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NOMINATIONS OF HON. LINDA M. SPRINGER, HON. LAURA A. CORDERO, AND HON. NOEL ANKETELL KRAMER

HEARING

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

ON THE

NOMINATIONS OF HON. LINDA M. SPRINGER, TO BE DIRECTOR, U.S. OFFICE OF PERSONNEL MANAGEMENT; HON. LAURA A. CORDERO, TO BE ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA; AND HON. NOEL ANKETELL KRAMER, TO BE ASSOCIATE JUDGE, DISTRICT OF COLUMBIA COURT OF APPEALS

JUNE 15, 2005

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NOMINATIONS OF HON. LINDA M. SPRINGER, HON. LAURA A. CORDERO, AND HON. NOEL ANKETELL KRAMER

WEDNESDAY, JUNE 15, 2005

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:36 p.m., in room SD–562, Dirksen Senate Office Building, Hon. George V. Voinovich, presiding.

Present: Senators Voinovich, Carper, and Pryor.

OPENING STATEMENT OF SENATOR VOINOVICH

Senator VOINOVICH. This hearing will come to order. Good afternoon and welcome. It looks like there are lots of family and friends here today for Ms. Springer and for our two judges.

Today the Committee on Homeland Security and Governmental Affairs meets to consider three pending nominations, the nomination of Linda Springer for the Director of the Office of Personnel Management, the nomination of Judge Noel Kramer to be an Associate Judge of the District of Columbia Court of Appeals, and the nomination of Laura Cordero to be an Associate Judge for the Superior Court of the District of Columbia. I thank all of you for being here today. We are going to begin by considering the nomination of Linda Springer.

Ms. Springer, as you know, I am committed to the needs and challenges of the Federal workforce and have devoted significant time to it since being elected to the Senate in 1999. Clearly there is no more important position in the Executive Branch of Government than the Director of the Office of Personnel Management to address these issues.

The Federal Civil Service now is undergoing significant reforms, the most significant since 1978. For example, agencies are implementing new performance management and pay-for-performance systems for the Senior Executive Service, and the Department of Homeland Security and Department of Defense are designing new personnel systems to meet their national security missions.

In addition to having a vital role in ensuring the success of these reforms, OPM has an important operational responsibility to Federal departments and agencies as well. I know that when I was governor of Ohio, the Department of Administrative Services served all executive agencies. The Department has a large respon-

sibility, and if things did not work in Administrative Services, things did not work in the departments.

OPM continues to implement the human resources line of business which will establish shared service centers to delivering a broad array of office personnel services to multiple agencies. The Office of Management and Budget estimates that this will produce a savings of 1.1 billion over the next 10 years, while improving efficiency and effectiveness of human resource transactions and administration.

In addition, OPM is taking over the responsibility for conducting the majority of security clearance background investigations for the government, for which there is a significant backlog. This is a vital national security mission that must be executed better. I assure you I will continue to monitor OPM's performance of this responsibility.

Ms. Springer, if confirmed as Director it would be your responsibility to oversee and successfully implement all of these reforms, and as I say, it is no small task.

I understand that Senator Pryor will be here in a few minutes, and he may have an opening statement. Senator Akaka is attending the funeral of Senator Exon, so he will not be here.

Ms. Springer, you have filed responses to a biographical and financial questionnaire.[1] You have answered pre-hearing questions[2] submitted by the Committee and you have had your financial statements reviewed by the Office of Government Ethics. Without objection, this information will be part of the hearing record, with the exception of the financial data, which are on file and available for public inspection in the Committee offices.

Our Committee rules require that all witnesses at nomination hearings give their testimony under oath, and therefore, Ms. Springer, I ask you to please stand and rise.

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

Ms. SPRINGER. I do.

Senator VOINOVICH. I understand that you have some family members here today, and I would like to give you an opportunity to introduce them. Please make any opening remarks at this time.

Ms. SPRINGER. Thank you, Mr. Chairman. I do have five members of the family here today that I'd like to introduce. First in the front row is my mother, Marie Springer from Pennsylvania. And, in the second row behind her, my Uncle Frank Caskirella, Aunt Marian Caskirella, and cousin Susan Young with her husband, Andy Young, also all from Pennsylvania.

Senator VOINOVICH. Pennsylvania is well represented here today. Thank you for coming. This is a very special occasion and I want to thank the Springer family for the sacrifice that they have to make so that Linda can serve her country. I know she had some other ideas for her future but received the call to service from the President. We are so happy that she was willing to respond to that call.

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[1] The biographical information appears in the Appendix on page 36.
[2] The responses to pre-hearing questions appears in the Appendix on page 44.

I will now begin with the standard questions this Committee asks all nominees. First of all, is there anything that you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Ms. SPRINGER. No, there is not.

Senator VOINOVICH. Do you know of anything otherwise that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Ms. SPRINGER. No.

Senator VOINOVICH. And last, do you agree without reservation to respond to any reasonable summons to appear and testify by any duly constituted Committee of Congress if you are confirmed?

Ms. SPRINGER. I do.

Senator VOINOVICH. I just want to remind you, that this is important to us. Some of the Members of Congress are a little bit frustrated because so often they do not think that they received appropriate responses. I think it is good that if the Committee wants you to come up—and I can assure you that it is not going to be often—that you try to accommodate us with those requests.

Ms. SPRINGER. I will do that.

Senator VOINOVICH. Great. I am interested in having your opening statement. Do you have anything you would like to share with us before I start asking questions?

TESTIMONY OF THE HON. LINDA M. SPRINGER,[1] TO BE DIRECTOR, U.S. OFFICE OF PERSONNEL MANAGEMENT

Ms. SPRINGER. Thank you, Mr. Chairman. I do have an opening statement, and in its entirety I would like it to be submitted for the record, and I will summarize it.

I am pleased to be before this Committee again, as I have been in the past, as you consider my nomination to be the next Director of the Office of Personnel Management. I want to express my gratitude to you, Mr. Chairman, as well as to Senator Collins and Senator Akaka for arranging for this hearing today, and we have obviously been looking forward to it.

I also want to acknowledge the courtesies of the other Members and their staffs in allowing me to come up and visit with many of them in advance of the hearing.

It is truly an honor for me to be nominated for this position by President Bush, and it's a particular honor to have the opportunity to be considered to lead the Office of Personnel Management.

Mr. Chairman, there are currently 1.8 million members of the Civil Service. On occasion these dedicated professionals are called resources or capital or assets, but I see them as professionals who are engaged in activities that are going to shape our world for years and decades to come. They are people, not entries on a balance sheet, and in that regard, we have a responsibility to make sure that they're able to perform their duties, perform them successfully, and to be compensated relative to the performance of those duties.

[1] The prepared statement of Ms. Springer appears in the Appendix on page 33.

With the passage of reforms in the Department of Homeland Security and the Department of Defense, as well as the Federal Workforce Flexibility Act of 2004, we have set a path for creating, what I consider to be, a work environment that will really and truly reward, as well as recruit and retain, top quality performers.

During my meetings with Members of the Committee, I have been asked some very important questions about personnel management reforms. Today I want to say to you and to the men and women of the Civil Service, just as importantly, that I am deeply aware of the concern about reform, and I pledge to all of you that OPM, should I be its next director, will be committed to a fair and effective implementation of any personnel reform that we undertake.

I'd like to share with you four principles on which I think reform should be based. The first is that core values and principles and protections that have served employees over the years must be preserved. Second, an effective personnel system should support employees by helping them to realize their full potential and providing the highest level of service to their constituents. Third, an employee's career and pay potential shouldn't be determined by the passage of time, but should be recognized and evaluated based on achievement. And fourth, managers should be given the training and tools to allow them to effectively carry out their responsibilities.

All four of those are principles that I've followed in the past, both in the private and in the public sectors, and I'd be guided by them as OPM Director.

Now, to call these reforms modern is really misleading. They're not new. They've been in practice for decades and decades in the private sector. While they're new to many of us in the Federal Government, they're not new territory, an untraveled territory. Performance as a basis for pay has been used, as I've said, for decades. I personally have been paid on that basis, managed on that basis, and designed programs on that basis throughout my professional life, and I think that's an important consideration in why I would be able to help lead us in that effort.

These systems, I have found, result in mutual support and reinforcement within organizations, and have really led to higher and higher levels of success in carrying out the missions of organizations who really are performance driven. And, employees and managers outside of government, as I say, have done it for years, and I don't believe that the members of the Civil Service are any less capable of carrying out and working in that kind of system, given the proper training. It always comes back to training. It's very important.

Beyond that, I'm very impressed with the dimensions of service provided by OPM. OPM is involved from the front end with things like investigative services, as you've mentioned, in a much broader role, all the way through to retirement services at the latter stages. OPM associates support the Federal Government workers throughout their career and beyond, and not only the workers themselves, but their extended families. In our Federal Employees Health Benefits (FEHB) program we are covering about 8 million people, and that's extended past, present, and families of our employees, so it's

a very large undertaking and a very large responsibility that OPM has.

And as you know, in that regard, I've spent many years in the financial and insurance and annuity sector, and I'm knowledgeable regarding all of those opportunities and needs for financial security across the entire life cycle of individuals and their families. I think that's a background that will be increasingly important and will be helpful to me in carrying out these duties should I be confirmed as the next OPM Director.

I want to recognize and thank you, Mr. Chairman, and acknowledge your leadership and Senator Akaka's in establishing the Chief Human Capital Officers Council and passing that Act. There is very important work done there. I know many of the members, and I look forward to working with them should I be confirmed.

Last, Mr. Chairman, I want to close with a commitment to you, the other Members of this Committee, and to all of the Members of the Congress, that I will continue to look forward to a constructive and a positive relationship with all of the Members as I have worked very hard to maintain in the past. And, I will give you my assurance of open communication and of a very constructive and open and positive, and hopefully, a productive period between OPM and the work of this Committee for the benefit of the Civil Service members and the American citizens.

And with that, I look forward to your questions.

Senator VOINOVICH. Thank you very much.

Senator Pryor, thank you for pinch hitting for Senator Akaka. We really appreciate your presence here today.

Senator PRYOR. Thank you.

Senator VOINOVICH. Before we begin questions of Ms. Springer, I would like to give you the opportunity to make a statement.

OPENING STATEMENT OF SENATOR PRYOR

Senator PRYOR. Thank you, Mr. Chairman. Let me just say a few words, that Senator Akaka could not be here today, and he regrets that he could not. I know I am a poor substitute, but I look forward to this hearing and look forward to hearing everything that you have to say today.

Mr. Chairman, thank you for your leadership on not just this nomination, but many issues relating to OPM and personnel issues throughout the Federal Government.

Ms. Springer, I know that you share our commitment to really making the Federal Government an employer of choice, and one that people would see as a very good option for them personally and a good place to work, and a good career field. I know you have some challenges there at OPM with impending retirements. I have seen your OPM staff, and I know you have some succession planning in process there, and that is important. Also I know you have the challenge of modernizing OPM recordkeeping systems, and that is a challenge from time to time for every organization, so I know you are up to that.

I think OPM needs strong and decisive leadership, and I believe that you have those qualifications. I am sorry that Senators Collins, Akaka, Levin, and Lautenberg could not be here today because I know they want to be here, but they have been called away.

I would ask unanimous consent that their statements and questions be submitted in the record if that is OK, Mr. Chairman.

Senator VOINOVICH. Without objection. Thank you.

[The prepared statements of Senator Collins, Senator Akaka, Senator Levin, and Senator Lautenberg follows:]

PREPARED STATEMENT OF SENATOR COLLINS

Senator Voinovich, I appreciate your willingness to chair today's hearing as the Committee considers the nomination of Linda Springer to be Director of the Office of Personnel Management. This position is vitally important given the challenges facing the Federal civil service.

As Director, Ms. Springer would help ensure that the personnel systems proposed for the Departments of Homeland Security and Defense are the products of a collaborative process that fully involves employees and employee unions, as Congress intended. As with any reform, employee acceptance will be essential to its success.

When this Committee assumed its new name earlier this year, we took on a new role. Now, in addition to overseeing the Federal Government, we have the responsibility of helping to protect our homeland. In homeland security parlance, we talk about protecting critical infrastructure. Well, there is no infrastructure more critical to the functioning of our government than our Federal workforce. Given the vital importance of the many missions the government carries out on behalf of the nation, the OPM Director must ensure our government has the ability to recruit and retain a highly skilled workforce for many years to come. The nominee appears to have the executive management and leadership skills necessary to meet the challenges that lie ahead.

Ms. Springer has already demonstrated her commitment to public service, having recently served our nation as Controller of the Office of Management and Budget and the Director of the Office of Federal Financial Management. Welcome back to the Committee, Ms. Springer. I look forward to your testimony.

PREPARED STATEMENT OF SENATOR LEVIN

Ms. Springer, welcome to the Committee. If you are confirmed, you will take over the Office of Personnel Management at a critical time. As you know, the Department of Defense is currently in the process of implementing a new National Security Personnel System. The statute that authorized the establishment of NSPS made OPM a full partner with DOD in the implementation of this new system, so you will have a critical role to play in this process.

In my view, the proposed NSPS is unlikely to be successful unless it has the broad support of the DOD employees who must live with it. Right now, DOD appears to be losing that battle. The draft regulations proposed to implement NSPS include a number of provisions which appear to send the message to DOD employees that the leadership of the Department of Defense doesn't trust them and isn't interested in ensuring that they are treated with the fairness and equity that they deserve. The "meet and confer" process under which DOD is supposed to consult with employee representatives, appears to have been almost dysfunctional, with five or six major DOD unions walking out last month.

Ms. Springer, I hope that, if confirmed, you will make sure that you are a full partner in the implementation of NSPS and will not be afraid to take whatever steps are necessary to ensure that the new personnel system is implemented in a way that is fair and balanced, and respects the legitimate interests of DOD employees.

PREPARED STATEMENT OF SENATOR AKAKA

Thank you, Senator Voinovich. I want to join you in welcoming our nominees along with their family and friends to the Committee today.

I also wish to thank Delegate Norton for taking the time to introduce Judge Noel Kramer to be an Associate Judge on the D.C. Court of Appeals and Laura Cordero to be an Associate Judge on the D.C. Superior Court. Both Judge Kramer and Ms. Cordero have impressive resumes and are exceptionally qualified to serve in the positions for which they have been nominated. I look forward to their testimony and learning their thoughts on the D.C. Court system.

Ms. Springer, as Chairman Voinovich has noted, you have capably served this Administration as Comptroller of the Office of Management and Budget, and I know

from our recent meeting that you are looking forward to taking on the new responsibility of the President's Chief Human Capital Officer. I commend your commitment to public service.

Your nomination comes at a critical juncture for the Office of Personnel management (OPM) and the Federal workforce. If confirmed, you will play a pivotal role in advancing the Administration's proposal to extend to all agencies a variation of the new personnel regulations for the Departments of Defense (DOD) and Homeland Security (DHS).

As you know from our meeting in April, I believe it is premature to give agencies the authority to modify the current personnel system based on the untested rules in place at DHS and DOD. One reason I feel so strongly about this is that Senator Voinovich and I have successfully moved forward a number of significant workforce flexibilities which, unfortunately, are under utilized according to congressional testimony and numerous reports by the Government Accountability Office (GAO).

Moreover, too many agencies, including the Department of Defense, lack strategic human capital plans that identify the skills and talents needed to meet future missions. Agencies must make a business case when seeking new flexibilities and should have a proposed plan of action to address their personnel needs, such as skill gaps, in order to be successful. But using DOD once again as an example, there is no single document identifying DOD's recruitment and retention strategy or goals for its current and future workforce. Without such documented needs and a plan of action, I believe the National Security Personnel System is headed for failure.

Given employee reaction to the DHS and DOD regulations, I fear the Administration is going down a road that diminishes employee input into the implementation of these new systems and fails to ensure employee rights and protections. And yet, the Administration argues that once the new personnel systems at DHS and DOD are fully implemented, non-DOD and DHS workers will want to transfer to those two agencies because of the perception that they will receive greater pay increases. I do not think that will happen.

Agencies will continue to face flattened or diminished budgets and DHS and DOD employees will no longer have true collective bargaining rights or independent review of grievances. Thus, I fail to see how there will be adequate resources to properly train managers and employees on new disciplinary, labor-management, appeals, and pay-for-performance systems, let alone guarantee sufficient funds for performance bonuses or pay increases. The lack of funding for training deeply concerns me. Congress has been warned that without strong training, there are no guarantees that employees will have fair and transparent appraisal systems that provide for meaningful distinctions in performance—the most critical component of performance based pay.

Ms. Springer, the stewardship of the Federal workforce will be your responsibility. Employees will look toward OPM to safeguard their rights and their paychecks from unfair and discriminatory performance evaluations. Although you and I respectfully disagree over the need to pursue wholesale, government-wide personnel changes at this time, I believe you are sincere in your desire to work with Congress and with employees.

Ms. Springer, Judge Kramer, and Ms. Cordero, again I welcome and congratulate each of you on your nomination. Thank you, Mr. Chairman.

PREPARED STATEMENT OF SENATOR FRANK LAUTENBERG

Mr. Chairman, thank you for the opportunity to comment on the important role Ms. Springer has been nominated to serve in our government: Director of the Office of Personnel Management (OPM).

First, let me congratulate this New Jersey native on her nomination.

I had the pleasure of meeting with Ms. Springer after her nomination, and she was willing to discuss her views on Administration policy and the future of the Federal workforce, and I appreciated that.

OPM is essentially the "human resources" department for the Federal Government, and there has perhaps never been a more important time in our nation's Federal workforce from the perspective of labor and Federal employees.

I must admit, I have been terribly distressed by this Administration's willingness to erode collective bargaining rights in its path to a new "pay-for-performance" system, and to diminish the ability to appeal personnel decisions.

I simply do not understand this Administration's efforts to weaken the rights of rank-and-file employees.

I am especially disturbed that we have chosen to invite cronyism and political bias into the employment decisions of senior government managers and appointees.

The General Schedule system has served our country and its Federal workforce well.

I do hope Ms. Springer will take a fresh look at these changes and work with our Federal employees to strengthen our workforce without walking all over them.

I hope that Ms. Springer's impressive experience in both the private and public sectors will permit her to decide objectively which models from the private sectors are suitable in the public sectors, and which are not.

I also wish to congratulate Laura Cordero and Noel Kramer on their judicial nominations to the Superior Court of the District of Columbia and the District of Columbia Court of Appeals, respectively. I look forward to their testimony as well.

Thank you.

Senator VOINOVICH. Ms. Springer, I had a wonderful opportunity to visit with you in my office and got to ask the ABC questions of why do you think you are qualified for this job. So I am not going to repeat some of those. But I do have other questions I would like you to answer for the record.

When the Department of Homeland Security was created, Senator Akaka and I added language to provide for enhanced human capital flexibilities for the Federal Government. We had been working on this legislation for years and we thought they would not only help the Department of Homeland Security, but all Federal departments. For example, agencies can now use category ranking to hire employees instead of the outdated rule of three. However, at a Subcommittee hearing I held on the 21st of April this year, GAO said agency usage of these flexibilities varies at best.

Given this information, what strategies will you employ to ensure that the Federal agencies understand and utilize all of the government wide human capital flexibilities that we have made available to them?

Ms. SPRINGER. One of the things that is important, first of all, with those flexibilities is not only that they're using them, but also they're using them wisely, using them in ways that they're tied to the missions of the agencies, that they're not using them frivolously. There is only a certain amount of money to go around, and it's got to be dedicated to using things like direct hire and other types of flexibilities and incentives in a way that will provide the best return and support the mission.

What I would like to do first in that regard is to work with the Chief Human Capital Officers because in that group, you have the representation of all of the agencies and departments, and to make sure that they first of all are able to be my arms and eyes and legs back to the agency in a very direct way, to know that we've got a full accounting for how they're using them or not using them.

I agree with you that it's disappointing to hear that they're not using them to their fullest extent because I believe in them, and I believe they'd be very valuable. So my first line of attack there, if you will, would be to work with the Chief Human Capital Officers to get a full accounting.

Senator VOINOVICH. As you know, I believe that an open and continual dialogue between employees and management is imperative. This practice becomes even more important as the workforce is in transition as it is now. This is a critical time. Everyone just takes for granted that 160,000 employees of the Department of Homeland Security are coming together. It is the biggest management challenge that this government has had since creating the Department of Defense. So much of the success, not only in the Department of

Homeland Security, but particularly the Defense Department, depends upon the kind of relationships that are created between management and those people that represent the employees.

How would you establish a relationship with representatives of Federal employee organizations, and could you be specific as to what kind of consultation, negotiation, collaboration, and information sharing you see as appropriate and beneficial to OPM's vision?

Ms. SPRINGER. Well, as an indication of the type of openness of communication I'd like to have, one of the things I would share with you, Mr. Chairman, is that the very first two people that I called after my nomination was made public were Colleen Kelly, who, as you know, is the head of the NTEU, and John Gage, who is the head of the other very large group, the AFGE. And, I called both of them before I called anyone else to offer to them that I would like to have a very open relationship with them, and as soon as I was confirmed, hopefully, as Director, that they would be my first two calls again, and that I would like to meet with them.

And really, there are three principles I would like to follow. One is that of open communication, having a very strong line of communication between the union leadership and the Director of OPM so that there's no misunderstanding. We shouldn't be having to communicate through the media. There should be very direct and open communication.

Second, a principle that I would follow in that relationship is to be personally involved and not delegate, necessarily. I've always been very hands-on, and I think it's important in these issues where you're talking about matters that are key to the men and women of government. They're people, as I say, not entries on a balance sheet, not assets—these are people issues, particularly things like their pay and their benefits, so I want to be personally involved.

I think that they will find I am, and I will be committed to being, a very straight shooter. I am not going to be playing games, and I will be very direct and very candid and very open. They'll be able to take me at my word.

Then third is that those communications and relationships will be characterized by having a very strong interest in what's best for the men and women of the Federal Government. And, I think that it would be naive to think that we're going to agree on everything. We have different perspectives, but I think that those three principles will carry us very far, and that would be my approach, to always maintain that type of a standard.

Senator VOINOVICH. Thank you. Senator Pryor.

Senator PRYOR. Thank you, Mr. Chairman.

I know that as part of the new Department of Homeland Security personnel regulations, the responsibility for deciding collective bargaining disputes will lie with a three-member internal DHS Labor Relations Board. Currently throughout the Federal Government those type of disputes are decided by the Federal Labor Relations Authority, as you well know. Do you believe that this internal labor relations board at DHS meets the statutory mandate of the Homeland Security Act that DHS employees may, "organize, bargain collectively and participate through labor organizations of their own

choosing in decisions which affect them?" Do you think it meets the statutory requirement?

Ms. SPRINGER. I do, Senator. I do believe that one must consider not just the board which, as you say, is responsible in that manner, but certainly the opportunity for input and recommendations for members. But I believe that it is the totality of the interaction, whether it's through things like the meet and confer that already took place with DHS in the early stage, that ensures all of the representation elements of the bill are satisfied in the way that DHS has been carrying things out.

Senator PRYOR. Sticking with DHS just for another moment or two, the personnel regulations there at DHS say that many personnel decisions, for example, pay, will now be based on more arbitrary, I might say arbitrary factors under the control of, say, local port supervisors and port directors. My sense is that system will take much more training and administrative time. And how will those administrative costs, the additional administrative costs for a system like that be paid for?

Ms. SPRINGER. Well, you're absolutely right that training is really the keystone for making sure that this is successful, and it's training at a variety of levels, manager training in particular being very important.

Senator PRYOR. And do you have the resources to do that training at DHS? I guess my concern is it might take away from their primary mission.

Ms. SPRINGER. Well, one of the things that was—and I want to thank and congratulate the Chairman—was that there was a challenge. It's my understanding, too, some of the funding that was in the proposal for the 2006 budget, in the amount of $50 million, I believe, directly related, very specifically related, for training for DHS in this regard. And, thanks to his efforts and some others, that is, I believe, going to see the light of day, and it should, because as you say, calling for new training, calling for new systems, but not funding it really would undermine that effort.

Senator PRYOR. Right. If we can stick with our DHS theme here this afternoon, let me also say that DHS employees pay is shifting from a GS scale pay system to a pay-for-performance system under the new DHS personnel regulations. I am curious about that in the sense that are you aware of any large-scale pay-for-performance system that has been successfully implemented in a law enforcement environment?

The reason I ask that is because law enforcement oftentimes in most cases relies on a lot of teamwork, and I can almost see trouble brewing if the members of the team are really competing against one another for pay. I just have a concern about that.

Ms. SPRINGER. To answer your question very specifically, I have not been a part of any implementation for a law enforcement organization. My background didn't really intersect with any law enforcement organization, so I can't say that I have any intimate knowledge of any.

What I do have knowledge though, and have participated in pay-for-performance implementations where there was a teamwork structure in place, and where the success of one individual really was dependent on others. It was almost like an interlock between

members of the team. No one individual could be successful and receive the compensation reward that would go with that success if the other teammates weren't equally successful. And as a matter of fact, I was paid that way. And, there were individuals in the organization where I was responsible for a line of business, and I was paid based on the sales of that organization or the investment return of the portfolio manager, and none of those people reported to me.

I had no control over them. But half of my pay was determined by things like that, so it was really, ultimately up to me to visit with them, to make sure they had everything they needed to be successful. And, all of us had the same goals even though we were only responsible for pieces.

So, at the end of the day, it can work in a teamwork environment, but it really requires that you function as a team, and so, although I haven't seen it in law enforcement, I've seen it used successfully in other teams.

Senator PRYOR. Thank you.

Senator VOINOVICH. Ms. Springer, I first of all would like to welcome Senator Carper. Senator, would you like to say a few words before we continue our questions?

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. I just want to talk with Ms. Springer about her FBI report but—just kidding. [Laughter.]

It was page 7 especially, the underlined parts. [Laughter.]

Let me just sit here and catch my breath, and then I will be right up with you. Thank you.

Senator VOINOVICH. One of the things that we insisted on when we went forward with the new personnel system for the Department of Defense was participation by OPM. We thought it was absolutely essential. If you are going to do the job that you are supposed to do, it is going to be very important that you have the courage to speak out in regard to things that are of great concern to you. For example, you just mentioned one of the things that I am concerned about in the MAX HR program at the Department of Homeland Security. The House of Representatives voted to cut the budget. I just could not believe it.

It seems to me that you are going to have a major responsibility and be very vocal in this matter. The question I have is, do you think you have the courage to do so? There are going to be some times when you are going to really have to put your foot down. For example, I will never forget going over on my own to the Defense Department. I insisted on a meeting with Secretary Rumsfeld and ended up with Mr. Wolfowitz. The Defense Department was going to go forward and implement its new personnel system by October of last year. I said, there is no way on God's earth that you are going to ever be able to do that. That caused some pause, and they were anticipating me and came up with a new program. Ms. Springer, you are going to have to evaluate these programs, and if you think they are moving improperly, intervene.

For example, I think I mentioned training when you were in the office. I surveyed agencies on training when I first came to the Congress. I asked the question, "How much money do you spend

on training?" Eleven Departments said, "We do not know," and one said, "We do know but we will not tell you." There are some fundamental things that should be in place in terms of human resources.

Ms. SPRINGER. Yes, I am, definitely. Senator, it would have been a mistake for anyone, including me, to take this job who wasn't willing to do that, and I think that's one reason why I was picked for this job. I think you know that people like Clay Johnson and other people who know me pretty well and whom I've worked with are not bashful people. I think they know that I'm up to that job. Frankly, there are two things I want to say in regard to this.

First, I want to thank you and the other Members who made sure that OPM did have a strong role in this, and I think it would have undermined OPM's position, OPM's responsibility, frankly, as the chief personnel organization in the Executive Branch, to not have had a major role in these reforms. And, the Department of Defense is no exception to that. So, I appreciate it and I applaud you all for having done that. But at the same time, in addition, it comes down to the person and the organization, OPM itself, to carry those things out. Just putting it on a piece of paper doesn't mean that it's going to happen, but I'm committed to making that happen.

One of the things that I think you know from our conversations is that I was ready to go back to Pennsylvania. I didn't take this role because I was looking to run for office or build a public image or anything else. I'm here because I care about good government, I care that what we're doing here is right, and it's done right. And, if that means that I'm going to get a little scuffed up or have to take off the gloves a little bit, that's fine. That just goes with the territory as far as I'm concerned.

Senator VOINOVICH. Senator Carper, any further questions?

Senator CARPER. Yes. When you worked at Provident Mutual did you ever work in Delaware?

Ms. SPRINGER. I visited that office, but that wasn't my home site, but, yes, down in that Christiana area.

Senator CARPER. That is now part of nationwide.

Ms. SPRINGER. Yes, it is. I went through that merger.

Senator CARPER. Did you really? OK.

Ms. SPRINGER. Yes, I did. I was there during the merger.

Senator CARPER. And then when you left Provident, what did you do? How long were you with them?

Ms. SPRINGER. I was with Provident for 10 years, and I stayed through the merger, and then the senior management team essentially, as happens in these mergers, often moves on, and so I came down to work at OMB to be the head of the Office of Federal Financial Management.

Senator CARPER. Controller?

Ms. SPRINGER. Controller.

Senator CARPER. And who has succeeded you?

Ms. SPRINGER. Over at OMB, the nominee actually—and I think before this Committee—is Linda Combs, who has been a CFO in several of the agencies.

Senator CARPER. Would you describe her as a worthy successor?

Ms. SPRINGER. I would.

Senator CARPER. Small little story. She went to Appalachian State University, same college as my wife. Her math teacher there was my wife's father. Is that not amazing?

Ms. SPRINGER. Isn't that something? Yes, small world.

Senator CARPER. And I managed to work it into the hearing that we had. I do not know if Senator Voinovich or Senator Pryor were there. I said, "Ms. Combs, I understand your financial skills are very good." She said, "Thank you, I would like to think so." I said, "I understand you have exemplary math skills." [Laughter.]

And my colleagues starting looking like, where is he going with this? And I said, "To what do you attribute your remarkable math skills?" And she said, "Well, I did go to Appalachian State University and my math teacher was your father-in-law." [Laughter.]

I just want to know for the record, did my father-in-law ever teach you math?

Ms. SPRINGER. I don't think so, but I feel like I've missed out on an opportunity. [Laughter.]

Senator CARPER. I have learned a lot from him and even more from his daughter. [Laughter.]

I learned some things I did not want to know too. We all know how that is.

I want to ask you a little bit about pay-for-performance which is something that I believe in as an old governor, recovering governor, but before I do that, why do you think you are particularly well-suited for this job? I can see, looking at your background, why particularly the Controller position at OMB was well-suited, but why this job?

Ms. SPRINGER. As part of my time in the private sector, Senator, I designed those types of systems, those pay-for-performance systems. I was paid under them. I managed people in them. Beyond the typical controller responsibilities I also managed a number of the benefits, administration areas, payroll areas, and had responsibilities, for a number of the human resource areas at Provident specifically. So it's a pretty broad portfolio even though the title seems to be more of a financial type of position.

Pay-for-performance is—once you've been in that type of an organization and through my whole professional life, I have been—it just is a way of life, and so that developing people, helping them be successful in that, is something that I'm a believer in. I've done it, I've lived it. I've had half my compensation at risk. I don't just mean for the raise on my base pay. I mean you're going to get either zero dollars or you're going to get 100 percent of those dollars based on how you do X, Y and Z, and with people that you don't even manage, as I mentioned earlier.

So, I'm sort of a living, breathing example of it, and I've seen it work and make the organizations more successful. But not just my own personal pay, but that of the people for whom I've been responsible and the organizations, and so I believe I have experience that's very relevant and will be very helpful, and I would say comforting, is a good word, and relieving some of the anxiety, that this really can work, and work to the benefit of people who are in that system.

Senator CARPER. I like that word "comforting," particularly when folks who are not used to pay-for-performance and it seems new

and scary. How do you comfort people who raise concerns about the possible lack of objectivity when the time comes to be evaluated? How do you address that concern, particularly in the arena in which we work as opposed to the private sector?

Ms. SPRINGER. I think, first of all, have to acknowledge that that's a very fair concern. We are talking about people's pay. There is nothing more dear to people from a professional standpoint, I think, than how they're compensated. And, to put that into the hands of someone else, a major determinant of that, I think, is something that creates anxiety, and so, I think you have to acknowledge that right off the bat. But, then you don't back off from it.

You have to then be committed to making sure that the people who are going to make those decisions are trained, are operating a system that has safeguards, and one of those safeguards, frankly, will be that OPM will not let any of these go online until we are satisfied that we can certify that all of the pieces are in place and that the supervisors are trained and experienced; that they have gone through practice; that they have the types of performance appraisal forms and mechanisms that are complete; and just that there is a complete training before we go live with any of those. And, OPM isn't going to let any of those happen.

I also think that it's important to, as I think about this, pick a few of the agencies that are really very well run, very well managed already—and I think we know who most of those are; GAO has their list, the President has his list—of the best run agencies, and work with those first and let them be the first wave of experience. So I think there's a way that you can do it that's informed, intelligent, and that will start to provide that comfort to the workforce.

Senator CARPER. What might be some of those agencies that we try this with first?

Ms. SPRINGER. Well, one that I think has done very well certainly, in the President's Management Agenda, and that I've worked with is Social Security, for example, and GAO usually gives them very high marks for how they're run. That's one that comes to mind.

Senator CARPER. One other question. In terms of being able to take the concept of pay-for-performance from the private sector and to transfer it to the Federal Government, are there any other concerns that you would have in terms of the ability to transfer from the one sector to the other?

Ms. SPRINGER. A part of the training issue that we have, is that we need to make sure that people know how to articulate goals, that they go beyond things like the GPRA and the other requirements for strategic planning, to really get down to planning and articulation. I'm a believer in articulation, in the writing of clear goals, so that we've got an agreed upon expectations for each of our employees who is under this type of a system. I think you should do it anyway, regardless of the pace, and people should know what's expected and there should be an agreed upon expectation in writing so that there's no guesswork. And, that's another one of those safeguards. That's my personal expectation.

But, as you go about that, I'm concerned that we have managers who have not been used to doing that, and so we have to make sure that they get used to it and get trained in it, and we need to get some help from those who have done it.

Senator CARPER. Good, all right.

Thanks, Mr. Chairman. And thank you, Ms. Springer, very much.

Ms. SPRINGER. Thank you, Senator.

Senator VOINOVICH. I would just like to add on, build on what Senator Carper has indicated. As you know, the Administration is interested in implementing pay-for-performance throughout the Federal Government. There has been some reluctance on my part and on the Chairman's part to entertain that suggestion. One of the things that I have made very clear to OMB Deputy Director Clay Johnson and the Administration is a need for their awareness and willingness to commit the resources to move forward with these new systems in the Departments of Homeland Security and Defense. I think it is incumbent on you, Ms. Springer, to look at what is happening and bring to their attention things that need to change. They must fully understand the commitment of talent and resources that are necessary to properly train people to execute an effective management system.

I really do not believe some of these folks understand how much time and effort they are going to have to give to making this successful. Even the Senior Executive Service, which is approximately 6, 000 people, has had challenges. I suspect you are going to find there are some stars, and you will also find some are struggling.

Also imperative is the involvement of your representatives. Senator Pryor.

Senator PRYOR. Thank you, Mr. Chairman.

I would like to follow up on a couple of the comments that you made a few moments ago, Ms. Springer. The Chairman talked about the Chief Human Capital Officers Council. As I understand it right now, the Chief Human Capital Officers Council, as it currently is today, only has political appointees on it, does not have career people on it. I may be wrong about that.

Ms. SPRINGER. I believe that there's a mixture, Senator Pryor.

Senator PRYOR. Is there?

Ms. SPRINGER. Is that right? Yes.

Senator PRYOR. I think that maybe they are eligible, but I am not sure any are serving right now. I am not sure.

Ms. SPRINGER. To my understanding it's a mixture.

Senator PRYOR. OK, great.

Ms. SPRINGER. I hope that it is.

Senator PRYOR. Because I was going to say that you have had experience on the Chief Financial Officers Council, and that was a mix, right?

Ms. SPRINGER. Yes.

Senator PRYOR. And the question I was going to ask is, is there value in having a mix there?

Ms. SPRINGER. Yes, there is, absolutely. What I found in the Chief Financial Officers Council was that blend of continuity over the years from the career staff and their insights that go with those many years of service and the perspective, was a complement

and a good assist to people who did not have the same years of experience and depth of knowledge of the Federal Government and the workforce, frankly, in that case, in the financial arena.

It is my understanding that we have both, and we certainly need to maintain that, and I'll be sure that we do.

Senator PRYOR. Great. Well, thank you, and thank you for your answer. That would be my guess, too, that there would be value.

Last thing, again, to follow up on Senator Voinovich's questions a few moments ago, or his statement. There has been considerable discussion of expanding the developing personnel systems at the DOD and DHS to other parts of government, to try to take some of those principles and export them to other parts of government. Is this something that you envision taking up early in your tenure at OPM, or do you believe that these systems should be allowed to mature and to be evaluated before they are extended to other parts of the government?

Ms. SPRINGER. I would be in favor of the sooner rather than later, and there are a few reasons why, and some of those are already happening, frankly. We have smaller agencies within the government that have already been in pay-for-performance type situations. I can give you several accounts of career employees, well-positioned, very experienced senior career officials at major cabinet agencies, who have left their positions from these major cabinet agencies, and gone to the smaller agencies that had existing pay-for-performance structures. And, when I asked them why, that was the reason. They had more upside compensation potential.

So, what was happening was there was a talent flight away from the agency that didn't have that pay-for-performance structure today, to an agency, a much smaller one, that didn't really need, frankly, the talent level and the skill set that the large agency needed in that individual, but they went. Why? Because of the upside compensation potential. That was the main factor, frankly.

And, I felt badly about that because it was really a drain. I can see that happening when we have now half of the workforce coming into a situation under DHS and under the NSPS new structures. If we don't have that elsewhere or at least start to build that opportunity, again with the caveat of the OPM certification, we will have no way to ensure that when they are mature and are ripe, they can begin. There's nothing that says we have to turn the switch today for them, but we should let them at least have the opportunity to start to build it and work with their employee representatives and get it right, so that they don't have to wait for years and years, and be at that disadvantage.

I can assure you there will be a talent drain of good performers who are going to be drawn to situations where they can have the maximum potential for their compensation. And, I've seen it happen already here in the government, and I think this will just be worse if we wait too long. So, I'm for sooner rather than later.

Senator PRYOR. OK. Thank you, Mr. Chairman.

Senator VOINOVICH. Thank you. No further questions at this time.

The hearing record will remain open for 48 hours so that other Members of this Committee may submit questions to you in writing. I am sure that you will respond to them.

We really thank you for being here today. I must say that I am very impressed with you. I think you are going to do a very good job at the Office of Personnel Management. We will work with you in any way we can. I want you to consider us as being your friends.

Ms. SPRINGER. Thank you. The feeling is mutual, Senator, thank you.

Senator VOINOVICH. Thank you.

I would like to welcome Judge Noel Kramer and Laura Cordero. And particularly I want to welcome my long-time friend, Congressman Eleanor Holmes Norton, District of Columbia. Eleanor, I apologize for making you wait, but there were some questions that we wanted to ask the nominee for Director of the Office of Personnel Management. I am sure you understand.

Thank you for being here, and we look forward to your introduction.

TESTIMONY OF THE HON. ELEANOR HOLMES NORTON, A REPRESENTATIVE IN CONGRESS FROM THE DISTRICT OF COLUMBIA

Ms. NORTON. Thank you very much, Mr. Chairman. I must say I am on the committee in the House—so I listened raptly to your questions and appreciate them—the committee that will have oversight or jurisdiction over our new OPM Director in the House.

Senator, I hope you will forgive me if I cannot begin or get down to the work of the day without simply thanking you for your work for the District of Columbia as Chairman of this Subcommittee. Many of the improvements in the Government of the District of Columbia have come through you and the work of your Subcommittee. I understand you, Senator. Your job here has been of course to be the Senator for the State of Ohio, and you have done that splendidly. But I must say, and I am sure I speak for the elected officials in the District of Columbia and for the people whom I represent, when I thank you for your work in our city. You have never forgotten that before you were a Senator, you were a mayor and a governor, and you brought that extraordinary background to your work on this Subcommittee for our city. So I thank you very much for that.

And I thank you for inviting me to introduce these two very splendidly qualified nominees.

Laura Cordero has spent her entire career in public service, and doing the kind of work that best prepares a nominee to do the work she will be called upon to do on the Superior Court. Ms. Cordero has been in the U.S. Attorney's Office. She came there from the Justice Department where she was in the Honors Program. She has been 12 years as an Assistant U.S. Attorney for the District of Columbia, representing and doing the kind of legal work she will be called upon to judge, and not only in the court where she will be sitting, the Superior Court of the District of Columbia, but in all of the courts of our jurisdiction, in the Court of Appeals for the District of Columbia, our highest court, and the U.S. District Court and in the U.S. Court of Appeals.

We are particularly grateful to Ms. Cordero for her work as the first community prosecutor in the District of Columbia, former U.S. Attorney set that post up, and she had to in fact form it. She has

continued to work on community-based programs which have been effective in reducing violent crime in the District of Columbia. We hate to lose her where she is. We know she will do great work where she is going, where she has been nominated to go.

I also have the honor of introducing a particularly distinguished judge, Associate Judge of the Superior Court, presently serving on the Superior Court of the District of Columbia, very long experience on that court in all manner of trials, from murder trials to family court and civil court.

Judge Kramer, Judge Noel Kramer is much revered for her work on our courts. She has been the presiding judge for the past 3 years of the Criminal Division. That is a particularly difficult division. She will always be remembered for her work on the Community Court. This is a court that works to provide defendants with substance abuse and mental health treatment and employment skills so they do not return to crime, since recidivism is the major problem of the criminal justice system. This is much appreciated work in our city.

This is a much honored lawyer and judge. She has been President of the National Association of Women Judges. The Congress, the House and the Senate, might want to take note of the fact that she has worked on the D.C. Bar Committee that drafted guidelines for civility in the legal profession.

She has been honored by the D.C. Women's Bar Association for her activity as a mentor of young judges. Judge Kramer began with the law firm of Wilmer, Cutler and Pickering in the District of Columbia. She went to the U.S. Attorney's Office for the District of Columbia. She is a graduate of University of Michigan Law School, where she served on the Michigan Law Review. She is an honors graduate of Vassar College. She was the first President of the Women's Law Students Association. She most recently has been named Woman Lawyer of the Year by the D.C. Women's Bar Association.

I think I have said enough to make you understand why the President would nominate Judge Kramer, and I am honored and pleased to introduce her as well, Mr. Chairman.

Senator VOINOVICH. Thank you, Congressman Norton. Thank you also for your nice comments about the Chairman of the Subcommittee. We have been friends for a long time and I look forward to working with you on matters like this and also the District of Columbia. I know you are very busy, and if you excuse yourself we will all understand.

Ms. NORTON. Thank you, Mr. Chairman.

Senator VOINOVICH. Thank you.

As Congresswoman Norton has pointed out, Judge Kramer has served as an Associate Judge in the Superior Court of the District since 1984. During her tenure she resided over civil, family and criminal cases, heavily involved in establishing the East of the River Community Court, and has provided over the court since its inception in September 2002. The Court was established to increase judicial understanding of the public safety and quality of life concerns of the citizens East of the Anacostia River, and to provide drug treatment, mental health counseling, employment assistance, and other services.

Judge Kramer, I am sure they are going to miss your leadership in that organization. I thank you for your years of service.

Ms. Cordero has served as clerk to the Hon. James A. Parker of the U.S. District Court for the District of New Mexico for a 2-year term. In 1991, Ms. Cordero joined the Department of Justice where she was assigned to the Civil Rights Division. In 1993 Ms. Cordero joined the U.S. Attorney's Office for the District of Columbia. In 1999, Ms. Cordero was assigned as the first community prosecutor as part of the U.S. Attorney's Office Citywide Community Prosecution Program.

Currently Ms. Cordero is the Executive Assistant U.S. Attorney for External Affairs. She is responsible for developing, coordinating, and maintaining effective partnerships with Federal and local law enforcement, government agencies in the community and the District of Columbia. That is a major challenge, getting them all to work together.

She also coordinates an extensive community engagement network aimed at reducing violent crime in the District of Columbia.

I believe that our candidates are both well qualified for the position to which they have been nominated.

Senator Pryor, would you like to say a few words?

Senator PRYOR. I just want to hear from the nominees. Their backgrounds and resumes sound very impressive, so I look forward to hearing what you have to say.

Senator VOINOVICH. As I mentioned earlier, it is the custom of this Committee for those that appear here to take the oath, and if you will stand up, I will administer it to you.

Do you swear that the testimony you are going to be giving today is the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. CORDERO. I do.

Judge KRAMER. I do.

Senator VOINOVICH. Judge Kramer, I understand that you may have some family members here today, as well as supportive colleagues and friends, and I will give you an opportunity to introduce them to us today. This is a very special day, I am sure, for them.

Judge KRAMER. Thank you, Senator. I am really honored to be here today. I am delighted to have an opportunity to introduce to you some of the people who have accompanied me today.

Let me begin with my husband, Frank Kramer, to whom I have been married for 35 years. My son, Christopher is a former staff member of the Permanent Committee on Investigations and heading off to law school next year. My older child, my daughter, Katherine, is working in San Francisco and unfortunately unable to be here today.

The next person I want to introduce to you is the equivalent of family, if you will, and that is my judicial assistant of 18 years, Jackie Waller. If you could stand since you are in the audience. I have to say that she has provided me with the utmost support for 18 years, and in all of my various endeavors, and I sometimes think that I get too much credit and she gets too little.

My current law clerk, Natalia Medly, also like myself, a graduate of the University of Michigan Law School, and our dear young

friend, Douglas Robb, who is a recent graduate of the Naval Academy and often takes up residence in our home.

In addition I would like to say that I have two other law clerks who happily are here today and would just like to mention their name, Murray Scheel, who actually has now preceded me to the Court of Appeals since he clerks for Judge Ruiz, and Braden Murphy, who is also here.

I am also honored to be accompanied here today by Chief Judge Rufus King of the D.C. Superior Court, who has been unfailing in his support of my various endeavors throughout his term as the Chief Judge. Also Chief Judge Annice Wagner of the D.C. Court of Appeals, who I so look forward to working with. And also Chief Judge Designate Eric Washington of the D.C. Court of Appeals.

So those are my introductions, Senator.

Senator VOINOVICH. Thank you. Your family and extended family.

Ms. Cordero, would you like to introduce members of your family that are here today?

Ms. CORDERO. Yes, thank you, Mr. Chairman.

With me today is my mother, Ofelia Cordero, who recently celebrated her 80th birthday.

Senator VOINOVICH. Congratulations.

Ms. CORDERO. My husband, Poli Marmolejos; our three daughters, Sofia, Cecilia, and I believe in the interest of preserving the integrity of these proceedings, our 4-year-old Amalia is outside. [Laughter.]

I would also like to introduce my extended family of friends and colleagues, who over the many years of my professional career have shared their wisdom, support, guidance generously, and who have joined me here today, and I very much appreciate their support and the fact that they are here with me today.

Senator VOINOVICH. Thank you very much.

There are three questions that I would like each of you to answer. First, is there anything that you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated? Ms. Cordero, Judge?

Judge KRAMER. No.

Ms. CORDERO. No, Mr. Chairman.

Senator VOINOVICH. Do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Judge KRAMER. I do not, Senator.

Ms. CORDERO. No, sir.

Senator VOINOVICH. And last but not least, do you know of any reason, personal or otherwise, that would in any way prevent you from serving the full term for the office to which you have been nominated?

Judge KRAMER. Let me say, Senator, that it is my intention to serve until the law's mandatory retirement age requires that I step down as an active judge, and that will be shortly before my term would end.

Senator VOINOVICH. Ms. Cordero.

Ms. CORDERO. No, sir.

Senator VOINOVICH. Do either one of you have a statement you would like to make for us today?

TESTIMONY OF THE HON. NOEL ANKETELL KRAMER,[1] TO BE ASSOCIATE JUDGE, DISTRICT OF COLUMBIA COURT OF APPEALS

Judge KRAMER. I would like to just simply make a very brief statement. I have been on the D.C. Superior Court for 20 years now. I can sincerely say that it has been a challenging and fulfilling job, as much as I could have ever asked for, but should the Senate see fit to confirm me for our Court of Appeals, I would be thrilled by the opportunity to serve the District of Columbia in this new role.

Let me also say that I much appreciate having the opportunity to appear before the Committee today. I appreciate the staff work that goes into such appearances, and I thank you for having me, and I thank President Bush for nominating me for this position.

Senator VOINOVICH. Thank you.

Ms. Cordero, do you have a statement you would like to make?

TESTIMONY OF THE HON. LAURA A. CORDERO,[2] TO BE ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Ms. CORDERO. Thank you, Mr. Chairman.

I would like to express my sincere gratitude to you, Mr. Chairman, for making the arrangements for this hearing today, to the Committee Members and to the staff. For some period of time now they have graciously extended their guidance through these proceedings, and I am very grateful for that.

I also would like to thank the President for nominating me for this very important position. I am very much humbled by the opportunity to continue to serve the residents of the District of Columbia if I were to be fortunate enough to be confirmed as Associate Judge of the Superior Court of the District of Columbia.

Senator VOINOVICH. Thank you.

Ms. Cordero, whether it is through your experience of appearing before judges or in observing your colleagues, I am sure that you have observed a variety of judicial temperaments. I would like you to discuss for me what you think the appropriate temperament and approach of a judge should be.

Ms. CORDERO. I have indeed, Mr. Chairman. I believe after spending many years in the courtroom first as a law clerk, and then the last 12 years as an Assistant U.S. Attorney representing the United States of America, I do believe that it is of the utmost importance to have, above all, fairness and impartiality from the Court. I think it is equally important for those who preside in those courtrooms to accord each and every person who comes into the courtroom, whether they are a litigant, a party, an attorney, a witness or a spectator, the utmost respect and dignity. I think those are very important factors for the appropriate judicial temperament.

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[1] The biographical and professional information appears in the Appendix on page 70.
[2] The biographical and professional information appears in the Appendix on page 105.

Senator VOINOVICH. Judge Kramer, you are moving to the D.C. Court of Appeals, which has a Chief Judge and eight Associate Judges, and is the equivalent of a State Supreme Court, whereas the Superior Court where you have been, you are a judge with your own courtroom. How are you going to handle the transition from the Superior Court to the Court of Appeals?

Are you going to be bored, Judge? [Laughter.]

Judge KRAMER. Senator, you are not the first person to ask me that question. I am confident that I will not be bored should I be so fortunate as to be confirmed. I've looked forward very much to bringing my experience to the Court of Appeals. Our Court of Appeals is really renowned nationally for its collegiality and its scholarship, and I am fortunate to personally know the members of the Court of Appeals, so I don't have any surprises in that regard. Indeed, even President Bush's most recent nominee and I go back to practically kindergarten, but that would be kindergarten in the U.S. Attorney's Office.

I look forward to the opportunity to work with others on making decisions. As a trial judge you work alone, and although it seems as if the Court of Appeals may be more isolating, were it not for staff, as a trial court judge you can actually be quite isolated. So I look forward to that opportunity. I look forward very much, should I be confirmed, to the opportunity to play a greater role in the development of the law in the District of Columbia.

Senator VOINOVICH. Thank you. Senator Pryor.

Senator PRYOR. Thank you, Mr. Chairman.

Judge Kramer, let me inquire, if I may. A mention was made to community court?

Judge KRAMER. Yes.

Senator PRYOR. I do not know if I understand what that means.

Judge KRAMER. Well, the idea of a community court is to take a group of cases that are of a misdemeanor nature. There may be community courts that involve felonies, but I don't know of any if there are. The low-level offenses that present a challenge for the community in terms of what to do with the offenders, where the offenders are not violent criminals, but are continually involved in activities that get them arrested, activities such as drugs, prostitution, unlawful entries, because perhaps they're homeless, or other low-level offenses such as this. Not drug sales or drug possession. Drug use particularly is a problem.

Senator PRYOR. So all of these are criminal in nature.

Judge KRAMER. Always criminal in nature. If by working with not only the judge but resources in the community——

Senator PRYOR. So social services and other type——

Judge KRAMER. Exactly, social services, drug treatment programs, mental health programs——

Senator PRYOR. Nonprofits, just whatever might be out there.

Judge KRAMER [continuing]. maybe prostitution programs. You can't stop the revolving door, but, at least, as Judge King so aptly put it once, you can slow down the revolving door. We don't expect miracles, but we can at least attempt to slow down the revolving door, to change lives.

At the same time it's a court and you—also one of the things that makes it effective is a close relationship between the judge and the

defendant, regular reviews, that kind of thing, so that there is true accountability, because without accountability you don't get very far.

Senator PRYOR. So there is some post-adjudication contact?

Judge KRAMER. Most of these cases are—actually, another key element is the cooperation of the U.S. Attorney's Office or the prosecutor. Most of these cases actually end up with dismissals if people do what they are supposed to do.

Senator PRYOR. Do you use a mix of probation and that type of thing to see if, for lack of a better term, they will stay on the straight and narrow for a designated time?

Judge KRAMER. Yes, that's also used.

Senator PRYOR. How long have you been involved with the Community Court?

Judge KRAMER. It began in September 2002, and my law clerk, Braden Murphy, was with me the first time I went out into the community for this.

Senator PRYOR. When you say go out in the community——

Judge KRAMER. Yes. That is another strong element of it. The judge goes into the community on a regular basis, is known in the community, tries to be high profile in the community, speaks with the citizens, learns their concerns. This particular community court was the East of the River Community Court, so it speaks for itself through its name. It has been going now since September 2002.

Senator PRYOR. As I understand it, you have been on the bench for 20 years?

Judge KRAMER. Yes.

Senator PRYOR. We have been talking about criminal here. Have you done civil as well?

Judge KRAMER. Oh, yes.

Senator PRYOR. What type of civil cases have you handled? I mean just everything, just whatever is filed?

Judge KRAMER. That is basically a good description, everything that's filed from landlord/tenant through what we call our Civil 1 cases, including some asbestos cases, a lot of malpractice matters, and contract issues, civil rights cases, the whole gamut.

Senator PRYOR. Thank you.

Ms. Cordero, your colleague there has community court on her resume. You have community prosecutor.

Ms. CORDERO. Yes, sir.

Senator PRYOR. Is there a connection there?

Ms. CORDERO. There most definitely is. I think generally the criminal justice partners have looked at new and innovative approaches to try to prevent crime as opposed to deal with the crime when it has already been committed. Our office certainly is an integral partner of the community court effort. Our prosecutors are integral partners in this effort. Much of what is done in the community court itself is, as Judge Kramer noted, preventive, and that's exactly what we do at the U.S. Attorney's Office through the community prosecution effort.

We go to many community meetings. In fact, we average about 600 a year. I've gone to hundreds of community meetings myself over the years, and I think it's a critical component for us as public servants to maintain that dialogue at all times with the residents

that we serve to better understand what their public safety needs are.

They vary greatly as you go from one part of the community to the other, and it's important to know what their priorities are and for us as law enforcement to work with them, to try to identify what is the best way that we can address some of those challenges.

Senator PRYOR. And you have been with the U.S. Attorney's Office for 12 years.

Ms. CORDERO. Yes, sir.

Senator PRYOR. What type of cases have you handled at the U.S. Attorney's Office?

Ms. CORDERO. The U.S. Attorney's Office has a great opportunity for young assistants because they rotate them through various sections in the office. I first did some appellate work, and then moved on to trial work, doing all types of misdemeanors, certainly prostitution, possession, assaults, and then handled some of the felony matters, narcotics, stolen drugs, and robbery. I also prosecuted some cases in the U.S. District Court for the District of Columbia under some Federal statutes, counterfeit currency. I did some human trafficking cases, illegal bringing in of undocumented persons. So I've had a pretty extensive and diverse caseload as an Assistant U.S. Attorney there.

Senator PRYOR. Sounds like all criminal.

Ms. CORDERO. Yes. While I was at the U.S. Attorney's Office I have only handled criminal cases. The civil cases I have handled were before my tenure as an Assistant U.S. Attorney. While I was at the Department of Justice I did have the opportunity to serve as a trial attorney in the Civil Rights Division, enforcing the Voting Rights Act of 1965, and so I had the opportunity to crisscross the country, working with citizens and safeguarding their right to vote in our great democracy. So those were civil suits that were filed in the course of that.

I did handle some civil cases while I was in law school. For 2 years I served at the Harvard Legal Aid Bureau, serving indigent clients on landlord/tenant matters and family court matters, and other such things.

Senator PRYOR. Thank you. Really, one last double question, if I may, Mr. Chairman, and that is, I am curious for both of you, your thoughts on the greatest challenges facing the D.C. Court system, and also how the Congress can respond to those challenges. I assume there are some things that can be done on the local level, and I am sure you will work on those things, and I would like to hear about that, but also what Congress can do.

You want to go next, Judge Kramer?

Judge KRAMER. One of the challenges, well there are several challenges, but one is always the volume, because our volume is so great, and I think that's probably true also with our Court of Appeals, although I don't pretend to be an expert on that issue.

Senator PRYOR. Now, when you say volume do you mean you need more judges or more——

Judge KRAMER. No.

Senator PRYOR. Better facilities or more support staff.

Judge KRAMER. Well, it is a continuing challenge. I'm not asking for more judges right now. I would leave that issue to my chief, but

that is a challenge. Part of the issue on the criminal side, which is where I've spent the last 6 years of my life, are finding the resources in the community to adequately reduce the recidivism in the District of Columbia. That was one of the reasons why community court was begun.

I don't think that we have yet gotten to the point where we have adequate resources such as drug treatment programs, which are so critical for making changes in people's lives, mental health treatment, that kind of thing. These are issues that still exist as unsolved problems many ways in the criminal justice system.

On our family court side, of course, as I'm sure you know, Congress has been extraordinarily helpful, and we have resources that when I sat in Family Court we never had. Just as somebody who looks back on where we were and where we are, I would like to thank you all for bringing about and providing the resources to make a change there. In terms of the court, I think that substantial—a world of difference has occurred.

Ms. CORDERO. Senator, I would agree with Judge Kramer, that I think one of the challenges is certainly the volume of the Superior Court of the District of Columbia. They preside over any matter, anything from criminal, civil, family, and probate. I think among the challenges for the court is there is always an issue of volume and an issue of resources, and how do we maximize the resources that we have to try to identify solutions for some of the systematic issues that may arise. Certainly, I see great strides in the court in terms of identifying models like community court. They recently started a truancy court as well, where they have only one judge presiding over all truancy matters. I think, again, that's always going to be an ongoing challenge, how do you maximize the resources that you have to provide the best service that you can ultimately to all the litigants that come before you.

Senator VOINOVICH. I want to thank both of you for your testimony here today. I know you are anxious to be confirmed and invested. The next step in this process will be consideration of your nomination at a Committee business meeting, and reporting your nomination to the Senate for final action.

I am happy to see that your families are with you, supporting you. I know it is a very proud day for them. Thank you both for the service that you have rendered to the District of Columbia, and we look forward to your continued service.

[Whereupon, at 3:58 p.m., the Committee was adjourned.]

APPENDIX

STATEMENT OF REP. TODD RUSSELL PLATTS

INTRODUCTION OF LINDA SPRINGER

before the

U.S. SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

June 15, 2005

Chairman Voinovich and Members of the Committee, it is my distinct pleasure to introduce a fellow Pennsylvanian, Ms. Linda Springer, to the Committee today as she undergoes confirmation to become Director of the Office of Personnel Management.

As Chairman of the House Government Reform Subcommittee on Government Management, Finance and Accountability, I had the privilege of working closely with her over the past two years while Ms. Springer served as Controller and head of the Office of Federal Financial Management at the Office of Management and Budget, a position for which she was confirmed unanimously by the U.S. Senate in March 2003.

As you and other members of this Committee are aware, the Controller is responsible for financial management practices throughout the Federal government – a daunting challenge unmatched by any fiduciary responsibility in the private sector. Ms. Springer performed this duty exceptionally well, and under her leadership, we saw significant improvements in Federal financial management – most notably, she reduced the Federal government's year-end financial reporting time from five months to 45 days. Ms. Springer also spearheaded the push for improved internal accounting controls at Federal agencies, and directed the development of a

Presidential Executive Order to ensure efficient and effective management of Federal real property assets.

Prior to serving President Bush, Ms. Springer had a distinguished career in the private sector that spanned more than twenty-five years and offered experience in all aspects of management. Most recently, she was Senior Vice President and Controller of Provident Mutual, an insurance and financial services company with assets of $9 billion. She led the company in achieving five consecutive years of earnings growth. During her tenure at Provident, Ms. Springer oversaw human resource management areas responsible for benefits administration and payroll and was actively involved in the design, administration, and funding of benefit and compensation packages, including incentive and profit-sharing plans.

On a personal note, I had the privilege of hearing Ms. Springer testify for the first time before Congress at one of my Subcommittee hearings. It was the beginning of a very productive working relationship, and I found Ms. Springer to be forthright and knowledgeable. I am certain that Ms. Springer will bring the same level of commitment, integrity, and acumen to the Office of Personnel Management, and I can think of no person more qualified to take on the challenge of shaping the Federal workforce to adapt to the 21st century.

Thank you, Mr. Chairman.

Statement of
Paul Strauss
On the Nominations of:

Laura A. Cordero, to be an Associate Judge
Of the Superior Court of the District of Columbia;

A. Noel Anketell Kramer, to be an Associate Judge
Of the District of Columbia Court of Appeals.

Wednesday, June 15, 2005

Dirksen Senate Office Building

Room 562

Chairman Collins, Senator Leiberman, and members of the Senate Committee on Homeland Security and Governmental Affairs, I am Paul Strauss, a United States Senator elected by the voters of the District of Columbia. I provide this statement on behalf of my constituents, not only as their elected representative, but also as a practicing local attorney. I strongly support the nominations of Laura A. Cordero for Associate Judge of the Superior Court of the District of Columbia and A. Noël Anketell Kramer for Associate Judge of the District of Columbia Court of Appeals. I am familiar with the record of these individuals, and I am confident that each of these individuals will serve the bench well. I would like to take this opportunity to address the specific qualifications of each of the individual nominees.

Laura A. Cordero

Laura A. Cordero is a nominee for Associate Judge of the Superior Court of the District of Columbia. Her excellent education, extensive legal experience and her ties to the local community make her an exceptional nominee.

At a young age, Ms. Cordero received an exceptional education from Notre Dame High School for Girls, DePaul University and Harvard Law School. While attending these excellent institutions, she received many honors and awards, including recognition as a National Hispanic Scholarship Fund Scholar, a Mexican American Legal Defense and Education Scholar, and membership to the Harvard Legal Aid Bureau.

Ms. Cordero's record of ensuring civil liberties is solid. She worked as a trial attorney for the Voting Rights Section of the Civil Rights Division at the United States Department of Justice from 1991 to 1993. During this time, she conducted investigations and monitored polling places to ensure that minority voters were able to cast their votes. As a Senator with many

minority constituents, I know the importance of guaranteeing each citizen access to the voting process. Ms. Cordero's work in this area shows her dedication to the civil liberties of all.

Presently, she works as an Assistant United States Attorney at the United States Attorney's Office for the District of Columbia. Her 11-year experience in criminal prosecution and her previous experience in civil law give Ms. Cordero a comprehensive background ideal for a Superior Court judge. As the Executive Assistant United States Attorney for External Affairs, Ms. Cordero works as a liaison among local communities, government agencies and law enforcement. Her commitment to addressing community concerns and dedication to building strong relationships in the District make Cordero a strong nominee for Associate Judge of the D.C. Superior Court.

As Senator for the District of Columbia, I admire Ms. Cordero's extensive work to engage young people in the local community. She is involved with Project LEAD classes at Marie H. Reed Elementary School, teaching local students the importance of Legal Enrichment and Decision Making. With continued community efforts, she has created an ongoing discussion between her office and the local community, and through these efforts Ms. Cordero can better address the community's concerns through law enforcement and legal efforts.

A. Noël Anketell Kramer

Noël Anketell Kramer is a nominee for a 15-year term for Associate Judge of the District of Columbia Court of Appeals, replacing John Montague Steadman. Judge Kramer, a native of Bay City, Michigan, has dedicated two decades of her life to the pursuit of justice in the District. She has fostered the ideals of her noble profession by acting as a mentor to young women

lawyers from the Women's Bar Association of the District of Columbia. Her years of experience in the legal system demonstrate her commitment to the District of Columbia and its citizens.

Noël Anketell Kramer began her legal career at the D.C. firm Wilmer, Cutler and Pickering. There she practiced law in several areas, including communications, antitrust and consumer protection, litigation, and corporate and securities law. Later, as an attorney at the United States Attorney's Office, she gained experience defending the rights of the American public. She handled hundreds of cases ranging from minor misdemeanors to serious felonies to white collar crimes.

In 1984, Noël Anketell Kramer became an Associate Judge of the District of Columbia Superior Court. She has presided over cases in the Civil, Family, and Criminal Divisions. Since 2002, Judge Kramer has been the presiding judge of the Criminal Division of D.C. Superior Court, where she has made decisions that impact the safety of the entire community. Her record demonstrates that she has consistently upheld criminal convictions, sending a strong message in support of victims' rights.

I do not stand alone in my support of Noël Anketell Kramer. She has received the Judge Robert A. Shuker Award in 2004, and has earned the Superior Court Medal of Excellence in 2000. She was honored by the Project Empowerment Program of D.C. in 2005; by the D.C. Community Justice Coordinating Council, also in 2005; by the Metropolitan Police Department in 2004; and by the National Association of Women Judges in 2001.

These two nominees have remarkable legal experience, and the District of Columbia would be fortunate to have Laura A. Cordero on the D.C. Superior Court and Noël Anketell Kramer on the D.C. Court of Appeals. I have the utmost confidence in the abilities and integrity of Ms. Cordero and Judge Kramer and ask that you confirm them without delay.

In closing, I want to thank Ms. Kelly Schliman, of my office for her assistance in researching the backgrounds of these nominees and preparing this statement. Thank you again for the opportunity to submit this statement.

Statement of The Honorable Linda M. Springer

before the

Committee on Homeland Security and Governmental Affairs

on the

Nomination to be Director of the Office of Personnel Management

June 15, 2005

Mr. Chairman, I am pleased to be before this committee again as you consider my nomination to be the next Director of the Office of Personnel Management. I want to express my gratitude to Chairman Collins for arranging, and to you for chairing, this hearing today. I also want to acknowledge the courtesies that the members and your staffs have extended to me in the period leading up to this hearing.

It is truly an honor to have been nominated for this position by President Bush. Having had the opportunity to serve in his Administration previously, I can say with confidence that I look forward to working with his team once again, should I be confirmed.

It is a particular privilege to be considered to lead the Office of Personnel Management. During a period of challenge unlike any in our history, the men and women of OPM have recommitted themselves to the service of the Federal Government and the American citizens. Much is underway in all the many aspects of OPM's mission and I welcome with enthusiasm the opportunity to direct this vital agency.

Mr. Chairman, there are currently 1.8 million members of the Civil Service. On occasion, these dedicated public servants are referenced in a depersonalized manner. They are called resources, capital or assets. But I see the women and men of the Federal Government as professionals engaged in activities that are shaping our world for years to come. They are people, not entries on a balance sheet, and we have a responsibility to enable them to perform, perform successfully, and to be compensated in relation to that performance.

We are at a moment when the Federal Government has an opportunity to raise the level of equity in carrying out that responsibility. With the passage of the reforms for the Departments of Homeland Security and Defense, as well as the Federal Workforce Flexibility Act of 2004, the path has been laid for creating a work environment that will truly reward, as well as recruit and retain, top quality performers. The American citizens deserve no less and this is an important factor in why I accepted the call to return to public service.

During my meetings with members of this committee, I was asked very important questions about personnel management reforms. You have asked if I am aware of the apprehension felt by the Civil Service about reform. You have emphasized the need for effective implementation and managerial training. You have asked if I understand OPM's role in assisting and certifying readiness in administering performance- and market-based pay.

Today I want to say to you and to the men and women of the Civil Service, that I am deeply aware of your concern and I pledge to you that OPM will be fully committed and engaged in achieving a fair and effective implementation of personnel reform should I become its next director.

I also want you to know that I believe there is an honest and legitimate basis for this apprehension. A significant portion of the reforms to date are focused on performance-based compensation. That means we are dealing with people's paychecks. Among this group are individuals who have been performing their duties in the absence of well-defined, measurable goals; lacking routine feedback on performance; and outside a culture that is focused on rewarding success. Some of our managers have never enabled or appraised performance that is tied directly to compensation. In this environment, it would be unrealistic to expect an initial reaction other than apprehension.

But that does not justify preserving a system that fails to use compensation to motivate and reward the highest level of performance, but rather pays primarily on the basis of longevity regardless of performance quality.

Let me share some principles on which I think reform should be based:

- Core values, principles and protections that have served employees over the years must be preserved.
- An effective personnel system supports employees in realizing their full potential and providing the highest level of service.
- An employee's career and pay potential should not be determined by the passage of time. Achievement must be recognized and rewarded.
- Managers should be given the training and tools to allow them to effectively carry out their responsibilities.

I have followed these principles in the past and would be guided by them as OPM Director.

To call these reforms modern is misleading. We are not blazing untraveled territory. We are not even fast followers. Performance as a basis for pay has been used for decades in the private sector. I have personally managed, designed and been paid on

this basis throughout my professional life. In some instances, half of my compensation was at risk – with down, as well as upside, potential – and was dependent not only on my own performance, but on that of associates over whom I had no authority.

These systems have resulted in mutual support and reinforcement to ensure successful performance. Employees and managers in the private sector have done it for years and the members of the Civil Service are no less capable than they, given the proper training.

I am impressed by the many dimensions of service provided by OPM. Its leadership in human capital planning and development, management of e-Government initiatives, and oversight in assuring adherence to merit system principles are typical of the significant role of this agency. From investigative services at the front end to retirement services at the latter stage, OPM associates support Federal Government workers throughout their career and beyond.

I also appreciate the significant role that the Chief Human Capital Officers Council plays in the strategic management of human capital and recognize the leadership of this Committee – and especially you, Mr. Chairman, and Senator Akaka – in enacting the legislation that established the Council. I look forward to chairing it.

As you know, I have spent many years in the insurance, annuity and financial services sector. As a Fellow of the Society of Actuaries, and having been a life and disability insurance line of business manager and an executive responsible for corporate benefits administration and payroll departments, I am knowledgeable in and sensitive to fulfilling the financial security needs across the entire lifecycle of individuals and their families. This background in design, development and administration of benefit plans will be increasingly relevant for an OPM director as our retiree and FEHB covered populations continue to grow beyond the current 2.4 and 8.0 million levels, respectively.

Mr. Chairman, I want to close with a commitment. During my tenure as Controller at the Office of Management and Budget and head of the Office of Federal Financial Management, I enjoyed constructive and positive relationships with members of Congress and their staffs. Should I be confirmed, I give you my assurance of continued open communication and look forward to a mutually productive period for the benefit of the women and men of the Federal workforce and the American citizens.

I will be happy to answer questions from the committee.

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL INFORMATION

1. **Name:** (Include any former names used.)

   Linda M. Springer

2. **Position to which nominated:**

   Director, U.S. Office of Personnel Management

3. **Date of nomination:**

   April 4, 2005

4. **Address:** (List current place of residence and office addresses.)

   Residence:

   Office: U.S. Office of Personnel Management
   1900 E Street, NW
   Suite 7353
   Washington, DC 20415

5. **Date and place of birth:**

   June 15, 1955
   Camden, New Jersey

6. **Marital status:** (Include maiden name of wife or husband's name.)

   Unmarried

7. **Names and ages of children:**

   None

8. **Education:** List secondary and higher education institutions, dates attended, degree received and date degree granted.

Haddon Township (New Jersey) High School	9/69 to 6/73
Ursinus College	9/73 to 5/77, B.S. Mathematics, 5/77

9. **Employment record:** List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)

   See Attachment I

10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with federal, State, or local governments, other than those listed above.

None

11. **Business relationships:** List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

See Attachment II

12. **Memberships:** List all memberships and offices currently or formerly held in professional, business, fraternal, scholarly, civic, public, charitable and other organizations.

See Attachment II

13. **Political affiliations and activities:**

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

None

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

None

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more for the past 5 years.

Pennsylvania Insurance Political Action Committee - $300 4/02

14. **Honors and awards:** List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

The Secretary of Defense Medal for Outstanding Public Service 1/05

15. **Published writings:** List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.

None

16. **Speeches:** Provide the Committee with four copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

While I had many speaking engagements during my tenure as OMB Controller, all were delivered from notes and none were from prepared text.

17. **Selection:**

(a) Do you know why you were chosen for this nomination by the President?

I served as Controller at the Office of Management and Budget and as the head of the Office of Federal Financial Management in President Bush's first term. In that position, I demonstrated an ability to achieve tangible improvements in long-standing areas of management challenge. Among these achievements are reduction of the Federal Government's year-end financial reporting time from five months to 45 days, establishment of a Sarbanes-Oxley equivalent internal control assurance requirement for Federal Government agencies, development of a Presidential Executive Order to ensure efficient and effective management of Federal real property assets, and the first comprehensive assessment of all Federal Government expenditures for risk of improper payment.

Accomplishing these objectives required firm, but constructive, leadership in enabling the Chief Financial Officers of all Executive Branch agencies to reach their goals. During this tenure I had active and positive relationships with members of Congress and White House officials, as well as good government groups. This track record of skills, knowledge, and success were foundational to my selection for the Office of Personnel Management Director position.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

In nearly thirty years of professional experience, I have obtained both the breadth and depth of executive management experience required to lead the Office of Personnel Management (OPM). I have achieved challenging goals and have developed a record of improving organizational performance. In both the private and public sectors, I have demonstrated the ability to attract talent, motivate and lead organizations, and revitalize stagnant operations. I also have extensive experience in strategic and operational planning, cost reduction, and financial management.

During my tenure in Federal Government, I have obtained extensive knowledge of Federal Government management, structure and personnel issues. As Controller, I had working relationships with senior OPM officers and its Inspector General, knowledge of the office's President's Management Agenda issues, the E-payroll project and OPM's financial statement audit. I also have strong working relationships with relevant leaders at major Federal agencies including the President's Management Council members, Chief Financial Officers (many of whom are Chief Human Capital Officers), key management officials at the Departments of Defense and Homeland Security, and OMB officials.

With respect to human resource and personnel issues specifically, my background includes several dimensions of experience. Having been a senior officer of a $9 billion insurance, annuity and financial services company, I am knowledgeable and sensitive to fulfilling the financial security needs of the entire lifecycle of individuals and families through well-designed and relevant benefit plans.

In addition to this business perspective, my portfolio of corporate duties included direct human resource responsibilities. I participated in the design and administration of incentive compensation arrangements, was responsible for corporate benefits administration and payroll departments, and dealt with issues related to active, terminated and retired employee's benefits. In these capacities I worked with legal and leading human resource consultants.

My personnel management experience also includes communications with employees in many

formats on a variety of personnel topics ranging from compensation and benefits to stay on agreements and severance arrangements. These included written materials and group and individual employee meetings. Additionally, I have worked closely throughout my career with many employees in skills development and career path identification.

As a Fellow of the Society of Actuaries, I have direct experience in pension plan valuation, reserving, ERISA compliance and reporting requirements and assumption setting. I am also knowledgeable about funding vehicles having been a product line manager for life and disability insurance products for five years.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

   Yes

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

   No

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

   No

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

   No

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

   Yes, at the pleasure of the President

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

   None

2. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy other than while in a federal government capacity.

   None

3. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

   Yes

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

   No

2. To your knowledge, have you ever been investigated, arrested, charged or convicted (including pleas of guilty or nolo contendere) by any federal, State, or other law enforcement authority for violation of any federal, State, county or municipal law, other than a minor traffic offense? If so, provide details.

   No

3. Have you or any business of which you are or were an officer, director or owner ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

   See Attachment III

4. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

   None

E. FINANCIAL DATA

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

AFFIDAVIT

Linda M. Springer being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Subscribed and sworn before me this 7th day of April, 2005

Bobbie Jean Williams
Notary Public
BOBBIE JEAN WILLIAMS
NOTARY PUBLIC OF DISTRICT OF COLUMBIA
My Commission Expires October 31, 2006

Biographical Information

Attachment I

Question 9 - Employment Record

Office of Management and Budget - 2002-2005
Executive Office of the President of the United States
Washington, DC

Controller, Office of Federal Financial Management
Counselor to the Deputy Director for Management

Provident Mutual Life Insurance Company - 1992-2002
Philadelphia/Berwyn, Pennsylvania

Senior Vice President and Controller
Vice President and Controller
Assistant Vice President and Actuary
Actuary

Penn Mutual Life Insurance Company - 1979-1992
Philadelphia/Horsham, Pennsylvania

Vice President and Product Manager
Assistant Vice President and Product Manager
Executive Assistant to the President
Various actuarial positions

Coopers and Lybrand (now PricewaterhouseCoopers) - 1977-1979

Various actuarial positions

Biographical Information

Attachment II

Question 11 - Business Relationships

Provident Mutual Life Insurance Company - Sr. Vice President and Controller
Providentmutual Life and Annuity Co. of America - Director
Provident Mutual International Life Insurance Co. - Financial Reporting Officer
1717 Capital Management Co. - Financial Reporting Officer
Sigma American Corporation - Financial Reporting Officer
Providentmutual Management Co. - Financial Reporting Officer

Penn Mutual Life Insurance Co. - Vice President and Product Manager

Puzzles and Pagentry (retail shop) - owner

Question 12 - Memberships

Society of Actuaries
American Academy of Actuaries
Philadelphia Actuaries Club
Haddonfield Symphony - member, director, advisory board member
Haddonfield Business and Professional Association
Old Paths Publications - trustee
Tenth Presbyterian Church - Philadelphia, PA
Children's Hospital of Philadelphia - Sunday School Teacher

Legal Matters

Attachment III

Question 3 - Business Relationships

On November 3, 2002, I received a copy of a derivative complaint filed on behalf of a policyholder against my former employer, its board of directors and its officers who were parties to Change in Control Agreements. As one of those officers, I was named in the complaint. The suit, Chartener v. Provident Mutual Life Insurance Co., et al, was filed on October 24, 2002.

On May 13, 2004, Judge Baylson of the U.S. District Court for the Eastern District of Pennsylvania issued his opinion dismissing with prejudice the action brought by Mr. Chartener.

U.S. Senate Committee on Homeland Security and Governmental Affairs
Pre-hearing Questionnaire for the
Nomination of The Honorable Linda M. Springer to be
Director, Office of Personnel Management

I. Nomination Process and Conflicts of Interest

1. **Why do you believe the President nominated you to serve as Director of the Office of Personnel Management (OPM)?**

   I served as Controller at the Office of Management and Budget (OMB) and as the head of the Office of Federal Financial Management in President Bush's first term. In that position, I demonstrated an ability to achieve tangible improvements in long-standing areas of management challenge. Among these achievements are reduction of the Federal government's year-end financial reporting time from five months to 45 days, establishment of a Sarbanes-Oxley equivalent internal control assurance requirement for Federal government agencies, development of a Presidential Executive Order to ensure efficient and effective management of Federal real property assets, and the first comprehensive assessment of all Federal government expenditures for risk of improper payment.

   Accomplishing these objectives required firm, but constructive, leadership in enabling the Chief Financial Officers of all Executive Branch agencies to reach their goals. During this tenure I had active and positive relationships with members of Congress and White House officials, as well as good government groups. This track record of skills, knowledge, and success were foundational to my selection for the Office of Personnel Management Director position.

2. **Were any conditions, expressed or implied, attached to your nomination? If so, please explain.**

   No.

3. **What specific background and experience affirmatively qualify you to be Director of OPM?**

   In nearly thirty years of professional experience, I have obtained both the breadth and depth of executive management experience required to lead the Office of Personnel Management (OPM). I have achieved challenging goals and have developed a record of improving organizational performance. In both the private and public sectors, I have demonstrated the ability to attract talent, motivate and lead organizations, and revitalize

stagnant operations. I also have extensive experience in strategic and operational planning, cost reduction, and financial management.

During my tenure in Federal government, I have obtained extensive knowledge of Federal Government management, structure and personnel issues. As Controller, I had working relationships with senior OPM officers and its Inspector General, knowledge of the office's President's Management Agenda issues, the e-payroll project and OPM's financial statement audit. I also have strong working relationships with relevant leaders at major Federal agencies including the President's Management Council members, Chief Financial Officers (many of whom are Chief Human Capital Officers), key management officials at the Departments of Defense and Homeland Security, as well as OMB and the Government Accountability Office.

With respect to human resource and personnel issues specifically, my background includes several dimensions of experience. Having been a senior officer of a $9 billion insurance, annuity and financial services company, I am knowledgeable and sensitive to fulfilling the financial security needs of the entire lifecycle of individuals and families through well-designed and relevant benefit plans.

In addition to this business perspective, my portfolio of corporate duties included direct human resource responsibilities. I participated in the design and administration of incentive compensation arrangements, was responsible for corporate benefits administration and payroll departments, and dealt with issues related to active, terminated and retired employees' benefits. In these capacities I worked with legal and leading human resource consultants.

My personnel management experience also includes communications with employees in many formats on a variety of personnel topics ranging from compensation and benefits to stay on agreements and severance arrangements. These included written materials and group and individual employee meetings. Additionally, I have worked closely throughout my career with many employees in skills development and career path identification.

As a Fellow of the Society of Actuaries, I have direct experience in pension plan valuation, reserving, ERISA compliance and reporting requirements, and assumption setting. I am also knowledgeable about funding vehicles having been a product line manager for life and disability insurance products for five years.

4. **Have you made any commitments with respect to the policies and principles you will attempt to implement as Director of OPM? If so, what are they and to whom have the commitments been made?**

No.

5. **If confirmed, are there any issues from which you may have to recuse or disqualify yourself because of a conflict of interest or the appearance of a conflict of interest? If so, please explain what procedures you will use to carry out such a recusal or disqualification.**

I have conferred with OPM's General Counsel/Designated Agency Ethics Officer (DAEO) and do not believe there are presently any issues from which I would have to recuse or disqualify myself following confirmation. In addition, I have notified the U.S. Office of Government Ethics that, as required by 18 U.S.C. §208(a), following confirmation I will not participate personally and substantially in any particular matter which subsequently arises that has a direct and predictable effect on my financial interests or those of any other person whose interests are imputed to me, unless I first obtain a written waiver, pursuant to section 208(b)(1), or qualify for a regulatory exemption, pursuant to section 208(b)(2).

II. Role and Responsibilities of the Director of OPM

6. **How do you view the role of OPM? Should OPM continue to straddle both strategic and administrative roles or focus on one or the other?**

I believe that the Fiscal Year 2004 Performance and Accountability Report has captured the essence of OPM's role when it states:

> The Office of Personnel Management (OPM) is the central human resources agency for the Federal government and the primary policy agency supporting the President as he carries out his responsibilities for managing the Federal workforce.

Both strategic and administrative responsibilities are integral parts of OPM mission and should continue to be so.

7. **What challenges currently face OPM? How will you as Director address these challenges and what will be your top priorities?**

OPM must assist agencies in having workforces with the skills, experience and training to accomplish their missions in a time of increasing competition for talent. Accordingly, we will need to position the Federal government as an employer of choice in the 21st century. While there are many dimensions to achieving and maintaining that profile, clearly pay for performance is particularly noteworthy. Implementation of systems reflecting this principle will be one of my highest priorities.

8. **How do you plan to communicate to OPM staff on efforts to address challenges facing OPM?**

I intend to maintain frequent and timely contact with the OPM staff in a manner that empowers employees to successfully meet these challenges.

III. Policy Questions

Human Capital Management

9. **What role should OPM play in assisting agencies with successful human capital management activities? Do you believe that OPM has the appropriate resources to help individual agencies develop and meet their human capital goals?**

   OPM plays a critical role in assisting agencies with human capital management including setting clear standards and measures for them to meet and assessing whether those standards are met. By simultaneously emphasizing those two complementary roles -- Strategic Human Capital Planning and Human Capital Accountability – it is my judgment that OPM is providing valued assistance in devising human capital strategies, providing extensive governmentwide data and sharing best practices across agencies. If confirmed, I would plan to review the distribution and application of the resources OPM has assigned to this effort.

10. **The human capital profession is in transition from valuing narrowly focused specialists to requiring generalists who have all the skills necessary to play an active role in helping to determine the overall strategic direction of agencies. How do you envision OPM assisting federal agencies' human capital professionals transition to this new role?**

    If confirmed, I would ask the Chief Human Capital Officers Council, which I'll chair, to join OPM in focusing on the development and further professionalization of our human resources specialists. I understand relevant research exists at OPM that could support formalizing competency models and standards for this critical work. Federal human resources specialists must acquire further skill and experience at applying strategic concepts and moving beyond the traditional roles they have played in agencies throughout the Federal government. OPM can and should play a strong leadership role in this regard.

11. **GAO's High-Risk Update (GAO-05-207) found that while progress had been made in addressing human capital challenges, ample opportunities exist for agencies to improve their strategic human capital management to achieve results. The Administration and several key members of Congress have described human capital management as one of their top priorities. Given the continued emphasis on the importance of human capital management, what are your plans to assure that the federal government continues to make progress in these areas?**

    Agencies have made progress to date in improving the strategic management of human capital as measured by the President's Management Agenda (PMA), with 26 of 28

agencies moving from red status scores to 17 at yellow and 9 at green. Further, the stage for continued human capital progress is set by the Chief Human Capital Officers Act of 2002 and the challenge to agencies through the PMA to set ever higher goals for their human capital success. OPM plays a key role in both of these and, if confirmed, I would rely heavily on these two vehicles to direct and support agencies in setting and meeting ambitious goals and monitoring their continuing human capital progress. My judgment is that pending civil service reform will enable us to fully realize the potential for successful human capital management.

12. **GAO has reported leading organizations go beyond a succession planning approach that focuses on simply replacing individuals. Rather, these organizations engage in strategic, integrated succession planning and management efforts that focus on strengthening both current and future organizational capacity. What steps would you take to help agencies further develop integrated succession planning and management efforts?**

    If confirmed, I would ensure that OPM assists the agencies in three ways that I believe will advance integrated succession planning and management efforts: by providing training workshops; by providing additional tools and guidelines in conjunction with the Chief Human Capital Officers Council, and by monitoring agency activities through the PMA scorecard. I am aware that OPM has worked with GAO and OMB to develop the Human Capital Assessment and Accountability Framework (HCAAF), which defines critical success factors and provides guidance to agencies on the development of integrated succession planning and management systems.

13. **The Government Performance and Results Act (GPRA) envisions that agencies will link their human capital planning with their strategic and annual plans. How do you plan to build and maintain the human capital OPM needs to achieve results?**

    The strategic success of any organization depends largely on the quality of its workforce. Therefore, it is critical that an organization engage in human capital planning that is integrated with the decision-making processes that enable it to execute its mission and achieve its strategic objectives. I am mindful that, if confirmed, I would be taking over leadership of an agency that has already attained a "green" status score for Human Capital in the PMA. I would expect to consider opportunities to further refine and focus OPM's internal human capital management plans and actions.

14. **Many factors such as age, attrition rates, diversity, and skills imbalances affect the success of the federal workforce in meeting its diverse missions. Describe your experience in evaluating such workforce factors and how you propose to deal with these issues in both your agency and the federal government.**

    My experience in creating and maintaining successful workforces has been grounded in hiring, retaining and leading people with the appropriate skills, knowledge and

competencies to accomplish the goals for which they are responsible. I would expect that these principles would apply on the broader governmentwide level, as well as at OPM.

15. **Both Equal Employment Opportunity Commission (EEOC) and OPM play pivotal leadership roles in helping federal agencies recruit, train, manage, and effectively utilize a diverse workforce. EEOC is responsible for enforcing federal laws prohibiting discrimination and oversees federal agencies' EEO programs, including their affirmative employment programs. OPM, as the government's human capital manager, is responsible for ensuring that personnel management functions follow merit principles, including those related to EEO. OPM also assists agencies in carrying out their minority recruitment programs and evaluating the effectiveness of these programs in eliminating the under-representation of minorities. Both OPM and EEOC issue regulations and directives to carry out their responsibilities and conduct extensive oversight activities, provide training, and issue guidance.**

    a. **What are your views on federal agencies' current EEO practices and on the assistance and guidance that OPM provides in this area? What changes, if any, would you make if you are confirmed?**

    b. **What are your views on the coordination and collaboration between EEOC and OPM with respect to diversity? If you are confirmed, what will you do to enhance cooperation in this area?**

    As you noted in your question, OPM and the EEOC have shared responsibilities in the field of equal employment opportunity within the Federal government. Recognizing their individual responsibilities, OPM and EEOC should nonetheless continue their already existing efforts to develop and enhance avenues of communication that will allow each organization to confer more proactively on matters of mutual concern and interest. In my previous position, I was not specifically responsible for EEO policy, so I am only generally familiar with current practices. However, my impression is that current EEO practices are fairly successful and OPM's assistance has contributed to this process. There is always room to improve Federal practices. As Director, I would work with staff to analyze existing efforts and make any necessary changes to enhance their effectiveness.

16. **In a recent report on the federal government's performance in managing its diverse workforce, GAO identified the following nine leading diversity management practices: commitment from the top; inclusion of diversity as part of the organization's strategic plan; understanding the link between diversity and high performance; measuring the impact of diversity programs; holding managers accountable for implementing diversity policies; succession planning; recruitment; employee involvement; and diversity training. (GAO-05-90) The goal of effective diversity management, according to GAO, is to create and maintain a work environment where individual similarities and differences are valued, so that all can**

reach their potential and can maximize their contribution to meeting the organization's mission.

a. **What is your opinion of the quality of diversity management within the federal government, and what steps do you believe agencies should take to better manage their increasingly diverse workforces? Which of the leading practices identified by GAO do you believe are most critical for federal agencies?**

b. **What would you do, as OPM Director, to foster effective diversity management at OPM and throughout the executive branch of government?**

Federal workforce diversity management is not an issue over which I had responsibility in my previous Federal position, so I do not presently have first hand knowledge of its scope or quality. However, the effective building and management of a diverse Federal workforce is not only a commitment and priority for this Administration, it is sound management policy and will continue to be an OPM goal. As long as the nine leading diversity management practices identified above are conducted within existing Constitutional parameters, the diversity of the Federal workforce will be enhanced.

I believe that the most effective way to achieve diversity in the workforce is through outreach and recruiting efforts in traditionally under-represented communities. All communities need to know what opportunities exist for an exciting and rewarding career with the Federal government. I believe that working with Members of Congress to sponsor job fairs in their constituencies is one means to achieve this.

Once a diverse workforce has been recruited it must be retained and maintained with appropriate mentoring and educational programs. OPM has the responsibility of making sure all Federal agencies are taking these steps to build and maintain a diverse workforce.

Personnel Management Legislation

17. **The personnel management statutes for both the Department of Homeland Security (DHS) and the Department of Defense (DoD) require that regulations be proposed and promulgated by the respective employing department jointly with OPM, in recognition of OPM's role as the central human resources agency for the federal government.**

a. **In February 2005, DHS published final regulations and DoD published proposed regulations. In the development of final regulations for DoD and of any amendments to the final regulations for DHS or DoD, do you intend that**

OPM will function as an equal partner with those departments? What will you do if either DHS or DoD seeks to proceed without OPM's full knowledge or participation?

b. **Given the lack of specific policies and procedures in the DHS and DoD rules, especially with respect to the establishment of pay and performance, and given the need therefore to establish policies and procedures through subsequent implementing documents, what role will OPM exercise in the development and adoption of those implementing documents to fulfill Congressional intent that OPM be an equal partner with DHS and DoD in establishing the terms of their new human resources management systems?**

It is my understanding that the law calls for regulations and any subsequent adjustment to be jointly prescribed by OPM and these agencies. OPM must also coordinate on the implementing directives that follow the publication of enabling regulations. Where the agency and OPM cannot reach agreement – and I would expect that to happen only in rare instances – we would elevate the matter to the Executive Office of the President for discussion and resolution.

18. **The Federal Sector Labor-Management Relations statute articulates a Congressional finding that statutory protection of the right of employees to organize and bargain collectively contributes to the effective conduct of public business. (5 U.S.C. § 7101(a)).**

a. **What is your opinion of the value of collective bargaining at federal agencies for the effective conduct of public business?**

b. **Under what circumstances do you believe the right of federal employees to bargain collectively is advantageous to the ability of agencies to fulfill their mission, and under what circumstances do you believe it is detrimental?**

a. Collective bargaining at federal agencies can provide a valuable contribution to the effective conduct of public business. Agencies should be encouraged to establish cooperative labor-management relations that strike the correct balance between the rights of employees and labor organizations to bargain collectively and the responsibility of agencies to effectively carry out their respective missions. Such efforts can enhance the effective and efficient conduct of public business, reduce the number of employment-related disputes, and ultimately improve working conditions.

b. I believe the right to bargain collectively is advantageous whenever the duty to bargain over the exercise of that right does not impede mission accomplishment, particularly when the mission involves national or homeland security. I believe the right to bargain is most beneficial when it furthers the cause of an effective and efficient government.

19. **The regulations for DHS and the proposed regulations for DoD provide that, when management issue directives, matters addressed in those directives are no longer allowed to be the subject of collective bargaining. At DHS, such directives must be department-wide, and at DoD such directives may extend to the entire department or to any component of the department. The DHS and DoD regulations also expand the scope of "management rights" (5 U.S.C. § 7106) that managers can exercise without a requirement to bargain.**

    a. **To what extent do you believe that these regulations preserve the right of employees to bargain collectively and to participate through labor organizations in decisions that affect them?**

    b. **If one party to a negotiation can take any subject off the table at will, how can collective bargaining achieve its intended purpose of encouraging and facilitating the amicable and productive resolution of workplace issues?**

    a. As I understand it, the proposed DoD and final DHS regulations preserve the fundamental right to bargain, as the legislation authorizing these changes clearly required. That is, employees of both Departments continue to have the right to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them, as required by both enabling statutes. The regulatory changes serve to emphasize the critical need for the Departments to be able first and foremost to meet their critical missions, by providing an obligation to bargain while ensuring the obligation does not impede mission accomplishment.

    b. No other federal agency or corporate entity has the mission responsibility comparable to DHS and DoD. I believe management officials of these two Departments are best able to determine the degree of flexibility and rapid response required to meet their mission demands. The intended purpose of collective bargaining is met since the regulations provide for collective bargaining on certain matters, and provide a mechanism for obtaining union views and recommendations where management is not required to negotiate.

20. **The Administration has proposed that statutory personnel flexibilities like those applicable to DoD and DHS should be extended to agencies throughout the government. Is this something you envision taking up early in your tenure at OPM, or do you believe that the systems at DoD and DHS should have an opportunity to mature and be evaluated before they are extended to other parts of the government?**

    I believe this is the right time to extend the civil service reforms granted to DoD and DHS to other agencies. All Federal employees should have the opportunity to benefit from compensation systems grounded in pay for performance principles. Workers should not be disadvantaged because some agencies have flexibilities and others do not. Pay for

performance, in particular, is a mature basis for compensation. It has existed successfully in the private sector for decades. If confirmed, I will make certain that OPM places the highest priority on helping agencies enhance the skill sets and knowledge bases of their HR professionals to meet the challenges of civil service reform. In addition, I would work closely with the Congress to make certain that its concerns are fully considered and addressed.

21. **Existing civil service statutes and regulations already provide agencies a great variety of personnel flexibilities, including opportunities to reward employees for superior performance. What is your opinion of the extent to which agencies make use of the proven and innovative options they currently have to reward performance, and what do you believe should be done to encourage agencies to make better use of them?**

Should I be confirmed, I would review the extent to which agencies are using currently available flexibilities, any obstacles to their use which may exist and whether OPM can provide additional assistance. These types of flexibilities have proven to be effective in recruiting, retaining and motivating employees both in the public and private sector. OPM must continue to ensure that agencies avail themselves of them.

22. **The pay and performance regulations adopted for DHS and proposed for DoD do not yet include many specific policies and procedures, which are left for future development and adoption. What specific policies and procedures do you believe should be incorporated into these pay and performance systems to ensure fairness and to guard against politicization and other abuse? For example, what procedures and policies do you believe should be considered in order to establish fair, credible, and transparent employee performance appraisal systems, mechanisms to ensure employee involvement in the design and implementation of the system, and effective safeguards to ensure that the management of the system is fair and equitable and based on employee performance?**

It is important to remember that there are established practices in the private sector from which agencies can draw to alleviate the concerns of employees and their representatives regarding the new pay for performance systems. First and foremost among these is the requirement that agencies provide employees with a clear definition of what is expected of them and how that fits into the overall agency mission. Further imperatives include performance goals which are measurable and on which pay can be based, constructive and periodic feedback on how the employee is performing relative to those expectations, and managers who are capable of and committed to helping employees to achieve success.

23. **In pay systems like those at DHS and DoD that move away form pay levels defined in statute, will the new pay systems be budget-neutral, or do you anticipate a need to increase overall funding for employee salaries to fund the performance component? What do you think can be done, in light of fiscal pressures, to ensure that funding**

will be adequate for employee recruitment and retention and to truly reward good performance?

It is my judgment that the new pay systems are focused on fair, equitable and market-based compensation levels. The amount of funding available is an issue that must be addressed in each year's budget process. I anticipate that the new pay systems established at DHS and DoD will be budget neutral in the sense that overall increases in payroll expenditures need not, in the aggregate, exceed the amount that would have been spent under current pay systems.

24. **Do you believe there are special challenges in establishing a pay-for-performance system in some environments? Do you believe there may be certain settings where pay-for-performance is not appropriate? For example, how do you believe pay-for-performance could be made to function effectively in a workforce that requires extensive teamwork to successfully accomplish its mission? What is your opinion about how pay-for-performance could be applied effectively in a law-enforcement context?**

Pay for performance systems have been established in a wide variety of environments in the private sector, so I'm confident we can accommodate any special characteristics in Federal government agencies. Every pay for performance system in which I have participated – both as an employee and as a manager – has had both individual and group performance components. This is commonplace in the private sector. The objective in such a situation is to set the components to appropriately reflect the employee's relative contribution to group and individual performance.

While I am unaware of any large scale pay for performance systems in a law enforcement environment, I understand that some State law enforcement agencies are converting or considering converting to a pay for performance system.

25. **What is your view about extending pay-for-performance beyond DoD and DHS to the rest of the government?**

I believe we must move forward now on extending pay for performance to ensure that the Federal civil service doesn't become further fragmented with agencies being forced to seek individual reforms to remain competitive for talent. Delaying governmentwide reform will do little to improve the opportunity for successful implementation at other agencies. Implementation is a function of how well they, not DHS and DoD, execute.

26. **As part of the human resources management systems established for DHS and proposed for DoD, the departments will establish agency-specific boards to resolve disputes involving collective bargaining and to hear certain employee appeals. What, if anything, do you believe the departments can do to ensure that such internal boards win the trust of their employees as being fair and independent adjudicators and decisionmakers?**

I believe winning the trust of employees begins with making sure that the individuals appointed to each panel are persons who are both well-qualified in terms of subject matter knowledge and also possess a reputation for integrity and impartiality. As I understand the DHS system, the selection process specifically includes consideration of individuals nominated by labor organizations. With respect to the DoD proposed system, I understand that this is a matter that will be explored with the labor organizations during the "meet and confer" discussion period. I would urge employees not to prejudge these panels but, instead, to evaluate the quality of their decisions. Ultimately, the fairness and independence of these panels will be demonstrated to employees by the decisions they each render.

Compensation

27. **As part of the new Senior Executive Service (SES) performance-based pay system, executive branch agencies must have OPM certify, and Office of Management and Budget (OMB) concur, that their SES performance management systems make meaningful distinctions among members of the SES based on individual performance, contribution to the agency's performance, or both, as determined under a rigorous performance management system. How do you envision OPM monitoring agencies' SES performance management systems to ensure they continue to make distinctions in senior executive performance?**

It is imperative for the SES to lead by example as we establish a performance culture for the rest of the Federal government. It is my understanding that the implementing regulations already require agencies to submit extensive data to OPM and OMB about the application and results of their pay for performance systems. I would anticipate that the analysis of this data will provide the basis for an audit-like review with recommendations for remediation, where necessary, and potential loss of certification.

28. **In February, the Chairman and Ranking Member of this Committee and the Chairman and Ranking Member of the Armed Services Committee (who also serve on this Committee) expressed concern about DoD's implementation of pay increases authorized for members of the Senior Executive Service serving in the Office of the Secretary of Defense and the defense agencies. DoD's decision to use the status of an employee — as either career or noncareer — as a factor in the awarding of a pay raise appears to be inconsistent with the law and with the Congressional intent in granting additional pay flexibilities for the SES. What safeguards should be added to the SES performance management system to ensure agencies make compensation decisions that are based on performance by the SES workforce?**

OPM Acting Director Dan Blair addressed this issue in his February 18, 2005 letter to interested parties:

As noted in your letter, Congress established that new SES pay for performance system in the National Defense Authorization Act for Fiscal Year 2004. That system requires that all adjustments in the base pay of SES members be "based on individual performance, contribution to the agency's performance, or both" – without regard to the career or non-career status of the employee. Further that system requires that OPM, in coordination with the Office of Management and Budget (OMB), certify that an agency's SES appraisal system makes such individual performance distinctions, before that agency is allowed to make pay adjustments above Level III, and up to Level II, of the Executive Schedule. Absent such certification, an agency is limited to making pay adjustments up to Level III only.

To date, DoD has not yet been certified, so they have not yet implemented this new SES pay for performance system. The pay adjustments you referenced were made using the Department's old "pass/fail" SES appraisal system, and that system applied only to SES members in those DoD components serviced by the Washington Headquarters Services. That system pre-dates the new SES pay for performance law, as well as OPM's implementing regulations. Under those regulations, all certified SES appraisal systems must have a least one rating level above Fully Successful to ensure meaningful distinctions in performance. DoD's old "pass/fail" system does not meet this requirement. As such, that system cannot be, and has not been, certified as meeting the statutory and regulatory requirements of the new SES pay for performance system.

I agree with this statement.

29. **What are the "lessons learned" from introducing performance-based pay into the Senior Executive Service? What steps can OPM take to ensure this system, and the DoD and DHS systems, are seen as credible by employees?**

The credibility of the executive pay for performance system depends primarily on the ability of agencies to make clear and consistent distinctions in performance that reinforce their missions and are consistent with their overall agency performance. If confirmed, I would expect to work closely with agency Chief Human Capital Officers and their staffs to ensure that their systems are established and administered in accordance with the law and OPM regulations and reflect this principle.

30. **The budgetary challenges facing the federal government are considerable and fiscal restraint will clearly be needed as part of the response to those challenges. Given this situation, how can the federal government also make the critical investments needed to attract, select, develop, motivate, and retain the highly qualified and productive workforce that the American people expect and deserve?**

An agency's starting point in addressing this challenge is to identify and prioritize strategic and operational goals. Next, is to determine what it can afford to do and then

identify the required skill sets for achieving successful execution of these goals. To the extent that there are human capital skill gaps, I believe we will be well-served by recruiting talent using existing flexibilities and the opportunity afforded in the new pay for performance environment.

31. **The pay-for-performance systems at DHS and DoD would provide annual rate range adjustments and locality pay supplements based on a number of factors. As OPM Director, what strategies will you propose to ensure that employees are not unfairly impacted based on their geographic location?**

I understand the final DHS regulations and the proposed NSPS regulations require OPM to coordinate on all rate adjustments, which would include the designation of locations where localized pay supplements would be appropriate, as well as the methods used to determine the amounts of such supplements. If confirmed, I would make certain that OPM fulfills its obligations to work with both DHS and DoD to ensure fair treatment of all affected employees, including those in rural areas and those in locations adjacent to the current General Schedule locality pay areas.

32. **In recognition of agencies' needs to better avail themselves of critical pay authority, the Federal Workforce Flexibility Act of 2004 (P.L. 108-411) provides OPM with a number of tools, including more control over agencies' use of critical pay authority. How can OPM help agencies make better use of this and other authorities recently enacted to realize the benefits of talented individuals whose expertise could improve the federal government's efficiency and effectiveness?**

The Federal government's ability to attract and retain high performing talent is integral to the long-term security of our citizens. In an increasingly competitive global human capital market, the Federal government must hire, develop and reward top talent. Once specific human capital needs are identified, they can be addressed using appropriate flexibilities, including critical pay authority to acquire higher priced, scarce skills. If confirmed, I would ensure OPM assists agencies in this process by such means as showcasing best practices, helping agencies develop self-accountability programs and by regularly reviewing them for progress, compliance, and return on strategic investment.

33. **To what extent do you believe an agency or department should have to determine its own compensation system? With regard to such an agency/department prerogative, what role should OPM play?**

In order to ensure a level playing field for employees and agencies, I think it is critical that the government have in place a core governmentwide compensation framework designed by OPM in consultation with agencies, with input from employees and labor organizations, and an opportunity for public comment. Agencies should be allowed to modify that system to reflect their mission, as needed and within parameters set by OPM.

34. **Over the past 20 years, Congress has consistently chosen to enact pay parity for civilian employees and members of the uniformed services, in recognition of the federal workforce's service to our nation. The President's FY2006 Budget proposes a 3.1 percent increase for members of the uniformed services and an increase in civilian pay of 2.3 percent. Do you support parity in pay increases for civilian and military employees?**

Civilian and military employees perform their services in valued, but distinct environments. In my opinion, neither is necessarily well-served by the simplicity of a common percentage increase that fails to account for the prevailing distinction in their markets and missions. More significant, however, is the principle that pay be set and adjusted according to performance. As we progress in building a true pay for performance system, the concern about this difference will become secondary.

Chief Human Capital Officer (CHCO) Council

35. **The Director of OPM serves as Chairman of the Chief Human Capital Officers (CHCO) Council. Using your previous experience with interagency councils such as the Chief Financial Officers Council, what approach would you take to leading the Council? Do you think the CHCO Council has fully achieved its potential as an advisory and coordinating body?**

If confirmed, I look forward to chairing the Chief Human Capital Officers (CHCO) Council, which is responsible for providing policy and operational advice and coordinating member agencies' human resources activities. While serving as Controller at the OMB, I had the opportunity to chair the Chief Financial Officers Council. That experience would provide an interesting and valuable perspective in these new responsibilities and the opportunity to transfer relevant best practices from the Federal government's oldest interagency management council to its considerably younger human capital counterpart. The CHCO Council has a unique mission, however, and I also look forward to reviewing its existing practices, strategic plans, reports to Congress, and other deliverables, which have been developed during the two years since its establishment.

Hiring Flexibilities

36. **The federal government's hiring process has been described as slow and cumbersome. What additional steps should OPM take to help ensure agencies are aware of the hiring flexibilities available to them, such as direct hire authority and category ranking?**

If confirmed, I would ensure OPM continues to provide agencies the training and guidance they need to implement the flexibilities that fit their needs. OPM should also continue to provide consultative services that review and analyze existing human

resources programs and monitor hiring practices of the agencies through the ongoing audit program. Additionally, OPM would emphasize expanding the use of all the e-Government tools, such as the OPM website, the On-Line Hiring Flexibilities Guide, Go-Learn and EHRI (Enterprise Human Resources Integration), to provide agencies with as many channels as they need to access information and guidance. Use of these flexibilities will be monitored via the PMA scorecard.

37. **OPM recently adopted a 45-day hiring model and joined with the Partnership for Public Service in a "call to action." Do you believe these programs have been successful?**

It is my understanding that it is premature to deem these programs successful. However, the introduction of this model focuses agencies' attention on the need to acquire talent expediently. We will continue to monitor agencies' progress in adopting this model via the PMA scorecard.

38. **Do you see recruitment and retention as a priority for OPM, and, if so, what types of initiatives would you be looking at?**

Recruitment and retention are an integral part of an agency's human capital strategy for ensuring sufficient human resources are in place to accomplish its mission. To that end, Congress has granted flexibilities to agencies to use to meet those needs. OPM will continue to work with agencies to make sure that they are used to the maximum extent possible.

39. **The federal government faces shortages in specific professions or skills that may require targeted recruitment and retention efforts. For example, the Partnership for Public Service issued a report in February identifying several primarily highly-skilled fields — including security inspectors and investigators, medical and public health professionals, engineers and scientists, and several others — where federal agencies will have the greatest hiring needs in coming years and where it may be difficult to attract the needed talent to public service. What do you believe OPM can do to help individual agencies and the government overall to identify such critical skill needs and to recruit and retain the required expertise?**

The PMA's Human Capital initiative focuses agencies' attention on preparing for their future needs through strategic workforce planning. Agencies identify current mission critical jobs and competencies, as well as forecast future needs and develop strategies to close gaps. OPM has worked with a number of agencies to approve direct hire authority for jobs where there exists a severe shortage or critical need. Further, a number of governmentwide direct hire authorities have been granted for mission-critical occupations. Finally, there are other hiring and retention flexibilities such as dual compensation (salary offset) waivers, term appointments, recruitment, retention, and relocation payments, as well as the student loan repayment program available to agencies.

Merit Principles and Equal Opportunity

40. **Federal employees have legal rights against discrimination, arbitrary personnel actions, and other prohibited personnel practices, but the government's administrative redress system has long been criticized as overly complex, time consuming, and costly. What role can OPM play in improving this system and in helping agencies develop conflict management systems that work to prevent as well as resolve workplace disputes? What are your views regarding the use of alternative dispute resolution to resolve workplace conflicts?**

As the President's key advisor on human resources management, the Director of OPM is uniquely positioned to influence the manner in which workplace disputes are prevented and resolved. OPM should continue to work closely with agencies to improve their human capital management in general, and their processes for preventing and resolving workplace disputes. However, the success of any effort in this area ultimately depends on the ability and willingness of agencies to create a culture in the local workplace that holds employees and supervisors accountable in this regard.

In the last few years, published reports, including those by GAO, have concluded that voluntary alternative dispute resolution techniques such as mediation can resolve workplace disputes in a more effective and efficient manner. I believe this continues to be a valid conclusion and that alternative dispute resolution, when used correctly, can be an effective tool to resolve workplace disputes at the earliest stage of their development.

41. **OPM and the EEOC are both involved in ensuring equal opportunity in federal employment. In what ways can OPM and EEOC work collaboratively in providing leadership to ensure that federal employees are treated fairly?**

I am aware that both OPM and the EEOC acknowledge that there are shared responsibilities in the field of equal employment opportunity within the Federal Government. Recognizing their individual responsibilities, OPM and EEOC should nonetheless continue their existing efforts to develop and enhance avenues of communication that will allow each organization to confer more proactively on matters of mutual concern and interest.

42. **The increase in personnel flexibilities at DHS and DoD, by affording greater discretion to supervisors in the areas of pay and performance management, raises the issue of oversight of the merit system. What role do you see OPM playing in ensuring agency compliance with the merit system principle? What mechanisms do you envision using to hold agencies accountable?**

What was important in this regard about the passage of those two authorizing statutes is that both preserved and affirmed merit system principles. OPM will continue to ensure compliance and adherence through its oversight role and leadership of the PMA human capital initiative.

43. **OPM has long stated the positions, thus far endorsed by this Administration, that employment discrimination based on sexual orientation is a prohibited personnel practice under 5 U.S.C. §2302(b)(10), and that agencies and managers should commit themselves to promoting a work environment that is free from discrimination based upon sexual orientation. (*See* "Addressing Sexual Orientation Discrimination In Federal Civilian Employment: A Guide to Employee's Rights," www.opm.gov/er/address2/guide01asp .) As OPM Director, would you continue to support these existing interpretations and policies?**

Yes.

Management Challenges

44. **GAO reported in its recent Performance and Accountability Series that OPM has made some progress in addressing key management challenges and program risks but challenges remain in several areas, including: leading strategic human capital management governmentwide; overseeing agency human capital management systems; transforming OPM and managing its internal operations; and administering the retirement and health insurance programs. What are your plans to address these challenges and program risks?**

OPM, as well as GAO, recognizes these challenges and is taking steps to address them. I plan to lead OPM in seeing these efforts through to completion.

45. **Agency leaders can use various methods to access human capital, such as hiring full-time or limited-term employees and contracting for services. How would you use these methods to achieve your goals in OPM?**

If confirmed, I would ensure a continued focus on systematic workforce planning at OPM, and work to optimize the blend of permanent and contingent workers to ensure an agile workforce that can meet our mission and goals.

46. **Numerous GAO reports have highlighted the need for effective training and development programs to better equip federal employees for the workplaces of the future. Based on your experience, how would you emphasize the need for continuous learning both within OPM as well as governmentwide?**

If confirmed as the OPM Director, I would continue to emphasize the value of learning and a learning environment to the success of an agency's mission. The Federal Workforce Flexibility Act of 2004 requires agencies to link training requirements to mission requirements and strategic objectives and evaluate the effectiveness of their training programs annually. I would work to ensure that this law is implemented effectively to ensure training resources are invested wisely.

I would also continue to emphasize use of the Federal Executive Institute as a resource for executive training and development, as well as its complement, the Go-Learn site for web-based training.

47. **GPRA is intended to provide managers with a disciplined approach — developing a strategic plan, establishing annual goals, measuring performance, and reporting on the results — for improving performance and service quality, increasing customer satisfaction, and strengthening internal management. During your tenure, how would you reinforce accountability with your senior leadership for accomplishing OPM's performance goals? How would you cascade accountability throughout the organization?**

If confirmed, I would hold OPM's managers accountable for achieving the goals and objectives of its strategic and operational plans. Additionally, both I and the rest of the senior leadership will be responsible for ensuring accountability for results throughout all levels of the organization. This effort will require clarity, specificity, and auditability in the construct of action steps underlying OPM's plans.

48. **Most public administration experts agree that effective workplaces typically feature a cooperative labor-management relationship. What steps can OPM take to improve labor-management relations across government, but especially at DoD and DHS?**

I agree that a cooperative labor-management relationship is vital to an organization's success. With respect to labor-management relations, I believe the important point to reinforce is the need for balance. OPM has a responsibility to ensure that any changes in labor-management relations implemented in DHS and DoD or proposed for the rest of Government strike the correct balance between the rights of employees and labor organizations and the responsibility of agencies to effectively carry out their respective missions. I believe that balance has been struck correctly for DHS and DoD, given their unique homeland and national security missions. The key now is to ensure that their employees, through their representatives, participate meaningfully in the design of the implementing directives with respect to DHS, and in the meet and confer process with respect to DoD.

If confirmed, I would ensure OPM continues to work closely with DHS to meet the mandate of the Congress to implement its human resources system, ensuring that DHS labor organizations have meaningful participation in the design of that agency's implementing directives as required by the final regulations. In addition, OPM should continue to be a full partner with DoD in the meet and confer process currently underway with that agency's labor organizations. I understand the parties already have had a number of productive discussions on the proposed regulations in the first week of that process. If confirmed, I look forward to working with these agencies in their efforts to establish and implement new human resources systems that are fair, credible and transparent.

49. **What improvements can be made to priority placement programs for displaced federal employees, especially in light of field reorganizations?**

It is my belief that Federal government agencies should use the tools at their disposal to retain quality workers who have been displaced, particularly in the current environment of heightened competition for talent. If confirmed, I will review our policies and procedures in this area.

Financial Management

50. **Recently, OPM was downgraded for its financial performance on the President's Management Agenda. What actions do you plan to take to improve the financial performance and hold managers accountable for OPM's financial operations?**

If confirmed, I would work aggressively to strengthen OPM's financial operations. I would ensure that OPM completes its remediation plan already underway to resolve conditions contributing to the identified material weakness. Similarly, I would preserve the integrity of the financial operations that conform to accepted standards of practice. All of these objectives will be reflected in the personal goals of the managers who are accountable for achieving them.

51. **What is your view on the importance and role of internal controls (i.e., management controls) in effectively meeting the organization's mission, goals, and objectives?**

My commitment to a strong system of internal control is evidenced by my leadership in issuing a new requirement – OMB Circular A-123 – for agencies to follow Sarbanes-Oxley standards.

I am pleased to note that OPM has established an internal control and risk management unit to perform high-level internal control review and quality assurance. I would support the work of that unit and expect OPM managers and employees to use internal control as a tool to improve the Agency's operations.

Information and Technology Management

52. **OPM has been working on an effort to modernize the federal government's retirement system. OPM recently concurred with a GAO report (GAO-05-237) issued at the end of February that calls for a series of recommendations to bolster the management and oversight of this effort. The President's FY2006 Budget request discusses the need to develop a business plan before proceeding with the Retirement Systems Modernization project. What do you see as the biggest risks to this modernization? What processes will you put in place to mitigate these risks?**

I understand the GAO report made a number of recommendations covering aspects of critical project management processes that put large, complex projects like OPM's retirement modernization effort at risk. I recognize the greatest risks to achieving success in this kind of business transformation project include managing the scope, schedule, and costs of the many complex, interrelated, and dependent activities. If confirmed, I would minimize risk by using project management best practices throughout the implementation.

53. **OPM is currently managing several major information technology initiatives that impact the entire federal government. These include Retirement Systems Modernization, enterprise Human Resources Integration, and e-Payroll. How will you ensure that these initiatives are well coordinated, both with each other and with other federal agencies?**

As Controller at OMB with responsibility for a set of e-Government initiatives, I observed the need for agencies and other stakeholders to achieve a shared vision of IT solutions and drive the development and adoption of these solutions across the Federal government. I will work to see that these initiatives support each other, meet the needs of their customers and promote the strategic management of human capital.

54. **As part of the federal government's transition to the Federal Employees Retirement System, thousands of employees were placed in the wrong retirement system through no fault of their own. Until 2000, federal agencies had no choice but to correct a retirement coverage error upon discovery, effectively forcing employees into a new retirement plan. Unfortunately, these corrections had a detrimental impact on many employees' financial ability to plan for retirement. In 2000, the Federal Employees Retirement Coverage Corrections Act (FERCCA) was enacted to provide relief to employees affected by these retirement coverage errors. Four years after enactment, it appears that only a handful of the roughly 5,000 eligible cases have been settled. If confirmed, what steps would you take to ensure successful implementation of FERCCA?**

I understand that the correction and prevention of retirement coverage errors is an ongoing effort. I assure you OPM would remain dedicated to working with agencies to provide training and guidance on determining eligibility and correcting personnel records, should I become Director.

55. **Initiatives to develop central electronic repositories of human resources and retiree information, such as the Enterprise Human Resources Integration project and the Retirement System Modernization project, must be secure to protect individual privacy. Certain applicable privacy obligations are spelled out in the Privacy Act of 1974, the e-Government Act of 2002, and OMB Memorandum 03-22. What steps would you take to address privacy and security requirements and objectives in developing these electronic systems of personnel and retiree data?**

If confirmed as Director of OPM, I would ensure these vital systems have the appropriate level of IT security to protect the privacy of individual information. In addition, I would continue to enhance policies regarding the use of personnel information to ensure we protect the privacy of individuals.

Security Clearances

56. **In the wake of the events of September 11, 2001, the demand for security clearances for both government and industry personnel has dramatically increased. Unfortunately, the government mechanisms for the investigation and adjudication of clearances have not kept pace with the necessity to process large numbers of clearance requests quickly and effectively. Federal employees and industry face additional challenges once they have a security clearance from one agency but then need to work on a project on behalf of a different agency; often, agencies do not recognize clearances granted by a sister agency, requiring personnel to go through the process yet again. As a result, government employees cannot work on security-related projects while their security clearance applications are pending. Similarly, many contractor companies are unable to hire otherwise qualified personnel because the security clearance process is requiring, on average, over a year to complete. OPM recently accepted the transfer of over 1,800 security investigation staff, consolidating the vast majority of personnel investigation staff under its authority.**

    a. **Section 3001 of the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458), 50 U.S.C. § 435b, contains a number of reforms to expedite the security clearance process. Under section 3001(b) of the Act, the President will select a single executive-branch entity to, among other things, establish uniform policies and procedures and to direct day-to-day oversight of security clearances, and develop a plan to reduce the length of the personnel security clearance process. Do you believe OPM is prepared to fulfill its responsibilities under the Act if selected by the President to do so? What specific steps would you undertake, as OPM Director, to help enable OPM to fully perform its responsibilities under the Act if designated by the President under section 3001(b) of the Act?**

    b. **Section 3001(e) of the Act also requires OPM to establish a governmentwide database of security clearances. OPM was given until December 7, 2005 to complete this task. What steps do you believe OPM must undertake to fulfill this responsibility? Do you know whether OPM is on schedule to complete this task?**

    c. **What additional steps do you believe OPM could take to speed the process of issuing security clearances, both for new hires and for existing federal and contract personnel?**

a. I am told that OPM's Investigations program has already taken aggressive steps to fulfill the requirements of the Act. Since 1999, OPM has increased its investigative capacity to process over 1.4 million requests projected for FY05. The recent transfer of the Defense Security Service investigative staff, along with the addition of five new contract companies, has resulted in a total Federal/Contractor workforce of almost 8,000 investigators and support staff.

As Director, I will assist OPM in fully implementing the Act by focusing on maintaining adequate staff capacity, directing the development of Information Technology systems that streamline processing and information sharing, and working with the National Security community to develop common standards that promote reciprocity.

b. I am told that OPM is on schedule to meet this requirement. The current Clearance Verification System (CVS), hosted on OPM's automated investigations processing system, already provides a framework that is suitable for expansion to meet this requirement. Linked with the Department of Defense's Joint Personnel Adjudication System (JPAS), the CVS system now provides on-line access to all active security clearances maintained by both the Department of Defense and the civilian agencies.

Over the next three months, OPM will be meeting with clearance-granting agencies to redefine the data that is maintained in this system, expanding it as needed to meet community requirements.

c. OPM's role is to conduct the background investigations used by agencies to determine whether applicants, employees or contractors are suitable for employment or should have security clearances. OPM does not issue security clearances for individuals other than those employed by OPM.

OPM must work closely with all agencies to ensure that each stage of processing is timely. Agencies delays in identifying individuals that require clearances and gathering the necessary data and forms to process investigations must be reduced, and OPM must provide aggressive oversight of these processes. OPM must maintain adequate investigations processing capacity to deal with peak workloads and must work closely with national, state, and local record providers to reduce response times which impede timely processing.

In addition, OPM must continue to provide rigorous oversight of the agency adjudication process in terms of both the adequacy and timeliness of actions taken.

Federal Employee Benefits

57. **What steps need to be taken to integrate the Federal Employees Health Benefits Program (FEHBP) and Medicare for retirees, especially now that Medicare will offer, in 2006, a prescription drug benefit?**

This is an area of significant concern to our retirees and, if confirmed, I would expect to focus on this to ensure the appropriate actions are taken. I am told that OPM has taken steps to ensure effective integration can be achieved.

58. **OPM's comments that were included as part of GAO's recent report on retiree health benefits (GAO-05-205) indicated that OPM does not expect to participate in the employer subsidy provided for by the Medicare Modernization Act. What is your view on whether OPM should participate in the subsidy? What impact do you believe OPM's participation in the subsidy could have on the benefits provided or on the premiums charged to medicare-eligible employees or retirees of the civil service or of the postal service?**

It is my understanding that the intent of the employer subsidy payment is to encourage employers to continue providing prescription drug coverage to their Medicare-eligible retirees. Federal retirees already have excellent access to health benefits coverage for drugs through their participation in the FEHB Program, and that coverage will continue. As a consequence, the rationale for granting the employer subsidy does not apply in this context. Therefore, it is my understanding that OPM does not intend to participate in the subsidy.

59. **Congress recently enacted the Federal Employee Dental and Vision Benefits Enhancements Act of 2004 (P.L. 108-496) to provide employees and annuitants with access to supplemental dental and vision coverage. What approach would you take to facilitate the participation of stakeholders in the development of the program to ensure employees have an appropriate menu of options to select from? In addition, what steps would you take to ensure employees have access to the information necessary to make informed choices when electing this future benefit?**

If confirmed, I would continue the efforts OPM has already begun, specifically to meet with a wide range of stakeholders, including carriers currently participating in the Federal Employees Health Benefits Program, insurance companies, and providers of dental and vision services. OPM staff would also continue briefing Congressional staff on the dental and vision program as needed. I would ensure OPM uses currently available communications vehicles for the new dental and vision programs and requires the selected carriers to make available detailed information about their product offerings through websites, call centers and mailings of educational materials.

60. **What approach would you take in management of the FEHB program to obtain high quality benefits while controlling premium increases?**

Both of these objectives are part of OPM's stewardship responsibility to over 8 million covered lives. Achieving them will be enabled by a combination of controlling administrative costs, maintaining high levels of insurance provider competition, careful management of plan experience along with diligence in offering benefits that are valued and utilized by the plan participants.

Communication with Congress

61. **The lack of effective communication has made it difficult for the Committee to conduct oversight of OPM. What approach would you take to communicating with Congress?**

I have always taken very seriously the need to ensure communication with Congress is ongoing and productive. I established an effective record as Controller at OMB in this regard and I pledge to continue that practice if confirmed as Director of OPM. You may be assured I would take appropriate action to eliminate any past difficulties in this area.

IV. Relations with Congress

62. **Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed?**

Yes.

63. **Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress if you are confirmed?**

Yes.

V. Assistance

64. **Are these answers your own? Have you consulted with OPM or any interested parties? If so, please indicate which entities.**

Yes, however, I have consulted with OPM staff to obtain helpful information of a background nature.

AFFIDAVIT

I, Linda M Springer, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

Subscribed and sworn before me this 6th day of May, 2005.

Notary Public

Cheryl V. Brown
Notary Public District of Columbia
My Commission Expires: Feb. 28, 2008

QUESTIONNAIRE FOR NOMINEES TO THE DISTRICT OF COLUMBIA COURTS COMMITTEE ON GOVERNMENTAL AFFAIRS, UNITED STATES SENATE

I. BIOGRAPHICAL AND PROFESSIONAL INFORMATION

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

   Noël Anketell Kramer

   Other Names Used: Alice Noël Anketell Kramer (5/70 to present)
   Alice Noël Kramer (5/70 to present)
   Alice Noël Anketell (11/45 to 5/70)

2. Citizenship (if you are a naturalized U.S. citizen, please provide proof of your naturalization).

   United States of America

3. Current office address and telephone number.

   D.C. Superior Court
   500 Indiana Avenue, N.W.
   Room 3530
   Washington, DC 20001
   202-879-1446

4. Date and place of birth.

   Date of Birth: November 22, 1945
   Place of Birth: Bay City, Michigan

5. Marital status (if married, include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

   Married to Franklin David Kramer
   Occupation: Attorney
   Position: Of Counsel
   Place of Employment: Goodman Procter
   Address: 901 New York Avenue, N.W.
   Washington, DC 20001

6. Names and ages of children. List occupation and employer's name if appropriate.

Katherine Anketell Kramer (28)
Christopher Anketell Kramer (23)

7. Education. List secondary school(s), college(s), law school(s), and any other institutions of higher education attended; list dates of attendance, degree received, and date each degree was received. Please list dating back from most recent to earliest.

University of Michigan Law School – August 1968 to May 1971; J.D. Cum Laude 1971

Vassar College – September 1963 to June 1967; B.A. Cum Laude 1967

Michigan State University – Summer Drama Program 1966 – No Degree

Bay City Central High School – September 1959 to June 1963; High School Diploma Magna Cum Laude 1963

8. Employment record. List all jobs held since college, other than legal experience covered in question 16, including the dates of employment, job title or description of job, and name and address of employer. Please list dating back from most recent to earliest. If you have served in the US military, please list dates of service, rank or rate, serial number, and type of discharge received.

From September 1967 to August 1968, and from June 1969 to August 1969, I was employed by the American Telephone & Telegraph Company in New York City as a computer programmer. The offices at which I worked were located in New York City, but I do not recall the addresses. I left that position to go to law school.

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.

2005 – Received recognition from the Project Empowerment program of the D.C. Government Department of Employment Services "for outstanding support and dedication to improving the lives of District of Columbia residents."

2005 – Received recognition from the District of Columbia Community Justice Coordinating Council, Pretrial Systems and Community Options Committee: "In recognition of your invaluable dedication to the advancement of the principles of pretrial services, we honor your visionary leadership of the Pretrial Systems and

Community Options Committee in its efforts to foster collaboration and bring improvements to the administration of criminal justice in the District of Columbia."

2004 – Received COP Award of Merit Award from the Metropolitan Police Department for "significantly enhancing the MDPC's ability to prevent crime, deliver public services and otherwise carry out the Department's public safety mission."

2004 – Received the Judge Robert A. Shuker award from an association of former U.S. Attorneys, an award that is given annually "to a judge who best exemplifies Judge Shuker's wit, scholarship and commitment to community service."

2002 – Received highest overall score of 9.8 out of ten given by community members who observed all of the judges in the Criminal Division of the Superior Court as participants in the Court Community Observers' Project of the Council for Court Excellence.

2001 – Received award from the National Association of Women Judges "[i]n recognition of your inspiration and leadership in advancing NAWJ's mission in breaking down barriers to justice for vulnerable populations, and in ensuring the fair administration of justice for all."

2001 – Received award "in appreciation of outstanding service to the Ionia R. Whipper home on the occasion of its 70th anniversary."

2000 – Awarded the Superior Court Medal of Excellence "for her superlative work, conspicuously above and beyond the call of duty, as Chairperson of the Ad Hoc Committee on the Criminal Justice Panel acting in the highest spirit of public service to the Bench and Bar in improving the ability of the Superior Court of the District of Columbia to provide quality legal representation through appointment under the D.C. Criminal Justice Act to indigents charged with criminal offenses before the Court."

2000 – Received award as outstanding mentor to young women lawyers from the Women's Bar Association of the District of Columbia.

1999 – Received the Edna G. Parker award from the National Association of Women Judges' chapter covering the District of Columbia, Maryland and Virginia "in recognition of distinguished service and significant contributions to the advancement of women in the legal profession."

1998 – Received award for outstanding and dedicated public service from the Friends of the Superior Court.

1996 – Elected to membership in the American Law Institute, an organization formed to promote the clarification and simplification of the law and its better adaptation to social needs, to secure the better administration of justice and to encourage and carry on scholarly and scientific work.

1993 – Elected a Fellow of the American Bar Foundation, a national institute committed to research on law and legal institutions conducted by staff from diverse fields such as law, sociology, psychology, political science, economics, history and anthropology.

1987 – Elected to the Bay City Central High School Alumni Hall of Fame.

1981 – Received Outstanding Litigator Award from the United States Attorney's Office.

1971 – Graduated with honors from the University of Michigan Law School

1970 – Elected as the Constitutional and Criminal Law Editor of the University of Michigan Law Review

1969 – Elected to the University of Michigan Law Review

1967 – Graduated with honors from Vassar College

1963 – Graduated with highest honors from Bay City Central High School

1963 – Received merit scholarship of $600 from the Rotary Club of Bay City, Michigan

1961 and 1962 – Won musical contests and received merit scholarships to attend Interlochen National Music Camp from the Bay Arts Council.

10. Business relationships. List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, or educational or other institution.

I was an Associate at the law firm of Wilmer, Cutler and Pickering from 1971 to 1976. For further detail, see answer to Question 16.B.

11. Bar associations. List all bar associations, legal or judicial-related committees, conferences, or organizations of which you are or have ever been a member, and provide titles and dates of any offices which you have held in such groups.

National Bar Associations and Legal Organizations

National Association of Women Judges (1985 - present)

President (2000 - 2001)
President-elect (1999 - 2000)
Vice President (1997 - 1998)
Secretary (1996 - 1997)
Treasurer (1995 - 1996)
Member, Board of Directors (1991 - 2002)
Chair, 25th Anniversary Conference, "Justice in America – Justice in the World" held in Washington, D.C. in October 2003

Member, American Bar Association (1972 - present)

Fellow, American Bar Foundation (1993 - present)

D.C. Superior Court Delegate, ABA Judicial Administration Division, National Conference of State Trial Judges (1992 - present)
Nominations and Bylaws Committees (1994 - 1995, 1998 - 1999, 2001 - 2002)

NAWJ Liaison to the ABA Commission on Women in the Profession (2004-2005)

Member, American Law Institute (1996 - present)

Member, American Judicature Society (1995 (apx.) - present)

Member, Women's Legal Defense Fund (1975 (apx.) - 1984)

D.C. Bar Associations

Member, Bar Association of the District of Columbia (1984 - present)

Member, Women's Bar Association of the District of Columbia (1983 - present)

Member, Greater Washington Area Chapter, Women Lawyers Division, National Bar Association (1998 - present)

D.C. Bar Committees

Co-Chair, D.C. Bar Civility Standards Implementation Committee (Nov. 1998 - 2001)

Member, D.C. Bar Task Force on Civility in the Profession (1993 - 1997)

Member, D.C. Bar Lawyer Counseling Committee (1997 - 2000)

Chairperson, District of Columbia Bar, Division IV -- Courts, Lawyers, and the Administration of Justice (1982 - 1984) (Member, Steering Committee 1981 - 1983)

Member, Committee on Legal Ethics, District of Columbia Bar (1983 - 1984)

Vice Chairperson, Committee on Divisions, District of Columbia Bar (1983 - 1984)

Member, Committee on Prepaid Legal Services, District of Columbia Bar (1983 - 1984)

D.C. Council for Court Excellence – Board of Directors (2004-present)

Inns of Court

Member, Charlotte E. Ray American Inn of Court (1998 - present)

Thurgood Marshall American Inn of Court (1990 - 1995)

Committees of the D.C. Superior Court

Chair, D.C. Superior Court Criminal Justice Act Panel Committee (2000 – present)

Member, D.C. Superior Court Liaison Committee with Judicial Disabilities & Tenure Commission (1990 - present)

Member, Joint D.C. Court of Appeals and Superior Court Advisory Committee on Judicial Conduct (1990 - 1997)

Member, D.C. Superior Court Rules Committee (1991 - present)

Chair, D.C. Superior Court Criminal Rules Advisory Committee (1991 - 2004)

Member, D.C. Superior Court Jury Management Committee (1988 - present)

University of Michigan Law School

University of Michigan Women Law Students Association (1969 - 1971)
President (1970 - 1971)

University of Michigan Law Review (1969 - 1971)
Constitutional and Criminal Law Note and Comment Editor (1970 - 1971)

12. Other memberships. List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, public, charitable, or other organizations, other than those listed in response to Question 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion.

Religious Organizations

St. Albans' Episcopal Church, Washington, D.C. (1985 - present)

Member, Committee on Medical Ethics, Episcopal Diocese of Washington, D.C. (1990 - 1998)

Alumnae Organizations

President, University of Michigan Law School Club of Washington, D.C. (1975 - 1977)

University of Michigan Alumni Association (1971 - present)

Vassar Alumni Association (1967 - present)

Social Organizations

Barristers (2001 - present)

Lawyers Club (2002 - present)

Note: My understanding is that both the Barristers and the Lawyers Club discriminated on the basis of gender, race and religion in the past. I believe that the invitations for membership extended to me were part of what I perceive to be an effort to change that practice.

Member, Vassar College Alumnae Club of Washington, D.C. (1971 - present)

Member, National Organization of Women (Approximately 1972 - 1984)

Member, Women's Legal Defense Fund (Approximately 1975 - 1984)

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

District of Columbia Bar – admitted May 1, 1972

United States District Court for the District of Columbia – admitted May 12, 1972;

In 1992, the United States District Court instituted a dues requirement as a condition of remaining a member of its Bar, which is not the primary Bar of the District of Columbia. Since I was by then a judge on the D.C. Superior Court, and thus had no occasion or intention of practicing in or appearing before the United States District Court, I permitted my membership to lapse. I have been in good standing with the D.C. Bar, the primary Bar of the District of Columbia, continuously since my admission on May 1, 1972.

United States Supreme Court Bar – admitted February 20, 1976

14. Published writings. List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited.

As a judge, I have published the following opinions:

Crim. – *D.C. v. Agin, et al.,* (Alcoholic Beverages – Underage Possession), D-739-04, July 14, 2004, 136 DWLR 1429

Civil – *Holder v. Archer Daniels Midland Co., et al.*, C.A. No. 96-2975 (Antitrust), June 1, 1999, 127 Daily Wash. L. Rptr. 977

Civil – *Talbert v. Thermo Cardiosystems, Inc.*, C.A. 95-8960 (Preemption)-March 10, 1999, 127 Daily Wash. L. Rptr. 409, 417

Civil – *Sporicidin v. Hauser*, C.A. No. 96-4347 (Costs) – October 9, 1998 – 126 Daily Wash. L. Rptr. 1905

Crim. Appeal – *Washington v. U.S.*, 689 A.2d 568 (1997) (sitting by designation by the Court of Appeals) (Defense of Intoxication)

Crim. - *U.S. v. Narcisse*, F1821-87, (Audita Querla) - April 21, 1997 -125 Daily Wash. L. Rptr. 769.

Civil - *Etchebarne-Bourdin v. Radice*, C.A. No. 93-12352 (Civil Proc. - Jurisdiction) November 19, 1996 - 124 Daily Wash. L. Rptr. 2253 & 124 Daily Wash. L.Rptr. 2261.

Civil - *MacMeekin v. Krassel*, (Civil Proc.- Jurisdiction) - October 31, 1995 - 123 Daily Wash. L. Rptr. 2137.

Civil - *Woodward v. White*, (Civil Rights (Employee Relations)) - December 8, 1994 - 122 Daily Wash. L. Rptr. 2397.

Civil - *Lloyd v. Zyblut*, (Fradulent Conveyances (Keogh Plan/Joint Property)) November 2, 1994 - 122 Daily Wash. L. Rptr. 2157, affirmed in part, reversed in part in Roberts and Lloyd, Inc. v. Zyblutt, 691 A.2d 635 (D.C. 1994).

Civil - *Askin v. Dustin, et al.*, (Attorney Fees (Pro Se Attorney Party)) - October 18, 1994 - 122 Daily Wash. L. Rptr. 2053.

Civil - *Donley v. Silverstein*, (Partnerships (Parties)) - September 19, 1994 - 122 Daily Wash. L. Rptr. 1861.

L&T - *Hanson v. EJP Associates, P.C., et al.*, (Architects) - August 22, 1994 - 122 Daily Wash. L. Rptr. 1669.

Civil - *Glover v. Providence Hospital*, (Responsibilities of Lead Trial Counsel) - August 15, 1994 - 122 Daily Wash. L. Rptr. 1617.

Civil - *Swesnik v. Steele*, (Sanctions) - March 29, 1994 - 122 Daily Wash. L. Rptr. 581.

L&T - *The Most Worshipful Prince Hall Grand Lodge, Inc. v. Moncue*, (Money Judgment) - January 11, 1994 - 122 Daily Wash. L. Rptr. 61.

Crim. - *U.S. v. Alphonso Williams*, (Sup. Ct. Crim. R11(e) invalid plea & agreement) - October 18, 1993 - 121 Daily Wash. L. Rptr. 2125.

Fam. - *In the Matter of T.M., Jr.*, (In Camera Inspection of Records Counseling Records of Rape Victim) - December 1, 1992 - 120 Daily Wash. L. Rptr. 2541.

Crim. - *U.S. v. James Speaks*, (Impeachment of Jury Verdict) - April 23, 1992 - 10 Daily Wash. L. Rptr. 833.

Fam. - *Johnson v. Cuccias*, (Dom. Rel.-Amended Complaint) - April 10, 1992 - 120 Daily Wash. L. Rptr. 737.

Crim. - *U.S. v. Michael Daramola*, (Crim. Law & Proc-Ineffective Assistance of Counsel) - May 14, 1991 - 119 Daily Wash. L. Rptr. 1009.

Fam. - *In re: J.A.*, (Parent & Child-Termination of Parental Rights) - May 6, 1991 - 119 Daily Wash. L. Rptr. 941.

Civil - *Benikas v. Custom Print*, (Attorney Disqualification) - November 21, 1989 - 117 Daily Wash. L. Rptr. 2389.

L&T - *McGinty v. Dickson*, (Notice) - May 31, 1989 - 117 Daily Wash. L. Rptr. 1109.

Crim. - *U.S. v. A.B.* , (Crim. Law & Proc-Sentencing) - April 19, 1989 - 117 Daily Wash. L. Rptr. 785.

Civil - *District of Columbia v. $59.00 In United States Currency (Melvin King, et al.)*, (Forfeiture-Notice) - April 19, 1989 - 117 Daily Wash. L. Rptr. 785.

Fam. - *District of Columbia, ex rel. K.L.H. v. Duncan*, (Parent & Child-Support) - January 5, 1989 - 117 Daily Wash. L. Rptr. 21.

Fam. - *Cobb v. Cobb*, (Dom. Rel.-Fraud) - September 26, 1988 - 116 Daily Wash. L. Rptr. 1993.

Crim. - *U.S. v. Hubbard*, (Crim. Law & Proc(Grand Jury)) - January 29, 1988 - 116 Daily Wash. L. Rptr. 181.

Crim. - *U.S. v. Wheeler*, (Crim. Law & Proc(Sentencing)) - September 25, 1997 - 115 Daily Wash. L. Rptr. 2025.

Crim. - *U.S. v. Brown*, (Crim. Law & Proc(Sentencing) - September 1, 1987 - 115 Daily Wash. L. Rptr. 1821.

Civil - *SMS Associates v. Clay*, (Contracts-Time) - October 2, 1985 - 113 Daily Wash. L. Rptr. 2001.

Civil - *Hines v. Monarch Novelty Company, et al.*, (Tax Sale) - June 20, 1985 - 113 Daily Wash. L. Rptr. 1253.

L&T - *Ryles v. Renfrow*, (Notice) - April 1, 1985 - 113 Daily Wash. L. Rptr. 629.

As the Chairperson for the Criminal Justice Act (CJA) Panel Committee for the District of Columbia, I drafted and submitted the following:

> Report of the Superior Court Criminal Justice Act Panel Implementation Committee for Chief Judge Rufus G. King, III, dated December 8, 2004, detailing the procedures followed to add attorneys to the panel of attorneys eligible to be appointed to represent indigent defendants prosecuted by the United States (known as the "U.S. Panel.")
>
> Report of the Superior Court Criminal Justice Act Continuing Legal Education Committee for Chief Judge Rufus G. King, III, dated December 3, 2002, recommending that attorneys eligible to represent criminal defendants in Superior Court be required to complete eight hours of continuing legal education yearly and recommending the procedures to be used to implement that requirement.
>
> Report of the Ad Hoc CJA Panel Committee for Chief Judge Eugene N. Hamilton, dated July 14, 2000, detailing the procedures followed to establish panels of attorneys to represent indigent defendants prosecuted by the United States and the District of Columbia.

As the President of the National Association of Women Judges during the 2000 to 2001 years, I wrote several columns entitled, "Message From the President," for *Counterbalance,* NAWJ's membership publication.

As a member of the D.C. Bar Task Force on Civility in the Profession, I participated in drafting the civility standards adopted by the D.C. Bar in 1997.

As a member of the Joint D.C. Court of Appeals and Superior Court Advisory Committee on Judicial Conduct, I participated in the 1995 revision of the Code of Judicial Conduct for the District of Columbia Courts.

As a member of the Committee on Medical Ethics of the Episcopal Diocese of Washington, D.C. from 1990 to 1998, I participated in writing two publications:

> "Wrestling with the Future: Your Genes and Your Choices, published by Morehouse Publishing in 1998.
>
> "Before You Need Them: Advance Directives for Health Care," published by Forward Movement Publications in 1995.

As Chair of the D.C. Bar's Division on Courts, Lawyers and the Administration of Justice from 1982 to 1984, I was involved in developing positions on matters of import to the administration of justice in the District of Columbia. Specifically, I had oversight or personal responsibility for the following reports, comments and public statements of the Division:

Report of the Committee on Court Rules of Division IV of the District of Columbia Bar Proposing Rules of Evidence for the Superior Court Based on the Federal Rules of Evidence. Submitted to D.C. Court of Appeals February 14, 1984.

Report for testimony before the Subcommittee on Courts, Civil Liberties and the Administration of Justice of the Committee on the Judiciary of the U.S. House of Representatives on November 10, 1983. Testimony concerned H.R. 968 and H.R. 1970 to remove the Supreme Court's mandatory jurisdiction and to establish an Inter-circuit Tribunal for a 5-year experimental period.

Comments of the Committee on Court Rules of Division IV, D.C. Bar, on Proposed Amendments to Rule 46-I(c)(3) of the D.C. Court of Appeals (Admission of Attorneys by Motion). Submitted to D.C. Court of Appeals July 25, 1983.

Position Paper of the Legislation Committee, Division IV, D.C. Bar, Regarding Titles I and VI S. 645, A Bill to Establish an Inter-circuit Tribunal and for Other Purposes. Sent to Subcommittee on Courts of the House and Senate Judiciary Committees in July 1983.

Report of the Legislation Committee of Division IV, District of Columbia Bar, on the Nomination of Judges for the District of Columbia Courts. Sent to all Members of the Subcommittee on Governmental Efficiency and the District of Columbia in May 1983.

Report of the Committee on Court Rules of Division IV, District of Columbia Bar, regarding Proposal for New Local Rules for the U.S. District Court for the District of Columbia. Submitted to the Advisory Committee on District Court Rules October 28, 1982.

Position Paper of the Legislation Committee of Division IV, D.C. Bar, regarding S. 2419, A Bill to Change the Venue Requirements for Suits Against the United States. Submitted to all members of the House and Senate Committees on the Judiciary December 20, 1982.

Report of the Committee on Cameras in the Courts of Division IV, District of Columbia Bar, submitted to the Board of Governors of the D.C. Bar in 1982 or 1983.

As a member of the *University of Michigan Law Review* and the Constitutional and Criminal Law Note and Comment Editor during my second and third years of law school, I published and edited a number of articles. Since none had my name on them, I am unable to be certain the ones with which I was involved.

15. Speeches. List the titles of any formal speeches you have delivered during the last five (5) years and the date and place where they were delivered. Please provide the Committee with four (4) copies of any of these speeches.

Although I am called upon frequently to speak to various audiences, I virtually never do a formal version of my speech. Instead, I use note cards which I do not generally retain. The one exception that I recall was my acceptance speech upon being sworn in as the President of the National Association of Women Judges in October 2000 at the annual meeting held that year in Los Angeles. Four copies are attached hereto.

16. Legal career.

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

(1) Whether you served as a law clerk to a judge, and if so, the name of the judge, the court, and the dates of your clerkship;

I have never served in the capacity of law clerk to a judge.

(2) Whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

(3) The dates, names, and address of law firms, companies, or governmental agencies with which you have been employed.

From 1971 to 1976, I worked as an associate for the law firm of Wilmer, Cutler and Pickering in Washington, D.C., now Wilmer Cutler Pickering Hale and Dorr, 1455 Pennsylvania Avenue, NW, Washington, DC 20004.

From 1976 to 1984, I worked as an Assistant United States Attorney for the United State's Attorney's Office, Washington, D.C.

From 1984 to the present, I have been an Associate Judge on the Superior Court of the District of Columbia.

B. Describe the general character of your law practice, dividing it into periods with dates if its character has changed over the years.

The character of my law practice has varied over the years. I would divide it chronologically into three phases: (1) a large firm civil practice; (2) criminal work as an Assistant United States Attorney; and (3) judicial experience.

Large Firm Civil Practice

In September 1971, after graduating from law school, I joined the firm of Wilmer, Cutler and Pickering in Washington, D.C., where I remained until April 1976. My practice there was exclusively civil. In accordance with the firm's policy, I was exposed to all of its primary areas of practice during my four and a half years at the firm.

I began in the communications section of Wilmer, Cutler and Pickering representing large broadcasters such as Capital Cities Communications, Inc., before the Federal Communications Commission and representing the Columbia Broadcasting System in the Circuit Court for the District of Columbia and in the Supreme Court. In this early period, I was also exposed to work involving the Food and Drug Administration and the Civil Aeronautics Board.

From the communications section, I moved to the area of antitrust and consumer protection. I did a substantial amount of work for American Express, primarily consisting of antitrust advice. I also represented Kaiser Steel Corporation in an antitrust suit before the Federal Trade Commission.

I then transferred to the litigation section of the firm. There I received a broad exposure to large-scale litigation, especially discovery and motions practice. Typical clients were BankAmerica Corporation, Baxter Laboratories, Inc., and Booze, Allen and Hamilton, Inc. At this stage, I concluded that litigation was the area in which I wished to specialize. Although most of my clients continued to be large corporations, I also acquired some smaller litigation matters to broaden my experience. I represented a plaintiff in a personal injury suit, a group of homeowners protesting the erection of an unsightly microwave reflector, a landowner in a landlord-tenant suit, and a hospital seeking payment from a negligent conservator.

Though I moved next to the corporate and securities area, my practice remained strongly oriented toward litigation. I represented, for example, a New York law firm charged with violations of the securities laws and took the case through presentation of the first trial witness, when the matter was settled. Ultimately, I concluded that I wanted more in-court litigation than Wilmer, Cutler and Pickering could offer, and thus went to the United States Attorney's Office.

Criminal Work at the United States Attorney's Office

In my first four years in the Office, beginning in April 1976, I tried forty-seven cases in the District of Columbia Superior Court, prepared hundreds more for trial, submitted approximately two hundred cases for grand jury indictment, and argued approximately fifteen appeals in the federal and D.C. Courts of Appeals. The cases I handled ranged in seriousness from minor misdemeanors to serious felonies. During this period, I not only became comfortable with courtroom procedures and trial skills, but I also acquired an in-depth knowledge of the operation of Superior Court.

In July 1979, I became the Deputy Chief of the Superior Court Grand Jury Section of the U.S. Attorney's Office, a position that I held for one year during which I also tried five cases. I then became the Chief of the Grand Jury Section, a position I held for the next two years. While serving in this position, I did not appear personally in court except on rare occasions.

The Superior Court Grand Jury Section at that time had responsibility for investigating almost all of the felony offenses indicted in Superior Court. That responsibility included both pre-arrest and post-arrest investigation of the most serious and complex felony offenses, as well as of more routine matters. The Section also had investigative jurisdiction over all police shootings resulting in deaths and over all charges of police brutality referred by the police department.

As Chief of the Section with a staff of thirty, I determined on a day-to-day basis whether arrests should be made, offenses investigated, or indictments sought. I supervised Assistants in connection with investigative tactics and strategy, proper handling and questioning of witnesses, negotiation of guilty pleas and immunity agreements, and presentation of evidence to grand juries. Either I or my deputies reviewed every case before it was indicted.

I also had responsibility to ensure that felony cases at the pre-indictment stage were promptly disposed of once they entered the Superior Court system. Because of the large volume of cases entering the Superior Court system, the control of felony cases pending indictment in Superior Court took substantial administrative effort. It included training Assistants unfamiliar with Grand Jury procedures,

motivating lawyers and non-lawyers to work at peak efficiency, and coordinating efforts with the police department and other law enforcement agencies.

In July 1982, after three years of heading the Grand Jury Section as Chief and Deputy Chief, I requested a transfer to the Fraud Section of the Office, where I could investigate and try white collar crimes and become familiar with the District Court side of the Office. In this position, I handled factually complex crimes requiring long-term investigations, appeared regularly before federal grand juries, appeared in the U.S. District Court (primarily for plea proceedings), and handled a counterfeiting trial.

Judicial Experience

Civil Matters

In October 1984, I was sworn in as an Associate Judge of the District of Columbia Superior Court. Following a training period, I was assigned to the Civil Division from November 1, 1984 to June 30, 1985, where I heard civil cases, presided over the Landlord-Tenant and Small Claims Courts, and handled civil pretrial conferences.

I returned to the Civil Division in October 1, 1988, and remained there until September 30, 1989. During this time, I not only presided over civil trials, but also spent three months on a calendar that handled solely civil motions, several months in the Landlord Tenant Court and several months as the Judge-in-Chambers, an assignment that includes matters such as temporary restraining orders, various technical property matters, approval of friendly law suits involving minors, and a myriad of other rather obscure issues.

I returned to the Civil Division in January 1992, remaining there for the next three years, until the end of 1993. I was on a Civil II calendar during that time. Those calendars are high volume and have matters on them such as personal injury suits, including wrongful death claims, contract claims, landlord tenant matters and requests for injunctions. They also have numerous motions, including motions for summary judgment, motions to dismiss and discovery motions. In addition, the judges on Civil II calendars handle appeals from administrative agencies. I tried several Civil II cases each month. Part of the assignment also involves sitting in the Landlord Tenant Court for a week about every eight weeks, where it is not unusual to handle three trials in a day.

My most recent civil assignment was in 1998, when I sat on a Civil I calendar. This is a low volume calendar to which the most complex civil matters in Superior Court are assigned. Those matters include professional liability claims, such as legal or medical malpractice, class action suits for damages allegedly caused

by exposure to asbestos, discrimination suits under the D.C. Human Rights law, actions based on lead paint exposure, and multi-jurisdictional contract disputes. My best estimate would be that I tried approximately eight cases while on that calendar, including a two-month legal malpractice case.

Family Matters

My first exposure to Family Division matters occurred in October 1987, when I moved to the Family Division where I remained for a year. During that time, I handled juvenile delinquency and neglect matters, petitions for termination of parental rights, adoptions, custody disputes, child support hearings, divorces, annulments, petitions for civil protection orders seeking relief from domestic violence, and other miscellaneous issues which arise in the Family Division. This assignment involved many trials, few of which were more than one or two days' duration.

My second assignment to the Family Division was from June 1992 to August 1993. The first half of the assignment involved juvenile delinquency matters and the second half divorces. Both of these assignments were heavy trial assignments. In addition to the regular duties on these calendars, all judges in the Division received neglect cases to monitor so long as they remained open. Most of those cases were of multiple years' duration, and at that time judges were required to carry the cases with them when they left the Division. When I left, I took with me one-hundred-ten cases of neglected children.

Criminal Matters

My first assignment to the Criminal Division was in July through September 1985, when I was assigned to the non-jury misdemeanor calendar, trying prostitution and shoplifting cases. On that calendar, it was not unusual for me to try five or six cases a day.

In October 1985, I assumed a regular calendar of what were then misdemeanor jury cases involving charges such as assault, attempted auto theft, and possession of illegal drugs. I handled this calendar for a period of one year. I had a similar calendar from October 1989 to October 1990. In a typical month, I would try between six and eight cases.

In October 1986, I took over a Felony II calendar, where I remained until October 1987. At that point, the types of cases on Felony II calendars included murders, armed assaults, robberies, burglaries, drug distributions, weapons possession, thefts of substantial amounts of money or property of substantial value,

and unauthorized use of motor vehicles. I generally tried four or five jury cases a month. I had a similar calendar for the year 1996, and for nine months in 2000, after becoming the Presiding Judge of the Criminal Division.

In October 1990, I took over a Felony I calendar, where the cases involve charges of first-degree murder, rape or child sexual abuse. I remained on that calendar until December 1991, trying about two cases a month.

In 1999, 2000 and 2001, I handled what is called the Accelerated Felony Calendar. This is a low volume calendar where defendants are held without bond and, in most instances, must be brought to trial within 100 days of their arrest. The primary reason for their being held without bond is that they have been found to present a significant danger to the community. The charges involved are Assault With Intent to Kill while Armed, Armed Robbery, Armed Burglary, and Aggravated Assaults resulting in serious bodily injury to the victim. While on this calendar, I tried about two or three cases a month.

East of the River Community Court

While Presiding Judge of the Criminal Division, I was heavily involved in helping to establish the East of the River Community Court and have presided over that court since its inception in September 2002. The court handles all misdemeanor cases prosecuted by the United States (except those involving allegations of domestic violence) arising out of arrests made in the area east of the Anacostia River. It was established for two purposes: to increase the judicial understanding of the public safety and quality of life concerns of the citizens who reside East of the Anacostia River and to provide drug treatment, mental health counseling, employment assistance and other services to defendants with the aim of keeping them away from trouble in the future. From its beginning until July 2004, I tried about eight cases a month on this calendar. Ultimately, my administrative responsibilities made it impracticable for me to continue to try matters on the calendar. Thus, after June 2004, trial matters were sent to other judges in the Criminal Division.

Deputy Presiding Judge, Criminal Division (Jan. 1999 – Jan. 2002)

As Deputy Presiding Judge, my main responsibility was in assisting the Presiding Judge in the administration of the Criminal Division, in addition to my full duties as an Associate Judge. In addition, then Chief Judge Hamilton appointed me to act as the liaison between the Superior Court Trial Lawyers Association and the Superior Court at a time of significant tension caused by the financial inability of the court to fully compensate attorneys appointed under the Criminal Justice Act.

Additionally, with the backing of Chief Judge Hamilton, I formulated a plan to improve the quality of counsel appointed to represent indigent criminal defendants and chaired a committee that, from 792 applications, selected 250 attorneys as eligible to represent indigent defendants in criminal cases prosecuted by the United States, and 85 attorneys to represent indigent defendants in criminal cases prosecuted by the District of Columbia.

Presiding Judge, Criminal Division (Jan. 2002 – December 31, 2004)

As Presiding Judge of the Criminal Division, I met regularly with other institutional entities within the District of Columbia's criminal justice system, such as the Pretrial Services Agency, CSOSA, the Public Defenders Service and the Superior Court Trial Lawyers Association, to address matters of mutual concern and to improve the system of justice within the District of Columbia. For example, with the Director of the Pretrial Services Agency, I co-chaired the Committee on Pretrial Systems, a subcommittee of the Criminal Justice Coordinating Council. This committee endeavors to improve the supervision of defendants in a pretrial status. It also addresses the availability of halfway house beds for pretrial defendants and other enhanced means of overseeing the behavior of defendants on pretrial release. In addition, it seeks out community resources for misdemeanor defendants to assist them in being diverted from the criminal justice system.

Visibility in the community was another important aspect of the position. Thus, I spoke regularly at community meetings in the District of Columbia to explain the operation of the criminal justice system and to listen to the concerns of the citizens with respect to public safety and security issues, and attended and spoke at functions such as graduations from drug treatment programs and employment programs.

In addition, I worked daily with Chief Judge Rufus King to ensure the smooth operation of the Division, to which twenty-three judges are assigned. In that connection, I also worked with the Director of the Criminal Division (a non-judicial position) on a wide range of administrative matters, including efforts to establish time standards for the processing of cases and the institution of a new computer system.

I also established a weekly meeting of the Criminal Division judges to discuss matters of such as recent appellate decisions, pertinent legislation, and the efficient handling of cases. These meetings provided a means for judges to seek advice from colleagues on issues needing immediate resolution.

C. Describe your typical former clients and describe the areas of practice, if any, in which you have specialized.

While in private practice, my typical clients were large American corporations.

While at the United States Attorney's Office, my clients were the United States and the public at large.

Since becoming a judge in 1984, I have had no clients.

D. Describe the general nature of your litigation experience, including:

(1) Whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your court appearances has varied over time, please describe in detail each such variance and give applicable dates.

For most of the last twenty years, I have been in court daily, on most days spending a full day there. During my time in private practice, I was rarely in court. For the amount of court work that I did during my years in the United States Attorney's Office, see my answer to question 16.B.

(2) What percentage of these appearances was in:

(a) Federal courts (including Federal courts in D.C.);

2%

(b) State courts of record (excluding D.C. courts);

None

(c) D.C. courts (Superior Court and D.C. Court of Appeals only);

98%

(d) Other courts and administrative bodies.

.05%

What percentage of your litigation has been:

(a) civil – 25%

(b) criminal – 75%

What is the total number of cases in courts of record you tried to verdict or judgment (rather than settled or resolved, but may include cases decided on motion if they are tabulated separately). Indicate whether you were sole counsel, lead counsel, or associate counsel in these cases.

Including both the cases that I tried as a prosecutor and the cases that I have presided over as a judge, I would estimate conservatively that I have tried at least 1000 cases to verdict or judgment, including 25 first-degree murder trials.

(3) What percentage of these trials was to
(a) a jury;
(b) the court (include cases decided on motion but tabulate them separately).

I would estimate that a third of the cases would be jury trials and two-thirds would be non-jury.

17. Describe the five (5) most significant litigated matters which you personally handled. Provide citations, if the cases were reported, or the docket number and date if unreported. Give a capsule summary of the substance of each case and a succinct statement of what you believe was of particular significance about the case. Identify the party/parties you represented and 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 court and the name of the judge or judges before whom the case was litigated; and (c) the name(s) and address(es) and, telephone number(s) of co-counsel and of the principal counsel for the other parties.

A. ***In re Simon Banks***, D.C.C.A. 02-BG-1374 (tried Feb. – Apr. 2004).

Defense counsel: Simon Banks (*pro se*)
Currently incarcerated in
Fairfax Correctional Center
CD 1 #A0121698
2001 Mill Road
Alexandria, VA 22314

Government: John D. Griffith, Esq.
Asst. U.S. Attorney
Judicial Center Building
555 4th Street, N.W.
Washington, DC 20001
202-353-2453

Factual Summary, Disposition and Significance

This matter, where the court sat by designation of the Court of Appeals, involved a criminal contempt proceeding against an individual who, for nearly twenty years (since 1984), had violated various injunctions issued by the Court of Appeals to prevent him from misleading the public into believing that he is licensed to practice law in the District of Columbia. (Though he graduated from law school, the defendant never passed the bar and was never licensed to practice law in any jurisdiction).

In 2003, I was designated to sit as a judge of the Court of Appeals to determine whether Mr. Banks should be held in criminal contempt for alleged fresh violations of the Court's injunction. After several days of trial, I issued an opinion finding that he had violated the most recent injunction against him and sentenced him to two years in jail. This matter reflects the difficulties of reining in a person determined to violate a court order. The case represents a matter sent to me for resolution from the Court of Appeals.

(A copy of the opinion is attached hereto.)

B. ***Washington v. United States***, 689 A.2d 568 (1997).

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Factual Summary, Disposition and Significance

I was designated to sit on a panel of the Court of Appeals for this case, and had the honor of writing the opinion. In writing the opinion, I pulled together precedent in order to clarify what evidence must be presented to justify a jury instruction on the defense of intoxication. My aim was to provide trial judges with recent precedent to which they could refer that would succinctly set out the requirements. Indeed, I later had occasion to refer to the decision myself in making that determination.

(A copy of the opinion is attached hereto.)

C. ***Talbert v. Thermo Cardiosystems, Inc.***, C.A. 95-8960, 127 Daily Wash. L. Rptr. 409, 417 (March 10, 1999).

Plaintiff's Counsel:

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Factual Summary, Disposition and Significance

This case presented a suit for damages resulting from the death of a patient suffering from heart disease after a tear developed in a device implanted in the patient to keep his heart pumping blood (referred to as an LVAD). The manufacturer of the LVAD, who had received approval for its marketing from the Food and Drug Administration, moved for summary judgment on the ground that pre-market approval of the device preempted state common law claims. Resolution of the summary judgment motion required the court to examine Supreme Court, federal court and state law precedent against the backdrop of administrative and common law concepts. Ultimately, I granted in part, and denied in part, the motion for summary judgment. The case illustrates my experience with resolving complex civil issues.

(A copy of the opinion is attached hereto.)

D. ***United States v. Burie Garrett***, F8144-95.

Defendant's Counsel:

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(202) 637-2218

Bradley G. Weinsheimer, Esq.
Ass't U.S. Attorney
U.S. Attorney's Office
555 4th Street, N.W.
Washington, DC 20001
202-514-7379

Factual Summary, Disposition and Significance

This case involved a group of four men armed with a .380 pistol and two shotguns, with the defendant as the ringleader, who kidnapped a prostitute by forcing her into a van stolen from a church parking lot. The men raped and sodomized her, then, as she cowered in the back of the van, they shot at and robbed two street venders, stole their car (ultimately torching it) and went to an apartment to dispose of the stolen property.

Thereafter, the defendant offered "to return" the prostitute, but stopped along the way to rob and pistol whip a man on his way to work. Ultimately, chased by the police, the defendant put a gun into the face of the officer who approached his car and pulled the trigger. The officer's life was spared when the gun jammed.

A wide range of legal issues were raised in this case, including the rights of a reluctant material witness, severance of counts and defendants, the protections and lack thereof for cooperating witnesses, and numerous evidentiary issues during the course of the trial. It also raised the issue of what sentence is appropriate for a young man who commits such a heinous series of offenses. In the end, I sentenced Mr. Garrett to a substantial period of incarceration.

E. ***United States v. Tracey McPherson***, F4790-96

Defense Counsel:

Cynthia Jones, Esq.
American University Law School
4801 Massachusetts Avenue, NW
Washington, DC 20016
202-274-4000

Julia Leighton, Esq.
633 Indiana Ave., NW
Washington, DC 20004
202-824-2428

Government Counsel:

AUSA Ryan Rainey
(Current address unavailable)

Factual Summary, Disposition and Significance

This case illustrates the need for careful investigation of the cause of child deaths. The defendant was charged with attempting to suffocate her two year old child with a plastic bag in a hospital bathroom. The incident was witnessed by a nurse, who heard crying and came to investigate. In addition to this eyewitness testimony, the government sought to introduce evidence that the defendant had previously murdered two of her other children. The government's underlying premise was that the defendant suffered from Munchhausen by Proxy Syndrome, whereby a mother will harm her children as a means of obtaining attention for herself. For reasons never made clear, however, the government was not prepared to put on proof of this syndrome.

The difficulty with the government's effort to put on evidence of the deaths of defendant's other two children was that the Medical Examiner had declared the cause of death of one child to be inflammation of the lungs and the other Sudden Infant Death Syndrome (SIDS). Because the deaths had occurred twelve and eight years before the incident with which defendant was charged here, it was essentially impossible to contradict those findings. The government's expert, a pediatrician with vast experience in child abuse matters, raised substantial questions about the findings. In the end, however, I concluded that the evidence amounted to no more than a suspicion that the defendant had murdered the two other children. Given the devastating prejudice which defendant would suffer from placing this unsubstantiated suspicion before a jury, I concluded that the evidence could not be admitted.

Because of the public's legitimate concern for cases such as this, I wrote a lengthy opinion explaining the factual and legal basis for my decision. Thereafter, the defendant pleaded guilty to a lesser charge.

(A copy of the opinion is attached hereto.)

18. Describe the most significant legal activities you have pursued, including significant litigation which did not proceed to trial or legal matters that did not involve litigation. Describe the nature of your participation in each instance described, but you may omit any information protected by the attorney-client privilege (unless the privilege has been waived).

The answer to this question is covered by my answer to Question 17.

19. Have you ever held judicial office? If so, please give the details of such service, including the court(s) on which you served, whether you were elected or appointed, the dates of your service, and a description of the jurisdiction of the court. Please provide four (4) copies of all opinions you wrote during such service as a judge.

Yes. Associate Judge, District of Columbia Superior Court, 1984 to present.

A. List all court decisions you have made which were reversed or otherwise criticized on appeal.

Adams, Chappell and Dent v. United States, 558 A.2d 348 (D.C. 1989), a case involving charges of assault with intent to kill while armed, where the Court of Appeals ruled that there was a sufficient factual basis for a self-defense instruction, and thus that I had erred by denying defendant's request for such an instruction.

Fitzgerald v. Fitzgerald, 566 A.2d 719 (D.C. 1989), a child custody case where the Court of Appeals affirmed my custody decision, but reversed my award of child support on the ground that I had based it on child support guidelines adopted by the Superior Court Board of Judges which were inconsistent with existing appellate case authority and therefore invalid.

E.A. Baker Co. v. Haft, 578 A.2d 706 (D.C. 1990). Though this was technically a remand, it was in actuality a reversal of my decision granting summary judgment. The court concluded that I had erred in ruling that a construction contract unambiguously provided the architect with authority to resolve all claims or disputes between the contractor and the owner.

District of Columbia v. Howard, 588 A.2d 683 (D.C. 1991). A wrongful death action where the Court of Appeals ruled that I had erred in barring the government, on the ground of lack of notice to plaintiff, from presenting testimony from the decedent's treating physician about the cause of decedent's injury.

Guevara v. Reed, 598 A.2d 1157 (D.C. 1991). In this appeal, my decision to dismiss a personal injury case was affirmed, but on the grounds of *forum non conveniens*, not jurisdiction.

Eugene Beard v. South Main Bank, 615 A.2d 203 (D.C. 1992). In this case, the defendant sought dismissal of the action on grounds of *forum non conveniens,* and I had denied the motion. The case was remanded for me to clarify the reasons for my decision. I did so, and there were no further proceedings in the Court of Appeals.

Lewis v. Lewis, 637 A.2d 70 (D.C. 1994). This is a case where I was reversed (1) for giving a wife discretion over whether her husband, who was incarcerated for shooting her, would be allowed prison visits with their children, and (2) for requiring the husband to pay $50 per month in child support, despite his incarceration, on the ground that by shooting his wife and becoming imprisoned he had voluntarily reduced his earning capacity.

In Re T.H.B., 670 A.2d 895 (D.C. 1996). In this case, I found the juvenile defendant guilty of both Assault with Intent to Rob and Simple Assault. The Court of Appeals concluded that the Simple Assault merged with the Assault with Intent to Rob. They neither reversed nor remanded the case, however, because the defendant had turned twenty-one years of age and was no longer subject to the juvenile court.

Roberts & Lloyd v. Zyblut, 691 A.2d 635 (D.C. 1997). Here the Court of Appeals upheld my decisions (1) to apply to joint brokerage accounts the presumption that a married couple owning property jointly hold it as tenants by the entirety, and (2) that the husband's creditor had failed to prove that the defendants (who were husband and wife) had transferred property with the intent of defrauding or hindering the husband's creditors, but (3) reversed my conclusion that a Keough retirement account owned by a self-employed individual is exempt from garnishment by the owner's creditors.

Robinson v. United States, 697 A.2d 787 (D.C. 1997), though technically a reversal, was in actuality an affirmance, since two of the three judges on the panel voted to uphold my decision. For reasons not entirely clear, however, the panel chose to defer to another panel which had unanimously reversed a similar decision of another judge rather than having the issue resolved *en banc*.

White v. United States, 729 A2d 330 (D.C. 1999). In this case, I had granted a motion for judgment of acquittal on a charge of possession with intent to distribute cocaine, but denied a motion for judgment of acquittal on the lesser charge of possession of cocaine. Rather than send the possession of cocaine to the jury, I, with the acquiesce of counsel, concluded that it should be tried to the court. The Court of Appeals found that the defendant had a right to a jury trial under these circumstances, and remanded the matter for a new trial. The same issue arose in a later case and was considered by the Court of Appeals *en banc*. There, the Court of Appeals concluded, as I had in *White*, that no right to a jury trial exists in such circumstances, and adopted the procedure that I had followed in *White*. *See Berroa v. United States*, 763 A2d 93 (D.C. 2000).

Veney v. United States, 738 A2d 1185 (D.C. 1999). Although affirming all convictions in this double homicide case, the Court of Appeals erroneously assumed that I did not understand that I had discretion on whether or not to sentence the defendant on a related escape charge. Thus, it found plain error, vacated my sentence on the escape charge and remanded the case for re-sentencing on that charge alone. The escape was based upon the defendant actually escaping from police custody while at the police station. On remand, I re-imposed the original sentence, again making it consecutive.

Zeledon v. United States, 770 A.2d 972 (D.C. 2001). In this case, the defendant was found guilty by a jury of Aggravated Assault while Armed and Assault with a Dangerous Weapon. I was asked by defense counsel to instruct the jury on the definition of of "serious bodily injury," a phrase used in the Aggravated Assault statute. Because neither the Aggravated Assault statute, nor the case law, provided such a definition, I declined to do so. After the jury finding in the *Zeledon* case, but before the resolution of his appeal, the Court of Appeals in another case adopted a definition of "serious bodily injury." Thus, in the appeal of *Zeledon,* the Court of Appeals reversed and remanded the Aggravated Assault while Armed conviction, so that on re-trial of that count, the jury would be provided with the definition it had adopted.

Bryant and Adams v. United States, 859 A.2d 1093 (D.C. 2004). In this case, the Court of Appeals found no error in the trial, but remanded for re-sentencing because certain convictions merged. This was in accord with the usual procedure recommended in *Garris v. United States*, 491 A.2d 511, 514-515 (D.C. 1985), where the Court of Appeals recommended that trial courts initially permit potentially duplicitous convictions to stand for "the useful purpose of allowing [the Court of Appeals] to determine whether there is error concerning one of the counts that does not affect the other."

20. Have you ever been a candidate for elective, judicial, or any other public office? If so, please give the details, including the date(s) of the election, the office(s) sought, and the results of the election(s).

I was an unsuccessful candidate for the following: I applied for a judgeship on the D.C. Court of Appeals in 1994, and, I believe in 1989. In 1997, 1998 and 1999, I applied for vacancies on the U.S. District Court for the District of Columbia.

21. Political activities and affiliations.

List all public offices, either elected or appointed, which you have held or sought as a candidate or applicant.

See answer to Question 20.

List all memberships and offices held in and services rendered to any political party or election committee during the last ten (10) years.

None. It would be contrary to the Code of Judicial Conduct of the D.C. Courts for me to engage in such activities.

Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity during the last five (5) years of $50 or more.

None. It would be contrary to the Code of Judicial Conduct of the D.C. Courts for me to make such contributions.

22. To your knowledge, have you ever been investigated, arrested, charged, or convicted (include pleas of guilty or nolo contendere) by federal, State, local, or other law enforcement authorities for violations of any federal, State, county, or municipal law, other than for a minor traffic offense? If so, please provide details.

No.

23. Have you or any business of which you are or were a officer, director or owner ever been a party or otherwise involved as a party in any other legal or administrative proceedings? If so, give the particulars. Do not list any proceedings in which you were merely a guardian ad litem or stakeholder. Include all proceedings in which you were a party in interest, a material witness, were named as a co-conspirator or co-respondent, and list any grand jury investigation in which you appeared as a witness.

I have never been involved actively as a party in any legal proceeding. I know that from time-to-time, as a result of my judicial actions, I have been named in a proceeding by an unhappy party, both civil and criminal, particularly *pro se* parties, that is, those without counsel. I have never been required to take any action with respect to any of these proceedings and have not kept a record of those that were brought to my attention.

I have testified as a witness on three occasions, all resulting from my work in the Fraud Section of the United States Attorney's Office. On July 28, 1983, I testified at Walter Reed Army Medical Center in an Article 32(b) proceeding of the United States Army's investigation of Colonel Robert L. Watson, an Army physician. On

May 7, 1984, I testified at Fort Lesley J. McNair in the general court-martial of Colonel Watson.

My testimony in both instances resulted from a plea of guilty that I had negotiated with Colonel Watson and his attorneys during my tenure in the Fraud Section. Colonel Watson pleaded guilty pursuant to that plea agreement to two counts of improperly supplementing his government salary, in violation of 18 U.S.C. § 208. The plea occurred on February 18, 1983, in the U. S. District Court for the District of Columbia (Criminal Number 83-15). The substance of my testimony in both instances concerned the facts and circumstances surrounding the plea agreement. A major issue at the court-martial, as I understood it, was whether the Army was barred from prosecuting Colonel Watson on particular charges as a result of the plea agreement.

I also testified at a motions hearing held on June 12, 1985, in the U. S. District Court for the District of Columbia in the case of *United States v. Lester J. Stone and James D. Loesch*, Criminal Number 85-0012, where the defendants were charged with conspiracy to commit bribery. The motion, filed on behalf of Mr. Loesch, claimed that delay in issuing the indictment against him had violated his constitutional due process rights. I had been the third of four different Assistant United States Attorneys who had handled this matter at different times while the investigation was pending. My testimony related to the actions I had taken in connection with the case during the eight months it was assigned to me. Those actions involved the presentation of numerous witnesses before the grand jury and the indictment of another co-conspirator. That co-conspirator was indicted first because his cooperation, obtained after his indictment and after my departure from the Office to become a judge, was a crucial prerequisite to indicting Mr. Loesch and Mr. Stone. The motion to dismiss the indictment was denied, and both defendants were ultimately convicted.

24. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, bar or professional association, disciplinary committee, or other professional group? If so, please provide the details.

In 1993, a party in a pending divorce action complained to the D.C. Judicial Tenure Commission about the length of time that a decision was pending in the case. The Commission asked me to respond to their inquiry. In fact, the opinion had been issued shortly before the Commission inquiry, and thus the complaint was dismissed.

There may be other complaints that have been filed against me during my twenty years on the bench, but the Judicial Tenure Commission does not inform a judge of a complaint unless the Commission concludes that a response would be appropriate.

II. POTENTIAL CONFLICTS OF INTEREST

1. Will you sever all connections with your present employer(s), business firm(s), business association(s), or business organization(s) if you are confirmed?

   No. I will still be under the umbrella of the D.C. Courts for many administrative matters.

2. Describe all financial arrangements, deferred compensation agreements, or other continuing dealings with your law firm, business associates, or clients.

   Not applicable

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest.

   I know of none.

4. Describe any business relationship, dealing, or financial transaction which you have had in the last ten (10) years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest other than while in a federal government capacity.

   There are none.

5. Describe any activity during the last ten (10) years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of legislation or affecting the administration and execution of law or public policy other than while as a federal government employee.

   About three years ago, I assisted in writing comments from the D.C. Superior Court to the D.C. Council explaining why the Department of Corrections should not eliminate the number of halfway house beds available for pretrial defendants.

6. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service as a judge? If so, explain.

   No.

7. Explain how you will resolve any potential conflicts of interest, including any that may have been disclosed by your responses to the above items. Please provide three (3) copies of any trust or other relevant agreements.

I will consult the Code of Judicial Conduct for the D.C. Courts, particularly the provisions on disqualification. I will also seek the views of my colleagues, as necessary. If I remain uncertain, I will consult the General Counsel of the D.C. Judicial Tenure Commission.

8. If confirmed, do you expect to serve out your full term?

Yes.

III. FINANCIAL DATA

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

IV. DISTRICT OF COLUMBIA REQUIREMENTS

Supplemental questions concerning specific statutory qualifications for service as a judge in the courts of the District of Columbia pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970, D.C. Code Section I I - 150 1 (b), as amended.

1. Are you a citizen of the United States?

Yes, I am a citizen of the United States.

2. Are you a member of the bar of the District of Columbia?

Yes, I am a member of the District of Columbia Bar.

3. Have you been a member of the bar of the District of Columbia for at least five (5) years? Please provide the date you were admitted to practice in the District of Columbia.

Yes, I have been a member of the bar of the District of Columbia for at least five years. I was admitted to practice in the District of Columbia in 1972.

4. If the answer to Question 3 is "no" --

   A. Are you a professor of law in a law school in the District of Columbia?

   B. Are you a lawyer employed in the District of Columbia by the United States or the District of Columbia?

   C. Have you been eligible for membership in the bar of the District of Columbia for at least five (5) years?

   D. Upon what grounds is that eligibility based?

5. Are you a bona fide resident of the District of Columbia?

   Yes, I am a bona fide resident of the District of Columbia.

6. Have you maintained an actual place of abode in the greater Washington, D.C. area for at least five (5) years? Please list the addresses of your actual places of abode (including temporary residences) with dates of occupancy for the last five (5) years.

7. Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Judicial Nominating Commission?

   No.

8. Have you been a member of either of these Commissions within the last 12 months?

   No.

9. Please provide the committee with four (4) copies of your District of Columbia Judicial Nomination commission questionnaire.

AFFIDAVIT

Noël Anketell Kramer being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Noël Anketell Kramer

SUBSCRIBED and SWORN TO before me this 23rd day of [illegible] 20 05

Notary Public

The District of Columbia: ss
subscribed and sworn to before me
this 23rd day of [illegible] 2005

Lisa Renee Johnson
Notary Public, DC
My commission expires 10/14/2006

2004 U.S. Senate Application for Senate

QUESTIONNAIRE FOR NOMINEES TO THE DISTRICT OF COLUMBIA COURTS COMMITTEE ON GOVERNMENTAL AFFAIRS, UNITED STATES SENATE

I. BIOGRAPHICAL AND PROFESSIONAL INFORMATION

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

   Laura Alicia Cordero

2. Citizenship (if you are a naturalized U.S. citizen, please provide proof of your naturalization).

   United States of America

3. Current office address and telephone number.

   Executive Assistant United States Attorney for External Affairs
   United States Attorney's Office for the District of Columbia
   555 Fourth Street, NW
   Room 5120
   Washington, D.C. 20530
   (202) 514-6930
   (202) 305-5608 (cell)

4. Date and place of birth.

   January 3, 1965 - Chicago, Illinois

5. Marital status (if married, include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

   Married to Policarpio Antonio Marmolejos

   Director, Office of Civil Rights and Diversity
   United States Department of Energy
   1000 Independence Avenue, S.W.
   Room 5B168
   Washington, DC 20585
   (202) 586-8167

6. Names and ages of children. List occupation and employer's name if appropriate.

7. Education. List secondary school(s), college(s), law school(s), and any other institutions of higher education attended; list dates of attendance, degree received, and date each degree was received. Please list dating back from most recent to earliest.

Harvard Law School, 1985 - 1988 (enrolled at age 20)
Juris Doctorate - June 1988

DePaul University, 1981 - 1985 (enrolled at age 16)
B.A. Political Science June 1985
B.A. Mathematical Science June 1985
Graduated with Highest Honors

Notre Dame High School for Girls, 1977 - 1981 (enrolled at age 12)
High School Diploma

8. Employment record. List all jobs held since college, other than legal experience covered in question 16, including the dates of employment, job title or description of job, and name and address of employer. Please list dating back from most recent to earliest. If you have served in the US military, please list dates 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.

1979-1981	National Honor Society
1985	Network for Youth Services Merit Award
1985	DePaul University Senior Leadership Award
1985	National Hispanic Scholarship Fund Scholar
1985	Mexican American Legal Defense and Education Scholar
1986	Harvard Legal Aid Bureau Membership
1991	U.S. Department of Justice, Certificate of Commendation
1992	U.S. Department of Justice, Certificate of Commendation,
1999	United States Attorney's Office, Special Achievement Award
2002	United States Attorney's Office, Senior Litigation Counsel
2002	Hispanic Bar Association District of Columbia, Equal Justice Award Honoree
2003	United States Attorney's Award for Creativity and Innovation
2003	Court Services and Offender Supervision Agency's Above and Beyond Award

10. Business relationships. List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, or educational or other institution.

None

11. Bar associations. List all bar associations, legal or judicial-related committees, conferences, or organizations of which you are or have ever been a member, and provide titles and dates of any offices which you have held in such groups.

Illinois Bar Association (1988 - present)
District of Columbia Bar Association (1991- present)
District of Columbia Election Board Member (1994)
National Hispanic Bar Association
Hispanic Bar Association for the District of Columbia - Board Member 1991-1996
Washington Bar Association

12. Other memberships. List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, public, charitable, or other organizations, other than those listed in response to Question 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion.

The Shrine of the Most Blessed Sacrament – Parish member
National Association of Women Judges
United States Attorney's Office Hiring Committee
United States Attorney's Office Death Penalty Committee
National Association of Assistant United States Attorneys
Assistant United States Attorneys Alumni Association of the District of Columbia
Department of Justice Association for Hispanic Employees for Advancement and Development (DOJAHEAD)
Chevy Chase Citizens Association
La Alianza (Latino Law Student Association, Harvard Law School) (1985-1988; Co-Chair 1986-1987)
Harvard Civil Rights/Civil Liberties Law Review
DePaul University Hispanic Student Association (1981-1985; Chair 1984-1985)

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

United States Supreme Court	February 2004
United States Court of Appeals for the District of Columbia Circuit	October 26, 1993

District of Columbia Court of Appeals	January 23, 1991
United States Court of Appeals for the Tenth Circuit	July 24, 1990
Supreme Court of Illinois	December 27, 1988

14. Published writings. List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited.

Constitutional Limitations on Official English Declarations (20 New Mexico Law Review 17, Winter 1990).

15. Speeches. List the titles of any formal speeches you have delivered during the last five (5) years and the date and place where they were delivered. Please provide the Committee with four (4) copies of any of these speeches.

None.

16. Legal career.

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

(1) Whether you served as a law clerk to a judge, and if so, the name of the judge, the court, and the dates of your clerkship;

(2) Whether you practiced alone, and if so, the addresses and dates;

(3) The dates, names, and address of law firms, companies, or governmental agencies with which you have been employed.

Post Law School Experience

June 1988 - Nov. 1988 Associate	Bell, Boyd & Lloyd 70 West Madison Street Three First National Plaza Suite 3300 Chicago, Illinois 60602 (312) 372-1121
Dec. 1988 - Dec. 1990 Law Clerk	Honorable James A. Parker United States District Court for the District of New Mexico 333 Lomas N.W. Suite 670 Albuquerque, New Mexico 87102 (505) 385-1519

Jan. 1991 - March 1993 Trial Attorney	United States Department of Justice Civil Rights Division, Voting Section 950 Massachusetts Avenue, N.W. Washington, D.C. 20530 (202) 307-2767
April 1993 - present Exec. Assistant U.S. Attorney	United States Attorney's Office for the District of Columbia 555 Fourth Street, N.W. Room 5120 Washington, D.C. 20530 (202) 514-6930

Legal Experience Acquired While in Law School

Sept. 1989 - June 1988 Student Attorney	Harvard Legal Aid Bureau Harvard Law School 1587 Massachusetts Avenue Cambridge, MA 02138 (617) 495-4408
Summer 1986 Summer Associate	Bell, Boyd & Lloyd 70 West Madison Street Three First National Plaza Suite 3300 Chicago, Illinois 60602 (312) 372-1121
Summer 1986 Summer Intern	Mexican American Legal Defense and Education Fund ("MALDEF") 188 West Randolph Suite 1405 Chicago, Illinois 60601 (312) 782-1422
Summer 1987 Summer Associate	Rodey, Dickason, Sloan, Akin & Robb 201 Third Street, N.W. Suite 2200 Albuquerque, New Mexico 87102 (505) 765-5900
Summer 1987 Summer Associate	Lord, Bissell & Brook 115 South LaSalle Chicago, Illinois 60603 (312) 443-0700

B. Describe the general character of your law practice, dividing it into periods with dates if its character has changed over the years.

I have been fortunate to have had an opportunity to practice both civil and criminal law in different fields.

Legal Aid, 1986 - 1988 (Civil)

As a Student Legal Attorney at the Harvard Legal Aid Bureau, I represented indigent clients in a variety of matters ranging from landlord tenant disputes and the denial of public benefits, to family law matters including divorce, child support and custody. During my last year at the Harvard Legal Aid Bureau, I instituted a *Pro Se* Divorce Clinic. Through the *Pro Se* Divorce Clinic, we provided legal counseling to a significantly greater number of indigent clients, with generally uncontested matters, while simultaneously enabling our clients to assume the lead in filing for divorce, obtaining custody, or seeking child support. Participants attended group sessions in which legal guidance was provided for each stage of the process. Where the proceedings were contested, a student attorney was assigned to handle the case.

Corporate, Summer 1986, Summer 1987, and June 1988 to November 1988 (Civil)

During my summers in law school and immediately after graduation, I served as an Associate in three large corporate law firms actively engaged in civil litigation. During my tenure at the law firms of Bell, Boyd & Lloyd, Lord, Bissell & Brook, and Rodey, Dickason, Sloan, Akin & Robb, I assisted with several pending civil actions involving torts, copyright infringement, contract disputes, insurance defense, and employment discrimination. During this time, I gained experience in all aspects of civil litigation, including conducting legal research, drafting complaints, interrogatories, and motions to dismiss and for summary judgment.

Clerkship, December 1988 - November 1989 (Civil and Criminal)

As a law clerk for the Honorable James A. Parker, I had gained valuable experience in both civil and criminal law. Judge Parker presided over civil and criminal cases in Albuquerque, Santa Fe, Las Cruces and Roswell, New Mexico, which provided me with the opportunity to observe civil and criminal law practitioners in various parts of the state.

During my first year as a law clerk, I assisted Judge Parker with civil matters. I worked on motions to dismiss, summary judgment motions, and discovery matters, and drafted proposed findings of fact and conclusions of law, proposed Memorandum Opinions and Orders, and jury instructions.

One of the most significant cases on which I worked was Jackson et al. v. Fort Stanton et al., 757 F. Supp. 1243 (D.N.M. 1990), *rev'd in part and remanded* 964 F.2d 980 (10th Cir. 1992), a civil rights class action suit filed on behalf of developmentally disabled persons residing in various state institutions. Twenty-one developmentally disabled individuals who filed the class action suit on behalf of themselves and others similarly situated, challenged the institutionalization of developmentally disabled persons at Fort Stanton Hospital and Training School and Los Lunas Hospital and Training School. Specifically, plaintiffs challenged deficiencies in the conditions at the institutions under Section 504 of the Rehabilitation Act and the Due Process Clause of the Fourteenth Amendment. Most of the plaintiffs sought alternative placement in integrated community settings. Over the course of my two years as a law clerk, I assisted Judge Parker with numerous motions, court proceedings, appointment of a court expert, and visits to the various facilities.

Following an eight-week trial, I assisted with the preparation of detailed findings of fact and conclusions of law that ultimately resulted in the filing, on December 28, 1990, of an extensive Memorandum Opinion and Order. After two years of continuous litigation, Judge Parker cited various statutory and constitutional deficiencies and ordered the institutions to correct them. Judge Parker also required that the institutions prepare a plan to transfer residents to a community setting for whom the interdisciplinary team recommended that such a transfer was appropriate.

As a second year law clerk, I assisted Judge Parker with criminal matters. I prepared recommendations on Memorandum Opinions and Orders, researched substantive and procedural legal issues, and assisted with pre-trial motions, discovery, evidentiary issues, and post trial motions. As a result of New Mexico's proximity to the border, Judge Parker presided over numerous narcotics trafficking cases. New Mexico is also home for several Indian Pueblos as well as a portion of the Navajo Nation. Consequently, Judge Parker presided over the prosecution of several criminal offenses, which occurred within these Native American communities, including assaults, rape, murder and arson.

During my tenure as a law clerk, Judge Parker also sat on the Tenth Circuit Court of Appeals by designation. In preparation for appellate hearings, I prepared bench memoranda and drafted proposed Memorandum Opinions and Orders. Overall, my clerkship afforded valuable insight and a thorough understanding of the operations of the judicial branch, both at the trial and appellate levels.

Civil Rights, 1991 - 1993 (Civil)

I joined the Voting Rights Section of the Civil Rights Division at the Department of Justice as a trial attorney through the Honors Program. The Voting Rights Section enforces laws designed to safeguard the right to vote of racial and language minorities, disabled and illiterate persons, overseas citizens, and other specially protected groups. I joined the section shortly after the completion of the 1990 census, which impacted the development and implementation of electoral changes, particularly redistricting plans.

As a trial attorney, I was responsible for all aspects of litigation and administrative enforcement of the Voting Rights Act of 1965. This included conducting investigations

of violations or abridgement of voting rights, and monitoring polling place and other election day activities in numerous political jurisdictions across the United States, in order to ensure that racial and language minorities would be permitted to cast their vote and have those votes counted. I also reviewed countless electoral changes affecting voting pursuant to the Act and made appropriate recommendations to the Attorney General on whether the plans were discriminatory in purpose or effect under the Voting Rights Act. In enforcing the Voting Rights Act, I also made recommendations regarding matters requiring legal action, and drafted pleadings necessary to institute legal action against states and local jurisdictions challenging discriminatory election systems.

Criminal Prosecution, 1993 - present

For the last eleven years, I have served as an Assistant United States Attorney at the United States Attorney's Office for the District of Columbia. During my tenure at the United States Attorney's Office, I have prepared many appellate briefs and argued cases on behalf of the United States before the District of Columbia Court of Appeals and the United States Court of Appeals for the District of Columbia Circuit. I have conducted numerous bench and jury trials in the Superior Court for the District of Columbia and the United States District Court for the District of Columbia. In preparation for trial, I have represented the United States on countless presentments, arraignments, detention hearings, and motions hearings, and conducted hundreds of grand jury investigations in both courts. I have supervised intake of criminal prosecutions in the District of Columbia, coordinated the filing of indictments, and supervised the operation of the Rapid Indictment Program and the Escape Program in our Superior Court Division. I have also investigated and prosecuted cases involving serious allegations of police misconduct.

In 1999, I was appointed to serve as the first Community Prosecutor assigned to the Third Metropolitan Police District. I served as a vital link between our Office, law enforcement, city agencies, community organizations, victims of crime and concerned citizens. I responded to the community's public safety concerns, attended community meetings and events, worked with local government on nuisance issues, and conducted countless criminal justice training sessions for law enforcement. My proximity to the community, coupled with a focus on a limited geographic region, enabled me to become familiar with the crime patterns in that community, to work closely with both the police and the citizens in that community, and to better address specific criminal justice concerns.

Currently, I serve as the Executive Assistant United States Attorney for External Affairs. I am responsible for maintaining and developing effective partnerships with law enforcement, federal and local government agencies and the communities we serve. I represent our Office on a wide range of committees and task forces that address problems involving both law enforcement and social service concerns. My work demonstrates a problem-solving approach to criminal justice. Our Office seeks to create a criminal justice system that is more responsive to the needs of the community by improving the investigation and prosecution of cases; responding more effectively to victims of crime and their families; addressing community concerns; ensuring appropriate dispositions and sentences; and preventing persons from entering or diverting appropriate candidates out of the criminal justice system.

I am also responsible for the coordination of an extensive community engagement network, involving a full range of community-based programs and initiatives for youth and adults. These programs are specifically aimed at reducing crime and violence in our City, including Community Prosecution, Weed & Seed, Project Safe Neighborhoods, Project Legal Enrichment and Decision Making (L.E.A.D.), Bias Crimes Task Force, Drug Education for Youth and our Office's partnership with Amidon Elementary School. Each program and initiative is a collaborative venture with law enforcement, government agencies, and a vast array of community organizations and residents across our City. Through these efforts, our Office has established an ongoing dialogue with the community at-large. This has enabled us to better address the public safety concerns of the community we serve, to enhance community trust and to foster greater cooperation with ongoing law enforcement efforts.

Over the last five years, I have also gained valuable managerial experience. I have supervised numerous programs and initiatives, as well as the attorneys and staff assigned to work on these programs. Of equal importance, I have learned from the residents of District of Columbia. As we address broad criminal justice and social justice issues, a keen understanding of their concerns has been vital in framing appropriate policy considerations.

C. Describe your typical former clients and describe the areas of practice, if any, in which you have specialized.

During the last fourteen years, I have represented the United States of America.

D. Describe the general nature of your litigation experience, including:

(1) Whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your court appearances has varied over time, please describe in detail each such variance and give applicable dates.

(2) What percentage of these appearances was in:

(a) Federal courts (including Federal courts in D.C.);
(b) State courts of record (excluding D.C. courts);
(c) D.C. courts (Superior Court and D.C. Court of Appeals only); other courts and administrative bodies.

(3) What percentage of your litigation has been:

(a) civil;
(b) criminal.

(4) What is the total number of cases in courts of record you tried to verdict or judgment (rather than settled or resolved, but may include cases decided on motion if they are tabulated separately). Indicate whether you were sole counsel, lead counsel, or associate counsel in these cases.

(5) What percentage of these trials was to

(a) a jury;
(b) the court (include cases decided on motion but tabulate them separately).

Between 1993 and 1998, I appeared almost daily before the Superior Court for the District of Columbia, and the United States District Court for the District of Columbia. During that same time period, I also appeared occasionally before the District of Columbia Court of Appeals and the United States Court of Appeals for the District of Columbia Circuit to present oral arguments on behalf of the United States.

During this time period, approximately seventy-five (75) percent of my appearances were before the Superior Court for the District of Columbia and the District of Columbia Court of Appeals, and twenty-five (25) percent of my appearances were before the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit. In each instance I represented the United States in criminal matters pending before the courts.

I have tried to verdict approximately thirty criminal cases before different judges, including the Honorable Noel Kramer, the Honorable Stephanie Duncan-Peters, the Honorable Russell Canan, the Honorable Colleen Kollar-Kotelly, the Honorable Judith Retchin, the Honorable Lee Satterfield, and the Honorable Stephen Eilperin. With three exceptions, all of the cases I tried as sole counsel. I also conducted a bench trial before a United States Magistrate Judge.

Approximately ninety (90) percent of the criminal cases I tried were before a jury and ten (10) percent of the criminal cases I tried were before a judge.

Between 1998 and 2002, I appeared before the Superior Court for the District of Columbia regularly. In all my appearances, I represented the United States in pending criminal matters. During this time period, I did not handle any trials to verdict. Instead, I represented the United States in the filing of countless criminal informations, complaints, indictments, fugitive matters and guilty pleas. I also represented the United States in scores of applications for arrest warrants and search warrants. During this time period, I appeared regularly before former Chief Judge Eugene Hamilton and occasionally before the Honorable Wendell Gardner and the Honorable Jose Lopez.

Since I assumed my current position in 2002 as Executive Assistant United States Attorney for External Affairs, I have not formally appeared before the court. While I am regularly in the Superior Court for the District of Columbia, it is generally in my capacity as the representative of the United States Attorney to meet with other representatives of agencies involved in the criminal justice system, including judges. Through these meetings we seek to address broader policy issues pertaining to our respective criminal justice agencies.

17. Describe the five (5) most significant litigated matters which you personally handled. Provide citations, if the cases were reported, or the docket number and date if unreported. Give a capsule summary of the substance of each case and a succinct statement of what you believe was of particular significance about the case. Identify the party/parties you represented and 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 court and the name of the judge or judges before whom the case was litigated; and (c) the name(s) and address(es) and, telephone number(s) of co-counsel and of the principal counsel for the other parties.

Over the course of my tenure as an Assistant United States Attorney, I have handled hundreds of grand jury investigations, filing of indictments, detention hearings, motions hearings, and guilty pleas, and dozens of trials before many judges. Below I have identified a few of the cases which I handled as sole counsel at trial as well as others, which were resolved through a plea agreement.

i) ***United States v. Michael A. Baker and Joseph Gingrich,*** Criminal Case No. F2313-99, Superior Court for the District of Columbia before the Honorable Harold Cushenberry. I worked as sole counsel during the investigation of this matter, and was assisted by co-counsel at the plea proceedings. The case resulted in a guilty plea by former Metropolitan Police Department Officer Joseph Gingrich and a dismissal and resignation of employment by former Metropolitan Police Department Officer Michael Baker.

Counsel for Mr. Joseph Gingrich: Mr. Harold Martin, 1140 Connecticut Avenue, N.W. 11th Floor, Washington, D.C. 20036, (202) 452-8080. Counsel for Mr. Michael Baker: Eileen Reilly and Ralph Caccia, Powell, Goldstein, Frazer & Murphy, LLP, 1001 Pennsylvania Avenue, N.W., Sixth Floor, Washington, DC, 2004, (202) 624-7353.

I handled the investigation and prosecution of two Metropolitan Police Department Officers, Michael Baker and Joseph Gingrich, for false statements. Following an extensive investigation, Officers Gingrich and Baker were indicted on multiple counts of false statements and making a false police report.

The case arose from the non-fatal police shooting of Mr. Steven Farmer at the Wingate Apartments located at 4600 Martin Luther King Avenue, S.W., Washington, D.C. On the night of the shooting, Officers Gingrich and Baker were in plain clothes, conducting surveillance in the parking lot of the apartment building. They observed Mr. Steven Farmer drive to the side of the apartment building, and engage in what the officers believed was a narcotics transaction with an unidentified male. As Mr. Farmer drove away, Officers Gingrich and Baker attempted to stop him. Officers Baker and Gingrich parked their vehicle in a manner that partially blocked Mr. Farmer's vehicle. Both officers exited their vehicle, identified themselves as police officers, and ordered Mr. Farmer to turn his engine off. Rather than stopping, Mr. Farmer accelerated his vehicle, striking Officer Gingrich and the unmarked police vehicle. As Mr. Farmer attempted to make his escape, the officers chased Mr. Farmer's vehicle, firing 35 rounds, and striking Mr. Farmer repeatedly.

Rather than acknowledging that both had fired their weapons as Mr. Farmer attempted to leave the scene, Officers Gingrich and Baker stated repeatedly that they fired in defense of each other. According to statements made by the officers after the shooting, Officer Baker fired all of his rounds as Mr. Farmer's vehicle was initially approaching Officer Gingrich. Officer Gingrich, in turn, discharged his weapon as Mr. Farmer's vehicle turned back toward Officer Baker and attempted to strike him. Officers recreated the shooting at the scene, indicating where they alleged each discharged their weapon. The shell casings, however, were not recovered from the area designated by the officers.

Officer Baker entered into a plea agreement with the government. In exchange for the dismissal of all pending charges against him, Officer Baker agreed to testify truthfully about the details of the shooting and to resign immediately from the Metropolitan Police Department. Officer Baker acknowledged that they had falsified statements regarding the details of the shooting. According to Officer Baker, he had previously been involved in a high profile shooting of another police officer and he did not want to be involved in another "bad shooting." Faced with the testimony of his co-defendant, Officer Gingrich agreed to accept an Alford plea and to resign immediately from the police department. He was sentenced to probation.

This case was particularly significant because both officers had a troubled history within the Department, but had remained on the force for years. Given the gravity of the implications from the officers' false statements, it was extremely important to proceed with the prosecution. In dealing with persons who wield vast power and authority over a citizen's life and liberty, we simply cannot vacillate or make any allowances for dishonesty.

ii) ***United States v. Adrian D. Duvall,*** Criminal Case No. F4609-94, Superior Court for the District of Columbia, before the Honorable Judith Retchin on March 22, 1995. Sole trial counsel. *Aff'd* 676 A.2d 448 (D.C. 1996). Defense Counsel: Arthur Parker, 1111 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

Mr. Adrian Duvall was convicted by an eleven-member jury of possession with intent to distribute cocaine. Mr. Duvall was observed drinking beer while sitting on a wall while in the company of other men. The beer bottle he was holding was partially covered by a brown paper bag. As the officers approached, Mr. Duvall pulled the beer bottle out of the bag and in the same motion dropped eighteen ziplocks of crack cocaine. To account for the hundreds of dollars found on Mr. Duvall at the time of arrest, Mr. Duvall's father testified that his son worked for his towing business and that he paid child support directly to his son.

Mr. Duvall had told the Pretrial Services Agency Officer that he was unemployed and was supported by his mother. However, the Pretrial Services Agency had misplaced their original file and could only locate a computerized report. Notwithstanding extensive voir dire of a Pretrial Services Officer, outside the presence of the jury, regarding the stringent requirements, training and safeguards designed to ensure that the computer records are accurate and complete, the testimony was not admitted.

Following closing arguments, alternate jurors were released and the jury was charged. After three hours of deliberations, the jury was unable to reach a verdict and the trial recessed until the following day. The following morning, we learned from a bereaved juror who had reported for service, that his wife had passed away the previous night. The juror was excused without objection. Uncertain as to the effective date of the Jury Trial Amendment Act of 1994, which authorizes eleven-juror verdicts under extreme circumstances, the court recessed to determine the status of the Act. Based on the court's confirmation that the Act had gone into effect the day before the trial began, I argued in favor of allowing the remaining eleven jurors to return a verdict. Defense counsel objected to the application of the act to an offense, which predated its effective date. Judge Retchin declined to order a mistrial. Less than thirty minutes later, Mr. Duvall was found guilty.

On appeal, Mr. Duvall challenged the retroactive application of the Act and the absence of a conforming change in the rules of the court. The District of Columbia Court of Appeals rejected Mr. Duvall's claims noting that the Supreme Court has established that the right to a twelve-member jury was not a substantial one for constitutional purposes. Given the proximity of the trial date to the effective date of the Act, this was the first case in which the retroactivity issue arose.

iii) ***United States v. Leon Truesdale,*** Criminal Case No. F5178-94, Superior Court for the District of Columbia, tried before the Honorable Noel Kramer on January 17, 1995 as sole trial counsel. *Aff'd* No. 95-CF-588, slip op. (D.C. 1997). Defense Counsel, Billy Ponds, 1200 G Street, N.W. Suite 800, Washington, D.C. 20005, (202) 333-2922.

Mr. Leon Truesdale was a very young man with a troubled past. At the time of trial, he had numerous pending cases, but no adult convictions. In a five count indictment, Mr. Truesdale was charged with possession with intent to distribute cocaine while armed, possession of a firearm during a crime of violence or dangerous offense, carrying a pistol without a license, possession of an unregistered firearm and unlawful possession of ammunition.

The case arose from an observation post established by police in response to complaints from the community about drug sales in the area and in the building particularly. Mr. Truesdale was observed standing in the doorway of an apartment complex. A few minutes later, Mr. Truesdale placed a gun and a white napkin inside a mailbox. The napkin contained nine ziplocks of crack cocaine. Recovered from Mr. Truesdale were $137 and a pager. According to a narcotics expert, the cocaine had a street value of $180.00. A District of Columbia Pretrial Services Agency Officer testified that Mr. Truesdale had indicated that he had been unemployed for one year at the time of the offense and that he was supported by his grandparents, with whom he lived.

Mr. Truesdale testified on his own behalf. He denied having committed the offense and claimed that he was simply there to visit a friend named "Maria." On cross-examination, Mr. Truesdale conceded that he did not know either her last name or her apartment number. He claimed to have been waiting for a cab to take him home, notwithstanding the fact that it was daylight, he lived only a few blocks away, and had in fact walked from his home to the apartment building earlier that day.

Mr. Truesdale was found guilty of all counts and requested that he be sentenced pursuant to the Youth Rehabilitation Act. The trial court denied his request and sentenced him to a term of imprisonment of five to fifteen years for possession with intent to distribute cocaine while armed, five to fifteen years for possession of a firearm during a crime of violence, and one year for each of the remaining charges, all sentences to run concurrently with each other.

Two issues were particularly noteworthy in the prosecution of this case. During the course of the trial, defense counsel requested that the government provide any information regarding complaints or allegations

of wrongdoing on the part of two police officers that were members of the arrest team. Following a recess during which we had extensive arguments over the disclosure of the information, I ultimately prevailed on my request to have the information revealed in an *ex parte* proceeding, during which the trial court could rule on the propriety of disclosing the government's information to the defense. Following disclosure, Judge Kramer agreed with the government that there was no information, which the government was required to disclose. Judge Kramer also granted my request to seal the *ex parte* proceedings and any record thereof. On appeal, Mr. Truesdale challenged only the sufficiency of the evidence to sustain his conviction, and his conviction was affirmed.

Equally noteworthy was the regular presence of Mr. Truesdale's grandfather at trial. Each day, his grandfather accompanied him to court, stayed throughout the proceedings and had lunch with him. Sadly, in my experience as a prosecutor, the presence of a parent or guardian is very much the exception rather than the rule.

iv) ***United States v. Eric Ward,*** Criminal Case No. F1401-94, Superior Court for the District of Columbia before the Honorable Colleen Kollar-Kotelly on March 16, 1995, as sole trial counsel. *Aff'd* No. 95-CF-954, slip op. (D.C. 199). Defense Counsel, Vandy Jamison, 11301 Wycombe Park Lane, Glenn Dale, MD 20769, (202) 253-2876.

Mr. Eric Ward was charged with a single count of possession with intent to distribute heroin. The police had established an observation post during which Mr. Ward was observed making several drug transactions. Each time, Mr. Ward walked to a nearby house, climbed the steps, and picked up a flattened cardboard box from the porch to remove an item. The buyers handed the money to an unidentified male who was with Mr. Ward. During the last transaction, the unidentified male gave the money to Mr. Ward after the customer drove off. Following his arrest, Mr. Ward was found in possession of $371. Seven ziplock bags of heroin, bound together by a rubber band, were stashed under the flattened box on the porch. None of the purchasers was arrested. A narcotics expert testified that the remaining bags of heroin had a street value of $140 and described the classic nature of the drug trafficking scheme.

Mr. Ward presented an alibi defense through his mother and his cousin. His mother testified that she had given Mr. Ward money from proceeds she received from her husband's life insurance following his death. She initially stated that she gave him $40, but later claimed she made a mistake and stated that she gave him $440. His cousin, a teacher's aide at a local school, offered an alibi. She testified that, prior to his arrest, Mr. Ward had walked through the neighborhood helping her look for her eleven-year-old son. Mr. Ward was arrested as they located her son. On cross-

examination, his cousin testified that while the case had been previously scheduled for trial several times, she had only been contacted about her testimony shortly before this trial date. I also reviewed in painstaking detail the time she claimed she had spent with Mr. Ward. She was able to account for every minute with the exception of the actual arrest. Although she claimed she observed her cousin being arrested, she did not stop to inquire as to a reason but rather located her son and proceeded home. She assumed Mr. Ward had been arrested for a past infraction.

During a recess, the defense investigator and Mr. Ward's cousin exchanged congratulations on her testimony, suggesting that her testimony was false. However, the jury found Mr. Ward's cousin's testimony not credible. Mr. Ward was found guilty as charged and was sentenced to seven to twenty-one years of imprisonment. At the time of his conviction, Mr. Ward was on supervised probation for a similar offense, in which the execution of a term of imprisonment of ten to thirty years had been suspended. As a result, Mr. Ward faced significant jail time.

v) ***United States v. Scott Lee Feuver aka Scott Lee Feuer***, Criminal Case No. 96-0397, United States District Court for the District of Columbia, sole counsel. Guilty plea before the Honorable Thomas Penfield Jackson. Defense Counsel, Valencia Rainey, former Federal Public Defender, (301) 390-0425. *Appeal dismissed*, 236 F.3d 725 (D.C. Cir. 2001).

Mr. Scott Lee Feuver was a serial bank robber, who robbed or attempted to rob six banks over a ten-day period. Following an extensive investigation by the Federal Bureau of Investigations (FBI) and the Metropolitan Police Department (MPD), Mr. Feuver was arrested on October 9, 1996, as he attempted to rob NationsBank. At the time of his arrest, Mr. Feuver asked police how they knew he would be there.

A federal grand jury indicted Mr. Feuver on six counts of bank robbery and attempt bank robbery, and one count of attempt robbery of a street vendor who threatened to mace Mr. Feuver. Specifically, the charges in the indictment were predicated on the following offenses:

September 30th	street vendor	attempt
September 30th	First Union Bank	$1,781
October 2nd	NationsBank	$300
October 3rd	First Union Bank	$2,910
October 5th	Citizens National Bank	$3,082
October 8th	Crestar Bank	teller refused
October 9th	Nationsbank	attempt

A search of the premises where Mr. Feuver was temporarily residing revealed a robbery note demanding money, threatening that he was armed,

and claiming he was a member of the Republic of Free Arab Nations. Also recovered was a notebook pad, which resembled the distinctive paper, used for the demand notes in several robberies, and clothing worn by Mr. Feuver during various robberies. Surveillance tapes were recovered from all of the banks, with one exception, as well as latent prints from the banks and the demand notes.

With the exception of the attempted bank robbery on October 9, 1996, Mr. Feuver was positively identified through photo arrays by bank tellers and or witnesses as the person who robbed the various banks. On October 9, 1996, Mr. Feuver was followed into the bank by FBI agents and MPD officers, who were present when Mr. Feuver passed a robbery demand note to the teller.

Each count of bank robbery charges carried a penalty of up to twenty years of prison. Faced with irrefutable evidence, Mr. Feuver agreed to enter into a plea agreement. In accordance with the terms of a plea agreement, Mr. Feuver entered a plea of guilty to three counts of bank robbery. On the day of sentencing, Mr. Feuver charged the public defender with ineffective assistance of counsel and sought appointment of new counsel. He also sought to withdraw his guilty plea. The trial court denied his request for new counsel and his request to withdraw his guilty plea. Mr. Feuver was sentenced to 115 months imprisonment, and three years of supervised release. Mr. Feuver subsequently filed *pro se* motions attacking his conviction. These were denied on appeal.

This case is significant for two reasons. First, the rash of robberies within the short time frame was cause for alarm among the law enforcement community. Second, it was evident that Mr. Feuver's long history of substance abuse had reached the point where he had lost all self-control. He was unemployed, had three different residences in a six-month period, and had an outstanding bench warrant for his failure to appear for trial in the Superior Court for the District of Columbia on charges of possession of cocaine and heroin. Mr. Feuver was truly destitute. Notwithstanding serious health problems, Mr. Feuver was trapped in a hopeless abyss of addiction.

18. Describe the most significant legal activities you have pursued, including significant litigation, which did not proceed to trial, or legal matters that did not involve litigation. Describe the nature of your participation in each instance described, but you may omit any information protected by the attorney-client privilege (unless the privilege has been waived).

I have represented the United States in approximately thirty-two (32) appeals before the District of Columbia Court of Appeals and approximately seven (7) appeals before the United States Court of Appeals for the District of Columbia

Circuit. I was the principal draftsperson of all of these briefs and was designated as counsel for oral argument. I have presented oral arguments on behalf of the United States in approximately twelve (12) appeals before the District of Columbia Court of Appeals and approximately two (2) appeals before the United States Court of Appeals for the District of Columbia Circuit.

Significant Appeals Argued before the Court

i) ***Toronto T. Gilliam v. United States***, No. 95-CF-537, District of Columbia Court of Appeals; argued before Associate Judges Ferren, Steadman and Ruiz. *Aff'd on reh'g en banc* 707 A.2d 784 (D.C. 1998) (*per curiam*).

Counsel for Appellant: Jeffrey T. Green, Sidley & Austin, 1722 Eye Street, N.W., Washington, D.C. 20006.

Appellant Toronto Gilliam was indicted, tried and found guilty of extortion of a senior citizen and first-degree theft of a senior citizen. According to the evidence presented at trial, Mr. Gilliam and the 63-year-old complainant, Mr. Whitfield Arnett, were neighbors. Mr. Arnett was a particularly vulnerable victim. He suffered from a number of health problems and had recently lost his wife of forty years to cancer. A few months before her death, Mr. Arnett and his wife had moved to his in-laws' house. During this time, Mr. Arnett hired Mr. Gilliam to mow the lawn. After Mrs. Arnett passed away, Mr. Gilliam told Mr. Arnett that he had found a large box of drugs under his porch and asked for payment for moving the box and its contents. Mr. Gilliam later told Mr. Arnett that thousands of dollars worth of drugs were missing from the box and that "the organization" was holding him responsible and demanding payment. Mr. Gilliam warned that they would come after him if he failed to pay or contacted the police. At one point, Mr. Gilliam claimed the debt was paid and even provided a receipt. However, later he claimed "the organization" demanded interest and had the home of his in-laws, where his son also lived, under surveillance. Over a five-month period, Mr. Arnett gave Mr. Gilliam over $88,000. Mr. Arnett ultimately confided in his brother-in-law, who persuaded him to contact the police. The police recorded a series of telephone conversations in which Mr. Gilliam demanded payment on behalf of "the organization" for work done. A number of Mr. Gilliam's relatives, including his mother, and acquaintances testified for the defense and essentially maintained that Mr. Arnett spent his money on wild parties with women following the death of his wife and on repairs Mr. Gilliam made to his home. When asked about the tapes, Mr. Gilliam's mother denied recognizing any of the voices on the tapes, including Mr. Arnett's and her son's.

During the course of the trial, Mr. Gilliam failed to appear and a bench warrant was issued for his arrest. Following Mr. Gilliam's capture, the court sentenced him to three to nine years, to run concurrently to each

other, but suspended execution of all but a twenty-four month sentence. The court also ordered that Mr. Gilliam pay $70,000 in restitution.

On appeal, Mr. Gilliam challenged the propriety of statements made by the prosecutor in closing arguments, including statements regarding an unidentified female voice on the tapes whom the prosecutor argued could be his mother. Mr. Gilliam also challenged the prosecutor's impeachment of his mother with Mr. Gilliam's prior conviction for child abuse, which was referred to only as a conviction for hurting another. Mr. Gilliam further challenged the trial court's exclusion of expert testimony on phonetic and discourse analysis. Finally, Mr. Gilliam alleged that the trial court erred in requiring Mr. Gilliam to pay restitution.

On behalf of the United States, I argued that based on Mr. Gilliam's failure to object to any of the statements made by the prosecutor during closing arguments, the appellate court could review only for plain error. When reviewed under that standard, the prosecutor's arguments, both individually and collectively, did not warrant reversal. Based on the evidence adduced at trial, the prosecutor was simply calling on the jury to draw reasonable inferences and compare the female voice on the tape with that of his mother. In addition, the trial court had *sua sponte* instructed the jury that no voice identification had been made, but that the jury could properly compare the voice on the tape with that of his mother.

I also argued that the impeachment of Mr. Gilliam's mother with Mr. Gilliam's prior conviction for hurting someone was entirely proper given Mrs. Gilliam's gratuitous statements on cross-examination that her son would never hurt anyone. Given how well versed Mrs. Gilliam was with her son's criminal record, her impeachment with the conviction was invaluable to the jury in assessing her credibility.

Nor did the trial court err in excluding the expert testimony proffered by Mr. Gilliam. There simply was nothing to suggest that the words spoken in the taped conversations had a meaning different from the common understanding of the words. Finally, I argued that Mr. Gilliam had specifically requested restitution, albeit in lieu of imprisonment, and had even suggested an amount of $400 per month.

The appellate court affirmed. Mr. Gilliam subsequently requested a rehearing *en banc* arguing that the appellate court had overturned settled law. On behalf of the United States, I filed an opposition. I argued that Mr. Gilliam's new legal argument on the standard of review for a trial court's failure to issue a limiting instruction to the jury *sua sponte*, on the limited use of appellant's conviction, was a well established plain error standard. I further argued that the trial court's restitution order had a solid factual basis. On *rehearing en banc*, in a *per curiam opinion*, the court agreed with my position and held that, where a trial court is alleged to

have failed to *sua sponte* issue a limiting instruction, the standard of view is plain error.

The appellate court's *per curiam* decision is ultimately at the center of Mr. Gilliam's case; a party should not be permitted to profit from his failure to intervene or from circumstances that he himself created.

ii) ***Pansing v. United States,*** 669 A.2d 1297 (D.C. 1995), No. 93-CF-1502, District of Columbia Court of Appeals. Argued before Chief Judge Wagner, Associate Judge Ferren, and Associate Judge Steadman. Affirmed.

Counsel for appellant: Alan D. Strasser, 1101 Connecticut Avenue, N.W., Suite 1000, Washington, D.C. 20036.

Appellant, Mr. David Pansing, was convicted of possession with intent to distribute ecstasy and valium. According to the evidence presented at trial, Mr. Pansing was observed selling pills inside Tracks Night Club to other patrons by a confidential informant, who advised off-duty police officers. Following Mr. Pansing's arrest, police recovered from Mr. Pansing $825, sixteen tablets of ecstasy and three tablets of valium. Mr. Pansing told police that he estimated having made twenty-five to thirty sales that night, that he sold the ecstasy for twenty-five dollars each, and the valium for twenty dollars each. Mr. Pansing also advised police that he brought $100 to $125 from home that night. On the day of his arrest, Mr. Pansing tested positive for cocaine.

Following an evidentiary hearing on Mr. Pansing's request to be sentenced pursuant to the addict exception, the trial court found Mr. Pansing was ineligible for the addict exception and sentenced him to a mandatory twenty-months to five years of imprisonment. The evidence at the hearing established that following graduation from Tufts University, Mr. Pansing moved to Washington, D.C. and was employed as a staff assistant at the American Society of Internal Medicine, where he received distinguished and excellent performance evaluations. While in Washington, Mr. Pansing joined a group known as the "Club Kids" - - individuals who frequented nightclubs almost daily, dressed in "outrageous" clothes and "used a lot of drugs." Over time, Mr. Pansing's use of drugs varied widely and extended beyond weekends. Mr. Pansing maintained that to sustain his habit, he began selling narcotics out of his home and at nightclubs. He was selling approximately 600 pills per month. Mr. Pansing also testified about the sense of power and social prominence he gained from the "Club Kids" scene. Not only did he sell narcotics, but he also gave them away. Mr. Pansing estimated that in a one-week period, he gave away up to twenty pills (worth hundreds of dollars) to friends.

Between his arrest in April 1992 and his sentencing on October 18, 1993, Mr. Pansing was tested for drugs on a weekly basis and only tested positive once. Mr. Pansing maintained that he continued to use drugs during this period of time, but was able to limit his drug consumption to weekends. By August 1992, his drug consumption was limited to once a month. Following his conviction in March 1993, Mr. Pansing began treatment with a clinical psychologist who found that Mr. Pansing was addicted to a lifestyle from which he derived a sense of power and social prominence, particularly among those who sought drugs from him.

On appeal, Mr. Pansing challenged the trial court's finding that he was not an addict and that he did not sell narcotics for the primary purpose of supporting his drug addiction. On behalf of the United States, I argued that appellant had not "lost the power of self-control" as a result of his addiction, failing to meet the definition of addict set forth by statute. To the contrary, he demonstrated his ability to restrict his consumption of narcotics to weekends, and later to monthly use. Nor did Mr. Pansing sell drugs to sustain his habit. Rather, Mr. Pansing was, as his psychologist suggested, addicted to a life style, where he gained social prominence and power from his ability to give away some of the drugs he sold, and to share some of the cocaine he purchased for his own consumption.

While the appellate court found that the trial court erred in finding that Mr. Pansing was not an addict, they upheld the finding that Mr. Pansing was not selling drugs for the primary purpose of supporting his addiction. This appeal is significant in that it examines the difficulties confronting a trial court in applying a legislative exception designed to aid those who are genuinely grappling with the ravages of a drug addiction, while excluding those who merely seek to profit, either financially or socially, from the sale of their wares.

iii) ***Tycho B. Veney v. United States***, *aff'd* 658 A.2d 625 (D.C. 1955) (*Veney I*); *vacated* 666 A.2d 63 (D.C. 1995) (*Veney II*); *aff'd on reh'g en banc*, 681 A.2d 428 (D.C. 1996); No. 93-CF-456, District of Columbia Court of Appeals. Argued *Veney I* before Associate Judges Ferren, Terry and Schwelb.

Counsel for appellant: Tana Lin, James Klein, and Samia Fam, Public Defender Service, 633 Indiana Avenue, N.W., Washington, D.C. 20004.

Appellant Tycho Veney, at nineteen years of age, was indicted for first-degree murder while armed, possession of a firearm during a crime of violence, and carrying a pistol without a license. He entered a guilty plea to manslaughter while armed based on a midday shooting of the decedent, Marc Locust, who was twenty-one years old. According to the evidence proffered at the plea hearing, Mr. Veney was standing in front of a neighborhood convenience store when he observed Mr. Locust approach

on a bicycle. As Mr. Locust neared the store, and without exchanging any words, Mr. Veney pulled a gun from his waistband and fired, striking him in the chest. Mr. Locust, who was unarmed, fell off his bicycle and attempted to run. However, Mr. Veney chased after Mr. Locust and fired a second shot, which grazed his head. Mr. Locust attempted to run for a short distance, but collapsed. The autopsy revealed that the gunshot wound to his chest had pierced both his lungs and his heart. Mr. Veney ran home to hide the gun, and later threw it in the river. Following his arrest, Mr. Veney gave a videotaped statement to police during which he explained that several summers earlier, Mr. Veney had argued with Mr. Locust over a girl. Mr. Veney claimed that Mr. Locust had fired at him weeks before the killing, but he could not recall any of the particulars.

In support of his request that he be sentenced pursuant to the Youth Rehabilitation Act, Mr. Veney submitted psychiatric and psychological evaluations indicating that he suffers from both mental and emotional disorders. Mr. Veney's submissions also indicated that he had engaged in extensive and dangerous criminal conduct. His request was denied and he was sentenced as an adult to fifteen years to life, with a mandatory minimum sentence of five years. Mr. Veney appealed the trial court's denial of a Youth Act sentence based on the trial court's failure to make a "no benefit" finding, and based on the trial court's determination that he would receive comparable treatment in an adult facility.

On behalf of the United States, I argued that the trial court was fully cognizant of the sentencing alternatives available under the Youth Rehabilitation Act, but affirmatively concluded that Mr. Veney would not derive any benefit from being sentenced under the Act. In fact, the trial court explicitly set forth reasons why a Youth Act sentence was inappropriate, including the violent nature of the offense, the fact that Mr. Veney had been carrying the gun around for a while, and that it was unclear whether the gun was intended to be used only against Mr. Locust. I also noted that the trial court was troubled by the reduced sentenced Mr. Locust could receive as a result of the plea agreement and was further concerned with an even further reduction of sentence under the Youth Act. Clearly, while the trial court did not utter the words "no benefit," the trial court evaluated the sentencing options under the Youth Act and found it to be "inappropriate." To require anything further would be to exalt form over substance. Noting the absence of a statutory presumption in favor of a Youth Act sentence, I argued that the trial court was satisfied that Mr. Veney would receive comparable treatment within the adult system.

The appellate court affirmed in a *per curiam* opinion, noting that it had recently held in a different case that a "no benefit" finding was not required. That decision was subsequently vacated and scheduled for a rehearing *en banc* on the question of whether an explicit finding of "no benefit" was required. The issue presented was an attempt to discern the

legislative intent in construing a trial court's discretion to apply differing sentencing options presented by the Youth Act and the adult system. Ultimately, the question before the appellate court was whether there had been, in fact, a wholesale change in the philosophical approach to youth sentencing. In repealing the Federal Youth Corrections Act, and subsequently enacting the D. C. Youth Rehabilitation Act, the legislature vacated a presumption in favor of a youth sentence and replaced it with a sentencing scheme, which simply offered rehabilitation for youth as an option balanced against the need to protect public safety. These competing interests were squarely before the trial court in Mr. Veney's case. Here, the trial court clearly considered a youth rehabilitative option for Mr. Veney, but rejected it out of concern for public safety.

iv) ***Raphael Smith v. United States,*** 666 A.2d 1216 (D.C. 1995); No. 92-CF-158, District of Columbia Court of Appeals. Argued before Chief Judge Wagner, Associate Judge Schwelb and Senior Judge Mack. Affirmed.

Counsel for appellant: Eli Gottesdiener, former Public Defender, 3901 Yuma Street, N.W., Washington, D.C. 20016.

Appellant Raphael Smith, III, was indicted and tried on charges of armed robbery and possession of a firearm during a crime of violence. Prior to trial, the government filed a Motion in Limine seeking the admission of a tape recording of a 911 call made by the complainant, George Frederick, as an excited utterance. Following a hearing, the trial court granted the government's motion. The evidence adduced at trial established that Mr. Frederick, a student at Theodore Roosevelt High School, was on his way home late at night after attending evening classes. Mr. Smith wearing a black ski hat and carrying a cocked gun, approached Mr. Frederick. Mr. Smith and a male companion demanded Mr. Frederick's leather jacket and money. Mr. Frederick threw the leather jacket on the ground, emptied his pockets and ran home. As Mr. Frederick left, Mr. Smith threatened to shoot him. When he arrived home, his mother urged him to call the police. Although initially reluctant, Mr. Frederick called the police. Several days later, Mr. Smith came to the Black Man's Development Center where Mr. Frederick was employed. Mr. Frederick immediately recognized him and called the police. The tape, of the initial call to the police, was introduced at trial as an excited utterance and as a prior identification. At the conclusion of the trial, Mr. Smith was found guilty of both counts and was sentenced to six to eighteen years on the armed robbery count, and five to fifteen on the possession of a firearm.

On appeal, Mr. Smith challenged the admission of the 911 tape as an excited utterance arguing that it showed conscious and reflective thought, and that the statement did not identify or describe the assailant. Specifically, Mr. Smith pointed to the fact that Mr. Frederick misrepresented during the call the fact that the robbers had stuck a gun to

his face, took a circuitous route home to avoid being followed, and called the police only at his mother's insistence, fifteen minutes after the robbery had occurred.

On behalf of the United States, I argued that the 911 tape was properly admitted as an excited utterance. The armed robbery was a serious occurrence, which produced a state of "nervous excitement" in Mr. Frederick. Indeed, the 911 tape confirms that Mr. Frederick was highly distraught as he spoke to the dispatcher. The call was made within 15 minutes after the offense occurred, which included the time it took Mr. Frederick to run home and relay the events to his mother. The circuitous route further evidenced his genuine concern for his safety. I further argued that the misstatement regarding the use of the gun during the robbery, while relevant to the jury's assessment as to the probative value of the statement, did not vitiate the admissibility of the statement at trial. In addition to the evidentiary hearing, the trial court had recalled Mr. Frederick to the stand specifically to question him regarding his state at the time he placed the 911 call. Clearly, the trial court had taken great pains to consider Mr. Smith's concerns in ascertaining the admissibility of the tape.

This case was significant in that it recognized practical realities in defining the general parameters of an excited utterance. Mr. Smith's reluctance to call the police stemmed from his lack of confidence in their responsiveness. He took a circuitous route because he feared identifying his home to the armed robbers. Application of our laws, must be reviewed against the backdrop of our society.

v) ***Delajandro Young v. United States,*** 639 A.2d 92 (D.C. 1994) (No. 90-CF-878, 92-CO-1262); District of Columbia Court of Appeals. Argued before Chief Judge Rogers, Associate Judge Terry, and Associate Judge Sullivan. Affirmed.

Counsel for Appellant: Bernard Jay Williams, 10010-B Colesville Road, Silver Spring, MD 20901.

Appellant Mr. Delajandro Young was indicted and tried on a multiple count indictment which included first degree felony murder, first and second degree burglary, robbery and unauthorized use of a stolen vehicle for a particularly gruesome crime. Following an eight-day jury trial before the Honorable Henry F. Greene, Mr. Young was found guilty of first-degree murder, robbery and second-degree murder. According to the evidence presented at trial, Barbara Johnson, the decedent, befriended Mr. Young and his girlfriend at a gas station, and subsequently helped Mr. Young with money and groceries on several occasions. On the night of the murder, Ms. Johnson found Mr. Young and his girlfriend waiting outside her home and invited them in for tea. Once inside, Mr. Young

bound Ms. Johnson's hands and feet, dragged her into her basement and stole jewelry, a television, a radio, personal items, her car and some food. Before leaving the house, Mr. Young told Ms. Johnson that he would have to kill her so that she would not call the police. He proceeded to bind her hands, feet, nose and mouth, causing her to asphyxiate. Mr. Young used the stolen items to pay for an outstanding cocaine debt to his supplier, Mr. Carpenter, and sold the remaining items to a pawnshop.

On appeal, Mr. Young challenged the consecutive nature of the sentences imposed on him for felony murder, robbery and second degree murder; the admission of Mr. Carpenter's testimony predicated on a plea agreement with the government; and the trial court's refusal to provide a new trial based on his claim that his girlfriend perjured herself during her testimony at trial and had subsequently recanted.

On behalf of the United States, I argued that the admission of Mr. Carpenter's testimony was entirely proper and that the terms of the government's plea agreement had been the subject of extensive cross-examination by the defense and therefore properly brought before the jury. Moreover, the trial court properly refused to grant Mr. Young a new trial based on affidavits from Mr. Young, his aunt and a civil attorney who once represented Mr. Young, which the court found to be wholly incredible and inadmissible. With respect to the sentencing, I asked that the case be remanded to the trial court for resentencing to cure the legal impediment to a consecutive sentence for felony murder and the underlying felony under the merger doctrine. Given the gravity to the offense, the trial court's affirmance was particularly significant.

19. Have you ever held judicial office? If so, please give the details of such service, including the court(s) on which you served, whether you were elected or appointed, the dates of your service, and a description of the jurisdiction of the court. Please provide four (4) copies of all opinions you wrote during such service as a judge.

I have never held judicial office.

A. List all court decisions you have made which were reversed or otherwise criticized appeal.

None

20. Have you ever been a candidate for elective, judicial, or any other public office? If so, please give the details, including the date(s) of the election, the office(s) sought, and the results of the election(s).

No.

21. Political activities and affiliations.

a. List all public offices, either elected or appointed, which you have held or sought as a candidate or applicant.

None.

b. List all memberships and offices held in and services rendered to any political party or election committee during the last ten (10) years.

None.

c. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity during the last five (5) years of $50 or more.

None.

22. To your knowledge, have you ever been investigated, arrested, charged, or convicted (include pleas of guilty or nolo contendere) by federal, State, local, or other law enforcement authorities for violations of any federal, State, county, or municipal law, other than for a minor traffic offense? If so, please provide details.

No.

23. Have you or any business of which you are or were an officer, director or owner ever been a party or otherwise involved as a party in any other legal or administrative proceedings? If so, give the particulars. Do not list any proceedings in which you were merely a guardian ad litem or stakeholder. Include all proceedings in which you were a party in interest, a material witness, were named as a co-conspirator or co-respondent, and list any grand jury investigation in which you appeared as a witness.

No.

24. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, bar or professional association, disciplinary committee, or other professional group? If so, please provide the details.

No.

II. POTENTIAL CONFLICTS OF INTEREST

1. Will you sever all connections with your present employer(s), business firm(s), business

association(s), or business organization(s) if you are confirmed?

Yes.

2. Describe all financial arrangements, deferred compensation agreements, or other continuing dealings with your law firm, business associates, or clients.

None.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest.

None.

4. Describe any business relationship, dealing, or financial transaction which you have had in the last ten (10) years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest other than while in a federal government capacity.

None.

5. Describe any activity during the last ten (10) years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of legislation or affecting the administration and execution of law or public policy other than while as a federal government employee.

None.

6. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service as a judge? If so, explain.

No.

7. Explain how you will resolve any potential conflicts of interest, including any that may have been disclosed by your responses to the above items. Please provide three (3) copies of any trust or other relevant agreements.

I have no potential conflicts of interest.

8. If confirmed, do you expect to serve out your full term?

Yes.

III. FINANCIAL DATA

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

IV. DISTRICT OF COLUMBIA REQUIREMENTS

Supplemental questions concerning specific statutory qualifications for service as a judge in the courts of the District of Columbia pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970, D.C. Code Section I I - 150 1 (b), as amended.

1. Are you a citizen of the United States?

   Yes.

2. Are you a member of the bar of the District of Columbia?

   Yes.

3. Have you been a member of the bar of the District of Columbia for at least five (5) years? Please provide the date you were admitted to practice in the District of Columbia.

   Yes, I was admitted to practice in the District of Columbia on January 23, 1991.

4. If the answer to Question 3 is "no" --

   A. Are you a professor of law in a law school in the District of Columbia?

   B. Are you a lawyer employed in the District of Columbia by the United States or the District of Columbia?

   C. Have you been eligible for membership in the bar of the District of Columbia for at least five (5) years?

   D. Upon what grounds is that eligibility based?

5. Are you a bona fide resident of the District of Columbia?

   Yes.

6. Have you maintained an actual place of abode in the greater Washington, D.C. area for at least five (5) years? Please list the addresses of your actual places of abode (including temporary residences) with dates of occupancy for the last five (5) years.

7. Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Judicial Nominating Commission?

   No.

8. Have you been a member of either of these Commissions within the last 12 months?

   No.

9. Please provide the committee with four (4) copies of your District of Columbia Judicial Nomination commission questionnaire.

AFFIDAVIT

I Laura A. Cordero being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

SUBSCRIBED and SWORN TO before me this 30th day of December 2004.

Notary Public

JAY D. FARRIS
Notary Public of District of Columbia
My Commission Expires July 31, 2008