your practice.

None

(e) Describe legal services that you have provided to disadvantaged persons or on a *pro bono* basis, and list specific examples of such service and the amount of time devoted to each.

I have been privileged in my career as an attorney in the general, civil practice of law to have been able to provide legal services to disadvantaged persons on a pro bono basis. This experience would include the specific instances of appointed counsel to indigent criminal defendants, representation to individuals in legal matters in which children's rights or domestic relations were at issue and the client was incapable of paying for the legal services as well as providing legal services without charge, to churches. These legal services ranged from preparing title opinions and closing loans on church expansions to representing the Coffee Baptist Association and representing the Daleville Korean Presbyterian Church, P.C.A. in a trial regarding the conversion of monies from the church treasury. I have also had the opportunity of being appointed to the task force on disaster response through the Alabama State Bar and providing assistance to disaster victims of floods, tornadoes, and other large natural disasters.

19. **LITIGATION:** Describe the ten (10) most significant litigated matters which you personally handled, and for each provide the date of representation, the name of the court, the name of the judge or judges before whom the case was litigated and the individual

name, address, and telephone numbers of co-counsel and of principal counsel for each of the other parties. In addition, please provide the following:

(a) the citations, if the cases were reported, and the docket number and date if unreported;

(b) a detailed summary of the substance of each case outlining briefly the factual and legal issues involved;

(c) the party or parties whom you represented; and

(d) describe in detail the nature of your participation in the litigation and the final disposition of the case.

1. **State of Alabama vs. Willie Simmons "Billy Boy" Jackson CC 87-33**
Capital Murder
Date of representation: 1997
Judge Gary L. McAliley
Attorneys for the State: **Joel M. Folmar**
202 Oleander Drive
Panama City Beach, FL 32413
(850) 234-7841

Mark E. Fuller
98 N. Edwards Street
Enterprise, AL 36330
(334) 347-3489

Attorneys for the Defendant: **Paul A. Young**
125 College Street
Enterprise, AL 36330
(334) 347-0843
Garth Lindsey
Post Office Box 327
Elba, AL 36323
(334) 897-2592

This case involved a charge of Capital Murder against the defendant, Billy Boy Jackson. Mr. Jackson befriended an elderly gentleman whom he subsequently gained entry into his home and robbed the victim of less than one hundred dollars after he had bludgeoned the victim with a wood stove iron, cut his throat with a pair of shears and then shoved a broom handle down his throat in an effort to kill the victim.

I, along with then District Attorney Joel M. Folmar represented the State of Alabama at the trial of this matter. This was the first capital murder case

that I had participated in and Mr. Jackson was convicted of Capital Murder and sentenced to die in the electric chair. Presently Mr. Jackson's case is on appeal while Mr. Jackson awaits execution at Holman Prison in Atmore, Alabama.

2. **State of Alabama vs. Russell Cutts, Jr. CC 98-B-163 Capital Murder**
Date of Representation: 1998 through 2000
Judge Robert W. Barr
Attorneys for the State:
Mark E. Fuller
98 N. Edwards Street
Enterprise, AL 36330
(334) 347-3489

Glenda Stout
98 N. Edwards Street
Enterprise, AL 36330
(334) 347-3489

Attorneys for the Defendant:
Paul A. Young
125 College Street
Enterprise, AL 36330
(334) 347-0843

Debbie Jared
130 N. Factory Drive
Elba, AL 36323
(334) 897-3507

This was a case of capital murder in which the defendant, Russell Cutts, Jr., along with a co-defendant, Jeremy Guthrie, lay in wait at the residence of Russell Cutts' father and step-mother. Upon the arrival of the Cutts, along with the minor children of Russell Cutts' step-mother, Leighanne Manning Cutts, Russell Cutts, Jr. and Jeremy Guthrie executed Russell Cutts, Sr., and Leighanne Manning Cutts by use of a .22 semi-automatic rifle and a 20 gauge semi-automatic shotgun. The adults were executed in the presence of the two minor children. The children were taken into the home by Russell Cutts, Jr. after which Russell Cutts, Jr. wrapped the bodies of his father and step-mother in a tarp and disposed of the bodies by weighing them down with weights and dumping their bodies into a small river some twenty miles away. Russell Cutts, Jr. and Jeremy Guthrie then took the minor children of Leighanne Manning Cutts to the local Dairy Queen where they purchased ice cream for the children within one hour of the murders. Russell Cutts, Jr. and Jeremy Guthrie fled the area the day following the murders and were arrested outside of Houton, Texas, where they were subsequently extradited to the State of Alabama.

Russell Cutts, Jr. was indicted for Capital Murder under Section 13A-5-40 (a)(10) and was subsequently convicted of capital murder and sentenced to life in the state penitentiary without the possibility of parole.

This case involved the offense of capital murder and the trial thereof where there were no eye witnesses available who would testify as to the events occurring on the night in question. The case by the State of Alabama was tried based upon circumstantial evidence.

I was the lead counsel in this case and tried the same along with Assistant District Attorney, Glenda Stout.

3. **State of Alabama vs. Sandy Walter Smith CC 99-H-169 Murder**
Date of Representation: 1999 through 2001
Judge Thomas E. Head
Attorneys for the State: **Mark E. Fuller**
98 N. Edwards Street
Enterprise, AL 36330
(334) 347-3489

Marty Williams
304 S. Edwards Street
Enterprise, AL 36330
(334) 347-1314

Attorneys for the Defendant: S. Albert Smith
Post Office Box 389
Elba, AL 36323
(334) 897-3658

Lloyd Carr
Post Office Box 389
Elba, AL 36323
(334) 897-3658

On August 6, 1999, recent high school graduates, Beth LeAnne Lawson and Daniel Josh Burkett were traveling down a rural county road in Coffee County, Alabama, when a vehicle being driven by the defendant ran through an intersection at approximately 72 miles per hour striking the vehicle in which Lawson and Burkett were passengers, killing Beth LeAnne Lawson. The investigation revealed that the defendant failed to stop at a stop sign, was driving in excess of 70 mph at the time of the collision, had a blood alcohol content of .235 and also had the presence of cannabinoid in his system. There were no statements or any eye witnesses outside of the survivor, Daniel Josh Burkett.

The Coffee County, Enterprise Division, Alabama Grand Jury indicted the defendant for the intentional murder of Beth LeAnne Lawson. This case was tried at the time the Alabama Supreme Court was considering whether reckless or gross negligence or even wanton conduct could satisfy the requirements of intentional conduct under the criminal code of the State of Alabama. The State presented the case against the defendant and all evidence concerning the defendant's speed, alcohol and marijuana in his blood were presented to the jury. The defense alleged that the defendant's employer forced him to ride with him to a point in which he met his girlfriend and then made him drive his vehicle home immediately preceding this wreck. The defendant refused the offer to charge the jury on any lesser included offenses other than the offense for which he stood charged, that being murder. The jury deliberated for two days after which they returned a verdict of not guilty. Shortly after the trial of this case, the Alabama Supreme Court ruled that such conduct in cases such as this would not satisfy the statutory requirement of an intentional act necessary under existing laws in Alabama.

I was the lead counsel for the State in this case and the defendant was ultimately found not guilty of the offense of murder and pled guilty to the charge of assault involving Josh Burkett and sentenced to a period of eight months in the Coffee County Jail.

4. **<u>State of Alabama vs. Jamie Culpepper CC 98-H-261 & 262</u>**
Manslaughter x 2
Date of Representation: 1998 through 1999
Judge Robert W. Barr
Attorneys for the State: **Mark E. Fuller**
98 N. Edwards Street
Enterprise, AL 36330
(334) 347-3489

Larry C. Jarrell
111 Williams Street
Troy, AL 36081
(334) 566-6896

Attorneys for the Defendant: Joel Williams
609 S. Brundidge Street
Troy, AL 36081
(334) 566-3464

On June 8, 1998, the defendant, while operating his motor vehicle, while under the influence of alcohol and in excess of eighty miles per hour on a four-lane, U. S. highway in Troy, Alabama, sideswiped a tractor trailer while

heading south on U. S. 231, causing the defendant's vehicle to cross the median and collide head-on with the victim, Willie Buck Griffin and after coming to rest in the northbound lanes of U. S. Highway 231the victim, Jeff Meredith collided with the defendant's truck while on a motorcycle causing the death of both Willie Buck Griffin and Jeff Meredith.

The defendant was charged with the offenses of manslaughter and indicted by the Pike County, Alabama Grand Jury for the offenses of manslaughter pursuant to Section 13A-6-3 of the Code of Alabama. At the trial of this case the defendant alleged that the collision with his vehicle was caused by the tractor trailer crossing into his lane of traffic and sideswiping his truck. The defendant initially requested no lesser included charges other than the charge of manslaughter for which the defendant stood trial.

After a recess, the defendant returned to the trial judge and requested that the jury be charged on the lesser included offense of criminally negligent homicide. After a brief deliberation, the jury returned it's verdict of guilty against the defendant for two counts of criminally negligent homicide for which the defendant was subsequently sentenced to sixteen years in the Alabama state penitentiary. The defendant appealed his conviction and the Court of Criminal Appeals reversed the conviction on the grounds that the jury was not charged on the lesser included offense of vehicular homicide.

The Alabama Supreme Court, during the pendency of this appeal, ruled that the vehicular homicide statute in the State of Alabama was unconstitutional on the basis that it did not specify a criminal state of mind for which an individual must possess to be charged and convicted with such an offense. Not withstanding this ruling by the Alabama Supreme Court, the Court of Criminal Appeals for the State of Alabama reversed this case on the grounds that the trial judge failed to instruct the jury on the lesser included offense of vehicular homicide. This case is presently on the trial docket to be retried and I was lead counsel in the prosecution of this case.

5. State of Alabama vs. Dieallo Stringer CC 00-H-225 Murder
Date of Representation: 2000
Judge Thomas E. Head
Attorneys for the State: Mark E. Fuller
98 N. Edwards Street
Enterprise, AL 36330
(334) 347-3489

Larry C. Jarrell
111 Williams Street
Troy, AL 36081
(334) 566-6896

Attorneys for the Defendant: **Randy Arnold**
Post Office Box 1181
Troy, AL 36081
(334) 566-7200

David Holmes
Post Office Box 7
Brundidge, AL 36010
(334)

This case involved a random drive-by shooting while the victim, Komomo. Offem was standing in front of a nightclub after midnight on the night in question. The defendant along with at least two other individuals in the automobile admitted to firing shots while leaving the club as a random act of celebration and alleged to not have been aiming at any particular person.

The defendant and the witnesses in the vehicle in which the defendant was a passenger admitted to leaving the club and firing two type of handguns in an act of celebration. The evidence showed that the bullet which struck the victim, leading to his death, was fired from a small caliber handgun recovered in the area where the defendants disposed of the weapon. This case involved the prosecution of the defendant based upon circumstantial evidence that the defendant fired the weapon in question leading to the death of Komomo Offem. I represented the State of Alabama, more particularly the family of the victim, Komomo Offem, and the defendant was found guilty of the offense of murder on September 15, 2000 , by a jury of his peers and sentenced to life in the Alabama state penitentiary.

6. **Braswell v. Conagra, Inc., United States Federal District Court, Middle District of Alabama, Southern Division, Case Number: 88-T-741S**
Judge Myron Thompson
Date of Representation: 1985 through 1990
Appellate Number 936 F 2nd 1169 (11th Circuit 1991)

Attorneys for the Defendant: **Kenneth T. Fuller**
203 E. Lee Street
Enterprise, AL 36330
(334) 347-2626

Joe Cassady, Sr.
203 E. Lee Street
Enterprise, AL 36330
(334) 347-2626

Leo Knowles
Suite 1400, 1 Central Park Plaza
Omaha, Nebraska 68102
(402) 341-3070

Mark E. Fuller
98 N. Edwards Street
Enterprise, AL 36330
(334) 347-3489

Attorneys for the Plaintiff: Joe S. Pittman (Ret.)
108 Windwood Lane
Enterprise, AL 36330
(334) 347-0694

This case involved allegations of numerous poultry producers contracted by Conagra, Inc., to grow chickens. The claims involved allegations of mis-weighing chickens by employees of Conagra, Inc. Through discovery it was learned that certain employees of Conagra, Inc., had intentionally mis-weighed chickens for certain growers causing them monetary loss and effecting the future contracts they had with Conagra, Inc. This matter was tried in the United States District Court for the Middle District of Alabama, Southern Division to a verdict and a verdict was rendered in favor of the plaintiff's poultry growers.

This case presented the first exposure I had to large class action litigation and complex litigation matters. I assisted as co-counsel on behalf of Conagra, Inc., and participated in the investigation, trial preparation, trial and subsequent appeal of this matter. The case was ultimately affirmed on appeal.

7. Dothan Assisted Housing Corporation v. Albert G. Smith Construction Company, Inc., and Sheets Aiken & Aiken
Houston County Circuit Court Case Number: CV 84-4835
Judge Billy Jo Sheffield
Date of Representation: September 1985

Attorneys for the Defendant: Mark E. Fuller
Smiths, Inc. 98 N. Edwards Street
Enterprise, AL 36330
(334) 347-3489

Attorneys for the Plaintiff: Robert F. Northcutt
Dothan Assisted Housing Post Office Box 2069
Montgomery, AL 36102-2069
(334) 241-8083

	James R. Seale **200 Coosa Street** **Montgomery, AL 36104** **(334) 834-7000**
Albert G. Smith, Const.	**William F. Lee, III** **Post Office Box 1665** **Dothan, AL 36302-1665** **(334) 792-4156**
Sheets, Aiken & Aiken	**John Byrd** **Post Office Box 536** **Dothan, AL 36302-0536** **(334) 794-0759**

This case involved a complaint by the Dothan Assisted Housing Corporation against Albert G. Smith Construction Company, the general contractor who constructed the Vaughn Towers assisted living facility in Dothan, Houston County, Alabama. The general contractor filed a third party complaint against the architect who in turn filed a third party complaint against each of the subcontractors. Since this was a high rise facility there were approximately fifty parties involved at any one time and extensive discovery was conducted through the depositions of the various parties and experts. Prior to the trial of this case a settlement was reached. This case gave me the opportunity of seeing how large lawsuits involving multiple parties was handled and gave me an opportunity to participate in complicated settlements of simple allegations.

I was the attorney for the subcontractor, Smiths, Inc., who installed the air conditioning units in the Vaughn Towers facility. The settlement was reached involving my client wherein monetary damages were paid to the Dothan Assisted Housing Corporation.

8. **Martin vs. Martin (494 So. 2nd 97, Ala Civ. App. 1986)**
Coffee County Circuit Court Case Number: DR 77-272.02
Date of Representation: 1985 – 1986
Judge Riley P. Greene

Attorney for the Plaintiff:	**Mark E. Fuller** **98 N. Edwards Street** **Enterprise, AL 36330** **(334) 347-3489**
Attorney for the Defendant:	**Warren Rowe** **119 E. College Avenue** **Enterprise, AL 36330** **(334) 347-3401**

This case involved an action by Doris Martin, former wife of the respondent, George P. Martin. The petitioner and respondent had been married and, during the course of their marriage had ten children of the union. At the time of the divorce the child in question was an adult and suffered a complete physical disability. My representation of Mrs. Martin was to file a petition seeking the establishment of child support for the disabled child, Angela Martin.

This case established the ability for a party to seek support on behalf of an adult, disabled child after divorce and established the principle that a parent has a duty to support a child, even after it has reached adulthood and who has been totally and permanently disabled since birth.

The Alabama Court of Civil Appeals ruled in favor of Mrs. Doris Martin.

9. **<u>Kelly vs. Cenlar Federal Savings Bank, et al</u>**
Coffee County Circuit Court, Elba Division, Alabama
Case Number: CV 1990-5023
Judge Gary L. McAliley
United States Federal District Court for the Middle District of Alabama
Case Number: 94CV698S
Judge Ira Dement
Date of Representation:

Attorney for the Plaintiff:	**Warren Rowe** **119 E. College Street** **Enterprise, AL 36330** **(334) 347-3401**
	Garth Lindsey **Post Office Box 327** **Elba, AL 36323** **(334) 897-2592**
Attorney for Defendant:	**Mark E. Fuller** **98 N. Edwards Street** **Enterprise, AL 36330** **(334) 347-3489**

This case involved a complaint by Mr. and Mrs. Kelly against Cenlar Federal Savings Bank and others following the failure of the mortgage company of the Kelly's to maintain the policy of flood insurance on their home prior to the flood in Elba, Alabama, in May, 1990. In August, 1990, a complaint was filed by the Kellys against Cenlar Federal Savings Bank, the current mortgage holder of the Kellys mortgage along with the former mortgage companies and insurance companies who

had financed the property prior to the mortgage being sold to Cenlar Federal Savings Bank. I represented Cenlar Federal Savings Bank and there were numerous other attorneys representing other defendants. This case involved significant investigation and discovery leading up to this case being scheduled for trial in mid 1994. Approximately one week prior to the scheduled jury trial in this matter, the co-defendants entered into a Mary Carter Agreement in which they met with the plaintiff's attorneys and agreed to contribute $75,000 towards any verdict that would be entered in this matter if the plaintiff's attorneys would not object to the court entering a summary judgment in their favor. The court entered a summary judgment in favor of all co-defendants with the exception of my client, Cenlar Federal Savings Bank within a few days of the scheduled trial of this matter. Upon the dismissal of the co-defendants, diversity of citizenship was created and the plaintiffs had amended their complaint within one year of the dismissal of the co-defendants to increase the damages to the amount that would allow removal of this case to the federal court. I filed a petition to remove this matter to the United States Federal District Court for the Middle District of Alabama and this matter was subsequently settled after mediation involving contributions to the plaintiffs by all defendants in the amount of approximately $112,000. This case involved factual and legal issues of fraud and misrepresentation and the apportionment of damages among co-defendants in what I considered to be an unethical manner. Upon removal to federal court it was subsequently settled and all defendants participated in this settlement of the Kelly's claim.

10. **<u>Lucille Guinn vs. American Integrity Insurance Company, et. al</u>**
Covington County Circuit Court Case Number CV 87-28
Date of Representation: 1987 through 1992

Attorney for the Plaintiff: **Clark Carpenter**
Post Office Box 277
Talladega, AL 35161-0277
(256) 362-0081

Attorney for Defendant: **Abner R. Powell**
Post Office Drawer 969
Andalusia, AL 36420
(334) 222-4103

Merrill Shirley
Post Office Box 406
Elba, AL 36323
(334) 897-5775

Attorney for Providers Life: **Mark E. Fuller**
98 N. Edwards Street
Enterprise, AL 36330
(334) 347-3489

This case involved a complaint by Mrs. Lucille Guinn, an elderly lady against American Integrity Insurance Company, Providers Fidelity Life Insurance Company and two independent agents for each of these companies for fraud and misrepresentation. It was alleged that Mrs. Guinn had been persuaded to cancel certain extended care coverage and Medicare supplemental insurance in which she had already served the waiting periods and obtained coverage to purchase new policies of insurance from American Integrity Insurance Company and Providers Fidelity Life Insurance Company. It was alleged by the plaintiff that these policies did not provide as good a benefits as the policies in which she had cancelled.

I represented Providers Fidelity Life Insurance Company, a nursing home supplemental insurance policy in which Mrs. Guinn had purchased and stated at trial that she was interested in purchasing at the time it was sold to her. This case involved complicated issues concerning Medicare Insurance benefits and coverage as well as representing a co-defendant in an action in which the other defendant was guilty of the allegations made against them.

The case was tried to a verdict by a jury in Covington County, Alabama, and a verdict was rendered in approximately 1989 against American Integrity Insurance Company. A defense verdict was entered in favor of Providers Fidelity Life Insurance Company.

20. CRIMINAL HISTORY: State whether you have ever been convicted of a crime, within ten years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and disposition and describe the particulars of the offense.

None

21. PARTY TO CIVIL OR ADMINISTRATIVE PROCEEDINGS: State whether you, or any business of which you are or were an officer, have ever been a party or otherwise involved as a party in any civil or administrative proceeding, within ten years of your nomination, that is reflected in a record available to the public. If so, please describe in detail the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings in which you were a guardian *ad litem*, stakeholder, or material witness.

While employed as District Attorney for the 12th Judicial Circuit, State of Alabama, I have been named as a defendant in very few legal proceedings, all of which have been in my capacity as District Attorney. These are as follows:

1. **Timmy Adams v. Mark E. Fuller, et al**
   Case Number: 01-00-692 CV-6-N
   United States Court of Appeals, 11th Circuit

Sued by a defendant convicted of capital murder and sentenced to life without parole prior to my tenure as District Attorney. Case was dismissed by Federal District Judge Myron Thompson prior to service. The petitioner appealed this matter to the 11th Circuit where it was dismissed.

2. Jeffery Baker v. Mark E. Fuller, et. al
Case Number: CV2001-344

Case filed by a resident of Pike County against me and numerous other political officials seeking some type of administrative relief for access to public records. The plaintiff is pro se and on April 5, 2002 Circuit Judge Thomas E. Head, III, dismissed the plaintiff's cause of action against me. The plaintiff has filed a Motion to Alter or Vacate the Judgment where it remains pending today.

During my involvement as a stockholder, Officer and Director of Doss Aviation, Inc. there have been several cases filed, mainly involving employment related matters, against the company. Most of these matters were resolved through the EEOC process. Doss Aviation, Inc. currently employs approximately three hundred individuals in twelve different locations. A list and brief description of each case filed is as follows:

Substantially all of the employment related complaints involving Doss Aviation, Inc., have been handled by our corporate attorney, Harry L. Hopkins, at 1900 SouthTrust Tower, 420 N. 20th Street, Birmingham, Alabama 35203, (205) 328-1900

1. Frank G. Messina, Aberdeen, Maryland (Baltimore, Maryland)
Date of Claim: May 12, 1994; Settled January 16, 1996
EEOC Case Number: 0901-0003987-95

Frank Messina was employed as an employee of the government contractor at Aberdeen, Maryland prior to Doss Aviation, Inc. being awarded this contract in 1994. The contract language required all employees to meet certain physical criteria and have a commercial drivers license to be employed under the contract beginning with the contract Doss Aviation, Inc. was awarded. After Mr. Messina was not retained following the starting date of the contract as assumed by Doss Aviation, Inc., he filed a complaint with the EEOC office and/or the Department of Labor in Baltimore, Maryland where this matter was subsequently resolved through an agreement with the Department of Labor, the contracting office and Doss Aviation, Inc.

2. Joe Dickinson, Wright-Patterson Air Force Base (Dayton, Ohio)
Date of Claim: August 2, 1995; Settled January 30, 1996
EEOC Case Number: 22A959438

Mr. Dickinson was an employee with the former contractor at Wright-Patterson Air Force Base when Doss Aviation, Inc., was awarded the fuels contract in 1995. Doss Aviation, Inc., chose not to hire Mr. Dickinson and a claim was filed by Mr. Dickinson by the Ohio Civil Rights Commission as well as the EEOC office in Cleveland, Ohio.

The Ohio Civil Rights Commission determined that the allegations made by Mr. Dickinson were not substantiated on October 26, 1995, and Mr. Dickinson never appealed that decision. The EEOC office in Cleveland reviewed the findings from the Ohio Civil Rights Commission and concurred in their findings and no further action was maintained by Mr. Dickinson.

3. **Douglas Welch, Hondo, Bexar County, Texas**
   Date of Claim: December 4, 1995; Settled August 12, 1998
   Claim Number: 07-97-0305-CV

Mr. Welch was an employee of Doss Aviation, Inc., employed to instruct Air Force flight students at Doss Aviation's contract facility in Hondo, Texas. Mr. Welch was observed making an unsafe maneuver by the military personnel assigned to the Hondo, Texas facility and this was reported to the Doss Aviation, Inc., management personnel with a demand to take actions against Mr. Welch for his actions while piloting the plane with an Air Force student in the traffic pattern. Mr. Welch was terminated and filed a suit against Doss Aviation, Inc., for wrongful termination. This matter was resolved by a summary judgment in favor of Doss Aviation, Inc., and no further action was maintained.

4. **Maybelline Porter, Wright-Patterson Air Force Base (Dayton, Ohio)**
   Date of Claim: May 24, 1997; Settled August 24, 2000
   Claim Number: United States Federal District Court No. C-3-98-506

Ms. Porter was employee of Doss Aviation, Inc., and was terminated after a reduction in force at the contract facility at Wright-Patterson Air Force Base in Dayton, Ohio. Ms. Porter filed a discrimination claim against Doss Aviation, Inc., for either age, sex or both and this matter was resolved by summary judgment being entered in Doss Aviation's favor or about August 24, 2000.

5. **Paul Lewis, Kingsville, Texas**
   Date of Claim: February 3, 2000; Settled May 26, 2000
   EEOC Number: 36BAO0090

Mr. Lewis was not employed by Doss Aviation, Inc., when Doss was awarded the fuels \ contract at Kingsville, Texas. Mr. Lewis filed a complaint with the EEOC on February 3, 2000, and after investigating Mr. Lewis' claims the EEOC found there was no basis for his claim. No further action was taken.

6. **Benjamin Bolanos, El Paso, Texas**
   Date of Claim: August 1, 2001
   Claim Number:

Mr. Bolanos was an employee of Doss Aviation, Inc., at its contract facility at Biggs Army Air Field in El Paso, Texas. Mr. Bolanos had previously been reprimanded for safety violations while working with military equipment being operated by Doss Aviation at Biggs Field. On July 27, 1999 Mr. Bolanos was observed operating a metal grinding machine without wearing safety glasses by the contracting officer charged with supervising the work performed by Doss Aviation, Inc. The contracting officer's representative, Harold Hintze, wrote a letter to Doss Aviation's contract manager requesting immediate action be taken against Mr. Bolanos. Mr. Bolanos was terminated and has filed a wrongful termination suit against Doss Aviation where it still remains in litigation as of the date of this response.

7. **Esteban Benavides, Corpus Christi, Texas**
   Date of Claim: March 8, 2002
   Claim Number: 02-00992-G, 319th Judicial District Court, Nueces County, Texas

Prior to August 29, 2001, Mr. Benavides was an employee of Doss Aviation, Inc., at its contract facility with the United States Navy at Corpus Christi, Texas. As part of the employment requirements, the defendant was required to have a valid Department of Transportation Commercial Drivers License. Mr. Benavides had had some medical problems where he was subsequently referred to a physician upon his return to work for a medical clearance and renewal of his Department of Transportation Commercial Drivers License. Due to the continued problems with Mr. Benavides blood pressure, the physician determined that Mr. Benavides did not qualify for the requirements of a Department of Transportation Commercial Drivers License and his employment with Doss Aviation, Inc., was terminated. Following service of this suit upon Doss Aviation, discussions were conducted between the attorney for Mr. Benavides and the attorney representing Doss Aviation, Inc., in Corpus Christi, Texas. Mr. Benavides suit was subsequently settled as of May 2, 2002 and Mr. Benavides no longer works with Doss Aviation, Inc.

22. **POTENTIAL CONFLICT OF INTEREST:** 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 have always maintained the highest ethical standard in regards to my commitment to the practice of law. In any situation that has ever arisen either in private practice or in public service in which there has been the inference of any conflict of interest I have tried to make that situation known both to the court and to the Alabama State Bar Association. In those situations in which a conflict of interest could raise the

appearance of any impropriety on my part or on part of the court in the performance of my duties and responsibilities as an attorney, I have recused myself from participation.

I would hope that there would be no categories of litigation or financial arrangements which would prohibit me from administering my responsibilities as a United States District Judge; however, I will make the same effort identifying any association, be it personal, professional or otherwise, and make known any potential conflict of interest to the parties involved and if the circumstances should warrant, recuse myself from participating in any action assigned to me and request the Chief Judge re-assign that matter to an alternate sitting District Judge.

23. OUTSIDE COMMITMENTS DURING COURT SERVICE: Do you have any plans, commitments, or arrangements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

Since I am unfamiliar with the extent of any permissible involvement in outside activities should I be successful in receiving this appointment, in an abundance of precaution I will attempt to describe the activities I am currently involved in by serving in the Office of District Attorney.

I serve and would anticipate seeking guidance from the Judicial Ethics Advisors on my ability to continue to serve as Chairman of the Board of Directors of Doss Aviation, Inc. I would also anticipate continuing my service as a member and deacon of the First Baptist Church of Enterprise as well as serving as a volunteer on civic and charitable Boards of Directors, as time would permit.

24. SOURCES OF INCOME: List sources and amounts of all income received during the calendar year preceding the nomination, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500. 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 attached.

25. STATEMENT OF NET WORTH: Complete and attach the financial net worth statement in detail. Add schedules as called for.

See Financial Statement of Net Worth attached

26. SELECTION PROCESS: Is there a selection committee in your jurisdiction to recommend candidates for nomination to the federal courts?

No.

(a) If so, did it recommend your nomination?

Not applicable

(b) Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.

I have been very impressed, and to some point overwhelmed, by the seriousness all parties have shown in selecting the best candidate to fill this judicial position. I have been privileged to have interviewed with each of my State Senators, Senators Shelby and Sessions, on two (2) separate occasions prior to them recommending my name be forwarded to the President. In April, 2002, I met with Judge Gonzalez and Representatives from the White House Counsel's Office as well as a Representative from the Office of Legal Policy. I had a very thorough interview with the White House Counsel and staff. I next filled out a series of questionnaires and security forms preceding the background check and I participated in several interviews conducted by the Justice Department. On August 1, 2002, I was notified that President Bush had nominated me to the position of United States District Judge for the Middle District of Alabama.

(c) 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 or seeking a commitment as to how you would rule on such case, issue, or question? If so, please explain fully.

No.

AO-10
Rev. 1/2001

FINANCIAL DISCLOSURE REPORT
FOR NOMINEES

Report Required by the Ethics in Government Act of 1978, (5 U.S.C. App., §§101-111)

1. Person Reporting *(Last name, first, middle initial)*	2. Court or Organization	3. Date of Report
Fuller, Mark E.	District Court - Middle District Alabama	August 6, 2002
4. Title *(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)*	**5. Report Type (check appropriate type)**	**6. Reporting Period**
United States District Judge Nominee	X Nomination, Date _____ ___ Initial ___ Annual ___ Final	January 1, 2001 thru August 1, 2002
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.**	
98 N. Edwards Street Enterprise, AL 36330	Reviewing Officer _____ Date _____	

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

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

	POSITION	NAME OF ORGANIZATION/ENTITY
☐	NONE (No reportable positions.)	
1	CEO & Chairman	Doss Aviation, Inc.
2	Director	Coffee County Habitat for Humanity
3	Director	F.A.C.E.S.

(see attached sheet)

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)
☐	NONE (No reportable non-investment income.)		
1	2001	State of Alabama	$125,503
2	2001	Pike County Commission	$ 1,000
3	2001	Coffee County Commission	$ 1,000
4	2001	WXUS (Part-time 4 weeks)	$ 200
5	2001	Doss Aviation, Inc.	$ 76,387

(see attached sheet)

FINANCIAL DISCLOSURE

(Continued)

I. POSITIONS

POSITION	NAME OF ORGANIZATION/ENTITY
4. Director	Enterprise Country Club, Inc.
5. Director	Enterprise Quarterback Club, Inc.

FINANCIAL DISCLOSURE

(Continued)

III. NON-INVESTMENT INCOME - 2000

SOURCE AND TYPE	GROSS INCOME
State of Alabama	$92,169.42
Pike County Commission	$ 8,300.77
Coffee County Commission	$ 8,299.98
WXUS (Part-time 4 weeks)	$ 200.00
Doss Aviation, Inc.	$58,972.56

IV. NON-INVESTMENT INCOME - 2002

SOURCE AND TYPE	GROSS INCOME
State of Alabama	$78,347.50
Pike County Commission	$ 583.31
Coffee County Commission	$ 583.31
Doss Aviation, Inc.	$35.769.30

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Mark Everett Fuller

Date of Report: August 6, 2002

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

(Includes those to spouse and dependent children. See pp. 25-27 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. 28-31 of Instructions.)*

	SOURCE	DESCRIPTION	VALUE
☐	NONE (No such reportable gifts.)		
1	EXEMPT		$
2			$
3			$
4			$

VI. LIABILITIES. *(Includes those of spouse and dependent children See pp. 32-33 of Instructions.)*

	CREDITOR	DESCRIPTION	VALUE CODE*
☐	NONE (No reportable liabilities.)		
1	AmSouth Bank	Financing on stock purchase	L

*Value 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; 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
	Mark Everett Fuller	August 6 , 2002

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

A Description of Assets (including trust assets) *Place "(X)" after each asset exempt from prior disclosure*	B Income during reporting period (1) Amt. Code1 (A-H)	B (2) Type (e.g., div., rent or int.)	C Gross value at end of reporting period (1) Value Code2 (J-P)	C (2) Value Method Code3 (Q-W)	D Transactions during reporting period (1) Type (e.g., buy, sell, merger, redemption)	D (2) Date Month - Day	D (3) Value Code2 (J-P)	D (4) Gain Code1 (A-H)	D (5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, transactions.)									
1 Doss Aviation, Inc.	A	Div	P1	W	Exempt				
2 IRA #1 Mark Everett Fuller									
3 -A. G. Edwards Moneymarket	A	Div	J	T	Exempt				
4 -Conagra Foods, Inc.	A	Div	J	T	Exempt				
5 -Lo Jack Corporation	A	Div	J	T	Exempt				
6 IRA #2 Lisa B. Fuller									
7 -A. G. Edwards Moneymarket	A	Div	J	T	Exempt				
8 -Conagra Foods, Inc.	A	Div	J	T	Exempt				
9 Mark E. Fuller custodian	(Child No. 1)								
10 Minors Act									
11 -Conagra Foods, Inc.	A	Div	J	T	Exempt				
12 -Loewen Group, Inc.	A	Div	J	T	Exempt				
13 Mark E. Fuller custodian	(Child No. 2)								
14 Minors Act									
15 - Harry's Inc.	A	Div	J	T	Exempt				
16 - Oceaneering, Inc.	A	Div	J	T	Exempt				
17 - Conagra Foods, Inc.	A	Div	J	T	Exempt				
- Loewen Group, Inc.	A	Div	J	T	Exempt				

1 Income/Gain Codes: (See 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=More than $5,000,000	
2 Value Codes: (See 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=More than $50,000,000		
3 Value Method Codes: (See 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: Mark Everett Fuller

Date of Report: August 6, 2002

VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

A. Description of Assets (including trust assets) *Place "(X)" after each asset exempt from prior disclosure*	B. Income during reporting period: (1) Amt. Code (A-H)	B. (2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting period: (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (If not exempt from disclosure): (1) Type (e.g., buy, sell, merger, redemption)	D. (2) Date: Month-Day	D. (3) Value Code (J-P)	D. (4) Gain Code (A-H)	D. (5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions)									
18 Mark E. Fuller custodian	(Child No. 3)								
19 Minors Act									
20 Conagra Foods, Inc.	A	Div	J	T	Exempt				
21 Doss Aviation, Inc.	D	Int	L	T	Exempt				
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1 Income/Gain Codes: (See 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=More than $5,000,000	
2 Value Codes: (See 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=More than $50,000,000		
3 Value Method Codes: (See 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
Mark Everett Fuller	August 6, 2002

VII. Page 3 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

A Description of Assets (including trust assets) *Place "(X)" after each asset exempt from prior disclosure*	B Income during reporting period (1) Amt. Code1 (A-H)	B (2) Type (e.g., div., rent or int.)	C Gross value at end of reporting period (1) Value Code2 (J-P)	C (2) Value Method Code3 (Q-W)	D Transactions during reporting period (1) Type (e.g., buy, sell, merger, redemption)	D (2) Date Month-Day	D (3) Value Code2 (J-P)	D (4) Gain Code1 (A-H)	D (5) Identity of buyer/seller (if private transaction)
☐ **NONE** (No reportable income, assets, or transactions)									
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1 Income/Gain Codes: (See 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=More than $5,000,000	E=$15,001-$50,000
2 Value Codes: (See Col. C1, D3)	J=$15,000 or less N=$250,001-$500,000 P3=$25,000,001-$50,000,000	K=$15,001-$50,000 O=$500,001-$1,000,000	L=$50,001-$100,000 P1=$1,000,001-$5,000,000 P4=More than $50,000,000	M=$100,001-$250,000 P2=$5,000,001-$25,000,000	
3 Value Method Codes: (See 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
Mark Everett Fuller	August 6, 2002

VII. Page 4 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

A. Description of Assets (including trust assets) *Please "X" after each asset exempt from prior disclosure*	B. Income during reporting period (1) Amt. Code1 (A-H)	B. Income during reporting period (2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting period (1) Value Code2 (J-P)	C. Gross value at end of reporting period (2) Value Method Code (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, merger, redemption)	D. Transactions during reporting period If not exempt from disclosure (2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ **NONE** (No reportable income, assets, or transactions)									
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1 Income/Gain Codes: (See 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	D=$5,001-$15,000 H2=More than $5,000,000	E=$15,001-$50,000
2 Value Codes: (See Col. C1, D3)	J=$15,000 or less N=$250,001-$500,000 P3=$25,000,001-$50,000,000	K=$15,001-$50,000 O=$500,001-$1,000,000	L=$50,001- $100,000 P1=$1,000,001-$5,000,000 P4=More than $50,000,000	M=$100,001-$250,000 P2=$5,000,001-$25,000,000	
3 Value Method Codes: (See 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
	Mark Everett Fuller	August 6 , 2002

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

X. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is curate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met plicable 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 mpliance with the provisions of 5 U.S.C. app., § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

gnature _____ Date August 6, 2002

)TE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE BJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. App., § 104.)

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

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 in banks	$ 15,055
U. S. Government Securities	
Listed securities	$ 41,618 (see schedule A)
Unlisted securities	$1,301,250 (see schedule B)
Accounts and Notes Rec	$ 70,900
Due from Relatives & Friends	
Due from others	
Doubtful	
Real Estate Owned	$ 650,000
Real Estate Mortgages Rec	
Autos & Personal Property	$ 75,000
Cash Value-Life Insurance	$ 88,154
Other Assets Itemize	
Total Assets:	$2,241,977

LIABILITIES

Notes Payable to banks (secured)	$ 94,500
Notes Payable to banks (unsecured)	
Notes Payable to Relatives	$ 0
Notes Payable to Others	
Accounts and Bills due	
Unpaid Income Tax	$ 0
Other Unpaid Income & Int	$ 0
Real Estate Mortgages pay (see schedule D)	$ 415,000
Chattel Mortgages & other	
Other debts-itemize:	
Total Liabilities:	$ 509,500
Net Worth:	$1,732,477
Total Liabilities and net worths:	$2,241,977

CONTINGENT LIABILITIES

As endorser, comaker or guarantor ~ 6mm (see schedule C)	
On Leases or contracts	$ 0
Legal Claims	$ 0
Provision for Federal Income Tax	$ 0
Other special debt	$0

GENERAL INFORMATION

Are any assets pledged? (Add Schedule) (see schedule E)	Yes
Are you Defendant in any suits or legal actions?	No
Have you ever taken bankruptcy?	No

Social Security Number 418-88-7253

SCHEDULE "A"

IRA #1 Mark E. Fuller

A. G. Edwards Moneymarket	$1,752.00
Conagra Foods, Inc.	$8,734.00
Lo Jack Corporation	$ 664.00

IRA #2 Spouse

A. G. Edwards Moneymarket	$ 464.00
Conagra Foods, Inc.	$ 922.00

MINOR SECURITIES – CHILD NO. 1

Conagra Foods, Inc.	$11,239,04
Loewen Group, Inc.	$ 5.40

MINOR SECURITIES – CHILD NO. 2

Hurry, Inc.	$ 14.00
Oceaneering, Inc.	$ 5,310.00
Conagra Foods, Inc.	$ 6,253.48
Loewen Group, Inc.	$ 6.84

MINOR SECURITIES – CHILD NO. 3

Conagra Foods, Inc.	$ 6,253.48

SCHEDULE "B"

UNLISTED SECURITIES	**$1,301,250**
Stock in Doss Aviation, Inc.	

SCHEDULE "C"

CONTINGENT LIABILITES **$6MM**

As endorser, co-maker or guarantor

Personal Guarantee on commercial notes with SouthTrust Bank and Regions Bank for Doss Aviation, Inc.

SCHEDULE "D"

REAL ESTATE MORTGAGES	$415,000.00
Washington Mutual	$315,000.00
Allgemeines Treuunternehmen Trust	$100,000.00

SCHEDULE "E"

GENERAL INFORMATION

Pledged assets

Residence located at #10 Indigo Place, Enterprise, AL 36330

350 shares of common stock in Doss Aviation, Inc.

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY, UNITED STATES SENATE

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

   Robert Gary Klausner

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

   U.S. District Judge, Central District of California

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

   111 N. Hill St., Room 534 S
   Los Angeles, Ca 90012
   (213) 893-1018

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

   8/04/1941 Los Angeles, California

5. **Marital Status**: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please also indicate the number of dependent children.

   Married
   Maiden name of wife: Mary Linda Besel
   Homemaker
   Five children (one dependent)

6. **Education**: List in reverse chronological order, listing most recent first, each college, law school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   Loyola Law School (Los Angeles) 1964 to 1967
   JD Degree in June 1967

   University of Notre Dame 1959 to 1964
   BA Degree in June 1963
   BS Degree in Engineering in June 1964

7. **Employment Record**: List in reverse chronological order, listing most recent first, all business or professional corporations, companies, firms, or other enterprises,

partnerships, institutions and organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

Los Angeles Superior Court
111 N. Hill Street
Los Angeles, California 90012
Judge (1985 to present)

Pasadena Municipal Court
300 E Walnut
Pasadena, California 91101
Judge (1980 to 1985)
Court Commissioner (1974 to 1980)

District Attorney Office of Los Angeles County
210 W. Temple St. Criminal Courts Building
Los Angeles, California 90012
Deputy district attorney (1969 to 1974)

US Army
6th Army Headquarters, Presidio
San Francisco, California
Captain (1968 to 1969)
Lieutenant (1967 to 1968)

Standard Gas Station
623 Foothill Blvd.
La Canada, California 91011
Part time gas station attendant while in law school

8. **Military Service**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge received.

Commissioned US Army (1963)
Active duty 1967 to 1969
Captain
Serial number - 05531120
Honorable Discharge

9. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Distinguished Military Graduate at University of Notre Dame - 1963
Merit Scholarship to Loyola Law School - 1964
Bronze Star - 1969

10. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Executive Committee of the Los Angeles Superior Court. 1990 - 1997, 2000 - present. (Chair 1995&1996)
Personnel & Budget Committee of the Los Angeles Superior Court. 1988 - present.
Automation Committee of the Los Angeles Superior Court. 1991-1992, 1997- .present (Chair 1998 - present)
Chair - Criminal Courts Committee of the Los Angeles Superior Court. 1989-1991
Chair - .Civil Courts Committee of the Los Angeles Superior Court. 2001 - present
Chair -Court Services/Sheriff Committee of the Los Angeles Superior Court. 1990
Judicial Orientation and Education Committee of the Los Angeles Superior Court.2001
Planning and Research Committee of the Los Angeles Superior Court. 2001 - present.
California Judges Association 1996 - present
California Judges Association - Chair of Probate section 1999
California Judges Association, Response to Judicial Criticism Committee 2001 - present.
Probate Committee - California Center for Judicial Education and Research. 1997-present (Chair 1999 - present)
Criminal Committee - California Center for Judicial Education and Research. 1990-1991
California Judicial Council, Presiding Judges' Committee 1995-1996

11. **Bar and Court Admission**: List each state and court in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Admitted to practice in California courts - 1/27/1969

12. **Memberships**: List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, charitable, or other organizations since graduation from college, other than those listed in response to Questions 10 or 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion - either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

La Canada Incorporation Committee.
La Canada Law Enforcement Commission
La Canada Junior Baseball Association
Pasadena Serra Club (Catholic community leaders that support religious vocations)

Los Angeles Catholic Social Services
St. Bede Parish Advisory Committee
St Bede Parish Financial Committee
YMCA
None of the above discriminate (Until the late 1970's the YMCA and YWCA were sexually exclusive).

13. **Published Writings**: List the titles, publishers, and dates of books, articles, reports, or other material you have written or edited, including material published on the Internet. Please supply four (4) copies of all published material to the Committee, unless the Committee has advised you that a copy has been obtained from another source. Also, please supply four (4) copies of all speeches delivered by you, in written or videotaped form over the past ten years, including the date and place where they were delivered, and readily available press reports about the speech.

Publications: None
Speeches: All extemporaneous to local bar groups or community groups concerning the court.

14. **Congressional Testimony**: List any occasion when you have testified before a committee or subcommittee of the Congress, including the name of the committee or subcommittee, the date of the testimony and a brief description of the substance of the testimony. In addition, please supply four (4) copies of any written statement submitted as testimony and the transcript of the testimony, if in your possession.

None

15. **Health**: Describe the present state of your health and provide the date of your last physical examination.

Excellent. Last complete physical examination was two years ago.

16. **Citations**: If you are or have been a judge, provide:

(a) a short summary and citations for the ten (10) most significant opinions you have written;

In the state trial courts judges rarely write opinions on their cases.
Instead, I am including information on cases I have tried.

People v. Belcher (A467219) 1986
LA Superior Court Southeast District

Charge: Assault with Great Bodily Injury.
Defendant, after being stabbed in a gang fight, broke into his girlfriend's house and assaulted her, causing great bodily injury. Defendant had 5 prior convictions.

Public Defender: Ronald Whitenhill
100 W 2nd St #200
Pomona, Ca 91766
(909) 868-6435
District Attorney: John Watson.
Judge John Watson
Orange County Superior Court
(714) 834-4685

People v. Rodarte, Cobos, Joe Figueroa, D. Figueroa (A468759) 1986
LA Superior Court Southeast District

Charge: Murder
Defendant D. Figueroa and Defendant Rodarte, along with a Mr. Osuna, drove Defendant Rodarte's girlfriend to a secluded area and executed her. Several days later, after they sobered up, the defendants felt that Osuna was not trustworthy and stabbed him to death.

Defense attorneys: Ronald Slick,
Commissioner Ronald Slick
Los Angeles Superior Court
(213) 974-1234

James Patterson
122 Wylerhorn Dr.
Crestline, Ca. 92325
(909) 338-4342

Peter Larkin
805 S. Gaffey St.
San Pedro, Ca 90731
(310) 833-5344

Public Defender: Joan Garrott (address unknown)

District Attorney: John Watson.
Judge John Watson
Orange County Superior Court
700 Civic Center Drive West
Santa Ana, Ca. 92702

(714) 834-4685

People v *Gee, Martin, Lee* 1986
LA Superior Court Southeast District

Charge: Grand Theft.
Employees at a card club switched decks during the game so an off-duty employee could win the super jackpot. The activity was caught on security cameras.

Defense attorney: Sheehan (address unknown)

District Attorney: John Watson.
Judge John Watson
Orange County Superior Court
700 Civic Center Drive West
Santa Ana, Ca. 92702
(714) 834-4685

People v *Porter* (A468439) 1986
LA Superior Court Southeast District

Charge: Robbery
Two men and a women went into May Co.'s fine jewelry department, pulled a gun jumped the counter, put the jewelry in a bag and ran.

Public Defender: Joan Garrott (address unknown)

District Attorney: Margaret Hay
Judge Margaret M. Hay
Los Angeles Superior Court
415 W. Ocean Blvd. Dept. B
Long Beach, Ca. 90802
(562) 491-6127

People v *Avalos* (A469686) 1986
LA Superior Court Southeast District

Charge: Murder
Victim shot four times and his head was bashed in. Broken barrel of gun was found in room. The defendant claimed self-defense.

Public Defender: Joan Garrott (address unknown)

District Attorney: Margaret Hay
Judge M. Hay
Los Angeles Superior Court
415 W. Ocean Blvd. Dept. B
Long Beach, Ca. 90802
(562) 491-6127

Michigan Millers v *Lumberman's Mutual* (C431706) 1988
LA Superior Court North Central District

Breach of Indemnity Agreement
Lumberman's Mutual issued a comprehensive liability policy to James D. Edison Co.. Michigan Millers Insurance provided car insurance for Edison Co.'s cars. There was a $615,000 settlement that Millers agreed to with the understanding that the court would decide responsibility later. Millers was found not to have a duty to defend yet they still wanted reimbursement from Lumberman's.

Plaintiff's attorney: Mark Kane
5150 E. Pacific Coast Highway #251
Long Beach, Ca 90804
(526) 498-3844

Defense attorney: Joseph Welsh. (address unknown)

Condon v *Sunday, Gifford, Valley Vista Hospital* (NEC31370) 1988
LA Superior Court North Central District

Medical Malpractice
Dr. Sunday removed what he thought to be a Morton's neuroma on plaintiff's right foot when in fact he removed part of a synovial cyst. This resulted in two additional surgeries having to be performed by an expert from Harvard Medical School.

Plaintiff's attorney: Rodger W. Clark
3250 Ocean Park Blvd #350
Santa Monica, Ca 90405
(310) 314-8660

Defense attorney: George McDonald
1318 Fair Oaks Dr.

South Pasadena, Ca. 91030
(626) 799-9544

Lee v Economy Roofing, Nunnally (NCC 033897B) 1988
LA Superior Court North Central District

Personal Injury
Plaintiff, who was a tenant in Defendant Nunnally's apartment building, was hurt by roofing material while defendant Economy Roofing was re-roofing the building.

Plaintiff's attorney: Larry Grassini
20750 Ventura Blvd.
Woodland Hills, Ca. 91364
(818) 348-1717

Defendants' attorneys: Jeffery Norwith
333 Hope St. #3650
Los Angeles, Ca. 90071
(213) 624-8293

Everett Minchcliffe
3415 Sepulveda Blvd. #900
Los Angeles, Ca 90034
(310) 398-5517

Estate of Mitchell L. Reinschreiber
LA Superior Court Central District Probate

Matter where creditors filed a $3 million plus creditors' claim against estate. Creditors claimed that decd, while acting as tee of the Weisman Trust, breached his fiduciary duties by self-dealing.

Attorneys:
Robert Sacks of Sacks, Glazier, Franklin & Lodise,
300 S. Grand Ave. #3900
Los Angeles. Ca 90071
(213) 617-2950

Lynard Hinojosa of Hinojosa, Khougaz & Wallet,
1111 Santa Monica Blvd. #1000
Los Angeles, Ca. 90025
(310) 473-7000

Bechtol Living Trust
LA Superior Court Central District Probate

Daughter files a petition to invalidate trust amendment based on undue influence by wife and insufficient mental capacity.

Attorneys:
Paul Lusby of Cooper, Kardara & Scharf,
141 E. Walnut St.
Pasadena, Ca. 91103
(626)-795-0814

Marck Spraic
301 E. Colorado Blvd. #614
Pasadena, Ca. 91101
(626) 792-9333

Jeffrey Segal of Selmen & Breitman
11766 Wilshire Blvd. Fl 6
Los Angeles, Ca. 90025
(310) 689-7010

Teresa Sanders
8949 Reseda Blvd. #118
Northridge, Ca. 91324
(818) 718-7150

Michael Augustine of Augustine & Seymour
741 S. Garfield Ave.
Alhambra, Ca. 91801
(626) 289-7774

While Supervising Judge of the Criminal Departments I also was involved with rulings that had to be made in many high profile cases such as: the Richard Rameriz case, the Mc Martin case, the Charles Keating case, the Mendoza Brothers case, the Rodney King case etc.

(b) a short summary and citations for all rulings of yours that were reversed or significantly criticized on appeal, together with a short summary of and citations

for the opinions of the reviewing court; and

Over the last 27 years the following are the reported cases of mine that have been reversed or in which writs have been granted.

1. **Bernson v. Browning-Ferris Industries, No. S032755,** SUPREME COURT OF CALIFORNIA, 7 Cal. 4th 926; 873 P.2d 613; 1994 Cal. LEXIS 2666; 30 Cal. Rptr.2d 440; 22 Media L. Rep. 2065; 94 Cal. Daily Op. Service 4169; 94 Daily Journal DAR 7713, June 6, 1994, Decided **REVERSED**

OVERVIEW: Defendants could be equitably estopped from asserting the statute of limitations in a libel action where plaintiff claimed he was unable to discover the true identity of defendant because of defendants' intentional concealment.

2. **Estate of Martin, No. B124420,** COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION FOUR, 72 Cal. App. 4th 1438; 1999 Cal. App. LEXIS 599; 86 Cal. Rptr. 2d 37; 99 Cal. Daily Op. Service 4898; 99 Daily Journal DAR 6233, June 21, 1999, Decided, Review Denied September 29, 1999, Reported at: 1999 Cal. LEXIS 6924 **REVERSED & REMANDED**

OVERVIEW: Sale of estate property of company shares in which the executor purchased the property through her position in the company and had an interest in the sale was voidable at the request of the beneficiary.

3. **Noggle v. Bank of America, B119164, B119254,** COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION ONE, 70 Cal. App. 4th 853; 1999 Cal. App. LEXIS 204; 82 Cal. Rptr. 2d 829; 99 Daily Journal DAR 2393, February 25, 1999, Filed. The Publication Status of this document has been changed by the Court from Unpublished to Published, March 12, 1999. Rehearing Denied March 17, 1999. Review Denied May 12, 1999. **AFFIRMED IN PART, REVERSED & REMANDED IN PART**

OVERVIEW: Court held that any claims that plaintiffs, residuary beneficiaries, had against trustee bank which arose out of acts which took place before May 1990 were barred by the statute of limitations.

4. **Edwards v. Edwards, No. B114210,** COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION FIVE, 61 Cal. App. 4th 599; 1998 Cal. App. LEXIS 117; 71 Cal. Rptr. 2d 653; 98 Cal. Daily Op. Service 1131; 98 Daily Journal DAR 1572, February 13, 1998, Decided. Review Denied, May 20, 1998, Reported at: 1998 Cal. LEXIS 3263.
REVERSED & REMANDED

OVERVIEW: Corporation Code controlled the voting rights of co-trustees with regard to shares of stock held in trust because it was an exception to the Probate Code that required a unanimous vote.

5. **Hogoboom v. Superior Court, No. B101481**, COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION FIVE, 51 Cal. App. 4th 653; 1996 Cal. App. LEXIS 1140; 59 Cal. Rptr. 2d 254; 96 Cal. Daily Op. Service 8914; 96 Daily Journal DAR 14749, December 9, 1996, Decided, As Modified February 19, 1997. **WRIT GRANTED**

OVERVIEW: Writ of mandate was issued enjoining trial court from enforcing rule that imposed Family Law Mediation Fee, where the legislature had preempted the subject matter which the rule concerned and fee was not statutorily authorized.

6. **Tricor California, Inc. v. State Compensation Ins. Fund, No. B073716**, COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION ONE, 30 Cal. App. 4th 230; 1994 Cal. App. LEXIS 1176; 35 Cal. Rptr. 2d 550; 94 Cal. Daily Op. Service 8844; 94 Daily Journal DAR 16333, November 21, 1994, Decided, Opinion certified for partial publication. Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is certified for publication with the exception of part VI. **AFFIRMED IN PART, REVERSED & REMANDED IN PART**

OVERVIEW: Evidence of negligent claims handling should not have been excluded as evidence of bad faith and breach of contract because that evidence would not cause relitigation of settled claims and it was relevant to show defendant's bad faith.

7. **Abeyta v. Superior Court, No. B071253**, COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION SEVEN, 17 Cal. App. 4th 1037; 1993 Cal. App. LEXIS 819; 21 Cal. Rptr. 2d 680; 93 Cal. Daily Op. Service 6023; 93 Daily Journal DAR 10204, August 6, 1993, Decided **WRIT GRANTED**

OVERVIEW: Nonsuit on grounds that an oral employment contract that violated the statute of frauds was vacated because employee's job could have extended indefinitely if he met quotas at end of three years and he could have been terminated for cause at any time.

8. **People v. Vergara, No. B046052**, Court of Appeal of California, Second

Appellate District, Division Two, 230 Cal. App. 3d 1564; 1991 Cal. App. LEXIS 595; 282 Cal. Rptr. 90; 91 Cal. Daily Op. Service 4361; 91 Daily Journal DAR 6683, June 6, 1991 **AFFIRMED IN PART, REVERSED IN PART**

OVERVIEW: Although prosecution did not approve plea bargain, trial court entered into plea agreement and stayed sentence enhancements for drug and weapons convictions, but trial court was required to state reasons on record for staying mandatory sentences.

9. **People v. Superior Court (Hernandez), No. B058317**, Court of Appeal of California, Second Appellate District, Division Two, 230 Cal. App. 3d 1276; 1991 Cal. App. LEXIS 570; 281 Cal. Rptr. 731; 91 Cal. Daily Op. Service 4241; 91 Daily Journal DAR 6357, May 31, 1991, as Modified June 6, 1991. Review Granted August 29, 1991 (S021783) and matter transferred to Ct. App., 2d Dist., Div. 2, with directions to grant rehearing (Gov. Code, @ 68081) and deny the petition for writ of mandate as moot. **WRIT GRANTED**

OVERVIEW: Trial court lacked authority to order another court to release joint murder defendant or conduct preliminary examination, when codefendant had obtained continuance of preliminary examination, because counsel jury trial conflict was proper exception.

10. **Jackson v. Superior Court, No. B056356**, Court of Appeal of California, Second Appellate District, Division Three, 230 Cal. App. 3d 1391; 1991 Cal. App. LEXIS 580; 281 Cal. Rptr. 545; 91 Cal. Daily Op. Service 4242; 91 Daily Journal DAR 6480, May 13, 1991, CERTIFIED FOR PUBLICATION June 3, 1991, as Modified June 3, 1991. **WRIT GRANTED**

OVERVIEW: Trial court was directed to dismiss all charges against petitioner because the trial's delay was the result of official conduct not justified by good cause, and thus, petitioner had been denied his right to a speedy trial.

11. **People v. Ramirez, Crim. A. No. 20564**, Appellate Department, Superior Court of California, Los Angeles, 154 Cal. App. 3d Supp. 1; 1984 Cal. App. LEXIS 1914; 201 Cal. Rptr. 303, March 1, 1984 **REVERSED**

OVERVIEW: The California Legislature did not intend to bar further prosecution of various traffic violators, simply because they were released from jail due to the unavailability of a magistrate the night of their arrests.

(c) a short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions.

None

If any of the opinions or rulings listed were in state court or were not officially reported, please provide copies of the opinions.

See "Attachment A"

17. **Public Office, Political Activities and Affiliations**:

(a) List chronologically any public offices you have held, federal, state or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or nominations for appointed office for which were not confirmed by a state or federal legislative body.

Commissioner on La Canada Law Enforcement Commission (est. 1976)
Appointed by La Canada City Council.

(b) 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, other than to retain my judicial office.

18. **Legal Career**: Please answer each part separately.

(a) Describe chronologically your law practice and legal experience after graduation from law school including:

(1) whether you served as clerk to a judge, and if so, the name for the judge, the court and dates of the period you were a clerk;

1) N/A

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

2) N/A

(3) the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature

of your affiliation with each.

Deputy district attorney for Los Angeles county, 1969 to 1974
District Attorney Office of Los Angeles County
210 W. Temple St. Criminal Courts Building
Los Angeles, California 90012
Deputy district attorney (1969 to 1974)

Court Commissioner for Pasadena Municipal Court, 1974 to 1980

Pasadena Municipal Court
300 E Walnut
Pasadena, California 91101
Court Commissioner (1974 to 1980)

Pasadena Municipal Court Judge, 1980 to 1985
Pasadena Municipal Court
300 E Walnut
Pasadena, California 91101
Judge (1980 to 1985)

Los Angeles Superior Court Judge, 1985 to present
Los Angeles Superior Court
111 N. Hill Street
Los Angeles, California 90012
Judge (1985 to present)

(b) (1) Describe the general character of your law practice and indicate by date if and when its character has changed over the years.

1) Criminal prosecution (1969 to 1974)

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

People of the State of California. Criminal

(c) (1) Describe whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe each such variance, providing dates.

1) I was in court almost every day

(2) Indicate the percentage of these appearances in

(A) federal courts;
(B) state courts of record;
(C) other courts.

2) A. None
B. 100%
C. None

(3) Indicate the percentage of these appearances in:

(A) civil proceedings;
(B) criminal proceedings.

3) A. 0%
B. 100%

(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.

4) In five years of prosecuting cases I probably tried close to 100 cases. Most cases were tried as sole counsel.

(5) Indicate the percentage of these trials that were decided by a jury.

5) More than 60% were jury trials.

(d) Describe your practice, if any, before the United States Supreme Court. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the U.S. Supreme Court in connection with your practice.

d) None

(e) Describe legal services that you have provided to disadvantaged persons or on a *pro bono* basis, and list specific examples of such service and the amount of time devoted to each.

e) As a sitting judge I am prohibited from personally engaging in any legal services. As a judge I have been involved in developing court self help centers to help people who do not have attorney. The court also work with the local bar in providing volunteer services to people that can not hire an attorney. We have recently opened a homeless court to help those that never would get to the courts.

19. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, and for each provide the date of representation, the name of the court, 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. In addition, please provide the following:

(a) the citations, if the cases were reported, and the docket number and date if unreported;

(b) a detailed summary of the substance of each case outlining briefly the factual and legal issues involved;

(c) the party or parties whom you represented; and

(d) describe in detail the nature of your participation in the litigation and the final disposition of the case.

19). Litigation:

I was a trial attorney with the Los Angeles District Attorney's Office From 1969 to 1974. The last 27 years I have been sitting on the bench. Because of this length of time, it is hard to provide the information requested. During the 5 years I was with the District Attorney's Office, I was in court on one case after another so it is difficult to remember specific names of these cases but I am providing the names of some of the prosecutors I worked with, defense attorneys I opposed, and judges that I appeared before during that time.

Prosecutors worked with:

Judge Ronald Coen
Los Angeles Superior Court
900 Third St.
San Fernando, Ca. 91340
(818) 898-2624

Judge Darlene Schempp

Los Angeles Superior Court
14400 Erwin St. Mall
Van Nuys, Ca. 91401
(818) 374-2719

Judge Coleman Swart
Los Angeles Superior Court
300 E. Walnut
Pasadena, Ca. 91101
(626) 356-5641

Ret. Judge James Albracht
(818) 591-0379

Jeffrey Jonas
L.A. Deputy District Attorney
18000 Criminal Courts Building
210 West Temple St.
Los Angeles, Ca. 90012
(213) 974-3501

Steve Cooley
L.A. District Attorney
18000 Criminal Courts Building
210 West Temple St.
Los Angeles, Ca. 90012
(213) 974-3501

Defense attorneys opposed:

Commissioner Ronald Hauptman
Los Angeles Superior Court
111 North Hill St. Dept.5
Los Angeles, Ca. 90012
(213) 974-5594

Robert Shapiro
2121 Avenue of The Stars Fl 18
Los Angeles, Ca 90067
(310) 556-7886

Ray Fountain
740 E. Colorado Blvd. #205
Pasadena, Ca 91101

(626) 793-4111

Joanne Glidden
L.A. Deputy District Attorney
18000 Criminal Courts Building
210 West Temple St.
Los Angeles, Ca. 90012
(213) 974-3727

Richard Hutton of Hutton & Wilson,
801 N Brand Blvd. #930
Glendale, Ca 91203
(818) 550-8750

Judge Barbara Burke
Los Angeles Superior Court
300 E. Walnut
Pasadena, Ca. 91101
(626) 356-5645

Paul Geragos of Geragos & Geragos
350 S Grand Ave #3900
Los Angeles, Ca 90071
(213) 625-3900

Chuck Essegian
PO Box 1306
Canyon Country, Ca 91386
(323) 254-6132

Judges appeared before (still living):

Judge Henry Shatford
Los Angeles Superior Court
600 S. Commonwealth Ave. Dept. 314
Los Angeles, Ca. 90005
(213) 351-8820

Judge Warren Ettinger
Los Angeles Superior Court
111 North Hill St. Dept.19
Los Angeles, Ca. 90012
(213) 974-5615

20. **Criminal History**: State whether you have ever been convicted of a crime, within ten years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and disposition and describe the particulars of the offense.

No

21. **Party to Civil or Administrative Proceedings**: State whether you, or any business of which you are or were an officer, have ever been a party or otherwise involved as a party in any civil or administrative proceeding, within ten years of your nomination, that is reflected in a record available to the public. If so, please describe in detail the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings in which you were a guardian *ad litem*, stakeholder, or material witness.

I was involved in my capacity as the Presiding Judge of the Los Angeles Superior Court, when action was brought against the court, but never as an individual.

22. **Potential Conflict of Interest**: 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. If the potential conflict would affect the fairness or the appearance of fairness of the court's decision, the court should disqualify

I would follow the Code of Judicial Conduct. If any potential conflict of interest are encountered, they should be disclosed to all the parties involved, as well as their attorneys. If the potential conflict would affect the fairness or the appearance of fairness of the court's decision, the court should disqualify itself.

I know of no financial arrangements that would present a potential conflict to my serving on the federal court bench

23. **Outside Commitments During Court Service**: Do you have any plans, commitments, or arrangements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No

24. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding the nomination, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500. 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".

25. **Statement of Net Worth**: Complete and attach the financial net worth statement in detail. Add schedules as called for.

See attached "Net Worth" Statement.

26. **Selection Process**: Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?

(a) If so, did it recommend your nomination?

a) Yes

(b) Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.

b) There was an extensive application form required. Then there was a seven member interview committee that I had to appear before. Next, I was interviewed by a two-member referral committee. Then I was interviewed by the Office of the White House Counsel. Since that interview, I have undergone an F.B.I. investigation and Department of Justice investigation and filled out numerous forms and questionnaires.

(c) 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 or seeking a commitment as to how you would rule on such case, issue, or question? If so, please explain fully.

c) 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
ner, Robert G.	Central California	07/19/2002

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 Court Judge Nominee	X Nomination, Date 07/18/2002 Initial Annual Final	01/01/2002 to 07/19/2002

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.
111 N. Hill St. Room 533 S Los Angeles, Ca. 90012	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
[ ]	NONE (No reportable agreements.)	
1	2002	California's Judges' Retirment
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)
[ ]	NONE (No reportable non-investment income.)		
1	2000	State of California Judicial Income	129,892
2	2000	Rutter Group	500
3	2001	State of California Judicial Income	145,640
4	2002	State of Clifornia Judicial Income	81,444

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Klausner, Robert G.	Date of Report 07/19/2002

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

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

	SOURCE (No such reportable reimbursements.)	DESCRIPTION
☐ NONE		
1		EXEMPT
2		
3		
4		
5		
6		
7		

V. GIFTS

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

	SOURCE (No such reportable gifts.)	DESCRIPTION	VALUE
☐ NONE			
1		EXEMPT	
2			
3			

VI. LIABILITIES

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

	CREDITOR (No reportable liabilities.)	DESCRIPTION	VALUE CODE*
X NONE			
1			
2			
3			
4			
5			
6			

* VALUE 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
Klausner, Robert G.	07/19/2002

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				
	(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			
Place "(X)" after each asset exempt from prior 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 American Mutual Fund	B	Dividend	L	T	EXEMPT				
2 AT&T Common Stock	A	Dividend	J	T	EXEMPT				
3 Bank of America Common Stock	A	Dividend	K	T	EXEMPT				
4 Europacific Growth Fund	B	Dividend	K	T	EXEMPT				
5 Exxon Common Stock	A	Dividend	J	T	EXEMPT				
6 Lucent Common Stock	A	Dividend	J	T	EXEMPT				
7 PG&E Common Stock	A	Dividend	K	T	EXEMPT				
8 SBC Common Stock	A	Dividend	J	T	EXEMPT				
9 Growth Fund of America Fund	A	Dividend	K	T	EXEMPT				
10 Vodafone Group Common Stock	A	Dividend	J	T	EXEMPT				
11 Small Cap World Fund	A	Dividend	K	T	EXEMPT				
12 Bank of America Account	A	Interest	J	T	EXEMPT				
13 Fed.Courts and Records Credit Union Account	A	Interest	K	T	EXEMPT				
14 Charles Schwab Account	A	Dividend	J	T	EXEMPT				
15 First Clearing Corporation Account	A	Dividend	J	T	EXEMPT				
16 Jackson National Life Ins.	B	Interest	K	T	EXEMPT				
17 Freeport McMoran Common Stock	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

2 Value 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. B1, 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: Klausner, Robert G. | Date of Report: 07/19/2002

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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period: (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period: (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period: (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 IMC Global Inc. Common Stock	A	Dividend	J	T	EXEMPT				
19 Coca Cola Common Stock	A	Dividend	J	T	EXEMPT				
20 Accesspoint Co, Common Stock			J	T	EXEMPT				
21 Caterpillar Inc. Common Stock	A	Dividend	J	T	EXEMPT				
22 Eagle Wireless Common Stock			J	T	EXEMPT				
23 Goodyear Common Stock	A	Dividend	J	T	EXEMPT				
24 Health Management Assoc. Common Stock	A	Dividend	J	T	EXEMPT				
25 Microsoft common Stock	A	Dividend	J	T	EXEMPT				
26 Tracy Area Public Facilities Bond	B	Dividend	K	T	EXEMPT				
27 Scudder Cal.Tax Free Bond	B	Dividend	K	T	EXEMPT				
28 American High-Income Muni, Bond Fund	B	Dividend	K	T	EXEMPT				
29 Bond Fund of America	A	Dividend	J	T	EXEMPT				
30 Edison International Common Stock			K	T	EXEMPT				
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; F=$50,001-$100,000; G=$100,001-$1,000,000; H1=$1,000,001-$5,000,000; H2=$5,000,001 or more (Col. B1, D4)

2 Val Mth 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; 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 (Col. C1, D3)

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

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	64	514	-	Notes payable to banks-secured	---	---	-
U.S. Government securities-add schedule	---	---	-	Notes payable to banks-unsecured	---	---	-
Listed securities-add schedule	486	376	-	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 income and interest	---	---	-
Doubtful	---	---	-	Real estate mortgages payable-add schedule - Lender is GMAC	85	012	-
Real estate owned-add schedule Home Residence (estimated)	750	000	-	Chattel mortgages and other liens payable	---	---	-
Real estate mortgages receivable	---	---	-	Other debts-itemize:	---	---	-
Autos and other personal property 3 Cars (estimate)	35	000	-				
Cash value-life insurance	24	616	-				
Other assets itemize: 401k Value	319	407	-				
			-				
			-				
			-	Total liabilities	85	012	-
			-	Net Worth	1594	901	-
Total Assets	1679	913	-	Total liabilities and net worth	1679	913	-
CONTINGENT LIABILITIES	000	000	-	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	---	---	-				

Financial Statement
Net Worth - Listed Securities

Listed Securites	Amount
Accesspoint Co, Common Stock	$400.00
American High-Income Muni, Bond Fund	$42,844.00
American Mutual Fund	$71,375.00
AT&T Common Stock	$3,294.00
Bank of America Common Stock	$30,452.00
Bond Fund of America	$13,580.00
Caterpillar Inc. Common Stock	$3,796.00
Coca Cola Common Stock	$981.00
Eagle Wireless Common Stock	$369.00
Edison International Common Stock	$15,798.00
Europacific Growth Fund	$42,323.00
Exxon Common Stock	$10,099.00
Freeport McMoran Common Stock	$3,770.00
Goodyear Common Stock	$1,347.00
Growth Fund of America	$56,224.00
Health Management Assoc. Common Stock	$4,268.00
IMC Global Inc, Common Stock	$390.00
Lucent Common Stock	$3,977.00
Microsoft Common Stock	$5,226.00
PG&E Common Stock	$55,765.00
SBC Common Stock	$15,902.00
Scudder Cal. Tax Free Bond	$38,299.00
Small Cap World Fund	$31,338.00
Tracy Area Public Facilities Bond	$25,000.00
Vodafone Group Common Stock	$9,559.00
Totals - Listed Securities	**$486,376.00**

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY, UNITED STATES SENATE

1. **Name**: Full name (include any former names used).
Robert Byron Kugler

2. **Position**: State the position for which you have been nominated.
United States District Judge, District of New Jersey

3. **Address**: List current office address and telephone number. If state of residence differs from your place of employment, please list the state where you currently reside.
Office - Mitchell H. Cohen United States Courthouse.
1 John F. Gerry Plaza, P.O. Box 889, Camden, NJ 08101
856-757-5019

4. **Birthplace**: State date and place of birth.
October 10, 1950; Camden, NJ

5. **Marital Status**: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please also indicate the number of dependent children.
Married to Mary Eva Colalillo,
Judge, Superior Court of New Jersey, Hall of Justice,
101 South 5th St., Camden, NJ 08103-4001
No dependent children

6. **Education**: List in reverse chronological order, listing most recent first, each college, law school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.
Rutgers - Camden Law School, Camden, NJ
1975-78, JD (with honors) (1978)
Syracuse University, Syracuse, NY, 1972-75
BA (summa cum laude) (1975)
Rutgers University, Camden, NJ, 1970-71
Cornell University, Ithaca, NY, 1968-69

7. **Employment Record**: List in reverse chronological order, listing most recent first, all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

1992-Present: United States Magistrate Judge, District of New Jersey, 1 John F. Gerry Plaza, Camden, NJ 08101;

1982-92: Moss, Powers & Kugler, 7 E. Main St., Moorestown, NJ 08057; associate/partner/shareholder;

1981-82: Deputy Attorney General, NJ Department of Law and Public Safety, Division of Criminal Justice, Special Prosecutions Section, Hughes Justice Complex, Market St., Trenton, NJ;

1979-1981: Assistant Camden County Prosecutor, Camden NJ;
25 N. Fifth St., Camden, NJ 08102-1231;

1978-1979: Law Clerk to Hon. John F. Gerry, United States District Court,
401 Market St., Camden, NJ;

1988 - 2000: Trustee, Camden Dental Health Center, Camden, NJ
(this organization no longer exists)

1985 - 2001: Partner, Main Street Moorestown II,
c/o E.E. Moss, II, 129 E. Oak Ave., Moorestown, NJ 08057

1977 - Law intern; Brown & Connery, 518 Market St., Camden, NJ

1975 - 1976: Attendant/Mechanic; Conte's Shell; Brace and Kresson Rds.,
Cherry Hill, NJ

8. **Military Service**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge received

None

9. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

BA, summa cum laude, Syracuse University, 1975;
JD with honors, Rutgers Camden Law School, 1978;
Peter J. Devine Award, Camden County Bar Association, 2002;
Certified Civil Trial Attorney, New Jersey Supreme Court;
Certified Criminal Trial Attorney, New Jersey Supreme Court;
Fellow, American Bar Foundation

10. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Fellow, American Bar Foundation; Camden County Bar Association; Burlington County Bar Association; New Jersey State Bar Association; American Bar Association; Association of Criminal Defense Lawyers of New Jersey; Trial Attorneys of New Jersey; New Jersey Defense Association; Judicial Conference of the United States, Committee on the Administrative Office of the United States; United States District Court Lawyers Advisory Committee; United States District Court Committee on Equal Employment; Third Circuit Task Force on Equal Treatment in the Courts; Commission on Race and Ethnicity (report reprinted in 42 Villanova L.Rev. 1355-1830 (1997) and copies attached), New Jersey Supreme Court, District IIIB Ethics Committee, member, vice-chair and chair; United States District Court Committee to Select a Magistrate Judge, (1989).

11. **Bar and Court Admission**: List each state and court in which you have been admitted to practice, including dates of admission and any lapses in membership. 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 (1986); United States Court of Appeals for the Third Circuit (1983); United States District Court for the District of New Jersey (1978); New Jersey Supreme Court (1978); United States District Court for the Eastern District of Pennsylvania (pro hac vice); United States District Court for the Eastern District of Virginia (pro hac vice).

12. **Memberships**: List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, charitable, or other organizations since graduation from college, other than those listed in response to Questions 10 or 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion - either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

Trustee, Camden Dental Health Center (1988 - 2000); Tavistock Country Club Tavistock Country Club (approximately 1988 - present). I do not believe that any of these organizations illegally discriminates. (By-Laws attached)

13. **Published Writings**: List the titles, publishers, and dates of books, articles, reports, or other material you have written or edited, including material published on the Internet. Please supply four (4) copies of all published material to the Committee, unless the Committee has advised you that a copy has been obtained from another source. Also, please supply four (4) copies of all speeches delivered by you, in written or videotaped form over the past ten years, including the date and place where they were delivered, and readily available press reports about the speech.

Commodities - Enforcement - CFTC Rule 30.01 Proscribes Negligent Deception of Person Engaged in Commodities Trading, 9 Rutgers - Camden Law Journal 193 (1977) (copies attached)

Keynote Address, April 14, 1997, New Jersey State Bar Association (topic was the Third Circuit Task Force on Equal Treatment in the Courts) (there are no transcripts, audio or videotapes); Third Circuit Task Force on Equal Treatment in the Courts 42 Villanova Law Review 1355 (1997) (copies attached).

Third Circuit Judicial Conference, May, 1997, Philadelphia, Pa., (topic was the Judicial Selection Committee of the Third Circuit Task Force on Equal Treatment in the Court) (there are no transcripts, audio, or videotapes)

14. **Congressional Testimony**: List any occasion when you have testified before a committee or subcommittee of the Congress, including the name of the committee or subcommittee, the date of the testimony and a brief description of the substance of the testimony. In addition, please supply four (4) copies of any written statement submitted as testimony and the transcript of the testimony, if in your possession.

None

15. **Health**: Describe the present state of your health and provide the date of your last physical examination.
Good; May 3, 2002

16. **Citations**: If you are or have been a judge, provide:

(a) a short summary and citations for the ten (10) most significant opinions you have written;

1. Cordy v. Sherwin-Williams Co, 156 F.R.D. 575 (D.N.J. 1994)
Defendant retained as an expert an engineer who had previously been retained in the same case by plaintiff's counsel. Plaintiff moved to disqualify the expert and defense counsel. The court granted the motion.

2. Upper v. U.S. Government, 1994 WL 660738, 74 A.F.T.R. 2d 94-5952 (D.N.J. 1994) aff'd j.o. 74 F.3d 1229 (3d Cir. 1995).
Plaintiff sought to bring an action against individual employees of the Internal Revenue Service for alleged violations of his constitutional rights (Bivens). The court held plaintiff's proposed amended complaint would be futile and therefore denied the motion.

3. Torres v. Kuzniasz, 936 F.Supp. 1201 (D.N.J. 1996)
Plaintiffs sued the City of Camden alleging that its police officers engaged in a pattern of violating the constitutional rights of the plaintiff class. Plaintiffs sought discovery of police internal affairs reports relating to citizen complaints against police officers. Defendants claimed privilege. The court ordered that defendants turn over the reports.

4. Reed v. Binder, 165 F.R.D. 424, 34 Fed.R. Serv. 3d 1511 (D.N.J. 1996)
Plaintiff brought a medical negligence action against certain doctors for a failure to diagnose the cancer which killed plaintiff's decedent. Plaintiff sought to impose upon defendants the costs of taking the discovery depositions of the defense experts. The court found numerous violations of Rule 26(a)(2)(B) and granted the motion.

5. State of N.J. v. Bazin, 912 F.Supp. 106 (D.N.J. 1995)
Union representatives brought criminal charges in the local municipal court against a postal inspector for harassment and simple assault. The United States removed the case to the United States District Court. The court upon motion of the defendant, dismissed the harassment charge pursuant to N.J.S.A. 2C:2-11 as de minimis. The court denied the motion to dismiss the assault charges finding that the defendant was not entitled to immunity.

6. McKowan Lowe & Co., Ltd. v. Jasmine Ltd., 976 F.Supp. 293 (D.N.J. 1997)
In this securities fraud class action case, defendants who had been added after the effective date of the Private Securities Litigation Reform Act of 1995, moved to dismiss and sought a stay of discovery pursuant to section 21 D of the Act. The court denied the motion, holding that the Act did not apply to the parties in this case.

7. United States v. Sealed Search Warrants, 28 Media L.Rep. 1151, 1999 WL 1455215 (D.N.J. 1999)
After the court granted the government's application to seal the affidavits and inventories filed in connection with three search warrants, newspapers and the "target" of the investigation moved to intervene and unseal the papers. Finding the need for secrecy of grand jury matters outweighs petitioner's constitutional and common law rights, the court denied the motion to unseal.

8. Cooper Hospital v. Sullivan, 1998 WL 1297329 (D.N.J. 1998)
Plaintiff sued former employees and others to recover money embezzled by the former employees. The non-employee defendants sought discovery of an internal audit report commissioned by plaintiff and moved to compel when plaintiff refused to disclose it. The court granted the motion to compel.

9. Chalick v. Cooper Hospital, 192 F.R.D. 145 (D.N.J. 2000)
Plaintiff in a wrongful death medical malpractice action against a hospital and others sought to amend the complaint to add another physician as a defendant. The court granted the motion holding that discovery violations estopped defendant from denying notice of the action.

10. Barr v. City of Atlantic City, 100 F.Supp. 2d 262 (D.N.J.2000)
Plaintiffs moved to amend their complaint to withdraw Title VII claims and substitute claims under §1983, which were based on the same conduct and occurrences that formed the basis of their Title VII claims. Defendant objected, contending that plaintiffs failed to exhaust administrative remedies. The court granted the motion, holding that Title VII and §1983 claims are not mutually exclusive, and that administrative exhaustion is not required.

(b) a short summary and citations for all rulings of yours that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court; and

To the best of my recollection, none of my rulings has been reversed by the United States Court of Appeals for the Third Circuit. The District Court reversed me in four instances. In United States v. Sclafani (an unreported decision), the sentence requiring restitution was vacated and remanded. In Mruz v. Caring, 166 F.Supp. 2d 61 (D.N.J. 2001), the imposition of a sanction (revocation of pro hac vice admission) was reversed because of an intervening Third Circuit case. There are two other cases whose names I cannot recall and therefore can't locate the records. In the first, the District Court reversed my denial of a motion to amend pleadings. In the second, the District Court modified an order for sanctions.

(c) a short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions.

1. Scotts African Union Methodist Protestant Church v. The Conference of African Union First Colored Methodist Protestant Church, involved a dispute over ownership of real estate and church buildings in Camden, New Jersey. The "mother church" instructed the pastor of the local church to execute a quitclaim deed in favor of the "mother church," which she did. The local congregation objected. The court held in favor of the local congregation, which was affirmed by the Third Circuit at 98 F.3d 78 (3d Cir. 1996), cert. denied 519 U.S. 1058 (1997).

There were First Amendment implications because of questions about church heirarchy and governance.

2. United States v. Sealed Search Warrants, 1999 WL 1455215, 28 Media L. Rep. 1151 (D.N.J.) (1999) involved an application by newspapers to intervene in an action and compel the United States Attorney's Office to release sealed search warrant affidavits and inventories. The locations searched included the office and home of the Mayor of Camden, New Jersey. The media asserted First Amendment and common law rights to public access of sealed court documents. The court denied the motion to unseal the documents, holding there is no First Amendment right of access to the sealed documents.

If any of the opinions or rulings listed were in state court or were not officially reported, please provide copies of the opinions.

17. **Public Office, Political Activities and Affiliations**:

(a) List chronologically any public offices you have held, federal, state or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or nominations for appointed office for which were not confirmed by a state or federal legislative body.

1. Assistant Camden County Prosecutor, 1979 - 1981. Appointed by John B. Mariano, Camden County Prosecutor.

2. Deputy Attorney General, New Jersey Division of Criminal Justice, Department of Law and Public Safety. 1981 - 1982. Appointed by Robert Winter, Director, Division of Criminal Justice.

No elective offices sought. No unconfirmed appointments.

(b) 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

18. **Legal Career**: Please answer each part separately.

(a) Describe chronologically your law practice and legal experience after graduation from law school including:

(1) whether you served as clerk to a judge, and if so, the name for the judge, the court and dates of the period you were a clerk;

1978 - 1979: Law Clerk to Hon. John F. Gerry, United States District Judge, Camden, N.J.

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

I never practiced alone.

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

1979 - 1981: Assistant Camden County Prosecutor, 25 N. Fifth St., Camden, NJ 08102-1231

1981 - 1982: Deputy Attorney, New Jersey Department of Law and Public Safety, Division of Criminal Justice, Hughes Justice Complex, 25 Market St., Trenton, NJ

1982 - 1992: Associate/Partner/Shareholder in law firm which ultimately became Moss, Powers & Kugler, 7 E. Main St., Moorestown, NJ

1992 - Present: United States Magistrate Judge, United States District Court for the District of New Jersey, 1 John F. Gerry Plaza, Camden, NJ

(b) (1) Describe the general character of your law practice and indicate by date if and when its character has changed over the years.

As an Assistant Prosecutor and Deputy Attorney General, I prosecuted criminal cases brought by county and/or state law enforcement agencies. In private practice from 1982 to 1992, I engaged in civil and criminal litigation and general practice.

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

Before becoming a Magistrate Judge, I qualified for appointment by the New Jersey Supreme Court as a Certified Criminal Trial Attorney and Certified Civil Trial Attorney. This was based on trial experience and passing an examination. My "typical clients" while practicing were defendants in negligence or malpractice cases, school boards, some criminal defendants and some small companies or individuals in commercial disputes.

(c) (1) Describe whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe each such variance, providing dates.

As a practicing attorney, I was in court frequently.

(2) Indicate the percentage of these appearances in

(A) federal courts:
15%

(B) state courts of record:
80%

(C) other courts.
5%

(3) Indicate the percentage of these appearances in:

(A) civil proceedings;
0% while a prosecutor; 90% while in private practice

(B) criminal proceedings.
100% while a prosecutor; 10% while in private practice

(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.

As a prosecutor I tried over thirty (30) cases to a jury verdict and over 100 cases to verdict in a bench trial. While in private practice, I tried as sole counsel to a verdict over fifty (50) cases (jury, bench trials, binding arbitration and administrative proceedings). Approximately 60% were jury trials.

(5) Indicate the percentage of these trials that were decided by a jury.

60%

(d) Describe your practice, if any, before the United States Supreme Court. Please supply four (4) copies of any briefs, amicus or otherwise, and if applicable, any oral argument transcripts before the U.S. Supreme Court in connection with your practice.

None

(e) Describe legal services that you have provided to disadvantaged persons or on a *pro bono* basis, and list specific examples of such service and the amount of time devoted to each.

I represented criminal defendants in the United States District Court in Camden and Trenton, N.J., on a pro bono basis. And I represented defendants in the Moorestown, N.J., Municipal Court on a pro bono basis. This occurred more than ten (10) years ago, so I have little recollection of the details and no records. The federal court matter in Camden, involved a drug case, the first one brought in New Jersey after the passage of the Bail Reform Act. The matter in Trenton involved a bank robbery.

I have also been deeply involved in community work. I served as a Trustee of the Camden Dental Health Center, New Jersey's oldest clinic devoted to dental care for indigent patients. Through the Camden County Bar Association Public Benefits Committee, I have participated in many events benefitting the children in the area. I have judged numerous moot court competitions at the University of Pennsylvania, Rutgers University and Seton Hall University. I have lectured dozens of times for continuing legal education courses and at Rutgers University Law School. Through the local Chamber of Commerce and the Administrative Office of the United States Courts I have conducted programs at the Camden Courthouse for high school students. In January of 2002, the Camden County Bar Association presented its most prestigious award, the

Peter J. Devine Award, to my wife and I for our service to the community and the bar.

19. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, and for each provide the date of representation, the name of the court, 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. In addition, please provide the following:

(a) the citations, if the cases were reported, and the docket number and date if unreported;

(b) a detailed summary of the substance of each case outlining briefly the factual and legal issues involved;

(c) the party or parties whom you represented; and

(d) describe in detail the nature of your participation in the litigation and the final disposition of the case.

1. Greenwood v. State Police Training Center, 127 N.J. 500 (1992). I represented the plaintiff who sought to become a Sheriff's Officer despite near blindness in one eye. The plaintiff prevailed before an Administrative Law Judge, but lost at the Commission and Appellate Division. The New Jersey Supreme Court granted certification and reversed the Appellate Division and ordered the plaintiff restored to his job as a Sheriff's Officer.

My adversaries were Carl Wyhopen, Deputy Attorney General, Box 081, Trenton, NJ, 609-292-8193 and Howard Wilson, 331 Jackson Rd., Atco, NJ 08004, 856-767-7232, for the Camden County Sheriff's Dept.

2. Bustamante v. Juliano, 248 N.J. Super 492 (App. Div. 1991), certif. denied 126 N.J. 385 (1992). I was retained to appeal an adverse verdict entered against a police officer who had been sued by another police officer from the same town who had been injured during a training exercise. The Superior Court, Appellate Division, (Judges King, Long and Stern) reversed and entered judgment for the defendant. This case further defines the workers' compensation - intentional act exception of NJSA 34:15-8 and construes Millson v. DuPont.

My adversary was Philip Ciprietti, 79 S. Maple Ave., Marlton, NJ 08053, 856-983-8695.

3. New Hampshire Insurance Company, et al v. Lowing Enterprises, et al, United States District Court, Civ. No. 87-0656(AET). This three week civil trial in 1991, focused on a fire at a nursing home in Hamilton Township, New Jersey. I represented a plumbing contractor who was alleged to be negligent. The trial judge was Anne E. Thompson, U.S.D.J. A verdict was entered for plaintiffs (my client was found to be only 5% responsible) and I ultimately settled the claims against my clients.

Counsel for the plaintiffs were Mark M. Bridge, 101 E. Lancaster Ave., Wayne, Pa. 19087, and Robert Prentice, current address unknown. Representing the other defendants were Bruce Helies, 2517 Highway 35, Bldg. K, Manasquan, NJ, 08736, 732-223-5100; Stanley Needell, 2681 Quakerbridge Rd., Trenton, NJ, 08619, 609-584-7700; and Richard Murray, 21 Larkin Circle, West Orange, NJ 07052, 973-243-0563.

4. Cunningham v. City of Camden, et al, Superior Court of New Jersey, Law Division - Camden County, L-077106-84, Hon. Joseph Greene (1986). This was an action against certain police officers who shot someone during an altercation. Trial lasted for seven days. There were issues regarding immunity and the like. The jury returned a verdict for defendants.

   Plaintiff was represented by Saul Steinberg, 519 Federal St., Camden, NJ 08103, 856-365-0080. Co-defendants were represented by F. Herbert Owens, 1000 Crawford Place, Mt. Laurel, NJ 08054, 856-722-1779 and Jay H. Greenblatt, 200 N. 8th St., Box 883, Vineland, NJ 08362, 856-691-0424.

5. Estate of Israel v. Derman, Superior Court of New Jersey, Law Division - Camden County, L-28825-80, Hon. Richard Hyland (1982). In this wrongful death case, the jury returned a verdict after five days of trial in favor of my client, the only remaining defendant (all the others had settled before and during trial). I had successfully moved before trial to dismiss the claim by the parents of the decedent for Portee type damages and was affirmed by the Appellate Division (unreported). The New Jersey Supreme Court denied certification. I had also successfully moved for summary judgment for indemnity from a settled co-defendant. That led to a successful application to have the co-defendant pay my client's trial expenses and fees. The Appellate Division affirmed in an unreported opinion and the New Jersey Supreme Court denied certification.

   Plaintiff was represented by Harold Crass, 59 N. Broad St., Box 377, Woodbury, NJ 08096, 856-845-7900. Co-defendants were represented by F. Herbert Owens, 1000 Crawford Place, Mt. Laurel, NJ 08054, 856-722-1779, Daniel McCormack and Barry Strosnider, 216 Haddon Ave., Box 2222, Westmont, NJ 08108, 856-858-7200.

6. Smith v. Proietti, Superior Court of New Jersey, Law Division, Camden County, L-45837-83, Hon. Edward Mennetti, J.S.C. (1984). Plaintiff was operating a moped when it collided with a car operated by my client. The plaintiff suffered serious injuries. After three days of trial, the jury on February 7, 1985, returned a verdict finding the plaintiff 75% negligent and the defendant 25% negligent. Plaintiff appealed, and the Appellate Division reversed because evidence was admitted of the minor plaintiff's drinking alcohol though there was insufficient evidence of intoxication. The case was retried the following year and even without the evidence of plaintiff's drinking, the new jury found plaintiff 100% responsible for the accident. Plaintiff's counsel was David Fox, 116 White Horse Pike, Haddon Heights, NJ 08035, 856-0546-8822.

7. State v. Herbert Jones, Superior Court of New Jersey, Camden County, Indictments 1419-77 and 231-78, Hon. Warren Douglas (1980). I was the assistant prosecutor in this fraud case against the operator of a collection agency. He failed to turn over the money he collected to the doctors and dentists who hired him. Pretrial motions took two days and defendant appealed the Order. Trial took eight days, involved hundreds of documents and I called over thirty (30) witnesses. Defendant elected during trial to proceed pro se. Because he was not indigent, the court did not appoint standby counsel. There were some other novel issues, for example the court charged that the jury could consider defendant's failure to purchase a bond as evidence of intent. The jury convicted the defendant on 51 counts on February 10, 1981, and the court sentenced him to prison. The Appellate Division affirmed in an unreported decision.

8. State v. Harvey Johns and Maurice Ollivierre, Superior Court of New Jersey, Camden County, Indictment 473-80, Hon. Peter Corruzzi (1981). I prosecuted both defendants who viciously beat and raped the victim in an attempt to force her to prostitute for them. The victim was reluctant to testify (she had entered into a relationship with one of the defendants before trial). Over my strenuous objections, defense counsel were permitted to cross-examine the victim about her

sexual relationship with one of the defendants. The jury convicted both defendants on July 29, 1981, after five days of trial. I successfully moved for the court to impose extended terms of imprisonment on both.

Representing the defendants were Harold Katz, 101 Haddon Ave., Camden, NJ 08103, 856-614-3500 and Jack E. Milkis, 5 Greentree Centre, Marlton, NJ 08053, 856-810-0909.

9. State v. Amador Rivera, Superior Court of New Jersey, Camden, Indictment 657-79; Hon. Leon Wingate, J.S.C. (1980). Defendant was charged with rape of a 39 year old woman who had a history of 13 prior psychiatric hospitalizations, and who was heavily medicated during this trial. There were extensive pretrial hearings on the mental state of the victim and about prior complaints of rape filed by the victim against others. A very incriminating statement by defendant was suppressed because of inadequate Miranda warnings. As prosecutor, I relied heavily on expert testimony (pubic hair comparison, semen analysis). There was a chain of custody problem concerning the victim's undergarments. Defendant was convicted on February 16, 1980, after 4 days of trial and sentenced to prison. The Appellate Division affirmed. Defendant was represented by George E. Stransky, Jr., Esq., who is now deceased.

10. State v. Brown, et al, Superior Court of New Jersey, Cape May County, SGJ 80-81-9, Judge Porreeca. I was the Deputy Attorney General assigned to prosecute this 16 defendant drug conspiracy case. During 1982, the defendants filed 48 motions. The court denied 45, deferred 2 until trial, and granted a severance motion for one defendant after taking testimony in camera under seal. I appealed the grant of the severance motion. The Appellate Division reversed. After taking guilty pleas for 10 of the defendants, the case was reassigned and I left the office to enter private practice.

Defendants were represented by Salvatore Alfano, 55 Washington, Bloomfield, NJ, 07003, 973-743-9390; William E. Nugent, 401 New Rd., Linwood, NJ 08221, 609-927-0015; Michael L. Testa, 424 Landis Ave., Vineland, NJ 08360, 856-691-2300; Thomas Rossi, 2700 Pacific Ave., Wildwood, NJ 08260, 609-729-1333; Richard L. Hoffman, 70 Pine St., New York, NY 10270; William W. Schultz, 222 New Rd., Linwood, NJ 08221, 609-926-2266; Joseph F. Rodgers, Prof. Plaza, 100 Anglesea Dr., North Wildwood, NJ 08260, Barry J. Hockfield, 425 Rt. 70 West, Cherry Hill, NJ 08002, 856-429-0802; Raymond A. Batten, II (now a Superior Court Judge in Cape May County, 609-463-6635; Joel A. Mott, III, Ocean Abstract, Box 1515, Ocean City, NJ 08226, 609-399-6955; Joseph G. Gindhart, One South N.Y. Ave., Atlantic City, NJ 08401, 609-345-3050; James E. Panny, no current address available; Edwin J. Jacobs, Jr., 1125 Pacific Ave., Atlantic City, NJ 08401, 609-348-1125; David A. Forman, no current address available; Harry A. Delventhal, Jr., 1151 West Ave., Box 212, Ocean City, NJ 08226, 609-398-6220; R. Robert Fleming, 1301 Pleasure Ave., Box 476, Ocean City, NJ 08226, 609-399-1080.

20. **Criminal History**: State whether you have ever been convicted of a crime, within ten years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and disposition and describe the particulars of the offense.

No

21. **Party to Civil or Administrative Proceedings**: State whether you, or any business of which you are or were an officer, have ever been a party or otherwise involved as a party in any civil or administrative proceeding, within ten years of your nomination, that is reflected in a record available to the public. If so, please describe in detail

the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings in which you were a guardian *ad litem*, stakeholder, or material witness.

a. I was plaintiff in a landlord-tenant proceeding in approximately 1995, to evict a tenant, Charles Kearney, for non-payment of rent, filed in the Superior Court of New Jersey, Law Division - Camden County. I do not have the docket number.

b. I have been a defendant in the following cases,

1. Joseph T. Toy, et al v. United States District Court, et al, 98 CV 3693 (MLC) (District of New Jersey). The Toys were pro se litigants who sued a number of judges, including me, because their lawsuit against a local police department had been dismissed by this court. They earlier had filed an identical lawsuit in the United States District Court for the Eastern District of Pennsylvania, Docket No. 96-2862, which Judge Shapiro had dismissed. This lawsuit likewise was dismissed.

2. Kevin Boone v. Troy Thompson, et al, Civ. No. 02-1580 (E.D. Pa). Plaintiff, pro se, sued judges, public defenders, probation officers, court reporters, and the like because of orders entered in prior criminal proceedings involving the plaintiff. He specifically alleges that I improperly signed orders waiving his rights. The matter is pending and Ms. Pat Geiger of the United States Attorney's Office in Philadelphia, has been assigned to represent me.

3. Jackson, et al v. Jarman, et al, Civil No. 97-00429 (D.D.C.). Plaintiffs were the unsuccessful attorney (Shearin) and client (Jackson) in the Scotts African Union Methodist Protestants Church v. The Conference of African Union First Colored Methodist Protestant Church matter, 98 F.3d 78 (3d Cir. 1996), and sued every federal and state judge who made any rulings in the case. This lawsuit has been dismissed (and Ms. Shearin was suspended from the practice of law in Delaware and New Jersey).

4. There was a lawsuit brought many years ago by a Lawrence Gaines, then an inmate in the New Jersey prison system. I had successfully prosecuted him for rape while an Assistant Camden County Prosecutor. The judge had sentenced him to forty years in prison. I believe I was represented by the Camden County (N.J.) counsel's office and they successfully moved to dismiss the case. I do not remember the year it was filed and do not know the docket number.

c. Clarence Hardy filed a complaint against me with the Judicial Council of the Third Circuit on May 22, 1996, docket 96-31. I had presided over a misdemeanor trial in which he was a defendant, found him guilty, and sentenced him to a short period of incarceration. By Memorandum Opinion filed June 14, 1996, Chief Judge Sloviter dismissed this complaint. Mr. Hardy appealed to the entire Council. By Order of October 30, 1996, the Judicial Council of the Third Circuit affirmed Chief Judge Sloviter's dismissal.

22. **Potential Conflict of Interest**: 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.

Of course I will be bound by 28 USC §455. I will provide to the Clerk of the Court a list of companies in which my wife and I own stock so that no cases involving those companies will be assigned to me. I will carefully examine any case in which my family or I may have a close personal relationship with a party or attorney. Finally, I will not accept habeas corpus matters where my wife, who is New Jersey Superior Court Judge, had any involvement.

23. **Outside Commitments During Court Service**: Do you have any plans, commitments, or arrangements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No

24. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding the nomination, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500. If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.

Financial disclosure report is attached.

25. **Statement of Net Worth**: Complete and attach the financial net worth statement in detail. Add schedules as called for.

Net worth statement is attached.

26. **Selection Process**: Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?

Yes

(a) If so, did it recommend your nomination?

I assume so.

(b) Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.

The Judicial Selection Commission established by Senators Torricelli and Corzine interviewed applicants. I had an initial interview with a 4 person subcommittee and a second interview with the full committee. Subsequently, I had interviews with the White House Counsel's Office, The Department of Justice, and had a Federal Bureau of Investigation background check. As part of that process I have submitted various forms and Questionnaires to the White House and Justice Department.

(c) 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 or seeking a commitment as to how you would rule on such case, issue, or question? If so, please explain fully.

No

FINANCIAL STATEMENT

ROBERT B. KUGLER

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	25000	Notes payable to banks-secured	
U.S. Government securities-add schedule		Notes payable to banks-unsecured	
Listed securities-add schedule	188000	Notes payable to relatives	
Unlisted securities-add schedule		Notes payable to others	
Accounts and notes receivable:		Accounts and bills due	2500
Due from relatives and friends		Unpaid income tax	
Due from others		Other unpaid income and interest	
Doubtful		Real estate mortgages payable-add schedule	183000
Real estate owned-add schedule	415000	Chattel mortgages and other liens payable	
Real estate mortgages receivable	5000	Other debts-itemize:	
Autos and other personal property	165000		
Cash value-life insurance	5000		
Other assets itemize:			
Retirement/401K/ Thrift Savings	400000		
Mutual Funds (Gabelli, Mutual Qualified)	30000		
		Total liabilities	185500
		Net Worth	1047500
Total Assets	1233000	Total liabilities and net worth	1233000
CONTINGENT LIABILITIES		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?	YES
Legal Claims		Have you ever taken bankruptcy?	NO
Provision for Federal Income Tax			
Other special debt			

ROBERT B. KUGLER

SCHEDULE

LISTED SECURITIES			
American Express	AXP	3000	
Connectiv	CIV	300	
Connectiv A	CIVA	50	
Exxon Mobil	XOM	26	
Ford	F	1748	
Lehman	LEH	400	
Newell	NWL	53	
Visteon	M	130	
			188,000
REAL ESTATE OWNED			
Residence			300,000
Rental Property			115,000
REAL ESTATE MORTGAGES PAYABLE			
Residence - Columbia Savings			175,000
Rental Property - Washington Mutual			8,000

Form A (Rev. 1/90)

FINANCIAL DISCLOSURE REPORT
FOR NOMINEES

Report Required by the Ethics in Government Act of 1978, 5 U.S.C. App. §§101-111

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
KUGLER, ROBERT B.	District Court of New Jersey	08/02/2002

4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	5. Report Type (check appropriate type)	6. Reporting Period
District Judge Nominee	X Nomination, Date 8/1/02 __ Initial __ Annual __ Final	1/01/2001 to 7/31/2002

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.
Mitchell Cohen U.S. Courthouse 1 John F. Gerry Plaza, Box 559 Camden, New Jersey 08101	Reviewing Officer _____ Date _____

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

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

	POSITION	NAME OF ORGANIZATION/ENTITY
	NONE (No reportable positions.)	
1	Partner	Moorestown II
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)
		NONE (No reportable non-investment income.)	
	2001	Income - State of New Jersey - Salary (Spouse)	$
	2002	Income - State of New Jersey - Salary (Spouse)	$
	2001	Income - Rental property, net income	947.00
	2002	Income - Rental property, net income (to date)	552.00
	2001	Income - Moorestown,	174.00
	2002	Income - Moorestown, (to date)	101.50
			$

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: KUGLER, ROBERT B.

Date of Report: 8/2/2002

IV. REIMBURSEMENTS - transportation, lodging, food, entertainment.
(Includes those to spouse and dependent children. See pp. 25-27 of Instructions.)

	SOURCE	DESCRIPTION
NONE	(No such reportable reimbursements.)	
EXEMPT		

V. GIFTS. *(Includes those to spouse and dependent children. See pp. 28-31 of Instructions.)*

	SOURCE	DESCRIPTION	VALUE
NONE	(No such reportable gifts.)		
EXEMPT			$
			$
			$
			$

VI. LIABILITIES. *(Includes those to spouse and dependent children. See pp. 32-33 of Instructions.)*

	CREDITOR	DESCRIPTION	VALUE CODE*
NONE	(No reportable liabilities.)		
EXEMPT			

J=$15,000-$50,000 K=$50,001-$100,000 L=$100,001-$250,000 M=$250,001-$500,000
N=$500,001-$1,000,000 O=$1,000,001-$5,000,000 P1=$5,000,001-$25,000,000
P2=Over $25,000,000

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: KUGLER, ROBERT B.

Date of Report: 8/2/2002

VII. Page 1 INVESTMENTS and TRUSTS – income, value, transactions *(Includes those of spouse and dependent children. See pp. 14-17 of Instructions.)*

A Description of Assets (including trust assets) *Place "(X)" after each asset exempt from prior disclosure*	B Income during reporting period (1) Amt. Code1 (A-H)	B (2) Type (e.g., div., rent or int.)	C Gross value at end of reporting period (1) Value Code2 (J-P)	C (2) Value Method Code3 (Q-W)	D Transactions during reporting period (1) Type (e.g., buy, sell, merger, redemption)	D (2) Date: Month-Day	D (3) Value Code2 (J-P)	D (4) Gain Code1 (A-H)	D If not exempt from disclosure (1) Identity of buyer/seller (if private transaction)
NONE No reportable income, assets.									
Commerce Bank	A	Int	J	T	EXEMPT				
Haddon Savings & Loan	A	Int	J	T					
First Union Bank	A	Int	K	T					
Vanguard Star Fund	A	Int	K	T					
Janelli Asset Fund	D	Div	L	T					
Mutual Qualified Fund	E	Div	K	T					
Schwab 1000 Fund	A	Div	J	T					
NEA Members Retirement Fund	E	Div	N	T					
Schwab Tax Fund	A	Int	J	T					
Municipal Bond - Lafayette	A	Int	J	T					
American Express Tax	A	Div	M	T					
Vest	A	Div	K	T					
Pasco Mgmt	A	Div	J	T					
Small Business	A	Div	J	T					
Commercial Mgmt	A	Rent	M	S					
Mid-Atlantic	A	Dist	K	S					
Other Mut. Fund		Non-	J	W					

A=$1,001-$2,500 B=$2,501-$5,000 C=$5,001-$15,000 D=$15,001-$50,000
E=$50,001-$100,000 F=$100,001-$1,000,000 G=$1,000,001-$5,000,000 H1=$5,000,001-$25,000,000 H2=More than $25,000,000
J=1%-5% K=6%-10% L=11%-25% M=26%-50% N=51%-75% O=76%-100% P1=More than $1,000,000 P2=More than $50,000,000
R=Real estate only S=Assessment T=Cash/Market U=Partnership V=Qualified trust W=Estimated

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: KUGLER, ROBERT B.

Date of Report: 8/2/2002

VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children See pp. 34-37 of Instructions.)*

A. Description of Assets (including trust assets) *Place "(X)" after each asset exempt from prior disclosure*	B. Income during reporting period (1) Amt Code1 (A-H)	B. (2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting period (1) Value Code2 (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions)					EXEMPT				
16 Lehman	A	Div	K	T					
17 Conectiv	A	Div	J	T					
18 Visteon Corp.	A	Div	J	T					
19									
20									
21									
22									
23									
24									
25									
26									
27									
28									
29									
30									
31									
32									

C: J=$2,501-$5,000; K=$5,001-$15,000; L=$15,001-$50,000; M=$50,001-$100,000; N=$100,001-$250,000; O=$250,001-$500,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000; P3=More than $50,000,000

D: H1=$1,000,001-$5,000,000; H2=More than $5,000,000

Value Method Code: Q=Appraisal; R=Assessment; S=Cost (Real Estate Only); T=Cash/Market; U=Book Value; V=Other; W=Estimated

FINANCIAL DISCLOSURE REPORT	KUGLER, ROBERT B.	Date of Report 8/2/2002

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

Partnership, rare coins, involving gold coins. I own 6/25 shares of each coin.

Home in Hackenfield is a rental property.

Partnership - Moorestown LLC holds a mortgage on an office building in Moorest New Jersey. My share is 10%.

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is true, complete and correct 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., §§ 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature [signature] Date 8/2/02

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., § 104.)

FILING INSTRUCTIONS

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

QUESTIONNAIRE FOR NOMINEES REFERRED TO THE UNITED STATES SENATE COMMITTEE ON THE JUDICIARY RESPONSES THERETO

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

RESPONSE: Ronald Bruce Leighton

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

RESPONSE: United States District Court Judge – Western District of Washington.

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

RESPONSE: Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim, LLP; 2200 Wells Fargo Plaza – P.O. Box 1157, Tacoma, WA 98401-(253) 572-5050.

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

RESPONSE: May 30, 1951 – Stockton, California.

5. **Marital Status:** (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.

RESPONSE: Sally Briggs Leighton (maiden name Briggs) – Attorney – Burgess, Fitzer, P.S. – 1501 Market Street, Suite 300, Tacoma, WA 98402 – 2 dependent children.

6. **Education:** List in reverse chronological order, listing most recent first, each college, law school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

RESPONSE: University of California – Hastings College of Law, 1973-1976 (J.D. 5/76)
Whitworth College – 1969-1973 (B.A. 5/73)

7. **Employment Record:** List in reverse chronological order, listing most recent first, all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

RESPONSE:

Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim, LLP, 1976 to present; 1201 Pacific Avenue, Suite 2200, Tacoma, WA 98401; Partner

California Supreme Court, 11/75 to 6/76; 350 McAllister Street, San Francisco, CA 94102; Law Clerk

Farella, Braun & Martel, 9/74 to 11/75; 235 Montgomery Street, San Francisco, CA 94104; Law Clerk.

See also Response to Question No. 12, which lists those non-profit organizations in which I served as a board member or an officer. In each of those positions, I received no payment or other compensation for my services.

8. **Military Service:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge received.

RESPONSE: None.

9. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

RESPONSE: American College of Trial Lawyers – 1997 to present
International Society of Barristers – 2001 to present

10. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

RESPONSE:

Washington State Bar Association (1976 to present)
Chairman – Judicial Recommendations Committee (1990-1991)
Pierce County Bar Association (1976 to present)
Federal Bar Association – Western District of Washington (1980 to present)

11. **Bar and Court Admissions:** List each state and court in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

RESPONSE:

State of Washington – 1976 to present
Federal District Court (Western District of Washington) – (1976 to present)
9th Circuit Court of Appeals – (9/12/96 to present)

12. **Memberships:** List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, charitable, or other organizations since graduation from college, other than those listed in response to Questions 10 or 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

RESPONSE:

Merle Palmer Minority Scholarship Foundation
Annie Wright School
Charles Wright Academy
Whitworth College
Pierce County Civil Service Commission
American College of Trial Lawyers
Tacoma Country & Golf Club
University Place Presbyterian Church
Tacoma Actors Guild
American Board of Trial Advocates
Washington Defense Trial Lawyers
International Association of Defense Counsel
Federation of Insurance and Corporate Counsel

To my knowledge, none of these organizations has ever discriminated on the basis of race, sex or religion.

13. **Published Writings:** List the titles, publishers, and dates of books, articles, reports or other material you have written or edited, including material published on the Internet. Please supply four (4) copies of all published material to the Committee unless the Committee has advised you that a copy has been obtained from another source. Also, please supply four (4) copies of all speeches delivered by you, in written or videotaped form over the past ten years, including the date

and place where they were delivered, and readily available press reports about the speech.

RESPONSE:

Chapter on Default Judgment, Washington Civil Procedure Deskbook, 1992
Chapter on Defenses, Washington Civil Procedure Deskbook, 2001

14. **Congressional Testimony:** List any occasion when you have testified before a committee or subcommittee of the Congress, including the name of the committee or subcommittee, the date of the testimony and a brief description of the substance of the testimony. In addition, please supply four (4) copies of any written statement submitted as testimony and the transcript of the testimony, if in your possession.

RESPONSE: None

15. **Health:** Describe the present state of your health and provide the date of your last physical examination.

RESPONSE: Excellent, last physical was June 2001.

16. **Citations:** If you are or have been a judge, provide:

(a) A short summary and citations for the ten (10) most significant opinions you have written;

(b) A short summary and citations for all rulings of your that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court; and

(c) a short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions.

If any of the opinions or rulings listed were in state court or were not officially reported, please provide copies of the opinions.

RESPONSE: I have never been a judge.

17. **Public Office, Political Activities and Affiliations:**

(a) List chronologically any public offices you have held, federal, state or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or nominations for appointed office for which were not confirmed by a state or federal legislative body.

RESPONSE: Chairman – Pierce County Civil Service Commission for Sheriff's Employees – 1985-1999. Appointed by County Executive Booth Gardner. I have never been a candidate for elective office. Nominated in 1992 by President Bush to be United States District Court Judge for the Western District of Washington – President Bush defeated in November 1992 election before Senate confirmation scheduled. I did not seek re-nomination.

(b) 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.

RESPONSE: I was a member of the Finance Committee for Slade Gorton campaigns in 1994 and 2000. I solicited political contributions.

18. **Legal Career:** Please answer each part separately.

(a) Describe chronologically your law practice and legal 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 dates of the period you were a clerk;

RESPONSE: I clerked for the Honorable Frank Richardson, California Supreme Court, November 1975 to June 1976.

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

RESPONSE: Not applicable.

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

RESPONSE: Since June 1976 I have worked for Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim. From 1976 to 1978 I was an Associate. I have been a Partner since 1978.

(b) (1) Describe the general character of your law practice and indicate by date if and when its character has changed over the years.

RESPONSE: During the entirety of my career as a lawyer, I have been a trial lawyer with emphasis on complex litigation in federal court. I have represented individuals, corporations and governments in complex tort actions, business litigation and environmental litigation. I have represented plaintiffs and I have represented defendants. I have handled all aspects of the litigation process, including trial and post-trial appeal.

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

RESPONSE: My clients have included individuals, governmental entities, corporations, and associations. I have specialized in tort litigation, business litigation, environmental litigation and professional liability litigation.

(c) (1) Describe whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe each such variance, providing dates.

RESPONSE: I have appeared frequently in court having tried more than 60 cases to verdict.

(2) Indicate the percentage of these appearances in:
(A) federal courts;
(B) state courts of record;
(C) other courts.

RESPONSE:

(A) Federal Court – 70%
(B) State Courts – 30%
(C) Other Courts – 0%

(3) Indicate the percentage of these appearances in:
(A) civil proceedings;
(B) criminal proceedings.

RESPONSE:

(A) Civil Proceedings – 100%
(B) Criminal Proceedings – 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.

RESPONSE: I've tried over 60 cases to judgment. I have always been sole counsel or chief counsel.

(5) Indicate the percentage of these trials that were decided by a jury.

RESPONSE: 85% of my trials have been to a jury.

(d) Describe your practice, if any, before the United States Supreme Court. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the U.S. Supreme Court in connection with your practice.

RESPONSE: I have never practiced before the United States Supreme Court.

(e) Describe legal services that you have provided to disadvantaged persons or on a *pro bono* basis, and list specific examples of such service and the amount of time devoted to each.

RESPONSE: I have represented members of the local Cambodia-American community since sponsoring two refugee families in 1980. I estimate that I have averaged approximately 50 hours of pro bono representation annually since that time. I have not kept track of the time spent. The specific examples include the purchase of land from a municipality, defending a complaint before the human rights commission and litigation to recover damages from a building fire.

19. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, and for each provide the date of representation, the name of the court, 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. In addition, please provide the following:

(a) the citations, if the cases were reported, and the docket number and the date if unreported;

(b) a detailed summary of the substance of each case outlining briefly the factual and legal issues involved;

(c) the party or parties whom you represented; and

(d) describe in detail the nature of your participation in the litigation and the final disposition of the case.

RESPONSE:

(1) **Skokomish Indian Tribe v. City of Tacoma.:**

Dates: November 1999 to present
Court: United States District Court for the Western District of Washington
Judge: The Honorable Franklin Burgess

Opposing Counsel: Mason Morisset, 801 Second Ave., Suite 1115, Seattle, WA 98104 (206) 386-5200

(a) Citation C99-5606FDB

(b) The Skokomish Tribe sued Tacoma for $7 billion alleging loss of treaty fishing and hunting rights occasioned by Tacoma's construction in the 1920's of the Cushman Hydroelectric Project. Legal issues centered around treaty interpretation and pre-emption of treaty rights by the adoption of the Federal Power Act.

(c) I represented Tacoma and its Utility Board members.

(d) I am chief counsel. The case was dismissed by the trial judge in August 2001 when granting two summary judgment motions. The case is pending before the 9th Circuit Court of Appeals.

(2) **Louisiana Pacific vs. City of Tacoma**

Dates: 1989 to 1994
Court: United States District Court for the Western District of Washington
Judge: The Honorable Robert Bryan

Co-Counsel:

Nick Verwolf
Davis Wright & Tremaine
10500 NE 8th Street
Bellevue, WA 98004
(425) 646-6100

Jeff Leppo
Stoel Rives
600 University Suite 3600
Seattle, WA
(206) 624-0900

Jim Collins
3223 Webster Street
San Francisco, CA
(415) 922-5454

Bill Beaver, Jr.
Karr Tuttle Campbell
1201 Third Avenue, Suite 2900
Seattle, WA 98101
(206) 223-1313

Jim Hanken
Schwabe Williamson & Wyatt
1420 Fifth Avenue Suite 3500
Seattle, WA 98101
(206) 622-1711

Opposing Counsel:

Peter Danelo
Heller Ehrman
701 Fifth Avenue Suite 6100
Seattle, WA 98104
(206) 447-09000

(a) Citation: C88-217TB

(b) This case involved the contamination of a number of properties in Commencement Bay which purchased Asarco slag for use as ballast in log sort yards. Murray Pacific was a principal plaintiff in the litigation. Its exposure for cleanup costs of its own sites and a nearby landfill potentially exceeded $100 million. Legal issues dealt with responsibility for cleanup of contaminated properties under CERCLA and under various state common law theories including trespass and nuisance.

(c) I represented Murray Pacific

(d) I was lead trial counsel. Judgment was entered in favor of plaintiffs following four month trial. 9th Circuit Court of Appeals affirmed judgment entered following jury verdict.

3. **Bulkley v. Aerospatiale, et al**

Dates: Approximately 1980 to 1983
Court: United States District Court for the Western District of Washington
Judge: The Honorable John C. Coughenhour

Opposing Counsel:

Steve Johnson
Lillick & Charles
Two Embarcadero Center, Suite 2700
San Francisco, CA 94111
(415) 984-8200

Vern Woolston
Perkins Coie
1201 Third Avenue, Suite 4800
Seattle, WA 98101
(206) 583-8888

Camden Hall
Foster Pepper
1111 Third Avenue
Seattle, WA 98101
(206) 447-4400

G. Val Tollefson
Danielson, Harrigan & Tollefson
999 Third Avenue, 44th Floor
Seattle, WA 98104
(206) 623-1700

David Swartling
1000 2nd Avenue, 30th Floor
Seattle, WA
(206) 382-1000

(a) Citation: C80-480T(C)

(b) This case involved a helicopter crash in which the pilot was permanently brain damaged. The case involved issues of product liability and extraterritorial proceedings against foreign corporations.

(c) I represented the plaintiff, Steve Bulkley, through his guardian.

(d) Most defendants settled for a total of $4 million. One defendant did not settle. A four week trial resulted in a hung jury. That defendant then paid $500,000 to avoid re-trial. I was lead counsel for Bulkley.

4. **Paul Hayes v. Tiller, Fagerness & Wheeler**

Dates: November 1992 to Spring of 1993
Court: Lewis County Superior Court
Judge: Honorable Frederick B. Hayes, visiting Judge from Pierce County.

Opposing Counsel: John Alexander, 333 Taylor Avenue N., Seattle, WA 98109 (206) 682-0300

(a) Citation: 91-2-00776-2

(b) This case involved claims against a law firm whose senior partner had allegedly stolen up to $2 million from client trust funds. For several years he would replenish stolen funds with funds that came into the office in the form of new estates that had been opened. The partner ran a set of extra books and successfully kept his partners from knowing what was going on. Ultimately, the partner committed suicide and confessed in the suicide note to stealing funds from clients. Several lawsuits were filed by disgruntled clients against surviving partners. The partners defended one case brought by Paul Hayes, who claimed that he had entrusted funds with the law firm as part of a Hayes Family Living Trust. The partners claimed that Hayes had made personal loans to the deceased partner and that no attorney/client relationship existed.

(c) I represented the surviving partners in the law firm.

(d) I was lead trial counsel. Following a two-week trial the jury rendered a defense verdict. All other cases against the firm were settled within policy limits.

5. **Bothwell v. Augusta Helicopters**

Dates: 1997 to 1999
Court: United States District Court for the Western District of Washington.
Judge: Honorable Robert Bryan

Co-Counsel:

Joel Cunningham
Luvera Barnett, et al
701 Fifth Avenue, Suite 6700
Seattle, WA 98104
(206) 467-6090

Robert Gebhardt
Schnader Harrison
601 California Street, 12th Floor
San Francisco, CA 94108
(415) 364-6700

Opposing Counsel:

Vic Pino
Pino & Associates
50 Main Street
White Plains, NY 10606
(914) 946-0600

(a) Citation: C96-5819 RJB

(b) This case involved a helicopter crash which took the lives of the pilot and two flight nurses. The aircraft was recovered from Puget Sound and a possible manufacturing defect was found. The defendant asserted the problem was caused post-accident by saltwater in the Sound.

(c) I represented the families of the pilot and one flight nurse.

(d) I was lead trial counsel. Although Augusta S.A. offered nothing prior to trial, after one and one-half weeks of trial the case settled for $10 million.

6. **Willford v. Turbomeca S.A.**

Dates: 1982-1984
Court: United States District Court for Western District of Washington
Judge: Honorable Wally McGovern

Opposing Counsel:

Eugene Wooley
Kern & Wooley
10900 Wilshire Blvd, 11th Floor
Los Angeles, CA 90024
(310) 824-1777

Don Fitzpatrick
Mendes & Mount
725 South Figueroa Street, 19th Floor
Los Angeles, CA 90017
(213) 955-7700

Steve Johnson
Lillick & Charles
Two Embarcadero Center, Suite 2700
San Francisco, CA 94111
(415) 984-8200

Robert Kraft
Levinson, Friedman
600 University Street
Seattle, WA 98101
(206) 624-8844

(a) Citation: C82-1504M

(b) This case involved a helicopter in which my client Tom Willford, was rendered a paraplegic. The crash was caused by design and manufacturing defects in the jet engine; specifically, a defective axial compressor blade.

(c) I represented the injured pilot.

(d) I was sole counsel for the plaintiff. The case settled shortly before trial for $3 million.

7. **American Alliance v. Dwyer Electric**

Dates: 1993-1996
Court: Pierce County Superior Court
Judge: Honorable Don Thompson

Opposing Counsel:

Tom Harris
Merrick, Hofstedt & Lindsey
710 9th Avenue
Seattle, WA 98104
(206) 682-0610

Suzanne Kelly Michael
Lane Powell
1420 fifth Ave., Suite 4100
Seattle, WA 98104
(206) 223-7000

Michael McCormick
Bullivant Houser
1601 Fifth Avenue
Seattle, WA 98101
(206) 292-8930

Stephen Jager
Lee Smart
1325 Fourth Avenue
Seattle, WA 98101
(206) 624-7990

Jeff Frank
Bullivant, Houser
1601 Fifth Avenue
Seattle, WA 98101
(206) 292-8930

Michael Helgren
McNaul, Ebel
600 University Street, Suite 2700
Seattle, WA 98101
(206) 467-1816

Patrick Paulich
Thorsrud Cane & Paulich
1325 Fourth Ave. Suite 1300
Seattle, WA 98101
(206) 386-7755

Ross Burgess
Burgess Fitzer
1501 Market Street
Tacoma, WA
(253) 572-5324

(a) Citation: 95-2-11206-0

(b) This case involved a large fire that destroyed a cold storage warehouse and its contents. Total damage exceeding $40 million. Plaintiffs included all companies which stored food product in the warehouse. Defendants included all entities responsible for the construction of the warehouse, the installation of electrical and fire detection and suppression systems and operating of those systems.

(c) I defended the owners of the facility.

(d) After defeating multiple motions for summary judgment, we settled claims against my clients for $1 million.

8. **Turner v. Port of Tacoma**

Dates: 1996 to 1998
Court: United States District Court for Western District of Washington
Judge: Honorable Robert Bryan

Opposing Counsel: Paul Lindenmuth, 4303 Ruston Way, Tacoma, WA 98402 (253) 752-4444

(a) Citation: C96-6002RJB

(b) This case was a civil rights claim filed by an employee in the human relations office of the Port of Tacoma. He applied for the position of Human Relations Director and was not selected. He sued the Port and its Directors and Officers claiming that he was discriminated against on the basis of race and age, and that his civil rights were violated.

(c) I represented all of the defendants.

(d) Following a two-week trial, the jury returned a defense verdict.

9. **Precision Machine Works v. Schultz Steel**

Dates: 11/98 to 9/00
Court: United States District Court for Western District of Washington
Judge: Honorable Robert Bryan

Opposing Counsel: William Smiland, Smiland & Khachigian, 601 West Fifth Street, 7th Floor, Los Angeles, CA 90071 (213) 891-1010.

(a) Citation: CV 97-5698-RJB

(b) This case was brought by a purchaser in a requirements contract. The defendant is a forger of steel and exotic metals including titanium and inconel. The parties entered into a long-term requirements contract for the supply of titanium and inconel forgings for engines on Airbus aircraft. When the contract turned out to be unprofitable for the forger it tried to terminate or modify the contract. The case involved basic issues of contract formation and defenses to performance.

(c) I represented the plaintiff-purchaser.

(d) Following a two to three week trial, the trial judge entered judgment in favor of plaintiff in all claims. The 9th Circuit Court of Appeals affirmed in an unpublished opinion.

10. **Janovich v. Herron**

Dates: 1978-1979
Court: Superior Court for Pierce County
Judge: Honorable Gerry Alexander, Visiting Judge (Now Chief Justice of Washington Supreme Court)

Opposing Counsel: Monte Hester, 1008 S. Yakima, Tacoma, WA 98405 (253) 272-2157

(a) Citation: Pierce County Cause No. 273718; *Janovich v. Herron*, 91 Wn.2d 767, 592 P.2d 1096 (1979)

(b) I represented the forces aligned to recall the Pierce County Sheriff following allegations that he was involved in criminal racketeering activities. The trial judge ruled that the recall petition was valid and that a recall election should occur.

(c) I represented the recall committee.

(d) The Supreme Court ordered a delay in the recall election until after the criminal trial of George Janovich on the theory that a conviction would remove Sheriff Janovich from office automatically and therefore render a recall election unnecessary. Sheriff Janovich was ultimately convicted and removed from office.

20. **Criminal History:** State whether you have ever been convicted of a crime, within ten years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and disposition and describe the particulars of the offense.

RESPONSE: I have never been charged with, or convicted of, any crime.

21. **Party to Civil or Administrative Proceedings:** State whether you, or any business of which you are or were in officer, have ever been a party or otherwise involved as a party in any civil or administrative proceeding, within ten years of your nomination, that is reflected in a record available to the public. If so, please describe in detail the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings in which you were a guardian *ad litem* stakeholder, or material witness.

RESPONSE: None.

22. **Potential Conflict of Interest:** 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.

RESPONSE: I will recuse myself whenever dictated by rules of judicial conduct or applicable statute. I will fully disclose all of my financial interests so that conflicts and potential conflicts can be detected. My law practice did not involve the representation of institutional clients so it is unlikely that conflicts of that nature will arise. My financial interests are not large so conflicts are not likely to occur in that regard.

23. **Outside Commitments Du ring Court Service:** Do you have any plans, commitments, or arrangements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

RESPONSE: I will not engage in employment other than my service with the Court.

24. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding the nomination, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500. 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.

RESPONSE: Financial Disclosure form substituted.

25. **Statement of Net Worth:** Complete and attach the financial net worth statement in detail. Add schedules as called for.

RESPONSE: See financial statement provided.

26. **Selection Process:** Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?

RESPONSE: Yes.

(a) If so, did it recommend your nomination?

RESPONSE: Yes.

(b) Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.

RESPONSE: I was selected following interviews with a judicial recommendation committee and with the White House Counsel's Office.

(c) 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 or seeking a commitment as to how you would rule on such case, issue, or question? If so, please explain fully.

RESPONSE: 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
:ton, Ronald B.	US Dis. Judge; Western Dist WA	01/25/2002

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
US Dis. Ct. Judge Nominee	X Nomination, Date 01/23/2002 Initial Annual Final	01/01/2000 to 12/30/2001

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.
Gordon, Thomas, Honeywell P.O. Box 1157 Tacoma, WA 98401	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.)*

NONE (No reportable positions.)

	POSITION	NAME OF ORGANIZATION / ENTITY
1	Partner	Gordon, Thomas, Honeywell, Malanca Peterson & Daheim LLP
2	Trustee	Whitworth College
3	Trustee	Charles Wright Academy

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

NONE (No reportable agreements.)

	DATE	PARTIES AND TERMS
1		
2		
3		

I. 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	Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim	573,000
2	2001	Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim	359,061
3	2000	Burgess Fitzer PS	
4	11	Burgess Fitzer, PS	

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Leighton, Ronald B.	01/25/2002

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

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

	SOURCE (No such reportable reimbursements.)	DESCRIPTION
1	Exempt	
2		
3		
4		
5		
6		
7		

VI. GIFTS

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

	SOURCE (No such reportable gifts.)	DESCRIPTION	VALUE
1		Exempt	
2			
3			

VII. LIABILITIES

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

	CREDITOR (No reportable liabilities.)	DESCRIPTION	VALUE CODE*
1	None		
2			
3			
4			
5			
6			

*VALUE 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: Leighton, Ronald B.

Date of Report: 01/25/2002

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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
						If not exempt from 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.)									
1 Montclair Real Estate Ltd. Partnership, Fife, WA	D	Rent	L	R	Exempt				
2									
3 Harborview East Real Estate Partnership, Gig Harbor, WA	E	Dividend	L	R	Exempt				
4 Evansville Retirement Residence Ltd. Partnership,	D	Dividend	K	R	Exempt				
5 US Bank, Tacoma, WA	B	Interest	J	T	Exempt				
6 Washington STate College Savings Bond	A	Interest	K	T	Exempt				
Cisco Syatems Inc. (Stock) (Common)		None	K	T	Exempt				
8 Lucent Tech. Stock (Common)	A	Dividend	J	T	Exempt				
9 Maytag Stock (Common)	A	Dividend	J	T	Exempt				
10 Qwest Comm. Stock (common)	A	Dividend	J	T	Exempt				
11 Alberto Culver Stock (Common)	A	Dividend	J	T	Exempt				
12 Cisco Systems Inc. (common)		None	J	T	Exempt				
13 Corning Stock (Common)	A	Dividend	J	T	Exempt				
14 Intel Stock (common)	A	Dividend	K	T	Exempt				
15 Lucent Tech. Stock (common)	A	Dividend	J	T	Exempt				
16 Nextel Comm. (common)		None	J	T	Exempt				
17 Qwest Comm. Stock (common)	A	Dividend	J	T	Exempt				

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

Values: 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

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: Leighton, Ronald B. | Date of Report: 01/25/2002

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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period: (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period: (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period: (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 Intermountain Power Agency Revenue Bonds		None	J	T	Exempt				
19 IRA #1					Exempt				
20 Morgan Stanley Div. Growth Securities B	B	Dividend	L	T	Exempt				
21 IRA #2					Exempt				
22 Morgan Stanley Div. Growth Securities B	A	Dividend	L	T	Exempt				
23 Bristol-Myers Squibb Stock (common)	A	Dividend	J	T	Exempt				
Centennial Money Market	B	Interest	K	T	Exempt				
25 Chevron/Texaco Stock (common)	A	Dividend	J	T	Exempt				
26 IBM Stock (common)	A	Dividend	K	T	Exempt				
27 Microsoft Stock (common)		None	K	T	Exempt				
28 Nokia Stock (common)	A	Dividend	J	T	Exempt				
29 Strattee Security Stock (common)		None	J	T	Exempt				
30 Vodafone Group PLC Stock (common)	A	Dividend	K	T	Exempt				
31 Boeing Stock (common)	A	Dividend	J	T	Exempt				
32 Cisco Stock (common)		None	K	T	Exempt				
33 Coca-Cola Stock (common)	A	Dividend	J	T	Exempt				
34 Columbia Bank STock (common)		None	J	T	Exempt				

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; F=$50,001-$100,000; G=$100,001-$1,000,000; H1=$1,000,001-$5,000,000; H2=$5,000,001 or more (Col. B1, D4)

Values: 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 (Col. C1, D3)

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

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Leighton, Ronald B.

Date of Report: 01/25/2002

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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(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									
36 Dell Computer Stock (common)		None	K	T	Exempt				
37 Intel Stock (common)	A	Dividend	K	T	Exempt				
38 Lucent Tech. Stock (Common)	A	Dividend	J	T	Exempt				
39 Microsoft Stock (common)		None	K	T	Exempt				
40 Pfizer Stock (common)	A	Dividend	J	T	Exempt				
Schlumberger Stock (common)	A	Dividend	J	T	Exempt				
42 Transocean Sedco Forex Stock (common)	A	Dividend	J	T	Exempt				
43 New Perspective Mutual Fund	A	Dividend	J	T	Exempt				
44 Oppenheimer Main St. Funds	A	Dividend	K	T	Exempt				
45 Washington Mutual Investors Fund	A	Dividend	J	T	Exempt				
46									
47 Prudential Stock Index Z Fund		None	K	T	Exempt				
48 MFS Capital Opportunities Fund A		None	K	T	Exempt				
49 Massachusetts Investors Growth Fund A		None	K	T	Exempt				
50 Van Kampen Emerging Growth Fund A		None	L	T	Exempt				
51 Davis NY Venture Fund A		None	K	T	Exempt				

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

Value 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. B1, 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

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
Leighton, Ronald B.	01/25/2002

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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(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 Vanguard Federal Money Market Fund		None	J	T	Exempt				
53 Vanguard Equity Income Fund		None	L	T	Exempt				
54 Vanguard Healthcare Specialized Portfolio Fund		None	L	T	Exempt				
55 Vanguard Life Strategy Income Fund		None	K	T	Exempt				
56 Vanguard Mid Cap Index Fund		None	L	T	Exempt				
57 Vanguard Specialized REIT Index Fund		None	L	T	Exempt				
58 Vanguard Wellington Fund		None	K	T	Exempt				
59 Vanguard Windsor II Fund		None	L	T	Exempt				
60 Schwab Money Market	A	Interest	J	T	Exempt				
61 American Century Small Cap Value Fund		None	K	T	Exempt				
62 Berger Mid Cap Value Fund		None	K	T	Exempt				
63 CRM Small Cap Value Fund		None	K	T	Exempt				
64 Delafield Fund		None	K	T	Exempt				
65 FBR Small Cap Financial Fund		None	K	T	Exempt				
66 Heartland Value Fund		None	J	T	Exempt				
67 Icon Financial Fund		None	K	T	Exempt				
68 Oakmark I. Fund		None	K	T	Exempt				

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

Value 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

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: Leighton, Ronald B.

Date of Report: 01/25/2002

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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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 One Group Mid Cap Value Fund		None	K	T	Exempt				
70 One Group Small Cap Value Fund		None	K	T	Exempt				
71 Pimco Value Institutional Fund		None	K	T	Exempt				
72 T. Rowe Price Financial Services Fund		None	K	T	Exempt				
73 TCW Galileo Value Opportunity Fund		None	K	T	Exempt				
74 Third Avenue Small Cap Fund		None	K	T	Exempt				
Vanguard Selected Value Fund		None	K	T	Exempt				
76 Wasatch Growth Fund		None	L	T	Exempt				
77 Diamonds Trust Series S&P Depository Receipts		None	K	T	Exempt				
78 SPDR Trust Unit SRI S&P Dep. Receipt		None	K	T	Exempt				
79 Dreyfus Mid Cap Value Fund		None	K	T	Exempt				
80 Vanguard Windsor II Fund	A	Dividend	J	T	Exempt				
81 Liberty Acorn Fund-Z	A	Dividend	K	T	Exempt				
82 Vanguard Windsor II Fund	A	Dividend	J	T	Exempt				
83 Liberty Acorn Fund-Z	A	Dividend	K	T	Exempt				
84 Liberty Acorn Fund-Z	A	Dividend	J	T	Exempt				
85 Schwab Money Market Fund	A	Dividend	K	T	Exempt				

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

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: Leighton, Ronald B.

Date of Report: 01/25/2002

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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. Income during reporting period (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. Gross value at end of reporting period (2) Value Method Code (Q-W)	D. Transactions during reporting period (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 King County Housing Authority Bond		None	J	T	Exempt				
87 University of Washington Bond		None	J	T	Exempt				
88 Vancouver Washington Housing Authority Bond		None	J	T	Exempt				
89 Federated Municipal Opportunities Fund	A	Dividend	J	T	Exempt				
90 AOL Time Warner Common Stock		None	J	T	Exempt				
91 Electronic Data System Common Stock		None	J	T	Exempt				
Kimberly-Clark Corp. Common Stock	A	Dividend	J	T	Exempt				
93 Macromedia Common Stock		None	J	T	Exempt				
94 Proctor & Gamble Common Stock	A	Dividend	J	T	Exempt				
95 Qualcomm Common Stock		None	J	T	Exempt				
96 Qwest Communications Int'l Inc (common stock)		None	J	T	Exempt				
97 SBC Communications Common Stock	A	Dividend	K	T	Exempt				
98 Starbucks Common Stock		None	K	T	Exempt				
99 Verizon Common Stock	A	Dividend	J	T	Exempt				
100 Invesco Health Sciences Fund		None	J	T	Exempt				
101 Scudder Global Fund		None	J	T	Exempt				
102 Scudder International Fund		None	J	T	Exempt				

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

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

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: Leighton, Ronald B.

Date of Report: 01/25/2002

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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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 News Investment Club		None	N	T	Exempt				
104 --AOL Time Warner Common Stock		None	J	T	Exempt				
105 --Apollo Group Common Stock		None	J	T	Exempt				
106 --Barr Labs Common Stock		None	K	T	Exempt				
107 --Cisco Systems Common Stock		None	J	T	Exempt				
108 --Home Depot Common Stock		None	J	T	Exempt				
--Harley Davidson Common Stock		None	K	T	Exempt				
110 --Intel Common Stock		None	K	T	Exempt				
111 --Ingersoll Rand Common Stock		None	J	T	Exempt				
112 --King Pharmaceuticals Common Stock		None	K	T	Exempt				
113 --Microsoft Common Stock		None	L	T	Exempt				
114 --Orthodontic Centers America Common STock		None	J	T	Exempt				
115 --Ocean Energy Common STock		None	J	T	Exempt				
116 --Proctor & Gamble Common Stock		None	J	T	Exempt				
117 --Starbucks Common Stock		None	K	T	Exempt				
118 --United Parcel Service Common STock		None	J	T	Exempt				
119 --Viacom Common Stock		None	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

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 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
Leighton, Ronald B.	01/25/2002

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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(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 --Whole Foods Mkt Common Stock		None	K	T	Exempt				
121									
122									
123									
124									
125									
126									
127									
128									
129									
130									
131									
132									
133									
134									
135									
136									

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 Amt 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. B1, D3) O=$500,000-$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

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
	Leighton, Ronald B.	01/25/2002

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Leighton, Ronald B.	01/25/2002

SECTION HEADING. (Indicate part of report.)

Information continued from Parts I through VI, inclusive.

PART 1. POSITIONS (cont'd.)

Li	Position	Name of Organization/Entity
4	Secretary	Merle Palmer Minority Scholarship Foundation

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Leighton, Ronald B.	01/25/2002

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 Ronald B. Leighton Date 1-25-02

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		30	000	Notes payable to banks-secured		25	000
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		839	068	Notes payable to relatives			
Unlisted securities--add schedule		20	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 income and interest			
Doubtful				Real estate mortgages payable-add schedule		237	743
Real estate owned-add schedule	1	375	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		250	000				
Cash value-life insurance		50	000				
Other assets itemize:							
Retirement Funds		967	997				
Vested Amt. in Law Firm		140	612				
Real Estate Partnerships		179	000	Total liabilities		262	743
				Net Worth	3	588	934
Total Assets	3	851	677	Total liabilities and net worth	3	851	677
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		No		Have you ever taken bankruptcy?		No	
Provision for Federal Income Tax		No					
Other special debt		No					

Schedule 1 – Listed Securities

Washington State College Savings Bond	26,335.50
Cisco Systems, Inc.	15,228.00
Lucent Tech.	1,239.50
Maytag	4,182.00
Qwest Communications	3,030.30
Alberto Culver	9,075.00
Cisco Systems	5,076.00
Corning	4,836.00
Intel	19,536.00
Lucent Tech.	1,005.00
Nextel	1,590.00
Qwest Communications	3,885.00
Intermountain Power Agency Rev. Bonds	7,679.50
Morgan Stanley Div. Growth Sec. B	60,148.88
Morgan Stanley Div. Growth Sec. B	63,269.75
Bristol Myers	11,192.00
Chevron-Texaco	10,226.95
IBM	26,678.40
Microsoft	28,860.80
Nokia	4,316.00
Strattec Security	3,075.00
Vodafone Group	17,677.50
Zimmer Holdings	580.20
Centennial Money Market	17,819.90
Avaya	303.60
Centennial Money Market	880.36
Boeing	7,536.00
Cisco	18,586.75
Coca-Cola	9,828.00
Columbia Banking Systems	4,586.60
Dell Computer	20,400.00
Intel	10,344.00
Lucent Tech.	2,780.00
Microsoft	49,760.00
Momentum Business App.	36.20
Pfizer	12,810.00
Schlumberger Ltd.	10,620.00
Transocean Sedco	1,254.38
New Perspective Fund	11,542.67
Oppenheimer Main Str.	19,341.71
Washington Mutual Investors Fund	10,596.58
Dreyfus Mid Cap Value Fund	17,607.34

Vanguard Windsor II	7,769.07
Liberty Acorn Fund – 2	23,083.98
Vanguard Windsor II	7,769.07
Liberty Acorn Fund – 2	24,672.07
Liberty Acorn Fund – 2	9,517.13
Schwab Money Market Fund	28,393.67
King County Housing Authority Bonds	5,120.60
University of Washington Bonds	10,240.30
Vancouver, Washington Housing Authority	5,230.00
Federated Municipal Opp. Fund	6,402.40
AOL Time Warner	6,242.00
Electronic Data Systems	12,874.00
Kimberly-Clark	11,102.00
Macromedia	1,496.00
Proctor & Gamble	14,756.00
Qualcomm Inc.	4,912.00
Qwest Communications	4,169.90
SBC Communications	20,045.86
Starbucks	27,392.00
Verizon	14,943.00
Invesco Health Sciences Fund	14,276.33
Scudder Global Fund	11,134.33
Scudder International Fund	9,538.46

Schedule 2 – Unlisted Securities

Eoscene	$ 20,000

Schedule 3 – Real Estate Owned

Lakewood, WA 98498 (Residence)	$1,200,000
Packwood, WA (cabin)	$ 175,000

Schedule 4 – Real Estate Partnership

(Valued at Cost)

Harborview East Partnership	$ 54,000
Montclair Limited Partnership	$ 100,000
Evansville Retirement Property (Limited Partnership)	$ 25,000

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY, UNITED STATES SENATE

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

   Jose Luis Linares

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

   United States District Court Judge for the District of New Jersey.

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

   465 Martin Luther King Blvd.
   Room 328
   Newark, New Jersey 07102
   (973) 693-6490

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

   Havana, Cuba
   November 30, 1953

5. **Marital Status**: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please also indicate the number of dependent children.

Marital Status:	Married
Number of Dependent Children:	Three
Spouse's Name:	Gail L. Blaha
Occupation:	Administrative Assistant
Employer:	Party City of Orange, Inc. 192 Boston Post Rd. Orange, CT.

6. **Education**: List in reverse chronological order, listing most recent first, each college, law school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

Temple Law School
Juris Doctorate Degree
Started: September 1975
Graduated: June 1978

Jersey City State University
B.A. in Political Science
Started: September 1971
Graduated: June 1975

7. **Employment Record**: List in reverse chronological order, listing most recent first, all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

2000 - Present	Essex County Superior Court 465 Dr. Martin Luther King Blvd. Newark, NJ 07102 Position Held: Judge
1999 - 2000	Linares, Coviello & Santana, Esqs. 307 Montgomery St. Bloomfield, NJ Position Held: Senior Partner
1985 - 1999	Linares & Coviello, Esqs. 307 Montgomery St. Bloomfield, NJ Position Held: Senior Partner
1982 - 1985	Linares & Seradzky, Esqs. 622 Bloomfield Ave. Bloomfield, NJ Position Held: Partner/owner until firm dissolved
1980 - 1982	Horowitz, Bross & Sinins 1180 Raymond Blvd. Newark, NJ Position Held: Litigation Associate

1978 - 1980	New York City Dept. of Investigation 110 John Street New York, NY Position Held: Supervising Attorney
2000 - Present	Party City of Warwick Warwick, RI Position Held: Stockholder/Investor
1993 - 2000	Party City of Orange, Inc. Orange, CT Position Held: Stockholder/Investor & Past President
1987 - 1989	Essex County College Served on Board of Trustees West Market Street & Martin Luther King Blvd. Newark, NJ and became Co-Chair of same for about one (1) year.
1990 - 1994	Immaculate Conception High School Cottage Place Montclair, NJ Past Member Board of Trustees
1989 - 1999	Linares Management, Inc. 307 Montgomery St. Bloomfield, NJ Past President (company sold)
1993 - 1996	Josel Corp. 307 Montgomery Street Bloomfield, NJ Past President (company sold)
1995-1996	New Jersey Hispanic Bar Association P.O. Box 32188 Newark, NJ 07102 Past President
1983 - 1984	Bloomfield Lawyers' Club Past President (Club no longer in existence)

8. **Military Service**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge received.

I did not have the honor to serve in any branch of the United States Military.

9. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

I have been the recipient of the following honors and awards:

Essex County Bar Association Civil Trial Attorney Achievement Award Recipient
Recipient of Latin American Law Students Association (LALSA) Outstanding Attorney & Role Model Award
New Jersey Supreme Court Certified Civil Trial Attorney
National Honor Society, Political Science
Temple Law School Barristers' Society Award for Excellence in Trial Advocacy
Dean's List Temple Law School (1975 - 1976)

10. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

1999	Essex County Ethics Committee Past Member
1995 - 1996	New Jersey Hispanic Bar Association Past President
1983 - 1984	Bloomfield Lawyers' Club Past President
1999 - 2000	New Jersey Supreme Court Board on Attorney Trial Certification Past Member
1999 - 2000	Essex County Bar Association Civil Bench-Bar Committee Co-Chair
1990 - 1992	New Jersey Supreme Court on Model Civil Jury Charges Past Member

1978 - present	New Jersey State Bar Association Member
2000 - present	Essex County Bar Association Member
1979 - present	American Bar Association Member

11. **Bar and Court Admission**: List each state and court in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

United States District Court for the District of New Jersey;
Admitted December 6, 1978

Plenary Admission New Jersey State Bar; May 15, 1979

12. **Memberships**: List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, charitable, or other organizations since graduation from college, other than those listed in response to Questions 10 or 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion - either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

Past Essex County Bar Association Long Range Planning Committee
Member, New Jersey Association of Trial Lawyers
Member, National Association of Trial Lawyers
Past Member, New Jersey State Bar Association Products Liability Committee
Past Vice Chairman, Board of Trustees, Essex County College
Past Trustee, Board of Education Immaculate Conception High School, Montclair, NJ
Past Zone Chairman, Lions Club, Zone 1 District 16E
Past Member, Knights of Columbus, Verona, NJ
Past Member National Honor Society, Political Science
Past Member, Cuban Lions Club
Past Member, Panamerican Lions Club
Past Counsel to the New Jersey Hispanic Chamber of Commerce
Member, Forest Hill Field Club
Temple Law School, Dean's List 1975-76
Past Member, Bloomfield Chamber of Commerce

Campaign Manager for Jose L. Linares, Sr., New Jersey Assembly Race, District 28, 1985
Past Co-Chair of Essex County Executive James Treffinger's Transition Team

None of the aforesaid organizations to my knowledge discriminate on the basis of race, sex, or religion; either through formal membership requirements or the practical implementation of membership policies.

13. **Published Writings**: List the titles, publishers, and dates of books, articles, reports, or other material you have written or edited, including material published on the Internet. Please supply four (4) copies of all published material to the Committee, unless the Committee has advised you that a copy has been obtained from another source. Also, please supply four (4) copies of all speeches delivered by you, in written or videotaped form over the past ten years, including the date and place where they were delivered, and readily available press reports about the speech.

I co-authored part of a book as part of a seminar on New Jersey Tort Litigation Update. The part authored by me was on the New Jersey Products Liability Act. The name of the book is "New Jersey Tort Litigation Update", Copyright 1991, Professional Education Systems, Inc. I also sat on the Supreme Court Committee on Model Jury Charges and my name appears as one of the committee members in the Model Jury Charges Book published by the New Jersey Institute for Continuing Legal Education.

Although I have participated as a speaker before law student groups and attorneys on various topics ranging from trial preparation to the importance of role models within the Hispanic community, I have not, after due diligence, been able to locate any notes, videotapes or copies of any of said speeches.

14. **Congressional Testimony**: List any occasion when you have testified before a committee or subcommittee of the Congress, including the name of the committee or subcommittee, the date of the testimony and a brief description of the substance of the testimony. In addition, please supply four (4) copies of any written statement submitted as testimony and the transcript of the testimony, if in your possession.

None.

15. **Health**: Describe the present state of your health and provide the date of your last physical examination.

I am in excellent health and the date of my last physical examination was March 20,

2002.

16. **Citations**: If you are or have been a judge, provide:

(1) a short summary and citations for the ten (10) most significant opinions you have written;

As of the present time, I have only been a judge for approximately seventeen (17) months so I have only submitted two (2) opinions for publication. Of these two, one was published. See, *Atlantic Merchandising Group, Ltd. v. Distribution By Air, Inc.*, 343 N.J. Super 382 (2001), a copy of which is attached. Copies of all opinions are attached and summarized below which total seven in number.

Atlantic Merchandising Group Ltd. v. Distribution by Air Inc., 343 N.J. Super 382 (2001).

In this case, a shipper brought action against a distributor for damages resulting from the non-delivery of the shipper's goods overseas. I wrote an opinion holding that the shipper's damages were limited by the Warsaw Convention and that the claim was barred due to the shipper's failure to give timely notice as required by the Convention. The opinion sets forth that the Warsaw Convention was meant to establish a uniform body of worldwide liability rules to govern international aviation which would supercede the scores of differing domestic laws. As a result, the distributor's liability for failure to deliver the shipper's goods overseas was limited by the Convention. The opinion also dealt with what constitutes appropriate "notice" of a claim under the terms of the Warsaw Convention.

DeGiovine v. SHU, et als.
Docket No.: ESX-L-11380-95

This opinion dealt with the evaluation and award of costs of litigation, attorney's fees and the interpretation of an indemnification and hold harmless agreement. The opinion determined that the rule of law set forth by the New Jersey Supreme Court in the subsequent case of Mantilla v. N.C. Mall Associates, et als. 167 N.J. 262 (2001) was not applicable to the case at bar. I found that to apply retrospectively the Mantilla rule would be inequitable under the specific circumstances of this case where a valid judgment already existed prior to the Mantilla decision.

Garden State Check Cashing Service, et als v. Board of Adjustment, et als.
Docket No.: L-11186-00

This matter came before me by way of an action in lieu of Prerogative Writ. The basic issue was whether a municipal Board of Adjustment's decision to grant a use variance to defendant, a check cashing business, should be overturned as arbitrary and capricious. I found that the board had

failed to explicitly state, as required, clear and specific findings of the facts that served as the basis of the board's decision. I also found that the Board had a legal requirement to make a decision based on an enhanced quality of proof standard that the variance sought was not inconsistent with the intent and purpose of the municipality's master plan and zoning ordinance. Without said findings the Board's decision was found to be conclusory and not legally supportable. The matter was remanded for a determination based upon specific findings.

Ronald Pitts v. Chris Bernal
Docket No.: ESX-L-1440-97

This opinion dealt with the issue of whether a plaintiff in a personal injury action is barred from pursuing a claim against the New Jersey Unsatisfied Claim and Judgment Fund if the plaintiff failed to file a timely workman's compensation claim petition against his uninsured employer. The opinion holds that an injured employee whose employer is uninsured is eligible to pursue benefits from the New Jersey Unsatisfied Claim and Judgment Fund Board without first being required to file a workman's compensation claim against said uninsured employer. The opinion is based on the remedial nature of the Unsatisfied Claim and Judgment Fund Board legislation which specifically created a fund intended to protect persons injured by someone who failed to have statutorily mandated insurance coverage. I found that to require the employee to first file a claim against his uninsured employer would circumvent the clear intent and design of the Unsatisfied Claim and Judgment Fund legislation.

Ivy League Associates v. Weequahic Park Association
Docket No.: L-3987-99

This decision pertained to whether Essex County was liable for a debt incurred by Weequahic Park Association as a result of a contract entered into between the Association and a third party (Ivy League Associates, Inc.), by virtue of a statute pursuant to which Essex County had formed a partnership with the Weequahic Park Association to accomplish better maintenance, operation and improvement of the Weequahic Park. I found that inasmuch as there was no direct contract between Essex County and Ivy League Associates, there was no liability on the part of the County. I also found that to impose liability based on a theory of an "implied in law" contract would render the applicable statutory scheme meaningless.

Schiavone v. Bay Roofing
(Opinion dated February 16, 2001)
Docket No.: L-5386-99

The issue dealt with in this opinion was whether or not a defendant (third-party plaintiff) should be allowed to pursue a tort of spoliation against the plaintiff by way of a counterclaim based on the plaintiff's alleged replacement of the roof which was the subject matter of the underlying litigation without notice to the defendant thereby affecting the defendant's ability to defend against

plaintiff's action . I found that I did not need to reach, at that juncture in the case, the merits of the spoliation claim itself and limited my opinion to the issue of whether a counterclaim was the appropriate procedural vehicle to be used for the redress of any prejudice suffered by the defendant as a result of the plaintiff's actions in destroying and replacing the roof.

I found that the applicable New Jersey Law indicated that the tort remedy of money damages is not applicable where the spoliation of evidence occurs in the context of a defendant's ability to defend against the plaintiff's cause of action. Therefore, the filing of a counterclaim was held not to be appropriate or available to the defendant. I did, however, indicate in the opinion that defendant still could pursue the traditional remedies available in spoliation cases such as discovery sanctions, and, if appropriate, dismissal of the plaintiff's case.

Schiavone v. Bay Roofing
(Opinion dated March 9, 2001)
Docket No.: L-5386-99

This opinion pertained to the defendant's motion to dismiss the plaintiff's complaint due to plaintiff's destruction of the allegedly defective roof which was the basis of the underlying litigation. I found that dismissal of the plaintiff's complaint based on the specific circumstances of the case at bar was too drastic a remedy and denied the defendant's motion to dismiss. I did however bar the plaintiff from cross examining defendant's experts as to the fact that his report was not based on an actual inspection of the roof and ordered the plaintiff to cooperate fully in making available to the defendant's expert all photographs plaintiff's expert took of the subject roof and all reports generated by plaintiff's expert. I also ordered a cautionary instruction to the jury at the time of trial advising the jury that the defendant's expert was unable to inspect the roof due to the fact that the plaintiff had replaced the roof without prior notice to the defendant.

1. a short summary and citations for all rulings of yours that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court; and

   To my knowledge and after diligent inquiries, none of my opinions have been reversed or significantly criticized on appeal to date.

2. a short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions.

   I have not dealt with or written any significant opinions on federal or state constitutional issues.

If any of the opinions or rulings listed were in state court or were not officially reported, please provide copies of the opinions.

17. **Public Office, Political Activities and Affiliations**:

(a) List chronologically any public offices you have held, federal, state or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or nominations for appointed office for which were not confirmed by a state or federal legislative body.

I have never held any public office except that I served for a brief period on the Essex County College Board of Trustees from 1987 to 1989 after being appointed to same by then Essex County Executive, Nicholas Amato.

(b) 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 campaign manager for my father, Jose L. Linares' New Jersey Assembly Race for District 28 in 1985.

I also served as Co-Chair of Essex County Executive, James Treffinger's Transition Team after he was successfully elected in 1994.

My role in my father's unsuccessful assembly race was to coordinate the campaign and accompany the candidate to scheduled public appearances. My role as Co-Chair of the Essex County Executive, James Treffinger's Transition Team was to interview some of the members of the outgoing administration and gather information pertaining to the status of the Essex County Government and make recommendations to the incoming administration regarding the status of County Government and different approaches for future government.

18. **Legal Career:** Please answer each part separately.

(a) Describe chronologically your law practice and legal experience after graduation from law school including:

(1) whether you served as clerk to a judge, and if so, the name for the judge, the court and dates of the period you were a clerk;

I did not serve as a clerk to a judge.

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

I have never been a sole practitioner.

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

Essex County Superior Court
465 Dr. Martin Luther King Blvd.
Newark, NJ 07102
Position Held: Judge
Years: 2000 - Present

Linares, Coviello & Santana, Esqs.
307 Montgomery St.
Bloomfield, NJ
Position Held: Senior Partner
Years: 1999 - 2000

Linares & Coviello, Esqs.
307 Montgomery St.
Bloomfield, NJ
Position Held: Senior Partner
Years: 1985 - 1999

Linares & Seradzky, Esqs.
622 Bloomfield Ave.
Bloomfield, NJ
Position Held: Partner/owner until firm dissolved
Years: 1982 - 1985

Horowitz, Bross & Sinins
1180 Raymond Blvd.
Newark, NJ
Position Held: Litigation Associate
Years: 1980 - 1982

New York City Dept. of Investigation
John Street

New York, NY
Position Held: Supervising Attorney
Years: 1978 - 1980

(b) (1) Describe the general character of your law practice and indicate by date if and when its character has changed over the years.

From the time of my admission to the bar, while in active practice, I was engaged in a general practice representing predominantly a blue-collar clientele with a great percentage of the clients being of Hispanic origin. My personal areas of specialty included medical malpractice, products liability and personal injury litigation. Through the years, however, my office also represented clients in criminal matters, matrimonial matters, worker's compensation, commercial litigation and civil rights litigation.

As a practicing attorney, I appeared in court regularly as I was involved in an active trial practice. I appeared in a substantial number of litigated cases, the number of which is hard to estimate. However, including motions, jury trials, arbitrations, case management conferences, *et cetera*, I appeared in over a hundred cases over the last five years as a practicing attorney. These appearances were mostly at the Superior Court level, but also included appearances at the Federal District Court, the New Jersey Appellate Division and Municipal Courts.

The frequency of my appearances in court basically remained the same. However, the complexity and nature of the cases I handled and tried did change. Over the last five (5) years as a practicing attorney, I was mostly involved in the preparation and litigation of very substantial and complicated medical malpractice, products liability and civil rights cases, a substantial number of which required a jury trial to verdict.

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

From the time of my admission to the bar, while in active practice, I was engaged in a general practice representing predominantly a blue-collar clientele with a great percentage of the clients being of Hispanic origin. My personal areas of specialty included medical malpractice, products liability and personal injury litigation. Through the years, however, my office also represented clients in criminal matters, matrimonial matters, worker's compensation, commercial litigation and civil rights litigation

(c) (1) Describe whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe each such variance, providing dates.

As a practicing attorney, I appeared in court regularly as I was involved in an active trial practice. I appeared in a substantial number of litigated cases, the number of which is hard to estimate. However, including motions, jury trials, arbitrations, case management conferences, *et cetera*, I appeared in over a hundred cases over the last five years as a practicing attorney. These appearances were mostly at the Superior Court level, but also included appearances at the Federal District Court, the New Jersey Appellate Division and Municipal Courts.

The frequency of my appearances in court basically remained the same. However, the complexity and nature of the cases I handled and tried did change. Over the last five (5) years as a practicing attorney, I was mostly involved in the preparation and litigation of very substantial and complicated medical malpractice, products liability and civil rights cases, a substantial number of which required a jury trial to verdict.

(2) Indicate the percentage of these appearances in
(a) federal courts; 5%
(b) state courts of record; 93%
(c) other courts; 2%
(***Note:*** *All figures are approximations*)

(3) Indicate the percentage of these appearances in:

(a) civil proceedings; 90%
(b) criminal proceedings; 10%
(Note: All figures are approximations)

(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 know and cannot state the exact number of cases I tried to a verdict during the approximate twenty-two (22) years that I practiced law before becoming a State Superior Court Judge. I estimate an average of three to four cases a year (some years less, others more). In all cases I tried, I was chief counsel.

(5) Indicate the percentage of these trials that were decided by a jury.

95%

(d) Describe your practice, if any, before the United States Supreme Court. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the U.S. Supreme Court in connection with your practice.

I have never had the honor of appearing before the United States Supreme Court.

(e) Describe legal services that you have provided to disadvantaged persons or on a *pro bono* basis, and list specific examples of such service and the amount of time devoted to each.

As an attorney, I was always involved with the hispanic community and participated in projects to help disadvantaged children including involvement with church groups, civic groups and education. As an attorney, I also dedicated time to the representation of many clients *pro bono* on my own initiative regardless of the value or complexity of their claim. The specific amount of time dedicated to these endeavors is hard to estimate but I expect it was generally 5%-10% of my practice time.

In addition, on occasion I was also appointed by the Court to represent disadvantaged and/or alleged incompetents in competency hearings.

19. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, and for each provide the date of representation, the name of the court, 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. In addition, please provide the following:

(a) the citations, if the cases were reported, and the docket number and date if unreported;

See answers below.

(b) a detailed summary of the substance of each case outlining briefly the factual and legal issues involved;

See answers below.

(c) the party or parties whom you represented; and

See answers below.

(d) describe in detail the nature of your participation in the litigation and the final disposition of the case.

See answers below.

1.	Estate of Maria Avila v. Essex County, et als.	
Docket No.:	94-1412	
Represented:	Plaintiff, Estate of Maria Avila	
Date of Representation:	10/93 - 06/96	
Court:	United States District Court, District of New Jersey	
Federal Magistrate:	Stanley R. Chesler, U.S. Magis. J.	
Federal Judge:	Harold S. Ackerman, J. U.S. Dist. Ct.	
Special Master:	Bennet Zurofsky	
Opposing Counsel:	Kevin Marino, Esq. One Newark Center Newark, NJ (973) 824-9300	Daniel Pomeroy, Esq. Mortenson & Pomeroy 155 Morris Avenue Springfield, NJ

(973) 467-9600

Michael Dougherty, Esq.
Isaacson, Dougherty Zirulnik
103 Eisenhower Pkwy
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Brian Corrigan, Esq.
Corrigan & Foster
155 Morris Avenue
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(973) 467-3203

John J. Fannon, Esq.
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103 Eisenhower Pkwy
Roseland, NJ
Unable to locate telephone number.

Summary:

This was a complex, interesting and substantial litigation involving numerous defendants and many months, of testimony before Special Masters in Federal Court eventually culminating in what we were advised was, at the time, one of the largest settlements by Essex County for a single plaintiff.

The case arose out of the incarceration of plaintiff's decedent following a conviction for a fourth degree crime based on an assault charge arising out of a fight with a neighbor in her building which led to a stabbing causing minor injury to the victim. Although the conviction would probably not have led to incarceration at sentencing (it was decedent's first offense and as a fourth degree offense, it carried the presumption of non incarceration) the decedent had been sent to the Essex County Jail Annex in Caldwell for incarceration pending sentencing.

The decedent, who was an asthmatic and a diabetic, was forced to leave her medications at the Court House as she was advised that medications could not be brought into the jail. Decedent's daughters were reassured by sheriffs officers at the court that a nurse would see decedent upon arrival at the jail and the medications would then be ordered and provided. The decedent, knowing her need for the medication and understandably concerned about going to jail (she had never been incarcerated before) requested that her public defender follow up with the jail to make sure she saw a doctor. Decedent arrived at the Jail Annex in Caldwell at about midnight and was seen by a nurse at medical screening as promised. The medical screening record at the jail indicated that Maria Avila advised the jail nurse of her medical condition (i.e. that she was an asthmatic and diabetic) and that she was on medication. The nurse advised that Ms. Avila would be placed on sick call and seen by a doctor the next day which, in fact, did not occur. Her asthmatic condition being worse, Ms. Avila once again complained to the nurse and called the public defender who personally went to the jail the following day to ensure Ms. Avila was seen by a

doctor. At the jail, the public defender was advised that the doctor was finally on the premises that day and would definitely see Ms. Avila. The doctor, however, left the jail never seeing Ms. Avila or prescribing the medication she was in dire need of since she had increasing problems breathing. That night, Ms. Avila went into respiratory arrest in her cell. Inmates in adjacent cells called for the nurses who came to Ms. Avila's aid with an oxygen tank. It was later established that the oxygen tank had no oxygen and was useless. The nurses then tried to call (beep) the doctor assigned to the jail. Unfortunately, the outside phone system at the jail at that particular time was out of order and they had to use a public pay phone. The doctor, failing to recognize the public phone's telephone number, did not return the call. The condition of Ms. Avila was deteriorating rapidly as she was unable to breathe, therefore, the West Essex Ambulance Unit was called. West Essex Ambulance, however, refused to go to the jail since they had no contract with the County and allegedly had a policy against servicing jail calls for security and safety reasons. Eventually, the Police Department was called and Ms. Avila was taken to Montclair Community Hospital where she languished in a severely brain damaged state and eventually died.

A lawsuit was then filed in Federal Court on behalf of Ms. Avila's estate which included many counts including Civil Rights violations, correctional negligence, nursing malpractice, medical malpractice and violations of previously issued Federal Court orders. As a direct result of the Avila lawsuit and at the insistence of plaintiff's counsel that the prior standing orders from Judge Harold Ackerman regarding the jail system had been violated by the County, the New Jersey Public Advocate initiated contempt proceedings against Essex County. The contempt hearings were assigned to Special Masters under the supervision of Judge Harold Ackerman, who had also been assigned the Avila case. Plaintiff then filed to be allowed to intervene in the contempt proceedings which application was granted. The contempt hearings took several months and required substantial discovery analysis and testimony in Federal Court. The undersigned participated at said hearings in the direct and cross examination of many witnesses working in conjunction with attorney, Susan Silver, who was assigned to handle the contempt case on behalf of the New Jersey Public Advocate's Office. Eventually, the Avila case proceeded to a final pre trial conference before Magistrate Chesler and was settled prior to trial. The contempt proceedings culminated in Judge Ackerman issuing orders revamping the entire Essex County Jail System, ordering the building of a new jail and specific directives regarding the medical treatment of inmates in Essex County, as well as all other aspects of inmate treatment.

2.	Hispanic Insurance Broker's Assoc., v. State of New Jersey, et al.
Docket No.:	ESX-L-16959-93
Represented:	Plaintiff, Individual Automobile Insurance Brokers and their association of Hispanic Urban Automobile Insurance Brokers
Date of Representation:	Approx. 1993 - 1998

1500

Court:	Essex County Superior Court	
Judge:	Carol A. Ferentz, J.S.C.	
Counsel for Co-Plaintiff:	Frederick D. Miceli, Esq. 1140 Bloomfield Avenue W. Caldwell, NJ (973) 575-7766	Opposing Counsel: Mary Smyth, Dep. Atty Gen R.J. Hughes Justice Complex CN 117 Trenton, NJ (609) 292-4925

Summary:

This case was a complicated challenge to the constitutionality of N.J.S.A. 17: 33B-1 et seq. which is known as the Fair Automobile Insurance Reform Act of 1990 (FAIRA).

This case was brought on behalf of some individual Automobile Insurance Brokers and their association (consisting of hundreds of Hispanic urban automobile insurance brokers) which felt that N.J.S.A. 17: 33B-1 was discriminatory in its application against urban automobile insurance brokers, inasmuch as it nullified their ability to write automobile insurance in urban areas. The statute in question required automobile insurance brokers to have a contract with an established automobile carrier in order to write automobile insurance in New Jersey. The argument basically stated was that the great majority of Hispanic brokers and their clients were in urban "high risk" areas and prior to the enactment of the act, were forced to operate under the assigned risk program since carriers were reluctant to write automobile insurance in those areas. The enactment of the act, it was alleged, unconstitutionally affected urban brokers and their clients (mostly African-Americans and Hispanics) who were deprived from being able to write insurance and service their minority clientele, since a very limited number of urban minority brokers had contracts with established automobile insurance carriers or were given contracts subsequent to the enactment of the act. The act in its application, it was argued, improperly "red lined" certain areas of the population in New Jersey consisting mostly of minority automobile insurance brokers and thereby extremely limited access to compulsory automobile insurance to a great portion of the New Jersey population consisting mostly of minorities in urban areas.

The case was complicated from both the legal/constitutional issues it presented and the problems regarding the appropriate remedy if successful on the constitutional challenge. The case was brought years after the statute was enacted and after many of the plaintiffs had already been forced to close their businesses.

After extensive discovery, the case was eventually dismissed by Judge Carol Ferentz, who had originally kept the case when she was Presiding Civil Assignment Judge in Essex County. This case, although lost, was significant in its importance to the

Hispanic Community at large and the potential effect on the automobile insurance industry in New Jersey. Although the litigation had a negative result in court for the plaintiffs, it did lead the State of New Jersey Insurance Commission to become more cognizant of the problems created by the statute for the urban automobile insurance brokers and the clientele they serviced and eventually led to a number of contracts being issued by established carriers to Hispanic and minority brokers in urban areas.

3.	Estate of Denise Layden v. Columbus Hospital, et als.	
Docket No.:	ESX-L-3601-89	
Represented:	Plaintiff, Estate of Denise Layden	
Date of Representation:	01/89 - 12/92	
Court:	Essex County Superior Court	
Judge:	Carol A, Ferentz, J.S.C.	
Opposing Counsel:	Peter A. Greene, Esq. Sachs, Maitlin, Fleming, Greene... 80 Main Street W. Orange, NJ (973) 731-3400	John L. Dughi, Esq. Dughi & Hewitt 340 North Avenue Cranford, NJ (908) 272-0200

Summary:

This was a very interesting and intricate case of medical malpractice arising out of the death of a young mother following complications from a surgical procedure for tubal ligation.

Denise Layden, a young mother of three, had been admitted to Columbus Hospital to give birth to her fourth child. The delivery went well and, at the mother's request, arrangements were made to undergo a tubal ligation a few days later while she was still at the hospital post partum. The tubal ligation itself was not expected to be a complicated or an unusually dangerous procedure and the patient was in good health and therefore, a good candidate for same. Unfortunately, something went terribly wrong during the procedure, and as a result, the patient became extremely ill requiring placement on a respirator for several days and eventually died.

The lawsuit was brought on behalf of the surviving children and after countless depositions and documentary discovery, it was established that the nurse anesthetist in charge of intubating the patient and ensuring that she remained properly oxygenated during the procedure, had failed to properly intubate the patient so as to ensure flow of oxygen into the lungs. Apparently, instead of placing the endotracheal tube into the trachea, it was placed into the esophagus. It was also established during discovery that the nurse anesthetist had left the operating room because of a personal phone call pertaining to her ongoing divorce and was consequently out of the room during critical minutes subsequent to the improper intubation when the mistake could have been realized and corrected. As a result, by the time the nurse anesthetist

returned, the patient was cyanotic and could not be properly resuscitated. Thereafter, the patient was transferred to the Intensive Care Unit and placed on a ventilator under the supervision of the co-defendant pulmonologist. The patient appeared, from the medical records, to have been slowly recovering. However, the defendant pulmonologist allowed the patient to extubate herself from the ventilator and remain extubated without proper monitoring. As a result, the patient deteriorated and eventually died. The case required substantial discovery and investigation to establish that the nurse anesthetist had a myriad of ongoing personal problems which had been affecting her judgement in prior procedures and, in fact, led her to require a leave of absence because of the effect her personal problems were having on her ability to care for patients. The medicine and proximate cause issues in this case were also complicated because of the two distinct and separate acts of alleged negligence occurring on separate days during the same stay at the hospital. The matter was eventually assigned for trial to Judge Carol Ferentz in Essex County where a substantial settlement was reached on behalf of the plaintiff at the time of trial.

4.	Estate of Maria Bedoya v. Dr. Olga Quintana
Docket No.:	ESX-L-13,722-96
Represented:	Plaintiff, Estate of Maria Bedoya
Date of Representation:	07/96 - 06/99
Court:	Essex County Superior Court
Judge:	Carol A. Ferentz, J.S.C.
Opposing Counsel:	Roger Ellis, Esq. Bumgardner & Ellis 136 Central Avenue Clark, NJ (732) 381-9700

Summary:

Medical malpractice action on behalf of the Estate of Maria Bedoya alleging that the defendant, Dr. Olga Quintana had been negligent in the medical care and treatment of Maria Bedoya. Maria Bedoya, a 52 year old woman, had come under the care of defendant, Dr. Olga Bedoya, a pediatrician in Newark, for the treatment of asthma. It was the plaintiff's allegation that the doctor had deviated from accepted standards of medical practice in failing to properly assess the nature and extent of the plaintiff's asthma and by continuing to treat her when she should have been referred to a specialist for pulmonary function tests. These tests would have given an objective indication of the severity of the plaintiff's medical condition and the indicated treatment. The decedent, Maria Bedoya, treated with the defendant doctor for over a 2 year period during which time she saw the defendant doctor 7 times. Decedent eventually went into respiratory arrest while at her apartment on Summer Avenue in Newark in the presence of her 16 year old daughter. As a result of the respiratory arrest, the plaintiff became severely brain damaged and remained in a semi-comatose

state for some time and eventually died. Defendant doctor, during discovery, had alleged that she did refer the plaintiff to a pulmonary specialist to have the pulmonary function tests done but that plaintiff had refused to do so. The doctor, however, conceded that her attempted referral of the plaintiff to a pulmonary specialist was not reflected in her office records. One of the disputed issues in the case, in addition to the issue of liability, was whether or not there had been conscious pain and suffering during the period of time that the plaintiff was in a semi-comatose state. The issue of liability was also hotly disputed in that the doctor strenuously contested plaintiff's family's allegations that a referral to a specialist had not been made and contended that it was the patient who had decided not to go forward with the medically indicated pulmonary testing. The plaintiff's case was severely handicapped by the lack of witnesses able to refute the doctor's testimony since only the doctor and decedent were present during the alleged conversations regarding the necessity for the pulmonary function tests. The plaintiff's case, therefore, rested on the interpretation of the defendant's office records by the plaintiff's expert. Another hotly contested issue was whether conscious pain and suffering could be proven. After many years of discovery, the matter was eventually assigned to trial before the Honorable Carol Ferentz, Essex County Superior Court, where it settled prior to trial basically for the doctor's substantial insurance policy limits.

To me, the case was significant in that it encompassed many thorny issues of law and medicine as it pertained to medical advice and the responsibility of a patient, vis a vis the doctor, pertaining to that advise, the intricacies of the nervous system and its voluntary and involuntary reactions to pain, and the extent of the liability of a doctor in general practice when treating a specific disease usually treated by a specialist.

5.	Gaetano DeVito v. Dr. Louis Allora, et als.	
Docket No.:	ESX-L-5534-94	
Represented:	Plaintiff, Gaetano Devito	
Date of Representation:	1994 - 09/96	
Court:	Essex County Superior Court	
Judge:	Julio Fuentes (Presently sitting on the Third Circuit Court of Appeals)	
Opposing Counsel:	Glenn T. Dyer, Esq. Connell Foley, LLP 85 Roseland Avenue Livingston, NJ (973) 535-0500	Peter Blejwas, Esq. Blejwas, Knapp & Schactele (732) 906-8875 (firm no longer in existence)

Summary:

This was a Dental Malpractice Action arising out of the treatment rendered by the defendant oral surgeon to Gaetano DeVito for a fractured jaw following an assault. The complaint originally named as defendants not only the treating oral surgeons but Clara Maass Hospital where the plaintiff was originally treated. The allegations

against the defendants oral surgeons were that they had failed to properly monitor the patient subsequent to performing a closed reduction of the fractured jaw, thereby failing to notice that the jaw bones subsequently become displaced and failing to render the appropriate treatment of open reduction and immobilization in a timely fashion.

The case was interesting and complicated from a proof perspective in that shortly before the trial, the plaintiff died from an unrelated cause. Therefore, at the time of trial, there was no witness able to testify as to what exactly transacted between the patient and doctors and also severely limited the testimony that could be produced as to the issue of damages and the plaintiff's death capped the damages to the period of time between the treatment and the plaintiff's death. The treating doctors denied the plaintiff's allegation and contended that they had recognized the need for additional treatment early enough to have performed it without any untoward complications to the plaintiff but that due to the fact that the plaintiff was indigent, the hospital had refused the plaintiff's admission for the open reduction procedure. The plaintiff, without a living client able to refute these allegations, thus became compelled to call as witnesses representatives of the hospital administration to be able to prove its case. Prior to jury selection, an agreement was reached between plaintiff and defendant hospital whereby the case against the hospital was dismissed by plaintiff, and the hospital agreed to make its employees available to testify on behalf of the plaintiff on the issue of the hospital's accessability to indigent patients in contradiction to the allegations of the defendant's oral surgeons. After a lengthy trial, the jury returned a substantial verdict in favor of the plaintiff well in excess of the original offer or demand notwithstanding the absence of the "live" plaintiff and the aforesaid proof problems. The trial and the result was significant as it involved issues of hospital administrations and procedures as well as medical and damages issues, proof of which was made very difficult due to the plaintiff's untimely death prior to trial.

6.	Regina Duran v. Shore Memorial Hospital, et als.	
Docket No.:	ATL-l-3848-95	
Represented:	Plaintiff, Regina Duran	
Date of Representation:	1995 - 2000	
Court:	Atlantic County Superior Court	
Judge:	George Seltzer, J.S.C.	
Opposing Counsel:	Timothy Cramer, Esq. Paarz, Master, Korning... 927 N. Main Street Pleasantville, NJ (609) 653-8800	Scott Bushelli, Esq. Dughi & Hewit 340 North Avenue Cranford, NJ (908) 272-0200

Summary:

This matter pertained to a medical malpractice action against Shore Memorial Hospital arising out of what was alleged to be was the medical negligence of an emergency room doctor and a consulting gastroentorologist in the diagnosis and treatment of plaintiff's appendicitis.

The allegation of the plaintiff was that the emergency room doctor and a consulting gastroenterologist at the hospital failed to properly diagnose the plaintiff's appendicitis upon her presentation at the hospital by failing to conduct the appropriate diagnostic tests, calling for a surgical consult in a timely fashion and failing to monitor and act upon the progression of the disease as the plaintiff waited for several hours at the emergency room department. The plaintiff's appendix eventually went on to perforate requiring a more extensive and dangerous emergency surgery, a longer hospital stay and additional medical treatment. The Emergency Room doctor himself was not an individual defendant and thus the case not only dealt with the intricacies of medical deviation and causation but also with the legal issue of whether a hospital could be held vicariously liable for the actions of an emergency room doctor who was admittedly not an employee of the hospital at the time that the treatment was rendered.

The matter required a lengthy jury trial to verdict. The jury returned a verdict in favor of the plaintiff as against the hospital based on the emergency room doctor's negligence and also found in favor of the co-defendant gastroenterologist. The hospital then appealed the trial court's ruling during the trial in favor of the plaintiff's motion that the doctrine of apparent authority applied and that the negligence of the doctor was by operation of law imputed to the hospital.

Ultimately, after appellate argument, the Appellate Division issued a written opinion affirming the trial court's ruling and the verdict in favor of the plaintiff was upheld. The case was significant in that the doctrine of apparent authority was applied successfully to circumvent the obstacles faced at trial regarding the fact that the culpable doctor was not an employee of the hospital defendant at the time of the treatment.

7.	Estate of Felix Fernandez v. David Roundsville, et als.
Docket No.:	HUD-L-22211-92
Represented:	Plaintiff, Estate of Felix Fernandez
Date of Representation:	02/91 - 08/94
Court:	Hudson County Superior Court
Judge:	James McLaughlin, J.S.C.
Opposing Counsel:	James Vasios, Esq. Hurley & Vasios 636 Morris Turnpike Short Hills, NJ

(973) 467-1300

Summary:

Medical Malpractice Action arising out of the death of Felix Fernandez. Mr. Fernendez had died following elective eye surgery. The defendant, Dr. Rounseville, was the treating anesthesiologist. The allegation of medical negligence was that defendant anesthesiologist had encountered difficulty intubating Mr. Fernandez during the induction of anesthesia and had used excessive and improper force during the intubation so as to cause a perforation of the esophagus which , according to the plaintiff, led to a massive infection in the mediastinum which weakened the plaintiff and contributed to the formation of a blood clot which eventually caused the patient's death. The defense's position was basically that the intubation had not been unduly difficult and that no perforation had occurred. The defendant's board certified anesthesiology expert opined that the theory of a perforation of the esophagus was completely unfounded in fact and medicine since the post mortem had not revealed an esophageal perforation and since nothing he had ever read in medicine would support the plaintiff's position.

This case, from a trial preparation and research standpoint, is significant in that through exhaustive medical research, plaintiff was able to locate and use effectively in the cross examination of defendant's expert, an obscure article (not disclosed by the expert prior to trial) which the defendant's expert himself had written supporting the very issues he was disputing at trial. The verdict and a substantial recovery was in favor of the plaintiff. The case has been used by speakers at different trial seminars as an example of proper medical research and preparation for trial.

8.	Estate of Sherry Harley v. East Orange Police Dept., et als.
Docket No.:	(Unable to Locate Docket Number)
Represented:	Plaintiff, Estate of Sherry Harley
Date of Representation:	1982
Court:	Essex County Superior Court
Judge:	Leo Yanoff, J.S.C.
Opposing Counsel:	Howard Brechner, Esq. Presently At: 629 Parsippany Road Parsippany, NJ (973) 403-1100

Summary:

This was a complicated wrongful death action arising out of the death of eighteen year old Sherry Harley following an assault at her apartment in East Orange. The case was brought on behalf of the decedent's only child through her grandmother, Luvenia

Hunter.

The allegations which formed the basis of the complaint involved police negligence, landlord/tenant negligence and damages for Sherry Harley's wrongful death.

Harley had been found stabbed to death in her Lenox Avenue residence on May 26, 1982. Her daughter, who was seven months old at the time, was found bound and gagged inside a closet. The suit alleged that about eight hours before Harley's body was discovered, East Orange Police Department had responded to a complaint of an early morning disturbance in the apartment. The two responding officers were met at the door by a woman named Sharon Dews. The police interviewed Ms. Dews but never asked to go inside the apartment even though (as was established during discovery) she had a blood stain on her blouse and even though the officers testified that they were able to hear, from the doorway, a "muffled" female voice inside the apartment. The police subsequently left the building without entering the apartment. Sharon Dews and a male accomplice (who had been inside the apartment) were eventually able to leave the apartment leaving Sherry Harley behind having stabbed her in the heart several times. Sharon Dews and her accomplice were eventually arrested, charged and sentenced for Harley's death.

The case proceeded against the East Orange Police Department, the City of East Orange, the responding police officers and the landlord and managing agent of the apartment building.

The case involved numerous depositions and experts (including police procedure experts, damages experts, medical and security experts) and was significant in its complexity regarding issues of police immunity, probable cause, appropriate emergency response time, landlord responsibility for the foreseeable criminal activities of others and most importantly, for proximate cause. The issue of proximate cause became the central issue shortly before trial because Dews (having been arrested and sentenced) was going to testify at trial on behalf of the defendants that at the time she was talking to the police at the door of the apartment, she had already stabbed the decedent several times in the heart. The defense therefore contested that even if the police had gone inside the apartment at that time, there was no proximate cause that could be established regarding the decedent's death as a result of any police negligence. Through much investigation and research regarding treatment of stabbing patients at area hospitals, and specifically, University of Medicine and Dentistry, the plaintiff was able to establish through the Chief of Trauma Surgery at University Hospital that the survival rate of stabbing victims depended on how fast police or emergency personnel were able to get patients to the hospital. The survival rate (the plaintiff's expert was able to opine) increased dramatically if the patient had vital signs when discovered by the police. In this case, the muffled female voice inside the apartment was the decedent's voice and ability to speak indicated the existence of a

vital sign which, had the police acted promptly, would have drastically increased the patient's chance of survival. The matter was assigned to trial to the Honorable Leo Yanoff and settled at trial for a substantial recovery in favor of the plaintiff.

9.	Estate of Edgardo Velasco v. Union County, et als.	
Docket No.:	UNN-6504-97	
Represented:	Plaintiff, Estate of Edgardo Velasco	
Date of Representation:	12/95 - 11/00	
Court:	Union County Superior Court	
Judge:	Edward W. Beglin, Jr., J.S.C.	
Opposing Counsel:	Stephen H. Schechner, Esq. 75 Main Street Millburn, NJ (973) 376-6200	Joan Bannan Harris, Esq. Tafaro & Flynn 571 Central Avenue New Providence, NJ (908) 508-0100
	John Bensulock, Esq. Johnstone, Skok, Loughlin & Lane 324 E. Broad Street Westfield, NJ (908) 233-9000	Christopher Howard, Esq. 312 North Avenue Cranford, NJ (908) 272-4300

Summary:

This case was brought as a result of the death of Edgado Velasco after he received a laceration injury to the head while an inmate at the Union County Jail. Mr. Velasco had been arrested for driving a motor vehicle with fictitious plates and outstanding warrants dealing with support payments. He had been sent to the Union County Jail to await trial and a few days after having been incarcerated was found in his cell in a puddle of blood with a severe laceration to his head. He was then transported to St. Elizabeth Hospital emergency department where he was treated by the emergency room physician, Defendant Dr. Maria Chirino. The doctor, after examining the patient and ordering x-rays, discharged him back to the jail. Mr. Velasco was then placed at the jail medical unit where he was supposed to be under observation. However, the next morning he was found on the floor unconscious and eventually died at University Hospital following a craneotomy which revealed a substantial subdural hematoma which apparently had gone on undetected.

Plaintiff's complaint alleged many counts against many different defendants including assault against a correction's officer, correctional negligence, violations of civil rights, hospital negligence, medical negligence and correctional nursing negligence.

Investigation prior to the filing of the complaint had uncovered a witness who had

worked at the jail medical department who indicated that prior to his death, Mr. Velasco had indicated to him that a correction officer had beaten him. As a result, extensive discovery ensued on that issue which revealed that inmate Velasco appeared to have been going through detox while at the jail exhibiting substantial strange behavior (talking to himself, eating toilet paper, banging his head against the wall, etc.)which led to several confrontations with the corrections officers, one of which culminated in the inmate being placed on a "restraint chair". This evidence was used by the county defendants to argue that the injury had been self inflicted and by the plaintiff as indicative of bad blood between the inmate and the corrections officers. The plaintiff also alleged medical negligence on the part of the emergency room physician in failing to order a CAT scan which would have revealed the subdural hematoma and against the hospital for failing to give proper instruction to the medical personnel at the jail regarding needed medical follow up and observation.

The case was significantly complicated and intricate as to both its fact pattern and the different issues of law encompassing everything from medical negligence to civil rights, governmental immunity and correctional facility administration and correctional medical care. The case took years of discovery before coming to fruition and was eventually settled just prior to being assigned to trial after an extensive conference by the Union County Court Presiding Judge, Honorable Edward Beglin.

10.	Blanca Ortiz v. Carlos Tello, M.D
Docket No.:	PAS-L-582-97
Represented:	Plaintiff, Blanca Ortiz
Date of Representation:	1996 - 1999
Court:	Passaic County Superior Court
Judge:	Anthony J. Graziano, J.S.C..
Opposing Counsel:	William R. Lane, Esq. Presently At: Parsons, Powell & Lane, LLC 131 White Oak Lane Old Bridge, NJ (732) 679-3777

Summary:

This matter was a medical malpractice action involving care and treatment of plaintiff's varicose veins by defendant Dr. Carlos Tello. The plaintiff consulted with Dr. Tello for her varicose vein condition. The plaintiff alleged that Dr. Tello recommended a vein stripping and ligation procedure to treat varicose veins. Said procedure only involved small incisions around the ankle and behind the knee. Instead, however, Dr. Tello performed a more invasive Linton Procedure involving an incision from the ankle to the knee, while the plaintiff was under anesthesia. The surgical scar did not heal properly and an ulceration developed. In addition, the

plaintiff claimed to have developed a nerve entrapment in the ankle as a result of hypertrophic scarring. Plaintiff alleged that she did not provide informed consent for the procedure and that the invasive Linton Procedure was not indicated under the circumstances. The case was tried to verdict, which resulted in a substantial verdict in favor of the plaintiff. The significance of this case was the complicated medicine involved in the different surgical procedures involved as well as the issues of informed consent.

20. **Criminal History**: State whether you have ever been convicted of a crime, within ten years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and disposition and describe the particulars of the offense.

I have never been convicted of a crime.

21. **Party to Civil or Administrative Proceedings**: State whether you, or any business of which you are or were an officer, have ever been a party or otherwise involved as a party in any civil or administrative proceeding, within ten years of your nomination, that is reflected in a record available to the public. If so, please describe in detail the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings in which you were a guardian *ad litem*, stakeholder, or material witness.

Manuel Henriquez v. Linares & Coviello	PAS-L-1152-93	Case Settled/Dismi
Jose Linares v. Lisa Anderson (Auto)	ESX-L-5143-99	Case Settled/Dismi
Jose Linares v. Marcela Wilson (Auto)	ESX-L-12,598-96	Case Settled/Dismi

I was also a plaintiff in a number of tenancy cases where I filed for eviction of tenants for non-payment of rents over the years but I do not recall names or docket numbers.

I was also nominally named in a lawsuit filed by a mentally incapacitated person in a matter where I had been appointed by the Court as an administrator for an estate. The plaintiff in that case sued many people including several judges, lawyers, the Essex County Prosecutor's Office and others claiming among other things that his mother was still alive and that she was kidnapped by the government, that the court and lawyers were conspiring against him and that his sister was part of the conspiracy. The suit was eventually dismissed as baseless and frivolous by the Court. The name of the case was *Louis Cope v. Marty Cope Splithe, et als.* Docket No.: 94-4566 United States District Court, District of New Jersey.

The law firm of Linares & Coviello was also a defendant in the matter of *Clarke*

Shorthand Reporting v. Linares & Coviello. This was filed in the Special Civil Part in Essex County under docket no. SC-100-00 and was settled and dismissed. I was not personally named as a defendant. It involved a disputed $97.80 invoice.

22. **Potential Conflict of Interest**: 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 institute and have available both a computerized and manual system which would include all potential conflicts including any litigation in which my previous law firm or clients are involved as well as all my real estate, investments, and business interests so any possible conflict which may come up is readily identified and dealt with. I presently do not know of any pending litigation or financial arrangement that presents a conflict of interest during my initial service as a Federal District Court judge.

23. **Outside Commitments During Court Service**: Do you have any plans, commitments, or arrangements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

24. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding the nomination, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500. 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.

25. **Statement of Net Worth**: Complete and attach the financial net worth statement in detail. Add schedules as called for.

See attached Statement of Net Worth.

26. **Selection Process**: Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?

Yes.

(a) If so, did it recommend your nomination?

I appeared before Senator Robert Torricelli and Senator Jon Corzine's Judicial Selection Committee in February, 2002. I do not know as of the present time whether the Committee recommended my nomination.

(b) Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.

I submitted my name and resume to the White House Counsel's Office asking to be considered for nomination to the United States District Court for the District of New Jersey. Thereafter, I was interviewed by Senator Robert Torricelli and Senator Jon Corzine's Judicial Selection Committee. I was also personally interviewed by Senators Torricelli and Corzine on March 22, 2002 and I was also interviewed by members of the White House Counsel's Office on January 30, 2002.

(c) 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 or seeking a commitment as to how you would rule on such case, issue, or question? If so, please explain fully.

No.

1513

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		21	380	Notes payable to banks-secured		423	000
U.S. Government securities-add schedule		0		Notes payable to banks-unsecured		79	184
Listed securities-add schedule (1)		371	712	Notes payable to relatives			
Unlisted securities--add schedule 2)		900	000	Notes payable to others			
Accounts and notes receivable:		131	794	Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule			
Real estate owned-add schedule (3)		870	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		100	000	Lincoln Financial margin balance		19	137
Cash value-life insurance		45	924				
Other assets itemize:							
First Investor NJ Bond Fund		61	696				
Retirement Accounts (see schedule 4)		577	878				
				Total liabilities		521	321
				Net Worth	2	559	063
Total Assets	3	080	384	Total liabilities and net worth	3	080	384
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor		722	305	Are any assets pledged? (Add schedule)		N	
On leases or contracts		124	569	Are you defendant in any suits or legal actions?		N	
Legal Claims				Have you ever taken bankruptcy?		N	
Provision for Federal Income Tax							
Other special debt							

SCHEDULE

1. *Listed Securities*

Environmental Solutions Worldwide	$ 304.00
Franklin New Jersey Tax Free C IB:	$ 73,121.65
Nuveen New Jersey Municipal CI B:	$ 72,796.72
Oppenheimer NJ Municipal Bond CI B:	$ 73,148.37
Avaya, Inc.	$ 59.80
Eaton Vance NJ Municipal CI B:	$ 73,034.91
Putnam NJ Tax Exempt Inc CI B:	$ 79,246.18
TOTAL:	$ 371,712.00

2. Unlisted Securities

50 Shares Party City of Orange, Inc.	$600,000.00
1 Share Party City of Warwick, Inc.	$300,000.00
TOTAL:	$ 900,000.00

3. Real Estate

Residence (J)	$500,000.00
Rental (J)	$350,000.00
Vacation Time Share	$ 20,000.00
TOTAL:	$ 870,000.00

4. Retirement Accounts

Individual Retirement Account Sun America Fund)	$537,121.86
Putnam Health Science	$ 23,727.47
Putnam OTC & Emerging Growth	$ 5,414.97
Putnam International New Opportunity	$ 11,613.94
TOTAL:	$ 577,878.00

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
LINARES, JOSE	U.S. DISTRICT COURT NEW JERSEY	08/03/2002
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 08/01/2002 Initial Annual Final	**6. Reporting Period** 01/01/2001 to 07/31/2002
7. Chambers or Office Address HALL OF RECORDS ROOM 328 465 DR.MARTIN LUTHER KING BLV. NEWARK, NJ 07102	**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	EXECUTIVE 01/01/00 TO 06/9/00	PARTY CITY OF ORANGE, INC.
2	PARTNER 01/01/00 TO 12/13/00	LAW OFFICES OF LINARES, COVIELLO & SANTANA
3	SUPERIOR COURT JUDGE 12/13/00 TO 07/31/2002	ESSEX COUNTY SUPERIOR COURT

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

☐ NONE (No reportable agreements.)

	DATE	PARTIES AND TERMS
1	121300	LAW PRACTICE OF LINARES, COVIELLO & SANTANA, ESQS. AND JOSE LINARES (cntd Part 8
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	03212002	SUPERIOR COURT OF ESSEX COUNTY	JUDGE	220035
2	010101	LINARES & COVIELLO PARTNERSHIP	SALE OF ASSETS	35408
3	010101	LINARES & COVIELLO	SALE OF ASSETS GOODWILL	100000
4	010101	LINARES & COVIELLO	POST SALE FEES	334190

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	LINARES, JOSE	08/03/2002

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	SOVEREIGN BANK	RENTAL PROPERTY BLOOMFIELD, NJ	M
2	CATHAY BANK	PERSONAL	L
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
LINARES, JOSE	08/03/2002

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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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 50 SHARES PARTY CITY ORANGE, INC,	G	Dividend	O	W	SOLD				EXEMPT
2 50 SHARES PARTY CITY ORANGE, INC.	G	Dividend	N	W					
3 1 SHARE OF PARTY CITY WARWICK, RI	E	Dividend	N	W					
4 PRIME FUND DAILY MONEY CLASS	A	Dividend	J	T					
5 ENVIRONEMENTAL SOLUTIONS WORLDWIDE	A	Dividend	J	T					
6 FRANKLIN NJ TAX FREE FUND	B	Dividend	L	T					
7 NUVEEN NJ MUNICIPAL	B	Dividend	L	T					
8 OPPENHEIMER NJ MUNICIPAL BOND	B	Dividend	L	T					
9 AVAYA	A	Dividend	J	T					
10 EATON VANCE NJ MUNICIPAL	B	Dividend	L	T					
11 PUTNAM NJ TAX EXEMPT	B	Dividend	L	T					
12 FIRST INVESTORS NJ MUNICIPAL BOND FUND	A	Dividend	L	T					
13 LINCOLN GROWTH INCOME	A	Dividend	K	T					
14 LINCOLN SOCIAL AWARENESS	A	Dividend	K	T					
15 LINCOLN AGGRESSIVE GROWTH	A	Dividend	K	T					
16 DELAWARE TREND	A	Dividend	K	T					
17 NOTE RECEIVABLE LINARES MGMT.	D	Interest	L	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
LINARES, JOSE	08/03/2002

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) *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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 NOTE RECEIVABLE ARTURO LINARES	C	Interest	L	T					
19 PNC BANK MONEY MARKET & CHECKING ACCOUNTS	B	Interest	J	T					
20 RENTAL #1 BLOOMFIELD, NJ	F	Rent	N	W					
21 RENTAL #2 EAST ORANGE, NJ	E	Rent	J	W	SOLD				EXEMPT
22 IRA SUN AMERICA FUND	D	Dividend	O	T					
23 IRA PUTNAM HEALTH & SCIENCE	B	Dividend	K	T					
24 IRA PUTNAM OTC & EMERGING GROWTH	A	Dividend	J	T					
25 IRA PUTNAM INTERNATIONAL NEW OPPORTUNITY	A	Dividend	J	T					
26 RENTAL #3 NEWARK NJ	D	Rent			SOLD				EXEMPT
27 RENTAL #4 WESTCALDWELL, NJ	E	Rent			SOLD				EXEMPT
28 AMERITRADE	A	Interest	J	T					
29 AMERICAN SAVINGS BANK	A	Interest	J	T					
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

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	LINARES, JOSE	08/03/2002

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.
(Indicate part of report.)

PART 2: Parties and Terms re: LAW PRACTI, cntd ...

SALE OF INTEREST IN PREVIOUS LAW PRACTICE OF LINARES, COVIELLO AND SANTANA ESQS. ARE UNLIQUIDATED AND CANNOT BE STATED WITH EXACTITUDE. MY REMAINING BENEFIT RANGES FROM 55% TO 70% OF FEES THAT WERE DUE TO LINARES, COVIELLO & SANTANA. (MOSTLY MEDICAL MALPRACTICE CASES THAT WERE TRANSFERRED TO OTHER LAW FIRMS AT THE TIME I LEFT PRIVATE PRACTICE SINCE I WAS THE ONLY ATTORNEY IN MY OLD FIRM WITH THE NECESSARY EXPERTISE TO HANDLE SAID CASES.) I ANTICIPATE THAT MY INCOME FROM THIS SOURCE, OVER THE NEXT THREE YEARS WILL BE BETWEEN $200,000 AND $300,000.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	LINARES, JOSE	08/03/2002

SECTION HEADING. (Indicate part of report.)

Information continued from Parts I through VI, inclusive.

PART 3. NON-INVESTMENT INCOME (cont'd.)

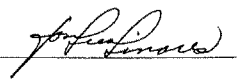
Line	Date	Source and Type	Gross Income
5	121500	INCOME FROM LINARES AND COVIELLO LAW PRACTICE 1/1/00 TO 12/15/00	120701
6	121500	WAGES FROM PARTY CITY OF ORANGE 01/01/00 TO 06/30/00	4125
7	08/03/02	SPOUSE WAGES FROM PARTY CITY OF ORANGE, INC.	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	LINARES, JOSE	08/03/2002

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 8/3/02

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

**QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY,
UNITED STATES SENATE**

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

   William Edward Smith

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

   Judge, District of Rhode Island

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

   Office: Edwards & Angell, LLP, 2800 Financial Plaza, Providence, Rhode Island 02903
   Phone: (401) 274-9200; Fax: (401) 276-6611

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

   December 31, 1959; Boise, Idaho

5. **Marital Status**: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please also indicate the number of dependent children.

   Married
   Spouse's name: Christine M. (Boris) Smith.
   Spouse's occupation: Data Support Analyst
   Spouse's employer: Metropolitan Life, Bald Hill Road, Warwick, Rhode Island
   Two Dependent Children

6. **Education**: List in reverse chronological order, listing most recent first, each college, law school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   Georgetown University Law Center; dates attended: December 1983 – May 1987
   J.D., 1987, Cum Laude

University of Idaho College of Law; dates attended: September 1982 – December 1982 (one semester) (left to attend Georgetown University Law Center beginning the following semester)

Georgetown University; dates attended: 1978 – 1982
Bachelor of Arts, 1982

7. **Employment Record**: List in reverse chronological order, listing most recent first, all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

Employment:

Edwards & Angell, LLP; 2800 Financial Plaza, Providence, RI 02903; Associate, 1987 – 1994; Partner, 1994 – 2000; Counsel, January 2001 to present.

United States Senate; Staff Director of Rhode Island Office of U.S. Senator Lincoln Chafee,10 Dorrance St. Providence, RI 02903; January 1, 2000 – January 22, 2001.

Providence College; 549 River Ave., Providence, RI 02918; Adjunct Faculty member, September 2000 to present.

Town of West Warwick, 1170 Main Street, West Warwick, Rhode Island, 02893; Municipal Court Judge, 1993 – 1998.

Bryant College; 1150 Douglas Pike, Smithfield, RI 02917; Adjunct Faculty member, 1992 – 1993.

Akin, Gump, Strauss, Hauer and Feld, LLP, 1333 New Hampshire Ave. NW, Washington, D.C. 20036; Law Clerk, September 1986 – May 1987; September 1984 – June 1985; Legal Assistant, January 1983 – August 1984.

Perkins Coie LLP, 607 14th Street, NW, Washington, D.C. 20005; Law Clerk – Summer Associate, Summer 1986.

Sharp, Green & Lankford, Washington, D.C. 20036 (office located on Dupont Circle; firm no longer in existence); Law Clerk, August 1985 – May 1986.

Stoel Rives LLP, 900 SW 5th Ave. Portland, OR 97204; Law Clerk – Summer Associate, Summer 1985.

Democrats for the 80s, N street NW, Washington, D.C. 20007 (no longer in existence), Research Assistant, February 1982 – July 1982.

All of the above employment was paid employment.

Board of Director Positions:

Diocesan School Board, Roman Catholic Diocese of Providence, member since 1998; Chairman effective June 2002.

Rhode Island Community Food Bank, member since 1993; President 1998 – 2000.

Providence/Cranston Private Industry Council, and Regional Employment and Training Board, Board member, 1989 – 1995; Vice President and President 1995.

Georgetown University Alumni Association of Rhode Island, 1987 – present; Board President 1993 – 2001.

Warwick Heights Tennis Club, Board member, 1999 – present.

Galilee Mission to Fishermen, Board member, approx. 1989 – 1990.

8. **Military Service**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge received

None served.

9. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Cum Laude graduate from Georgetown Law Center.

Member, American Criminal Law Review (based on grades).

George F. Baker Scholar, Georgetown University.

10. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Rhode Island Bar Association, 1987 – present.

State of Rhode Island, Commission on Judicial Tenure and Discipline, June 2001 – present (appointed by Governor Lincoln C. Almond).

Chief Justice's Task Force on Alternate Dispute Resolution, 2001 – present (appointed by Rhode Island Chief Justice Frank Williams).

American Bar Association, March 1988 – March 1993.

11. **Bar and Court Admission**: List each state and court in which you have been admitted to practice, including dates of admission and any lapses in membership. 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 Rhode Island, since 1987.

U.S. District Court for the District of Rhode Island, since 1987.

12. **Memberships**: List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, charitable, or other organizations since graduation from college, other than those listed in response to Questions 10 or 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion - either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

University Club of Providence, Rhode Island, member since 1996.

Quidnessett Country Club, 2000 – present.

Seaside Beach Club, 1987 -- present.

Our Lady of Mercy Home-School Association, since approx. 1993 – present.

(Copies of By-laws/Rules and Regulations of social clubs are attached.)

13. **Published Writings**: List the titles, publishers, and dates of books, articles, reports, or other material you have written or edited, including material published on the Internet. Please supply four (4) copies of all published material to the Committee, unless the Committee has advised you that a copy has been obtained from another source. Also, please supply four (4) copies of all speeches delivered by you, in written or videotaped form over the past ten years, including the date and place where they were delivered, and readily available press reports about the speech.

Judicial Review of Labor Arbitration Awards in Rhode Island, Roger Williams Law Review, Vol. 3, No. 2, Spring 1998.

Court Shows for Arbitration, The Rhode Island Law Tribune, May 16 – 22, 2001, 1RILT 14 (2001), with John Doran, Esq.

The Providence Journal, 1988 (op-ed column with two other attorneys; have been unable to locate, but continuing to search newspaper archives).

Syllabus for course taught at Providence College – "Employment Law Practice", 2002

Syllabus for course taught at Bryant College – "Business & Society: The Ethical and Legal Foundations", 1992 – 1993

New England Newspaper Association – "Protecting Your Union-Free Workforce", May 28, 1998

Edwards & Angell CLE Program – "Silicon Technologies' Impact on Employment Law and Litigation Issues", May 14, 1997

Council on Education in Management Personnel Law Update 1995 – "Sex Harassment Claims", October 18, 1995

Rhode Island Bar Association Annual Conference – "Avoiding and Dealing with Conflicts in Municipal Law Practice", June 15, 1995

The Greater Providence Chamber of Commerce Business Expo, Current Issues in Employment Law – "Interviewing Prospective Employees/Negligent Hiring; Independent Contractors; Discipline and Termination: Documenting the File", March 16, 1993

The Greater Providence Chamber of Commerce Business Expo, Current Issues in Employment Law – "At-Will Employment; Negligent Hiring", June 4, 1992

Labor & Employment Law Developments – "The Americans With Disabilities Act", 1992

PARI/PEC HRM 2000 – "The Cost of Making References", September 19, 1991

Hospital Association of Rhode Island – "Employment Law Considerations of Dealing with Workers' Compensation Issues in the Workplace", November 14, 1990

The Greater Providence Chamber of Commerce – "An Overview of the Worker Adjustment and Retraining Notification Act of 1988 ("WARN")", May 18, 1990

Rhode Island Chamber of Commerce Federation – "Legal Implications of Drug Testing in the Work Place", April 11, 1989

Edwards & Angell 1988 Labor & Employment Law Update – "Wrongful Termination", March, 1988

14. **Congressional Testimony**: List any occasion when you have testified before a committee or subcommittee of the Congress, including the name of the committee or subcommittee, the date of the testimony and a brief description of the substance of the testimony. In addition, please supply four (4) copies of any written statement submitted as testimony and the transcript of the testimony, if in your possession.

I have not testified before Congress.

15. **Health**: Describe the present state of your health and provide the date of your last physical examination.

Excellent; May 2000.

16. **Citations**: If you are or have been a judge, provide:

(1) a short summary and citations for the ten (10) most significant opinions you have written;

(2) a short summary and citations for all rulings of yours that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court; and

(3) a short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions.

If any of the opinions or rulings listed were in state court or were not officially reported, please provide copies of the opinions.

I was a Municipal Court Judge in West Warwick, RI, for approximately four and one half years. This is a court of limited jurisdiction. While nearly all matters that come before the municipal courts are handled in a summary fashion, I did, on several occasions, write opinion/orders. These were primarily housing cases where the remedies requested were serious (i.e. demolition of property). I have attached the opinions I issued in this capacity as follows: Town of West Warwick v. Ward, No. 94-4 (1994); Town of West Warwick v. Jacob Frank, No. 94-5 (1995); Town of West Warwick v. Hanniford, No. 94-14 (1995); Town of West Warwick v. 30 St. James Corp., No. 97-2 (1997); Town of West Warwick v. Lombardi, No. 97-3 (1997). I am not aware that any of these opinions were reversed, however, under our statutes, matters appealed from the Municipal courts are heard *de novo* in the Rhode Island District or Superior Court.

17. **Public Office, Political Activities and Affiliations**:

(1) List chronologically any public offices you have held, federal, state or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or nominations for appointed office for which were not confirmed by a state or federal legislative body.

City Solicitor, Warwick, Rhode Island, 1993 – 2000 (appointed by Mayor Lincoln Chafee) (Beginning in 1998, the appointment of Solicitor was technically changed to the firm of Edwards & Angell; for all practical purposes, I continued to function as the Solicitor.)

Assistant Town Solicitor, Town of West Warwick, Rhode Island, 1988 – 1992 (appointed by Mayor Michael Levesque).

Town Moderator, Town of West Warwick, Rhode Island, 1991 – 1992 (appointed by Town Council).

General Counsel, Rhode Island Republican Party, 1988 – 1989 (appointed by Republican State Committee).

(2) 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 been involved in political campaigns for my entire life. Most recently, when I was Staff Director for the Rhode Island office of U.S. Senator Lincoln Chafee, I oversaw the conduct of his campaign for the U.S. Senate. I did not have an official position with the campaign, but was involved, in my free time, in numerous campaign activities and essentially oversaw the campaign as the chief aid to the Senator.

I have been an informal advisor to several Republican candidates over the fifteen years I have lived in Rhode Island including a current candidate for Governor, Jim Bennett.

In 1992 I headed (along with two other attorneys) the local chapter of "Lawyers for Bush - Quayle" for the 1992 Presidential campaign for Presidential candidate George Bush.

Many years ago, as a college student in 1980, I worked on the campaign staff of Idaho Senator Frank Church from June – August of 1980. My title was Staff Assistant. I worked on the campaign while on leave from my position as a clerk in the U.S. Senate Committee on Foreign Relations, while a student at Georgetown University.

As a young child, I assisted my father, who was a judge in Boise, Idaho, in his campaigns, first as a Republican and then as a non-affiliated candidate. (In Idaho, judges are elected for four-year terms and compete in non-partisan elections.)

18. **Legal Career**: Please answer each part separately.

(1) Describe chronologically your law practice and legal experience after graduation from law school including:

(1) whether you served as clerk to a judge, and if so, the name for the judge, the court and dates of the period you were a clerk;

I did not serve as a judicial clerk.

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

No, I have always practiced in a law firm.

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

Since 1987, I have practiced at Edwards & Angell, LLP (with the exception of one year as Staff Director for U.S. Senator Lincoln Chafee, in 2000). Edwards & Angell, LLP, is a large multi-state law firm (the largest in Rhode Island), with a broad range of practice areas. I have been a member of the Labor, Employment and Litigation departments of the firm.

(2) (1) Describe the general character of your law practice and indicate by date if and when its character has changed over the years.

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

My practice generally has concentrated in labor and employment law and litigation. My practice has included representation of management in labor and employment matters, including union contract negotiations, union organizing drives, arbitration proceedings, unfair labor practice proceedings, employment discrimination matters, sexual harassment, wage and hour law, OSHA, OFCCP Compliance and investigations, and other Department of Labor investigations. My practice has included both private sector and public sector representation.

In the first several years of my practice, as an associate in the Labor and Employment Law Department of the firm, I handled matters for mostly private sector clients, splitting my time between "traditional" labor law and "employment" law, assisting more senior attorneys.

After the election of Lincoln Chafee as Mayor in 1992, I successfully competed to become the City Solicitor of Warwick, Rhode Island, and led a team of attorneys in my firm in taking over all the legal work for the City on a fixed fee (approximately $350,000 - $400,000 per year) basis. During this period, I continued my representation of private sector clients in labor and employment law matters, expanded my practice significantly into the public sector (I had previously represented the Town of West Warwick, Rhode Island, in labor matters), and spent considerable time supervising the work of the numerous attorneys performing services for the City. In this regard, I frequently consulted with attorneys who were primarily responsible for matters (such as litigation, zoning and planning, special education and other educational law issues) regarding strategy and tactics. I handled most of the labor negotiations, arbitrations, police disciplinary hearings and significant litigation matters myself. Further, I consulted regularly and closely with insurance counsel on federal civil rights and other matters filed against the City which were covered by insurance.

Also in 1993, I was retained by the Rhode Island Secretary of State to be the legal counsel for her office. In this connection, I again performed all of the labor and employment law matters myself, and supervised other attorneys providing advice to the corporations division and the elections division of the Secretary of State's office.

In 1994, Governor Lincoln C. Almond was elected Governor of the State of Rhode Island. I was hired by the Rhode Island Department of Administration as outside labor-litigation counsel for a number of arbitration cases. A number of these cases involved Court challenges to adverse arbitration awards; others involved the trial of the arbitration matters. (Several of these cases are discussed below.)

Also during this period I was retained by the Court system of the State of Rhode Island in connection with several labor matters. I represented the Chief Judge of the Family Court in an organizing drive of his clerical employees; and the Chief Justice of the Supreme Court and the Chief Judge of the District Court in connection with the restructuring of the State Court system which brought the former Traffic Court into the District Court as a separate division, to be called the "Traffic Tribunal."

In late 1999, after the death of U.S. Senator John H. Chafee, and the appointment of his son, Lincoln Chafee, to fill his seat, I left my practice to become Staff Director of the Rhode Island Office of Senator Chafee. Lincoln Chafee had been a long time client and has become a good friend. I left the active practice of law for the year 2000 in order to take this position. However, while I was not actively practicing law during this year, I worked on a number of important issues before the Senate during this time. After the election in 2000, in which Senator Chafee was elected for a full six-year term, I returned to private practice.

The year 2001 – present: Since my return from one year as Staff Director for the Rhode Island Office of U.S. Senator Lincoln Chafee, I have continued to focus my practice in labor and employment law, but primarily have represented private sector companies and institutions of higher education. My two largest clients are now Providence College and Bryant College, both located in Rhode Island. The nature of my work for these Colleges includes labor negotiations with unions representing various employee groups, including faculty, plant maintenance, and security officers and other employees, as well as arbitration proceedings and administrative matters (such as defense of unfair labor practice charges.) My practice is now focused on larger institutions in the private sector, and is considerably less focused on public sector labor law. However, I do continue to represent public agencies in selected matters. For example, in 2001 I was retained by the State of Rhode Island Department of Children, Youth and Families ("DCYF") as an Independent Counsel to investigate an internal matter; and, in 2002, I was retained again by the DCYF to challenge a 16-year old Consent Decree on constitutional grounds in U.S. District Court.

(3) (1) Describe whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe each such variance, providing dates.

While I am involved in litigation before courts, arbitrators, and administrative agencies and commissions frequently, I appear in Court occasionally. Most of my appearances in Court have been in state courts, particularly the Superior Court and Supreme Court. Some of my work has included Federal court matters.

(2) Indicate the percentage of these appearances in

(1) federal courts – less than 5%
(2) state courts of record – 95% plus
(3) other courts.

(3) Indicate the percentage of these appearances in:

(A) civil proceedings – 100%
(2) criminal proceedings – 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.

I have tried at least four cases to verdict in courts of record (Rhode Island Superior Court) as chief counsel. These cases were all non-jury cases. These cases are discussed below in Question 18. In addition, I have tried numerous contested matters to verdict before Arbitrators, Administrative Agencies and Hearing Committees.

(5) Indicate the percentage of these trials that were decided by a jury.

These cases were all Judge trials.

(4) Describe your practice, if any, before the United States Supreme Court. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the U.S. Supreme Court in connection with your practice.

Not applicable.

(5) Describe legal services that you have provided to disadvantaged persons or on a *pro bono* basis, and list specific examples of such service and the amount of time devoted to each.

I have devoted a considerable amount of my time and effort to the service of the disadvantaged. I have done this in several ways.

First and foremost, I have served as a member of the Board of Directors of the Rhode Island Community Food Bank for approximately nine years. I served as President of the Board from 1998 – 2000.

The Rhode Island Community Food Bank is the largest non-profit agency engaged in the fight against hunger in Rhode Island. It processes over six million pounds of food per year, has a budget of $4.5 million, is engaged in numerous joint ventures with various anti-hunger, anti-poverty agencies, and other community organizations. As a Board member, and as President of the Board, I have devoted a considerable amount of my time and professional efforts on the Food Bank's behalf. Included in my work for the Food Bank has been the donation of pro bono legal services, which have mostly been directed in the personnel and labor relations issue areas. I would estimate conservatively that I have devoted over 100 hours of legal services to the Food Bank over the years and hundreds of hours in service as a Board member. I have also assisted in obtaining pro bono services from partners and colleagues in my firm to assist the Food Bank on various needs over the years. The Food Bank has recently purchased a facility to serve as their new headquarters for approximately $2.8 million. I involved one of my colleagues to assist in the environmental issues associated with the purchase of this property.

In addition to the Food Bank, I have served on the Board of the Diocesan School Board and became Chairman of that Board in June. The Diocesan School Board services many low-income students in inner-city schools. I recently served as co-chair, with my wife and others, on the Committee which organized the first Inner-City Scholarship Fund Ball devoted to raising money to assist low-income students in attending parochial schools. Much of service as a Board member calls upon my experience as an attorney.

I have provided pro bono legal services to other non-profit organizations such as the Galilee Mission for Fishermen, which addresses alcohol and drug problems for the employees in the fishing industry; the Samaritans, which provides counseling for individuals who are contemplating suicide; the Audubon Society; my local parish (in a zoning dispute); the Providence Chamber of Commerce (on business issues). I have also provided discounted work to organizations such as Boys & Girls Clubs, schools, churches, parents organizations, as well as various other entities.

I have also devoted time to teaching courses in Junior High school on personal finance through Junior achievement.

Finally, I have, from time to time, represented individuals on a pro bono basis with respect to providing advice on their employment-related questions and concerns and met with groups of employees to explain their legal rights.

19. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, and for each provide the date of representation, the name of the court, 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. In addition, please provide the following:

(1) the citations, if the cases were reported, and the docket number and date if unreported;

(2) a detailed summary of the substance of each case outlining briefly the factual and legal issues involved;

(3) the party or parties whom you represented; and

(4) describe in detail the nature of your participation in the litigation and the final disposition of the case.

1. City of Warwick v. Michael D. Mallette, C.A. No. PM95-3113
C.A. No. KC 95-70

Summary of case: This case was an action by the City of Warwick to terminate the employment of Sgt. Michael Mallette, a police officer in the Warwick, Rhode Island Police Department. In my capacity as City Solicitor and counsel for the City of Warwick, I was responsible for prosecuting police officer misconduct cases. Under Rhode Island law, such prosecutions take place before a "Law Enforcement Officers' Bill of Rights" ("LEOBOR") hearing committee (the "Hearing Committee"). The Hearing Committee is an administrative body which, functions effectively as an agent of the Superior Court. The panel is composed of three officers, one of whom sits as chairman. The panel functions under the oversight of the Presiding Justice of the state Superior Court, and the Presiding Justice may, upon application, appoint counsel to assist the Committee and in the procedural and evidentiary rulings.

At the time of this matter, the LEOBOR statute also provided for de novo review by the Superior Court on appeal by the officer. (The law has since been amended so that appeals are brought under the Administrative Procedures Act.) Thus, this case was tried twice, first before the Hearing Committee and subsequently before a single judge of the Superior Court. While the case was tried twice, the trials were substantially different because of the evolution of the case which is described below.

In this case, the City of Warwick sought to terminate the employment of Sgt. Michael Mallette. Mallette had been accused of having sexual relations with his girlfriend, while on duty, in his police cruiser. The complaint was brought to the attention of the Police Department by the girlfriend, with whom Mallette had fathered a child.

The initial trial, before the Hearing Committee, involved the presentation of the case based on entirely circumstantial evidence. The trial had been ongoing for approximately 15 days over the course of several months when it took a

change in course. On both direct examination and cross examination, Sgt. Mallette had denied the relationship with the woman. The Police Department Internal Affairs unit then conducted a surveillance operation in which Mallette was recorded on audio and video tape admitting that he had lied under oath to the Hearing Committee regarding the relationship with the girlfriend, and particularly regarding the allegation of having sexual relations in the police cruiser while on duty. This material was first provided to the state Attorney General's office (because it revealed perjury) and was then introduced into evidence in the hearing. Subsequently, after retaining criminal defense counsel, Mallette retook the stand and recanted his perjured testimony in an effort to avoid criminal prosecution. The Hearing Committee, after approximately 20 days of trial, held in favor of the City and voted to terminate Mallette's employment.

Mallette exercised his right to appeal this decision to the Superior Court where the case was once again tried over the course of one-week in a non-jury trial. The new trial was substantially different than the trial before the Hearing Committee because Mr. Mallette did not perjure himself, but rather admitted the conduct of which he was accused. By admitting the conduct, Mallette was initially effective in preventing the introduction of his earlier perjured testimony. However, I was ultimately successful in admitting evidence regarding Mallette's perjury through representatives of the Attorney General's office who testified regarding the effect of Mr. Mallette's perjury on his ability to successfully function as a police officer. At the close of the trial, Judge Michael Silverstein ruled in favor of the City and upheld the termination of the officer.

I acted as sole counsel in the trial of this case before the Hearing Committee, and as chief counsel in the trial in Superior Court. My then-associate, and later partner, Lincoln Almond, assisted me in the Superior Court trial.

Date of representation: 1995

Court/Judge: Rhode Island Superior Court: Judge Michael Silverstein; Law Enforcement Officers Bill of Rights Hearing Committee: Ret. Capt. Emile Mittendorf; Col. William DeFeo (Warwick Police Department); Capt. Peter St. Jean (Warwick Police Department)

Co-counsel: Lincoln D. Almond, Edwards & Angell, LLP, 2800 Financial Plaza, Providence, Rhode Island 02903; (401) 274-9200.

Counsel for Michael Mallette: Sandra A. Lanni, 33 College Hill Road, Suite 20D, Warwick, Rhode Island 02886, (401) 822-1800 x8.

Counsel for the Law Enforcement Officers Bill of Rights Hearing Committee: Vincent F. Ragosta, Jr., 128 Dorrance Street, Shakespeare Hall, Penthouse, Providence, Rhode Island 02903-2814, (401) 274-2100.

2. In Re: Joseph A. Duquette and Warwick Police Department, PBR-95-1 (On file in Office of the Presiding Justice)

Summary of case: This case was a LEOBOR case against the third ranking officer in the Warwick Police Department. The case grew out of a scandal in the Department involving a murder investigation which was improperly handled by the Police Department. As a result of an independent counsel's investigation of the matter, disciplinary action was taken against Commander Joseph Duquette. The Department moved to terminate Duquette's employment. Three of the six charges brought against Duquette were dismissed by the Presiding Justice of the Superior Court because they fell outside of the three-year statute of limitations. The remaining three charges were tried to a Hearing Committee over the course of eight days. The Committee found Duquette guilty of the charges and demoted him. Duquette retired before the effective date of the demotion.

Date of representation: October – November, 1995

Court/Judge: Law Enforcement Bill of Rights Panel Members: Lt. Manuel Vierra (Portsmouth Police Department); Chief Gary Dias (East Providence Police Department); Captain Joseph Subin (Newport Police Department); Rhode Island Superior Court: Presiding Justice Joseph Rodgers

Opposing counsel: Edward C. Roy, Jr., Roy & Cook, 86 Weybosset Street, Suite 400, Providence, Rhode Island 02903-2800, (401) 273-4900.

3. Chief Justice Joseph Weisberger and Chief Judge Albert E. DeRobbio and v. Local 404, International Federation of Professional and Technical Engineers, AFL-CIO and Rhode Island Laborers District Council, Local Union 808; C.A. No. PC99-5412

Summary of case: In this case, I represented the Chief Judge of the Rhode Island District Court, and the Chief Justice of the Rhode Island Supreme Court, in connection with implementation of legislation which mandated reorganization of the Rhode Island State Traffic Court. The reorganization legislation merged the previously independent Traffic Court into the District Court. As a result of this merger, all of the operations of Traffic Court were to be integrated with existing District Court operations. I was asked to devise a labor relations strategy to deal with the problem of having two unions representing employees of the merged courts. The Chief Justice and Chief Judge wished to have only one union for obvious administrative purposes.

After preliminary discussions with both unions (in which it became clear that both wished to remain), we filed an action for Declaratory Judgment in Superior Court, arguing that the employees of Local 404 (the smaller union) had been "accreted" into the union representing the majority of employees, Laborers Union Local 808. This action was novel because there is no statutory procedure, or case law precedent, for bringing an accretion petition under Rhode Island state labor law. (Under the National Labor Relations Act ("NLRA"), an employer may file a "Unit Clarification Petition" in order to argue an accretion has occurred.) I contended that the Court should recognize an accretion as a matter of law. The case was presented to the Court on a stipulated set of facts. After briefing and argument, Judge Silverstein rendered a bench decision finding that an accretion had, in fact, occurred and ordering the relief requested.

Date of representation: 1999

Court/Judge: Rhode Island Superior Court: Judge Michael Silverstein

Opposing counsel: Frederic A. Marzilli, Marzilli Law Offices, 685 Warren Avenue, East Providence, Rhode Island 02914, (401) 434-5887 (on behalf of Local 404)

Darren F. Corrente, Corrente Law Corp., 226 South Main Street, Providence, Rhode Island 02903-2989, (401) 751-5522 (on behalf of Laborers' Union, Local 808)

4. Board of Trustees, Robert H. Champlin Memorial Library v. Rhode Island State Labor Relations Board and Teamsters Local Union 64, 694 A.2d 1185 (1997)

Summary of case: This case began with an effort by Teamsters Local 64 to organize the employees of the Champlin Memorial Library located in West Warwick, Rhode Island. I represented the Library. The union sought to represent all employees, including supervisors and part-time employees. The Library disputed whether supervisors and part-time employees (as well as a confidential employee) were appropriately included in the bargaining unit. The matter involved a four-day evidentiary hearing before the Rhode Island State Labor Relations Board ("SLRB"). The Board issued a decision in the Union's favor, which the employer appealed, pursuant to the Rhode Island Administrative Procedures Act, to the Superior Court. The Superior Court issued a decision, which affirmed in part and reversed in part, the decision of the SLRB. All parties petitioned for certiorari to the Rhode Island Supreme Court.

The argument which I presented on behalf of the Library was effectively a challenge to a 1973 policy statement of the SLRB which held that supervisors in public employment could be included in units for collective bargaining. It was my contention that this 1973 policy was contrary to the applicable statute, and that the statute should be interpreted consistent with the National Labor Relations Act.

The matter was fully briefed and argued before the Rhode Island Supreme Court. In its decision, the Supreme Court affirmed the arguments of the Library, excluded the part-time employees, and agreed that the legal standard applicable under the NLRA must be applied to the question of whether supervisors may be included in units for collective bargaining under the SLRA.

This opinion reversed 25 years of practice and precedent regarding whether public sector supervisors should be included in units for collective bargaining with the employees they supervise. It has become the seminal case in Rhode Island on this issue in public sector labor law.

Date of representation: 1994 – 1997

Court/Judge: Rhode Island Supreme Court: Chief Justice Weisberger, Justices Bourcier, Lederberg and Flanders; Rhode Island Superior Court: Judge Richard Israel; and Rhode Island State Labor Relations Board Case Number EF-3543

Principal opposing counsel: Ed Hogan (now deceased) and Margaret L. Hogan, 212 Main Street, Suite 4, Wakefield, Rhode Island 02879, (401) 782-4488 (for the State Labor Relations Board)

Marc B. Gursky, Gursky Law Associates, 18 Imperial Place, Suite 1D, Providence, Rhode Island 02903 (401) 454-7400 (for Teamster Local Union 64)

5. Linda Sullivan, Council President, et als. v. Lincoln D. Chafee, Rhode Island Supreme Court, 703 A.2d 748 (R.I. 1997)

Summary of case: This case was brought by the City Council of the City of Warwick against the Mayor of the City of Warwick, Lincoln Chafee, challenging the Mayor's authority to veto the City budget passed by the City Council and implement his own budget pursuant to his authority under the City Charter. The case was one of the first of its kind in Rhode Island, and the first to litigate the respective budgetary powers of the Mayor and the City Council under the Warwick City Charter.

In this case, the Mayor submitted a budget for the City's fiscal year to the City Council. The City Council passed a separate budget, which the Mayor vetoed. It was our position that under the City Charter, after the veto of the City

Council's budget the City Council could override the Mayor's veto; however, if they failed to do so, the Mayor's budget became law. The City Council, after failing to override the veto, challenged the conclusion that the Mayor's budget became law.

The case was presented to the Superior Court on a set of stipulated facts. The Superior Court held for the Mayor, and the matter was appealed to the State Supreme Court. After briefing and oral argument, the Supreme Court agreed with the City's interpretation of the City Charter and ruled in the Mayor's favor.

Date of representation: April – June 1997

Court/Judge: Rhode Island Supreme Court: Chief Justice Weisberger, Justices Lederberg, Bourcier, Flanders and Goldberg; Rhode Island Superior Court: Judge Michael Silverstein

Opposing counsel: John J. Harrington and Russell Bramley, Haronian, Paquin, Bramley & Harrington, 190 Commerce Drive, Warwick, Rhode Island 02886-2497, (401) 739-9330

6. City of Warwick v. Rocky Point Amusements Inc., Fairway Capital Corporation, C.R. Amusements, LLC and Moneta Capital Corporation; C.A. No. KC96-306

Summary of case: This was an action by the City of Warwick against the owners of Rocky Point Amusement Park, a closed amusement park located near the shore in Warwick, Rhode Island. Rocky Point has been closed for many years.

Over the last 10 years, ownership of the park changed hands on several occasions. In the late 1990s, the new owners had explored several possibilities for reopening the park and concluded that it was not feasible. They then decided to strip the park of its assets and sell them on the open market. At that time, the City was owed approximately $650,000 in back taxes.

Representing the City, I brought an action against the owners of Rocky Point to enjoin the removal of the assets of the park (in particular, the amusement rides), and for $650,000 in back taxes. The action was based upon a previous agreement by the owners to operate the park as an amusement park as part of their approved plan for reorganization under Chapter 11 in Federal Bankruptcy Court. The Superior Court converted the preliminary injunction hearing into a trial on the merits, and the case was tried over the course of one week. At the close of trial, the Judge issued a verdict in the City's favor, ordered the owners to pay the City $650,000, and enjoined the removal and sale of the amusement equipment until such payment was made.

Date of representation: April – May 1996

Court/Judge: Rhode Island Superior Court: Judge Michael Silverstein

Co-counsel: Edward Bertozzi, Edwards & Angell, LLP, 2800 Financial Plaza, Providence, Rhode Island 02903; (401) 274-9200

Kimberly A. O'Connell, General Counsel, Roger Williams Hospital, 825 Chalkstone Avenue, Providence, Rhode Island 02908, (401) 456-2498 (formerly an associate at Edwards & Angell, LLP)

Opposing counsel: Edward L. Gerstein, 29 Meeting House Lane, Little Compton, Rhode Island 02837, (401) 272-4548

7. Department of Corrections, State of Rhode Island v. Rhode Island Brotherhood of Correctional Officers, 707 A.2d 1229 (R.I. 1998)

Summary of case: This was one of several cases in which I represented the State of Rhode Island in an action to vacate an arbitration award. In this case, the arbitrator had ruled that the State violated the Collective Bargaining Agreement when the State attempted to prohibit four full time union officers from working on behalf of the union while being paid by the State.

We argued, among other things, that the arbitrator's ruling was contrary to specific provisions of the Rhode Island State Labor Relations Act, and inconsistent with the analogous Federal labor law known as the Taft-Hartley Act (part of the National Labor Relations Act).

The State moved to vacate the arbitrator's award in Superior Court and ultimately the case was litigated before the Rhode Island Supreme Court. This case involved extensive briefing and argument before the Supreme Court with the briefs totaling close to 200 pages.

The Supreme Court ruled in the State's favor, and vacated the arbitrator's award. This decision eliminated the prevailing practice of full time union officers being paid by the State while they performed work for the union. The cost savings realized by the State as a result of this decision were very significant, particularly when viewed over time. At least as important as the financial impact of the decision was the principle involved: the State should not pay union officials for full-time work done on behalf of their union.

Date of representation: 1997 – 1998

Court/Judge: Rhode Island Supreme Court: Chief Justice Weisberger, Justices Lederberg, Bourcier, Flanders and Goldberg); Rhode Island Superior Court: Judge Richard Israel.

Opposing counsel: Gerard P. Cobleigh, Cobleigh, Sprague & Giacobbe, 70 Jefferson Boulevard, Warwick, Rhode Island 02888-1049, (401) 941-5900.

John A. ("Terry") MacFadyen III, 91 Friendship Street, Providence, Rhode Island 02903-3819, (401) 521-4420.

8. Rhode Island Council 94, AFSCME, AFL-CIO v. State of Rhode Island

Summary of case: This is another case in which I represented the State in an effort to overturn or vacate an adverse arbitrator's award.

This case is somewhat different than the others in that it was still in arbitration when I was brought into the case in 1998. (It is still pending at this time.) The case came to me after the arbitrator had ruled on the merits of the case, but not on the remedy. The case had been tried by a lawyer in the Rhode Island State Office of Labor Relations who had failed to present an effective case for the state. After the State evaluated the impact of the arbitrator's ruling, it determined that the potential damage to the State was in the range of $25 million. State officials retained me to develop a strategy for challenging the arbitrator's award.

Rather than embarking on the usual strategy of moving to vacate the arbitrator's award in Superior Court, and litigating the case through the Rhode Island Supreme Court, I suggested that we attempt to reopen the arbitration hearing under the remedy phase of the case and attack the award through the presentation of evidence regarding the remedy. (The facts of this case are extremely complicated. The case relates to a state-wide layoff of employees in 1994 which resulted in a domino-like bumping throughout state government. The union essentially claimed that all overtime worked after the bumping was a violation of the Collective Bargaining Agreement, entitling union members to remedial pay. It was my view that the award was vulnerable, and this could be fully demonstrated if the case were effectively "re-litigated" in the remedy phase.)

On behalf of the State, I filed a motion with the arbitrator to reopen the case and ultimately sought reconsideration of the award. These motions were successful, and as a result the case has evolved into a state of deadlock.

The significance of the case is obvious in terms of its potential cost savings to the citizens of Rhode Island. Had a strategy not been devised to undo the damage done by the original arbitrator's award, that award could have cost the taxpayers $25 million or more. While the case is not completed, the strategy has

so substantially altered the playing field that the union has essentially stopped litigating the case.

Date of representation: 1998

Court/Judge: American Arbitration Association: Arbitrator Michael Ryan; AAA # 10 390 00166 94; Rhode Island Superior Court: Richard J. Israel.

Opposing counsel: Gerard P. Cobleigh, Cobleigh, Sprague & Giacobbe, 70 Jefferson Boulevard, Warwick, Rhode Island 02888-1049, (401) 941-5900

9. Rhode Island Council 94, AFSCME, AFL-CIO v. State of Rhode Island

Summary of case: In this case (and a companion case brought by a second union) a union representing state employees filed grievances arguing that certain pay raises were due to their bargaining unit of state employees as a result of the operation of a "parity" provision in the Collective Bargaining Agreement which tied wages to increases given to employees in comparable wage classifications in other unions.

The cases were litigated before two arbitrators in separate grievance arbitrations. Ultimately, all parties agreed to develop the factual record in one proceeding and adopt that record for the other. It was tried over eight days and presented to Arbitrator Mark Irvings, who issued a decision. A similar ruling was issued by Arbitrator Michael Ryan in the companion case. These rulings held in large part in the State's favor saving the State from a potential liability ranging in the millions of dollars.

Date of representation: 1995 – 1996

Court/Judge: American Arbitration Association: Arbitrator Mark Irvings and Arbitrator Michael C. Ryan

Opposing counsel: Gerard P. Cobleigh, Cobleigh, Sprague & Giacobbe, 70 Jefferson Boulevard, Warwick, Rhode Island 02888-1049, (401) 941-5900

10. Rhode Island Council 94, AFSCME, AFL-CIO v. State of Rhode Island, 714 A.2d 584 (1998)

Summary of case: In this case, I was retained by the Rhode Island Department of Administration to challenge an arbitrator's award which held that inmates of the state penal system were "employees" of the state when they performed menial work, such as highway cleanup and the like. I argued that the arbitrator's ruling

ignored 150 years of practice of using inmate labor to perform menial tasks, and violated important public policy favoring the use of inmate labor for rehabilitative and penal purposes. The effort to overturn the arbitrator's award was initially brought in Rhode Island Superior Court and argued before Judge Richard J. Israel. The state prevailed in this argument and the union appealed to the Rhode Island Supreme Court. After full briefing and oral argument, the Supreme Court sustained the lower Court's ruling and vacated the arbitrator's award.

Date of representation: 1996 - 1998

Court/Judge: Rhode Island Supreme Court: Chief Justice Weisberger, Justices Lederberg, Bourcier, Flanders and Goldberg; Rhode Island Superior Court, Judge Richard Israel

Opposing counsel: Gerard P. Cobleigh, Cobleigh, Sprague & Giacobbe, 70 Jefferson Boulevard, Warwick, Rhode Island 02888-1049, (401) 941-5900

20. **Criminal History**: State whether you have ever been convicted of a crime, within ten years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and disposition and describe the particulars of the offense

None.

21. **Party to Civil or Administrative Proceedings**: State whether you, or any business of which you are or were an officer, have ever been a party or otherwise involved as a party in any civil or administrative proceeding, within ten years of your nomination, that is reflected in a record available to the public. If so, please describe in detail the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings in which you were a guardian *ad litem*, stakeholder, or material witness.

None.

22. **Potential Conflict of Interest**: 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 only conflict of interest which I believe I have involves cases in which parties are represented by Edwards & Angell, LLP. It is my expectation that I would, for the period

of time, disqualify myself from any cases involving Edwards & Angell, LLP as attorneys for any party, as well as any cases involving the firm in any other way.

Matters involving my former clients (particularly major clients), even if not represented by Edwards & Angell, LLP, could present a conflict for a period of time. I would expect to recuse myself from such matters, consistent with the Code of Judicial Conduct and applicable precedents.

23. **Outside Commitments During Court Service**: Do you have any plans, commitments, or arrangements 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 on the Court. However, I am interested in possibly teaching, and have, in the past, taught on the adjunct faculty of two colleges here in Rhode Island. I would be interested in continuing to pursue my interest in teaching, although I have made no plans or arrangements to do so, and understand that I would be required to obtain the permission of the Chief Judge to do so.

24. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding the nomination, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500. 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

25. **Statement of Net Worth**: Complete and attach the financial net worth statement in detail. Add schedules as called for.

See Net Worth Statement

26. **Selection Process**: Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?

No.

(1) If so, did it recommend your nomination?

Not applicable.

(2) Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.

I participated in a selection process conducted by Senator Chafee, answering questions from him on various matters, including my background, experience and judicial philosophy, and my interest in the District Court position. After he recommended my nomination to the White House, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice. Thereafter, I interviewed with representatives of the Federal Bureau of Investigation and the Department of Justice Office of Legal Policy. My nomination was then sent to the Senate by the President.

(3) 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 or seeking a commitment as to how you would rule on such case, issue, or question? If so, please explain fully.

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	6,700.00	Notes payable to banks-secured	0.00
U.S. Government securities-add schedule	0.00	Notes payable to banks-secured	0.00
Listed securities-add schedule	0.00	Notes payable to relatives	0.00
Unlisted securities-add schedule	0.00	Notes payable to others	0.00
Accounts and notes receivable	0.00	Accounts and bills due	14,000.00
Due from relatives and friends	0.00	Unpaid income tax	0.00
Due from others	0.00	Other unpaid income and interest	0.00
Doubtful	0.00	Real estate mortgages payable-add schedule	267,000.00
Real estate owned-add schedule	370,000.00	Chattel mortgages and other liens payabl	0.00
Real estate mortgages receivable	0.00	Other debts-itemize:	
Autos and other personal property	35,000.00	401(k) Loan	11,200.00
Cash value-life insurance	5,000.00		
Other assets-itemize:			
E&A 401(k) Plan	200,000.00		
§ 529 Savings Accounts	8,000.00		
		Total liabilities	292,200.00
		Net Worth	332,500.00
Total Assets	624,700.00	Total liabilities and net worth	624,700.00

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		

**QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY,
UNITED STATES SENATE**

AFFIDAVIT

I, William E. Smith, being duly sworn, hereby state that I have read and signed the foregoing Questionnaire for Nominees Before the Committee on the Judiciary and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

SUBSCRIBED AND SWORN TO before me this 25th day of July, 2002.

Notary Public

JENNIFER A. FOURNIER, Notary Public
State of Rhode Island and Providence Plantations
...y Commission Expires 02-09-06

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
Smith, William E.	District of Rhode Island	07/19/2002
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 07/18/2002 Initial Annual Final	01/01/2001 to 06/30/2002
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.**	
Edwards & Angell, LLP 2800 Financial Plaza Providence, RI 02903	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
☐	NONE (No reportable positions.)	
1	Counsel	Edwards & Angell, LLP
2	Adjunct Faculty	Providence College
3	Staff Director	U.S. Senate (Senator Lincoln Chafee)

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

	DATE	PARTIES AND TERMS
☐	NONE (No reportable agreements.)	
1	01/18/01	Edwards & Angell 401(k) Retirement Plan (Plan of the law firm)
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)
☐	NONE (No reportable non-investment income.)		
1	12/31/01	Edwards & Angell, LLP	$148,200.00
2	06/30/02	Edwards & Angell, LLP	$94,791.58
3	2001	(Spouse) Metropolitan Life Insurance Company	
4	05/20/02	(Spouse) Metropolitan Life Insurance Company	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Smith, William B.	07/19/2002

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	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	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	American Express	Revolving Credit	J
2	Edwards & Angell 401(k) Loan	401(k) loan	J
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: Smith, William E. | Date of Report: 07/19/2002

(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions

A. Description of Assets (including trust assets) *Place "(X)" after each asset exempt from prior disclosure*	B. Income during reporting period (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (I-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (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 Edwards & Angell 401(k) Retirement Plan	A	Interest	M	T	Exempt				
2 - Fidelity Growth Op.									
3 - Galaxy Lg. Co. Index									
4 - Fidelity Advisor Equity Income									
5 - E&A Very Aggressive									
6 - Putnam Int'l Growth									
7 - Neuberger Berman Focus Trust									
8 - Putnam New Opportunities									
9 - AIM Fund									
10 - E&A Moderate Port.									
11 - IRT 500 Index									
12 - SSBA Money Market									
13 Fidelity 529									
14 - Fidelity "Unique" Plan	D	Interest	J	T	Exempt				
15 - Fidelity "Unique" Plan	D	Interest	J	T	Exempt				
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	Date of Report
	Smith, William E.	07/19/2002

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

Indicate part of report.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Smith, William E.	07/19/2002

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	Board Member	Rhode Island Community Food Bank

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Smith, William E.	07/19/2002

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 7/19/02

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

Chairman LEAHY. Thank you very much, and thanks for the comment about the Magistrate Judges. I know how Jerry Neidermeyer, who is a Magistrate Judge in Vermont, what a tremendous help he has been to us up there and the great respect there is for him, so thank you.

With that, we stand in recess.

[Whereupon, at 3:33 p.m., the committee was adjourned.]

[Submissions for the record follow.]

[Additional material is being retained in the Committee files.]

SUBMISSIONS FOR THE RECORD

Statement of Senator Maria Cantwell
Introducing Western District Nominee Ronald Leighton
October 7, 2002

Thank you very much, Mr. Chairman, for holding this unusual Monday hearing. I am particularly pleased that Ronald Leighton, a nominee to the District Court for the Western District of Washington in Tacoma is among today's nominees. Mr. Leighton's nomination has taken some time to reach this Committee as a result of negotiations between the White House and Senator Murray and myself. But I am pleased to say that as a result of those negotiations, the White House has committed to using a bipartisan selection commission for vacancies in Washington state.

I believe that Ron Leighton has the experience, the intelligence, and the temperament necessary to be a good federal judge. I can attest to his calm, deliberate, nature and his patience through this process. I have received many endorsements of his nomination from his peers including many from attorneys who have appeared opposite him, all of whom praise his competence, his collegial manner, and his commitment to the law. He has also received a well qualified rating from a majority of the American Bar Association, a very high rating based on an extensive peer review process.

Mr. Leighton is a principal in the firm of Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim, one of the top law firms in our state. He specializes in general litigation and his broad experience includes the law of business, personal injury, products liability, professional negligence, employment, aviation, environment, and intellectual property. He has represented both plaintiffs and defendants, trying more than sixty cases in federal and state court, most to juries-- a tremendous record of trial experience.

Just as he is committed to the law, Mr. Leighton is also committed to his community. In the 1980's, he served as chairman of his church's Refugee Resettlement Committee and helped to bring three Cambodian families from refugee camps in Thailand. And, one family member is now employed at Mr. Leighton's firm. Mr. Leighton also devotes significant time to an organization that mentors and provides financial support to college bound minority students.

Ron Leighton demonstrates the broad range of legal experience, knowledge, and competence necessary to serve as an effective judge on the federal bench. He is respected by his peers for his professionalism and integrity. He will be a welcome addition to the federal bench in my state, and I urge the committee to confirm him.

JON S. CORZINE
NEW JERSEY

COMMITTEES:
BANKING, HOUSING, AND URBAN AFFAIRS
ENVIRONMENT AND PUBLIC WORKS
JOINT ECONOMIC
BUDGET

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11TH FLOOR
NEWARK, NJ 07102
(973) 645–3030

208 WHITE HORSE PIKE
SUITE 18–19
BARRINGTON, NJ 08007
(856) 757–5353

STATEMENT OF SENATOR JON S. CORZINE
IN SUPPORT OF ROBERT KUGLER AND JOSE LINARES
NOMINEES FOR U.S. DISTRICT COURT, DISTRICT OF NEW JERSEY

October 7, 2002

Mr. Chairman and members of the committee, it is my pleasure to offer my strong support for Robert Kugler and Jose Linares, nominees for the U.S. District Court for the District of New Jersey. I know that Senator Torricelli also joins me in offering support for their nominations.

Let me begin by saying that I am very proud to support these two nominees who currently serve as judges in New Jersey. They are distinguished jurists and truly represent the best that New Jersey's legal community has to offer.

Bob Kugler is a life long New Jerseyan who has had a distinguished legal career that has prepared him well to serve on the District Court. He has served as a Magistrate Judge in Camden for ten years, where he is well respected in the legal community for his legal acumen, his fairness, and his judicial temperament.

Prior to becoming a Magistrate, Bob Kugler worked in a diverse private practice, gaining exposure to both civil and criminal litigation. He also served as a Deputy Attorney General in New Jersey and before that as a Camden County Assistant Prosecutor. It should be no surprise that Bob Kugler has dedicated the majority of his legal career to public service; in fact, he hails from a family that is committed to public service – his father served as New Jersey's Attorney General.

Jose Linares also brings a wealth of experience that will make him an excellent addition to the federal bench in New Jersey. For the last several years he has served as an Essex County Superior Court Judge, and has developed a reputation as a fair and hardworking judge with good judgment and strong legal skills. Prior to serving on the bench, he operated in private practice for twenty years, handling a variety of civil matters and litigating numerous cases.

I also want to note that Judge Linares is a first-generation American, born in Cuba, a fact which I know has contributed to his strong character and sense of fairness. He has been a leader in New Jersey's growing Hispanic community, serving as President of the New Jersey Hispanic Bar Association and working with various civic groups. In addition, in his twenty years of private practice, Jose Linares has represented many clients of Hispanic origin and handled a significant *pro bono* caseload.

Mr. Chairman, I want to note for the record that I am particularly pleased that Judges Kugler and Linares are part of an extremely distinguished group of nominees for the U.S. District Court in New Jersey.

As I have mentioned previously in testimony before this Committee, New Jersey currently has an unprecedented five openings on the Court. Senator Torricelli and I have worked cooperatively with the White House to arrive at a group of five nominees who are each distinguished in their own right. Together they represent the best of New Jersey's legal community as well as a tremendous diversity of experiences and backgrounds that reflect our great State.

I am pleased that after today, the committee will have heard from all of these distinguished nominees, and I am hopeful that their nominations can be approved and sent to the floor for full Senate consideration shortly.

Finally, in closing, Mr. Chairman, I know it will be clear to the Committee that Judges Kugler and Linares are extremely able and respected lawyers. We will be fortunate to have their skills and background on the federal bench in New Jersey. I am pleased to support their nominations and thank you for your consideration.

Senator Dianne Feinstein

Statement of Introduction for Judge Gary Klausner
Judicial Nominations Hearing
October 7, 2002

I am pleased to introduce Judge Gary Klausner to the Committee. Judge Klausner is a nominee for the Central District of California.

Judge Klausner's wife Linda has joined him at today's hearing. He is also the proud father of five children, who, unfortunately, could not make it here on such short notice.

Judge Klausner is the **fifth candidate** to come before the Committee from California's bipartisan screening process, which Senator Boxer and I have set up with the White House.

He received a unanimous **6-0 vote** from our screening committee in California, which found him "exceptionally well qualified."

Judge Klausner currently holds the position of Supervising Judge of the Civil Department of the Los Angeles Superior Court. The position was created on January 1st, 2001, and he is the first judicial officer ever selected for the position. His duties include supervising the courts in the Central Courthouse and setting countywide policy for civil case management.

With 28 years of judicial experience, Judge Klausner is unquestionably prepared for a District Court seat.

- Since 1985, Judge Klausner has served as a Superior Court judge in Los Angeles,

- From 1980 to 1985, he presided as a municipal court judge in Pasadena,

- And from 1974 to 1980, Judge Klausner was a municipal court commissioner in Pasadena.

Prior to his service on the bench, Judge Klausner was a Los Angeles Deputy District Atorney from 1969-1974. He is a graduate of the University of Notre Dame and Loyal Law School.

He also spent several years as a lieutenant in the United States Armed Forces and received a bronze star for his meritorious service.

Judge Klausner counts among his enthusiastic supporters, Steve Cooley, the District Attorney of Los Angeles County.

According to the District Attorney, Judge Klausner *"... has earned the respect and praise of law enforcement, prosecutors, civil lawyers, the defense bar and his colleagues. He has the consummate judicial temperament couple with experience, intelligence, dedication, and fair-minded decisiveness."*

Community Service:

Judge Klausner is a leading advocate of judicial training. He currently Chairs the Probate Committee of the California Center for Judicial Education and Research. He has served on the Judicial Orientation and Education Committee of the Los Angeles Superior Court, and currently conducts training courses for calendar judges.

I would also note the active contributions of Judge Klausner to a variety of Los Angeles community organizations including the Los Angeles Catholic Social Services, the St. Bede Parish Advisory Committee, and the YMCA.

With the nomination of Judge Klausner, the Committee has an opportunity to appoint a highly respected and thoroughly experienced jurist to the Federal bench.

I urge the Committee to support his nomination.

ROBERT G. TORRICELLI
NEW JERSEY

COMMITTEES:

GOVERNMENTAL AFFAIRS

RULES AND ADMINISTRATION

FOREIGN RELATIONS

FINANCE

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(856) 933–2245
http://torricelli.senate.gov/
Senator_Torricelli@Torricelli.Senate.Gov

STATEMENT OF SENATOR ROBERT TORRICELLI
on the NOMINATIONS of JOSE LINARES and ROBERT KUGLER
FOR the U.S. DISTRICT COURT, DISTRICT OF NEW JERSEY
October 7, 2002

Thank you, Mr. Chairman and members of the Committee, for holding this hearing to consider the nominations of Robert Kugler and Jose Linares for the United States District Court in New Jersey. I am certain that after reviewing the qualifications of each of these fine individuals and after hearing from them today, you will be as confidant as I am that each will be a valuable addition to New Jersey's Court.

George Washington once said, "The Administration of Justice is the firmest pillar of government." Those words are never far from my mind when I review the qualifications of a judicial nominee because long after we all leave the Senate, those who sit on the Judiciary will continue to impact public policy and the lives of other Americans. I am confidant that both Jose Linares and Bob Kugler are well-suited to such great responsibility.

A graduate of Syracuse University and Rutgers-Camden Law School, Robert Kugler began his career as a clerk for the Honorable John Gerry, a district court judge sitting in Camden, New Jersey. He served as a Camden County Prosecutor and then as a Deputy Attorney General in New Jersey, before spending ten years in private practice specializing in both civil and criminal litigation. In 1982, Bob Kugler was appointed to the Magistrate Court in New Jersey where he has served with distinction to this day. It is clear that his career has been distinguished by a solid record of public service. He has consistently demonstrated that he is an accomplished attorney who has made a commitment to improving the quality of justice in our society.

Jose Linares currently serves as a Superior Court Judge in Essex County, New Jersey. He is a graduate of Jersey City State University and Temple Law School. After law school, he worked in the New York City Department of Investigations as a Supervising Attorney before moving into private practice where for 20 years he specialized in medical malpractice, products liability and personal injury litigation. Then, in December 2000, Jose Linares was appointed by then-Governor Whitman to the New Jersey Superior Court where he still sits. He is widely respected by his colleagues and throughout the legal community for both his intellect and demeanor. When you speak with those who have had the opportunity to work with Jose Linares throughout his career, they universally praise his character and commitment to the law.

That being said, I want to thank you again, Mr. Chairman, for holding this hearing and the hearings for New Jersey's other three district court nominees. All five of the individuals nominated for these seats are distinguished in their own right and together they represent the best of New Jersey's legal community as well as the geographic and gender diversity of the State. Thank you.

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