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S. HRG. 108–135, PT. 5

CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

OCTOBER 15, NOVEMBER 12, AND NOVEMBER 19, 2003

Serial No. J–108–1

PART 5

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NOMINATIONS OF D. MICHAEL FISHER, OF PENNSYLVANIA, NOMINEE TO BE CIRCUIT JUDGE FOR THE THIRD CIRCUIT; DALE S. FISCHER, OF CALIFORNIA, NOMINEE TO BE DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA; AND GARY L. SHARPE, OF NEW YORK, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF NEW YORK

WEDNESDAY, OCTOBER 15, 2003

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:10 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Larry E. Craig, presiding.

Present: Senators Craig, Specter, Leahy, Feinstein, and Feingold.

Senator SPECTER. [Presiding.] We are awaiting the arrival of the Chairman. I am not certain at this point whether Senator Hatch is going to chair or, reportedly, Senator Craig may chair. But it is now 10 minutes after 10:00, and we have a long agenda. People need to proceed, so we will start at this time. And we will begin with Senator Feinstein.

Senator Feinstein, do you have a nominee to introduce?

PRESENTATION OF DALE S. FISCHER, NOMINEE TO BE DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA, BY HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator FEINSTEIN. I do, Mr. Chairman. Thank you very much. I am very pleased to introduce Judge Dale Fischer. She is the nominee for the Central District of California, and she comes to this nomination after a distinguished career in private practice and as a member of the State court. She also received a unanimous endorsement of the Central District's bipartisan Judicial Advisory Committee.

Judge Fischer has really stellar academic credentials. She obtained her undergraduate degree from the University of South Florida, her law degree from Harvard. Prior to her appointment as a State court judge, she practiced as a corporate lawyer for 17 years in Los Angeles, first at the firm of Kindel and Anderson and

then at Heller, Ehrman, White and McAuliffe. Her corporate practice focused almost exclusively on the representation of small and mid-sized companies in civil litigation matters. She also developed special expertise in wrongful termination and employment discrimination and trust and estate disputes.

In 1997, Governor Wilson appointed Judge Fischer to the municipal court. In 2000, she became a judge on the Los Angeles Superior Court. Her peers praise her as, and I quote, "brilliant, hard-working, fair, and compassionate." And Los Angeles Superior Court Judge Alan Harbor noted in a letter, and I quote, "It is highly unlikely that any judge in our court works harder than she does. It is not unusual for her to be in her chambers starting at no later than 7:00 a.m. every morning and staying until the early evening."

She is widely praised for her intellect and her competence. To cite one example, Judge Jacqueline O'Connor noted that, "When Judge Fischer was asked to take on a task involving bail law, she approached it with her full resources, and in short order became our court's leading expert on bail issues. That expertise has become known statewide."

Another judge, Judge Linda Lefkowitz, summed it all up by describing Judge Fischer as "a star of the Los Angeles Superior Court." It should not then be surprising that she received a unanimous "well qualified" rating from the American Bar Association's Standing Committee on the Federal Judiciary.

So I am very pleased to make these comments, and I would just like the Committee to know that Judge Fischer came back once before her hearing, but in true Senate style, when she got to the airport at Dulles, she learned that the hearing was not going to take place, so she had to turn around and go home again. So if she would stand, I would just like to recognize her, and I know she will recognize some friends of hers that are in the audience.

Thank you very much.

Senator SPECTER. Thank you very much, Senator Feinstein.

As to protocol, Senator Santorum is senior to Senator Schumer, who is on the Committee, and if it is satisfactory to my distinguished colleague, we will now turn to the nomination of Gary L. Sharpe and call first on Senator Schumer.

PRESENTATION OF GARY L. SHARPE, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF NEW YORK, BY HON. CHARLES SCHUMER, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator SCHUMER. Thank you, Mr. Chairman, and I will be brief in deference to my colleagues. Senator Clinton and I are here today to introduce Gary Sharpe to the Committee, and we are proud to stand by his nomination. I want to welcome him, ask him to stand so the panel can see what a nice fellow he is, just on first appearance.

[Laughter.]

Senator SCHUMER. As you know, Mr. Chairman, this does not always work in this Committee, but sometimes it does. And I want to welcome Lorraine, his wife, who just celebrated a birthday. Welcome to your 30's, being in your 30's. Hope you enjoy it. And they have two sons named Robert and Michael, and two daughters-in-

law named Ann and Anne, who I guess will be introduced later, and two wonderful grandchildren, Jake and Colby. The rest of the family could not be here today for the hearing, but I am told they are watching on C–SPAN or the Webcast, and I know they are proud of Judge Sharpe today.

Before I introduce Judge Sharpe, I want to make one point, and that is that, if my math is right, when Judge Sharpe is confirmed by the full Senate—and I expect and hope he will be confirmed quickly and unanimously because, as the Committee will see, he is an example of the nominees we get when the process works right—he will be the 175th judicial nominee of President Bush's we have confirmed. And I note that at the outset because to hear the hue and cry from some on the other side or on the talk radio, you would think we were blocking every nominee that comes before us. Within a couple of weeks, the score will be something like 175–5, a score that the Chicago Cubs or New York Yankees would envy, or the Bills or the Sabres, to choose a team closer.

Senator LEAHY. Let's not forget the Red Sox.

Senator SCHUMER. No comment, Mr. Chairman. I will not belabor the point.

But it is important to note that this process can work. It frequently does work. It is working well in New York where Senator Clinton, Governor Pataki, myself, and the White House have worked very well together, and we are filling every vacancy in New York. As long as nominees are, in my judgment, anyway, excellent, legally excellent, moderate, not too far right, not too far left, and diverse—those are the criteria we can use—we can just clear things right through no matter what disagreements of specific issues or specific parts of judicial philosophy we have.

So Judge Sharpe easily clears that bar. For the past 6 years, Judge Sharpe has served with distinction as a magistrate for the Northern District of New York. That includes Albany, Syracuse, the whole north country. Before taking the bench, he spent his professional career working as one of the best prosecutors northern New York has ever seen, and he spent nearly a decade in State court as a prosecutor from Broome County, which is the county that the city of Binghamton and Johnson City and Endicott are in as well.

He went over to the Federal court where he was an Assistant U.S. Attorney before becoming the U.S. Attorney for the Northern District. He is a graduate of two fine New York schools: the University of Buffalo, which he graduated from magna cum laude, and Cornell Law. After graduating from college but before heading for law school, Judge Sharpe served in the armed forces as a member of the Naval Reserve. He is a Vietnam vet, having served there from 1966 to 1968.

We have talked to lawyers in the Northern District, and they simply—the way to put it, their opinion of Judge Sharpe is "rave reviews." They just love him. One upstate judge said, "He is the best lawyer I have ever known." And a judge knows a whole lot of lawyers. So that is pretty high praise.

So, Judge Sharpe, congratulations on this nomination and hopefully on your ascension to the bench, and, Mr. Chairman, I look for-

ward to our Committee moving Judge Sharpe quickly. He is going to be a great addition to the Northern District bench.

Senator SPECTER. Thank you, Senator Schumer.

Senator Leahy?

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

Senator LEAHY. Mr. Chairman, I want to concur with what the Senator from New York has said. There are tremendous qualifications here, and I think it has helped that Senator Clinton and Senator Schumer have worked with Governor Pataki and both Republicans and Democrats and the White House on their nominees, one of the reasons they go by us so quickly.

I will put my full statement in the record, but I was also caught by something that Senator Schumer had said. It is interesting. I was stopped by somebody the other day who said, "How come President Bush's nominees aren't going through to the judiciary? I think they are being unfair to the President's party."

Now, it is true that in the 17 months that Democrats were in charge, we put through 100, and in the 17 months that Republicans have been in charge, they have put through nearly 70. And I would not criticize the President's party for not doing as good a job for him as the Democrats did for him, but I mention that. The fact of the matter is this Committee has moved President Bush's nominees faster than this Committee has for any President for years. And, of course, with President Clinton, 61 nominees were stopped in this Committee. We have stopped three or four, I think, of President Bush's. But in 17 months—that is the number to keep in mind, 17 months—when we were in charge, 100; in 17 months with Republicans in charge, close to 70. So it is a good record either way. I think both parties could be proud of the record. I do not think the Republicans should be embarrassed by their record at all.

But I would say, to be serious, I would note that this is a case where the process starts at the other end of Pennsylvania Avenue, and when you have respected Senators and the White House works with them and they come up with a good nominee, we can go forward. And I know, Mr. Chairman, in your nominees, you and I have worked together on this Committee for over a quarter of a century, and we have usually been able to work out nominees from the left to the right or the right to the left. Either way we have worked out controversies, and we have worked out people. I have enormous respect for your judgment, as I do all the Senators here, of course.

But having said that, I will put the full statement in the record so as not to delay this. I know we have votes coming up on the floor, and I thank you for holding this hearing.

Senator SPECTER. Without objection, the full statement will be made a part of the record.

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

Senator SPECTER. Senator Craig has arrived. Let me call on Senator Clinton, and I will yield the gavel thereafter to Senator Craig.

Senator Clinton?

PRESENTATION OF GARY L. SHARPE, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF NEW YORK, BY HON. HILLARY RODHAM CLINTON, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator CLINTON. Well, thank you. Thank you very much, and I want to thank the Committee for this opportunity to join with my colleague, Senator Schumer, in strongly endorsing this nomination.

Magistrate Gary Lawrence Sharpe has a distinguished career both as a prosecutor and a magistrate, and I welcome him and his wife, Lorraine. I would just add to the very thorough comments that Senator Schumer made that, even with his prior prosecutorial responsibilities, Judge Sharpe made time to serve as a member of the Broome County Prisoner Rehabilitation Board, the Onondaga County Substance Abuse Commission, and the Onondaga County Youth Court. To me that speaks volumes, that this is a man who understands the full range of problems that come before a prosecutor or a judge. And, more recently, he worked with the Department of Probation to develop the High Impact Incarceration Program, known as HIIP, which is a program for defendants who have substance abuse problems and who might be candidates for release.

He really does combine the traits one would want in a judge, and I think the experience that he will bring to the district court, his intellect, his judicial demeanor, his commitment to justice will not only serve the Northern District of New York with great distinction, but will add to the quality of our bench across our country.

So I appreciate this chance to both introduce and express my very strong support for this nomination. I, too, look forward to it being quickly moved through the Senate, and I would just add that in New York we have worked very hard—and Senator Schumer has been superb as a leader on this front—to make it possible for us to have a united, bipartisan, really non-partisan approach toward nominating judges, prosecutors, and others. And this is a sterling example of what that process can produce.

Thank you.

Senator SPECTER. Mr. Chairman, Senator Craig, now that we are moving to Michael Fisher on the Third Circuit, let me yield the gavel to you to chair.

Senator CRAIG. [Presiding.] Well, thank you very much. I apologize for running late. There was a little traffic problem in a tunnel, and I was in the tunnel.

But, with that, let me turn to you for any opening statement you would like to make on behalf of the nominee.

Senator SPECTER. Mr. Chairman, since I will be here for the hearing and expect to have an opening statement a little longer than usual, let me yield to my colleagues who will be in a position to be excused. Senator Santorum has been waiting, as has Congressman Murphy, and Congresswoman Melissa Hart is standing by for a word or two as well.

Senator CRAIG. Fine. Well, Rick, Senator Santorum, welcome before the Committee.

PRESENTATION OF D. MICHAEL FISHER, NOMINEE TO BE CIRCUIT JUDGE FOR THE THIRD CIRCUIT, BY HON. RICK SANTORUM, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SANTORUM. Thank you, Mr. Chairman. And I thank my colleague.

It is a rare privilege for me to have the opportunity to introduce to the Committee someone who I have a tremendous amount of respect for, who has been a mentor of mine from the very early days, even prior to my political career, and someone who has served southwestern Pennsylvania and the Commonwealth of Pennsylvania with incredible distinction. I am just very thankful to the President for his nomination of the Attorney General from Pennsylvania, Mike Fisher. Mike has been Attorney General now for 7 years, has had an outstanding record, which I am sure Senator Specter will get into detail on and I will not detail that record, but has had an outstanding record as Attorney General for the Commonwealth of Pennsylvania.

His record of service to the Commonwealth is really truly remarkable, from his time as a young assistant district attorney in Allegheny County, where he served there for 4 years prosecuting a whole host of cases and making a name for himself in the community as a man of great integrity and honesty, and from there to participating in private practice and then shortly thereafter getting elected to the State Legislature, where he served for 6 years, and then, as we who are former Congressmen get promoted to the Senate, he was promoted to the State Senate and served in the State Senate for an additional 16 years.

During that time I got to know him. I was a staffer in the State Senate when Mike was a State Senator, and I got to see him firsthand and the tremendous quality of work. He was a go-to person on criminal justice issues, on criminal and litigation reform issues. He was the lawyer's lawyer in the State Senate and someone who really led the Judiciary Committee and the entire State Senate on those matters.

Another area, coming from southwestern Pennsylvania, because of our rich industrial history, we have our share of environmental problems. And Mike, representing a suburban district, was the leader on a lot of reforms that took place in Pennsylvania in the 1970's, 1980's, and 1990's on trying to clean up our environment, to be good stewards. We became leaders in the country on some of our environmental programs, and Mike was the author of so many pieces of legislation to bring Pennsylvania into what is now—you know, people go to Pittsburgh now, and they look at that city, and they look at all the improvements to the quality of that environment. And Mike Fisher had a tremendous role to play in improving the environment in southwester Pennsylvania and all across our Commonwealth.

Mike's educational background is terrific. He is a graduate of Georgetown and Georgetown Law Center, and he is someone who has used that education in service to the people of Pennsylvania, and now he is going to have an opportunity, with the consent of this Committee and the U.S. Senate, to bring that incredible wealth of experience and service to a very, very important position.

I want to note, as I am sure Congressman Murphy will detail, the support he has from every member of the delegation, Democrat and Republican alike. I am sure Senator Specter will review the letter of Governor Rendell, who was Mike's opponent when Mike and Ed faced off in the Governor's race last year. But I think what Governor Rendell indicated is that anybody who knows Mike, this is a man, where you may disagree on some policy issues, a man of incredible integrity, incredible fairness, thoroughness, and someone who will be an exemplary judge on the Third Circuit.

I am pleased to be here to introduce him to the Committee. I want to welcome his wife, Carol, who has been a loyal soldier and trooper along the way of all this public service, and Brett and Michelle, his two kids, and thank them for their service to the Commonwealth and being supportive of Mike in all he has done.

Thank you, Mr. Chairman.

Senator CRAIG. Senator Santorum, thank you. That was an outstanding statement on behalf a gentleman who has obviously become an associate and friend of yours over the years, and I thank you for it.

Now let us turn to Hon. Tim Murphy, U.S. Representative.

PRESENTATION OF D. MICHAEL FISHER, NOMINEE TO BE CIRCUIT JUDGE FOR THE THIRD CIRCUIT, BY HON. TIM MURPHY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Representative MURPHY. Thank you, Mr. Chairman and members of the Committee.

When people talk about issues of justice, sometimes one has to recuse themselves because they are talking about a friend. But in this case, the friendship and respect I have for Attorney General Mike Fisher has grown because of his unwavering commitment to justice, his unyielding determination for fairness, and his unparalleled integrity that we have seen throughout an incredible career.

I stepped into the shoes that he left when he moved from State Senator to Attorney General in Pennsylvania, and they were big shoes to fill. But what was apparent throughout the time that I served as a State Senator as—people still refer to it often as "Mike Fisher's seat" because of the tremendous respect that they had developed for him over the years. And to echo what Senator Santorum said, throughout the gubernatorial campaign that he had, no one had anything ever unkind to say about him. No one had ever questioned anything about him, which is pretty remarkable. I believe even Governor Rendell says he has been a great friend of Mike's for several years except for a few weeks during the campaign when they perhaps were not the best of friends at that time, but have rebuilt that relationship.

I do have with me—and I believe you have it, but if not, I will offer it again for the record—a letter that is signed by every member of the Pennsylvania delegation, Republicans and Democrats alike. This was not something that any arm-twisting had to be done to get people to sign.

They said absolutely it is across both sides of the aisle, this respect continues.

Senator CRAIG. Congressman, that will become a part of the record. Thank you.

Representative MURPHY. Thank you very much.

Also, to say that the part that a Committee like this can never know is how people in the community view Attorney General Fisher and his family. If a measure of a man's integrity and commitment is also of the children that they have raised and the respect they have, you cannot do any better than Mike Fisher. His family's respect in the community also holds to that. And we know when one has dedicated their life to public service, it is also tough to have that level, but it is something that throughout Pennsylvania we recognize there can be no better person than Mike Fisher.

I thank the Committee for their time and attention they are putting towards him, and certainly know that as you move forward in this process, you will feel equally comfortable with Mike's credentials.

Thank you very much.

Senator CRAIG. Well, thank you very much, Congressman, for that fine statement.

Senator LEAHY. If I might while the Congressman is still here?

Senator CRAIG. Yes.

Senator LEAHY. Congressman, you mentioned Governor Rendell. Governor Rendell called me at home on behalf of Mr. Fisher and said very similar things to what you have just said and supported him, as did the Attorney General of Vermont, Bill Sorrell. And Mr. Sorrell had been a successor of mine as State's attorney in Chittenden County in Vermont, so I pay a lot of attention to that. I must say what you have said here today echoes very much what both of those gentlemen have said.

So thank you very much for taking the time.

Representative MURPHY. Thank you.

Senator CRAIG. Thank you, Pat.

We have with us Congresswoman Melissa Hart. Are here prepared to make a statement on behalf of the Attorney General?

Representative HART. Very brief.

Senator CRAIG. You are here. We would appreciate hearing from you. Thank you.

PRESENTATION OF D. MICHAEL FISHER, NOMINEE TO BE CIRCUIT JUDGE FOR THE THIRD CIRCUIT, BY HON. MELISSA HART, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Representative HART. Thank you, Mr. Chairman, Senator.

I served in the State Senate with Mike Fisher for 6 years and am also a lawyer and served also as a member of the Allegheny County Bar Association, Pittsburgh's bar association, as Mike and I both practiced in that region. And I just want to add, as the perspective of a lawyer and legislator, that I do not think there is a better combination to offer service on the Third Circuit than someone who understands and respects the making of the law and also the enforcement of the law, as he has been as Attorney General. But Mike's reputation as a practicing attorney in private practice is also unblemished. He is the kind of guy that, when he is talked about by students in law school, he is the kind of guy that they

want to be when they finish. He has the reputation that everyone who practices law would like to have.

As a citizen of Pennsylvania, I am very proud to be here with Mike and also offer my support and encouragement. I do not believe that the President could have found a better person to fill that vacancy on the Third Circuit.

Thank you very much for allowing me to say a few words.

Senator CRAIG. Congresswoman, thank you very much for that fine statement on behalf of Mike Fisher.

With that, let us turn to the nominee, and let me ask Attorney General Michael Fisher to come forward.

Senator SPECTER. Mr. Chairman, before you do that, I would like to make an opening statement.

Senator CRAIG. I thought we might seat him so that he could hear directly from you.

[Laughter.]

Senator CRAIG. Is that okay?

Senator SPECTER. Mr. Chairman, I defer to you.

Senator CRAIG. All right. Attorney General Fisher, if you would please take your chair.

I will now defer to my senior colleague on this Committee—well, both of these gentlemen are senior to me, Attorney General. I am the freshman here.

Senator LEAHY. Yes.

Senator CRAIG. It is okay, Pat.

Let me turn to my colleague, Arlen Specter.

PRESENTATION OF D. MICHAEL FISHER, NOMINEE TO BE CIRCUIT JUDGE FOR THE THIRD CIRCUIT, BY HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Thank you, Mr. Chairman. I am pleased to both introduce Attorney General Fisher and to be on this Committee. Attorney General Fisher has been nominated for the United States Court for the Third Circuit by the President on the recommendation of Senator Santorum and myself, and he comes to this position with an extraordinarily distinguished record in public service.

Attorney General Fisher was an assistant district attorney from 1970 to 1974. He was elected to the Pennsylvania House of Representatives, where he served 6 years until 1980. He was then elected to the Pennsylvania State Senate where he served 16 years until 1996, when he was elected Attorney General of Pennsylvania, and he has since been re-elected in the year 2000. He was the candidate for Lieutenant Governor in 1986 with Bill Scranton, and he was the Republican nominee for Governor in the year 2002.

He has a long list of recommendors. Governor Rendell has written a strong letter of support, already mentioned by Senator Leahy, and I would ask consent that Governor Rendell's letter and other letters to which I will refer all be made a part of the record.

Senator CRAIG. Without objection.

Senator SPECTER. Governor Rendell wanted to be here to introduce Attorney General Fisher. Governor Rendell was the candidate who ran against Attorney General Fisher in the year 2002, but the

decision was made to stay with the rule of the Committee in not having any other witnesses appear other than Members of Congress.

Attorney General Fisher is supported by all 19 members of the Pennsylvania Congressional delegation, Democrats and Republicans alike; by the Pennsylvania Bar Association, by the Pennsylvania District Attorneys Association; by 20 current State Attorneys General, eight Republicans, 12 Democrats, seven former Democratic State Attorneys General; two sitting Governors—Governor Napolitano of Arizona, Governor Easley of North Carolina, both having been Attorneys General—by Secretary of the Interior Gale Norton, also a former Attorney General; also recommended by Auditor General Bob Casey, a Democrat; Lieutenant Governor Catherine Baker Knoll, also a Democrat—all of whom are recommending him for the position.

There is one factor which warrants comment, and that is that there is an outstanding verdict against Attorney General Fisher and a number of others for duties performed in his official capacity. A lawsuit was instituted in the Middle District of Pennsylvania by two plaintiffs—Mr. John McLaughlin and Mr. Charles Micewski—and each received a verdict of $112,500, actual damages $12,500 and punitive damages of $100,000.

There are post-trial motions now pending in the Middle District Court, and it was decided that this hearing could not await a final disposition by the judicial system because the Third Circuit is very short of personnel and we want to move ahead with the Committee's determination and the full Senate's determination on this nomination.

The existing rules of the Committee do not permit outside witnesses to be called. It was my recommendation that the Committee hear from both of the plaintiffs, Mr. McLaughlin and Mr. Micewski, and from others who have detailed knowledge of the matter so that this Committee would be best prepared to make its independent evaluation, as it is our responsibility, giving appropriate respect to what the jury has said, but reserving under our constitutional prerogatives the decision on confirmation. That is our constitutional duty.

My office has contacted attorneys for Mr. McLaughlin and Mr. Micewski, and I intend to invite them to come in personally to talk to me, and I will be personally talking to the United States Attorney, who had been the United States Attorney—Michael Stiles—who has submitted a strong letter of recommendation, and also District Attorney Lynne Abraham, I have already talked to her first assistant, Arnold Gordon, so that I will be in a position to make as comprehensive an analysis as I can as to the underlying questions with respect to the jury's verdict and with respect to my role as a member of this Committee.

Thank you, Mr. Chairman.

Senator CRAIG. Well, thank you very much, Senator Specter.

Attorney General Fisher, before we continue, let me give you the opportunity to introduce your family, if you would like, and then I will administer the oath to you.

STATEMENT OF D. MICHAEL FISHER, NOMINEE TO BE CIRCUIT JUDGE FOR THE THIRD CIRCUIT

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

First of all, I would like to thank the President for nominating me and the support that I have received for this nomination from Senators Specter and Santorum. And I would also like to thank Representative Murphy, Representative Hart, and the other members of the Congressional delegation from Pennsylvania who have supported me.

With me here today are members of my family: first of all, my wife, Carol; our two children, Michelle and Brett; my sister, Colleen; a couple of cousins of mine, Donna Fisher and her son, Tim; another cousin, Linda Burke; together with a number of friends, long-time friends of mine: Dick Williams from Philadelphia, who was the best man in Carol and my wedding a few years ago, 30 to be exact; Terry Sleece, a friend of many years from when I began practicing in the District Attorney's Office; also a couple of friends of mine who are here today from—colleagues of mine when I was attending Georgetown and Georgetown Law Center: Tom Hogan, Wayne Siren, and Rob Walsh; together with a couple of employees from my office who have been—my Office of Attorney General, who have been tremendous aides and public servants for Pennsylvania: Jerry Pappert, my first deputy; Kevin Harley, my press secretary; and Brian Westmoreland.

I am very pleased that all of them were able to change their schedules and to be with me here today for this very important time in my life and my career.

Senator CRAIG. Well, Attorney General Fisher, that is phenomenal support. I would ask them to stand, but that might include the whole room.

[Laughter.]

Senator CRAIG. I did say immediate family, but obviously the respect you are being shown today—

Mr. FISHER. And I failed to mention one other person, Mr. Chairman, the Executive Director of the National Association of Attorneys General, Ms. Lynne Ross, who is here with us.

Senator CRAIG. Fine. Now, if you would stand, please? Would you please raise your right hand? D. Michael Fisher, will you please stand to be sworn and repeat after me? Do you swear that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. FISHER. I do.

Senator CRAIG. Please be seated.

Please continue, if you will, with any opening statement you would like to make.

Mr. FISHER. Mr. Chairman, I would defer any further opening statement at this time.

[The biographical information of Mr. Fisher follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)
D. Michael Fisher

2. Address: List current place of residence and office address(es).
Home: **Pittsburgh, PA**
Office: **16th Floor**
Strawberry Square
Harrisburg, PA 17120

3. Date and place of birth.
11/7/44, Pittsburgh, PA

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).
Married
Carol Hudak Fisher
Consultant
Harcourt Publishing
Pittsburgh, PA

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.
Georgetown University, 1962-66 A.B. Degree, Government, 6/66
Georgetown University Law Center, 1966-69, J.D. Degree, 6/69

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.
Congressman James G. Fulton, 1967-68, Staff Assistant, Washington, DC
US General Accounting Office, 1968, Law Clerk, Washington, DC
Wilkes & Artis, 1969, Law Clerk, Washington, DC
Allegheny County District Attorney's Office, Summer 1968- Law Clerk, 1970-74- Assistant District Attorney, Pittsburgh, PA
Pa. House of Representatives, Member, 1974-80,Harrisburg,PA
Private Practice of Law, Brenlove & Fisher, Fisher & McGinley, 1970-1980, Pittsburgh, PA
Pa. Senate, Senator, 1980-96, Harrisburg, PA
Fisher & Flynn, Partner,Law Practice, 1981-83, Upper St. Clair, PA
Houston Harbaugh, P.C. Attorneys, Shareholder, 1984-97

Pittsburgh, PA
Commonwealth of Pennsylvania, Attorney General, 1997-Present, Harrisburg, PA
Outboard Haven Realty Corporation, 1995-Present, Verona, PA, President and Director
Outboard Haven Inc., 1995-Present, Verona, PA, Director
American Legacy Foundation, 2003, Washington, DC, Director
St. Clair Country Club, 2003, Upper St. Clair, PA, Director and Secretary
Council of State Governments, Eastern Regional Conference, 1990-96, New York, NY, Director, Co-Chair, 1993-94
University of Pittsburgh, 1985-97, Trustee, Pittsburgh, PA

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

DC National Guard, September 1969 to May 1970, Basic Training and Advanced Infantry Training Ft. Polk, La. Spec. 3, and Active Reserve, transferred to Army Reserves

2073 USAR School, 99th Arcom, Pittsburgh, PA May 1970 to March 1975, SPC 5, Active Reserves, Honorable Discharge

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

Waynesburg College, 5/16/98, Honorary Degree
Grove City College, 5/99, Honorary Doctor of Laws
Alvernia College, 5/22/99,Honorary Doctor of Humane Letters
PA Breast Cancer Coalition, 10/13/99, Pink Ribbon Award
Vectors Pittsburgh, 1991, Man of the Year in Law and Govt
National Republican Legislators Association, 7/12/95, 1995 Legislator of the Year
Villanova Law School,5/18/01,Outstanding Public Service Medal
Pennsylvania Bar Association,2000-01, President's Award
Commission For Social Justice,5/3/98, Grand Lodge of PA, Law and Justice Award
Shomrim of Philadelphia,6/6/02, Humanitarian Award

German American Police Association of Philadelphia, 4/12/03, Man of the Year Award

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.
Allegheny County Bar Association, 1970 to Present
Pennsylvania Bar Association, 1970- Present, Member House of Delegates, 1994-Present, Unauthorized Practice Of Law Committee, 1993 to 2000, Ethics Committee, 1993-Present, Multi-Disciplinary Practice Committee, Co-Chair, 1999-01

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.
Bethel St. Clair Rotary, 1973-1993, active member until 1993, Honorary Member since.
American Legion, Post 760, Bethel Park, PA 1970 -Present
South Hills Elks, 2213, Bethel Park,PA, 1980-Present
Ancient Order of Hibernian's, Division #32, 1984-Present
National Association of Attorney Generals, 1997-present
Pa. District Attorneys Association, 1997-present
American Legacy Foundation, Board Member, 2003
St. Clair Country Club, 1970-present, Board member and Secretary, 2003
University of Pittsburgh School of Law, 1989- Present, Board of Visitors

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.
Supreme Court of Pennsylvania, November, 1969
Superior Court of Pennsylvania, November, 1969
US District Court for the Western District of PA, Nov, 1969
Supreme Court of the United States, March, 1997
US Court of Appeals, 3rd Circuit, February, 2003

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues

involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

A. 1980, Report on Medical or Mental Health, Pa. Correctional System. (Not presently available)

B. 1983, Senate Act 195 Task Force Report.

C. 1985, PCCD Prison and Jail Overcrowding Task Force Report

D. 1988, Report on Hate Crimes in Pennsylvania

E. 1999, Family Violence Task Force Report

F. 2000, School Safety Action Plan Report

G. 2000, Task force for the Protection of Older Pennsylvanian Report

H. 1997, 98, 00 Pa. Office of Attorney General Year in Review

I. 2001, A case for Merit Selection of Judges in Pennsylvania

J. 1998, Keeping our Neighborhood Safe

K. 2001, The Tobacco Spending Plan, A Blueprint for a Healthier Pennsylvania

L. 2001, An Opportunity for Health-Spending the Tobacco Settlement

M. 2003, Tobacco Settlement Fund, is for Public Health, not Budget Fixes

N. 5/20/98, U.S. Senate Judiciary Committee, Testimony on Child Custody Protection Act, §1645

O. 2/22/00, Pa Senate Judiciary Committee, Testimony on Death Penalty Moratorium

P. 3/29/00, Pa Senate Judiciary Committee, Testimony on Solutions to Competitive Problems in the Oil Industry

13. Health: What is the present state of your health? List the date of your last physical examination.
Excellent, Last Physical is 4/7/03, also 2/02.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.
None

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

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

Pa. State Representative, 1974-80, elected 74, 76, 78,
Member House Judiciary Committee 1975-80,
Chair, Subcommittee on Crimes and Corrections, 1979-80
Pa. State Senator, 1980-96, elected 80, 84, 88, 92
Chair, Environmental Resources & Energy, 1980-1990
Judiciary Committee, 1980-96, Vice Chair 1986-96
Republican Policy Chairman, 88-90,
Majority Whip, 1990-96
Attorney General of Pennsylvania, 1997-04, elected 96 &2000
Pa. Board of Pardons, 1997-present, appointed pursuant to Constitution as Attorney General.
Unsuccessful Campaigns:
Lt. Governor, Republican Candidate, 1986
Governor, Republican Primary, 1994
Governor, Republican Candidate, 2002

17. Legal Career:

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

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;
None

2. whether you practiced alone, and if so, the addresses and dates;
None

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;
Brenlove & Fisher, 1970-75, Associate
Frick Bldg, Pittsburgh, PA, 15219
Fisher & McGinley, 1975-80, Associate
Frick Bldg, Pittsburgh, PA,15219 &
513 2ND Avenue, Pittsburgh, Pa.15219
Fisher & Flynn, 1981-83, Partner
71 McMurray Road, Pittsburgh, PA,15241
Houston Harbaugh, PC, Attorneys,
Shareholder, 1984--97
12th Floor, 2 Chatham Center
Pittsburgh, PA, 15219
Allegheny County, Assistant District
Attorney, 1970-74
3rd Floor, Courthouse,Pittsburgh,PA15219
Commonwealth of PA, Attorney General,
1997-2004
16th Floor Strawberry Square
Harrisburg, Pa.17120

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?
1970-74. During this period, I served as an Assistant District Attorney. I started for a brief period in the appellate section, and then went to the Trial section where I tried all types of cases, both non jury and jury, including 25 Homicides. ADA's were allowed at

that time to have private practices. I began doing some work for my father's firm and began developing clients of my own.

1975-80. After being elected as a State Representative, my law practice became more active and included many of my father's client's. My practice was civil, family, estate, and real estate.

1981-83. After being elected to the Senate, my father retired and I open my own practice in the suburbs. The nature of the practice was the same.

1984-97. Associate then shareholder with Houston Harbaugh, a firm of 35 attorneys. I continued to serve my clients and provided help to the firms clients. I continued to do litigation, but began doing more estate work and commercial law.

1997-Present. As Attorney General of Pennsylvania, I have served as the chief legal and law enforcement officer of Pennsylvania, with approximately 900 employees including 210 attorneys, 325 law enforcement officers and others. I review and approve case decisions made by my staff and am involved in determining case strategies on major cases. I have argued at least one appellate case per year. My duties also include many public responsibilities. I have substantial interaction with all levels of law enforcement and am involved personally and thru my staff with other state Attorneys General on multistate litigation.

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

Typical clients would be family businesses, builders, developers, auto dealers, ,restaurants, insurance companies individuals and since 1997 the Commonwealth of Pennsylvania.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.
In court extensively on a daily basis as an ADA, weekly as a private practitioner, and As Attorney General I have personally argued at least one case a year in the Appellate Courts.

2. What percentage of these appearances was in:
(a) federal courts; **10%**
(b) state courts of record; **90%**
(c) other courts.

3. What percentage of your litigation was:
(a) civil; **90%**
(b) criminal. **10%**

As an Assistant DA all of my work was criminal. As Attorney General, half is criminal and half civil or public protection.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.
Assistant DA- 1000 cases as sole counsel.
Private Practice-50 as sole counsel.
Attorney General-1000 per year by office.

5. What percentage of these trials was:
(a) jury; **5%**
(b) non-jury. **95%**

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. Commonwealth of Pennsylvania v. Philip Morris, et.al, 40Pa.D.& C.4th225 (Phil.C.P. 1999), aff'd, 736 A. 2d 705 (Pa.Cmwlth.1999).

a)March 1997 to 1999
b)Court of Common Pleas, Philadelphia County, Judge John Herron
c)CO-COUNSEL

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Office of Attorney General
Tobacco Enforcement Section
15th Floor, Strawberry Square
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843-216-9159

OPPOSING COUNSEL

In this action there were multiple defendants who had a coordinating defense. Lead coordinating counsel was The Honorable Mary A. McLaughlin, United States District Court for the Eastern District of Pennsylvania, 3809 U.S. Courthouse, 6th and Market Streets, Philadelphia, PA 19106, (267) 299-7600. *

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Philadelphia, PA 19103-6998
(215) 569-5500

J. Kurt Straub, Esquire
Obermayer, Rebmann, Maxwell & Hippel, LLP
One Penn Center, 19th Floor
1617 John F. Kennedy Blvd.
Philadelphia, PA 19103-1895
(215) 665-3100

This was Pennsylvania's suit against the tobacco industry and litigation on the Consent decree. I was plaintiff on behalf of the people of Pennsylvania and lead counsel with in house and outside counsel. I was one of 6 negotiators for PA and 45 other states on the November, 1998, Master Settlement Agreement and then personally appeared in Court to gain approval of our consent decree.

2. Pennsylvania Bd of Probation and Parole v. Scott, 524 U.S. 357 (1998)

a) March, 1998.
b) Personally argued this case before the Supreme Court of the United States on behalf of the petitioner.

c) CO-COUNSEL

Gregory R. Neuhauser, Senior Deputy Attorney General
Office of Attorney General
Litigation Section
15th Floor, Strawberry Square
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(717) 787-8106

John G. Knorr, III, Chief Deputy Attorney General
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Calvin R. Koons, Senior Deputy Attorney General
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Harrisburg, PA 17120
(717) 783-6709

OPPOSING COUNSEL

Professor Leonard Sosnov
Widener University
P.O. Box 7474
4601 Concord Pike
Wilmington, DE 19803-1406
(302) 477-2135

This was a case where we argued that parole officers were able to search Parolees without the need to have reasonable suspicion and that the exclusionary rule should not apply to Parole proceedings. The Court ruled in our favor 5-4 in an opinion written by Justice Thomas finding that the exclusionary rule did not apply to parole proceedings.

3. Commonwealth v. Scher, 569Pa.284(2002)

a) May, 2000
b) Pa. Supreme Ct.- Personally argued this case before the Pa Supreme Court sitting en banc.
c) CO-COUNSEL

William H. Ryan, Jr., Executive Deputy Attorney General
Office of Attorney General
Criminal Law Division
16th Floor, Strawberry Square
(717) 787-2100

The Honorable Robert A. Graci
Former Senior Deputy Attorney General
Pennsylvania Superior Court
1017 Mumma Road, Suite 103
Wormleysburg, PA 17043
(717) 731-1525

OPPOSING COUNSEL

John P. Moses, Esquire
Moses and Gelso
120 South Franklin Street
Wilkes-Barre, PA 18701-1188
(570) 826-1401

This was a first degree murder case in which the Pa Superior Court overturned the 1997 conviction for a 21 year old murder and released the defendant finding negligent pretrial delay. I argued the case personally before the Supreme Court sitting en banc arguing that there was no such doctrine in Pennsylvania law, and that the prosecution could not be barred absent intentional misconduct that prejudiced the Defendant. In September, 2002 the Pa. Supreme Court reversed ,remanded and reinstated the conviction, returning the case to the Superior Court to dispose of the other issues raised on appeal.

4. Marianna v. Fisher, No. 02-2906, Third Circuit
a) 2002-03
b) Argued by me on March 12, 2003 before Third Circuit panel of Judges Sloviter, Nygaard, and Alito.
c) CO-COUNSEL

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(717) 783-1794

OPPOSING COUNSEL

David F. Dobbins, Esquire
Patterson, Belknap, Webb & Tyler, LLP
1133 Avenue of the Americas
New York, NY 10036
(212) 336-2000

Alan R. Wentzel, Esquire
Windels Marx Lane & Mittendorf, LLP
156 West 56th Street
New York, NY 10019
(212) 237-1000

This case involves an antitrust challenge to the Tobacco MSA, by a group of smokers. We argued there is no antitrust violation or commerce clause violation or in the alternative that the Commonwealth was entitled to Noeer Pennington (petitioning immunity) or Parker v.Brown (state action immunity).

5. Commonwealth v. Hartford, 707 A.2d 549(Pa. Super.1997), appeal dismissed 558 Pa. 169(Pa. 1999).

a)1997-98
b)Argued by me before Pa. Superior Court panel of Judges Shiller, Hoffman and Beck.

c) CO-COUNSEL

The Honorable Robert A. Graci
Former Senior Deputy Attorney General
Pennsylvania Superior Court
1017 Mumma Road, Suite 103
Wormleysburg, PA 17043
(717) 731-1525

OPPOSING COUNSEL

Susan K. Snyder, Esquire
P.O. Box 266
Cornwall, PA 17016
(717) 270-0441

This case involved the conviction of the defendant for taking her son's 13 year old girlfriend to New York to have an abortion . I argued to uphold the constitutionality of a PA statute making it a crime to interfere with the custody of a minor.

6. Litigation involving the Bankruptcy of the Allegheny Health System(AHERF)

a) 1997-2001
b) Led and directed the Attorney General's multi pronged effort of seeking to recover charitable funds taken from restricted endowments both inside and outside of bankruptcy. Litigation included efforts to successfully seek relief from the stay in bankruptcy, litigation vs. officers and directors, and an investigation by our statewide grand jury which led to the filing of criminal charges against three officers, two of whom were convicted.
c) CO-COUNSEL
Bankruptcy Appeal of Allegheny Health Education and Research Foundation

Mark Pacella, Deputy Attorney General
Office of Attorney General
16th Floor Strawberry Square
Harrisburg, PA 17120
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7. Commonwealth v. Minarik, Court of Common Pleas, Allegheny County
a) 1972
b) Plea of Guilty to First Degree Murder, Judge Joseph Ridge
C) OPPOSING COUNSEL

The Honorable Ralph J. Cappy
Former Assistant Allegheny County Public Defender
Chief Justice of Pennsylvania
One Oxford Centre
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This case involved the brutal murder of a young woman by defendant who entered the victims home and attacked her with a brush hook(ax). Defendant pled guilty to first degree murder to avoid death penalty and is still serving a life sentence. There was a significant insanity issue raised. I prosecuted this case as an Assistant District Attorney.

8. Commonwealth v. Woodward, 483 Pa. 1(1978)

a) 1972
b) Jury trial before Judge Albert Fiok, Court of Common Pleas of Allegheny
c) OPPOSING COUNSEL

The Honorable Lester Nauhaus
Court of Common Pleas
Allegheny County
Pittsburgh, PA 15219
(412) 350-5446

First Degree murder conviction before a jury for a felony murder in the shooting of a patron during an armed robbery of Chief's Cafe. I asked for the Death penalty as an Assistant District Attorney due to the killing and the defendant's prior record. Jury returned Life.

9. Commonwealth v. Whitson, 461 Pa 101 (1975)

a) 1973
b) Jury trial before Judge Loren Lewis, Allegheny County
c) OPPOSING COUNSEL

John J. Dean
Assistant Public Defender
County Office Building
Pittsburgh, PA 15219
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First degree murder conviction for a felony murder involving a purse snatching and shooting on the sidewalk on the campus of the University of Pittsburgh. The defendant exited a car, accosted the victim, grabbed her purse, and shot her in the head. I prosecuted the case as an Assistant District Attorney. The defendant is still serving a life term. I also personally argued this case on direct appeal before the PA Supreme Court, sitting en banc, which upheld the conviction.

10. Bergdoll v. Kane, 557 Pa. 72 (1999)

a) 1997
b) Argued constitutionality of Constitutional Amendment before Pa. Supreme Court sitting en banc.
c) CO-COUNSEL

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I personally argued the Challenge to a Constitutional Amendment to permit Child videotape testimony as Attorney General before the PA Supreme Court sitting en banc. The Court struck down the constitutional amendment finding that it impermissibly contained two amendments in one question.

9. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

1)The most significant legal activity that I have been involved with was the lawsuit against the tobacco industry and the negotiations which resulted in the signing of the tobacco master settlement agreement(MSA) in November, 1998. I was on of the six state negotiators who negotiated the MSA over a period of more than five months of protracted face to face negotiations with industry counsel. My role as a negotiator also required me to keep Pa. officials informed at all times and to keep our Attorney General colleagues around the country informed as we needed to have a critical mass of states sign on to have a settlement.

2)Another significant case was the attempted sale of Hershey Foods by the Milton Hershey Trust. In my role as parens patria, I filed a Petition for citation for a Rule to Show Cause, to require the trust to notify the Attorney General and the Court before any bid could be accepted. The Orphans Court granted our Citation, and the Commonwealth Court affirmed, thereby preventing the Trust from selling Hershey Foods to the highest bidder and potentially causing the loss of thousands of jobs in Central Pennsylvania. This case was of the highest profile and one in which I was personally involved at every stage. It also showed the power of the role of parens patria when dealing with public trusts.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.
   Commonwealth of Pennsylvania, State Pension.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.
   None, other than Commonwealth of PA cases I have filed or entered my appearance on as Attorney General. I generally would follow the guidelines of the Code of Judicial Conduct to resolve any conflicts of interest.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.
   Adjunct professor of law at University of Pittsburgh School of Law. Scheduled to begin in September, 2003. I will seek permission from the Chief Judge of the 3rd Circuit Court of Appeals to do this.

   Co-Trustee of John A. Murphy Trusts. I will seek permission if possible, from the Chief Judge of the 3rd Circuit to remain as trustee. If not allowed, I will resign as trustee and as officer and director of Outboard Haven Realty Corporation and Outboard Haven Inc., which are 2 companies owned by Murphy Trust B2.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)
   See attached Financial Disclosure Report.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Bethel St. Clair Rotary- Participated in fundraisers for for charities for many years as a pancake cook. I have been the emcee for over 25 years for a fish fry at my Church which helps youth sports programs. Worked with groups such as Pathfinder School to help the disabled.

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

None.

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

I was interviewed by the Office of Counsel to the President, Office of Legal Policy, United States Department of Justice, and by the FBI.

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

No one.

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

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

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

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

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

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

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

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

I served in the Pennsylvania General Assembly for 22 years and believe that the separation of powers doctrine is very important. It is the job of lawmakers, not judges to make the law. A judge needs to look at the text of the law, as only the words themselves can really explain what the legislature intended the law to mean. Judges should decide the case before them based on the specific facts in dispute and apply the constitution, statutes and any applicable precedent to only those issues in dispute. There are very sound reasons for the rules on standing and ripeness. I am keenly aware of this in my job as Attorney General, particularly in my role as parens patria.

AFFIDAVIT

I, D. Michael Fisher, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

D. Michael Fisher

5/9/03
(DATE)

(NAME)

Mary Beth Camprobst 5/9/03
(NOTARY)

Notarial Seal
Mary Beth Camprobst, Notary Public
City of Pittsburgh, Allegheny County
My Commission Expires Mar. 11, 2006

Senator CRAIG. Okay. Senator Leahy, do you have any opening comments?

Senator LEAHY. No. I will wait for questions.

Senator CRAIG. All right. Do you wish to start with any questions, sir?

Senator SPECTER. No.

Senator LEAHY. I would say one thing. I notice that Attorney General Fisher is thanking all the people that supported him. I assume you are not regretful that the Governor supported you. You listed a panoply of Republicans. I hope you are not upset that a Democrat supported you.

Mr. FISHER. No, Senator, I am very honored that Governor Rendell not only has sent his letter of support, and he informed me that he had talked personally to you, but in addition to that, Governor Rendell was prepared to come to Washington today to personally appear before the Committee. I think he made a good statement a week or so ago when we were at a reception at his home for the Pennsylvania Supreme Court when he introduced my wife and me and said that he and I had been friends for over 25 years, except for about 7 or 8 weeks last year when he hated me.

[Laughter.]

Mr. FISHER. But that was in the course of a campaign for Governor, and it was hard fought, but friendship and our professional friendship was quickly repaired, and since then we have worked closely together, me as Attorney General and him as Governor.

Senator CRAIG. Well, let me ask you this, then, Attorney General Fisher: You obviously, by all that has been said so far today, demonstrate a phenomenal level of bipartisan support for your nomination to the Third Circuit Court of Appeals. It is a pretty fundamental question, but how did you earn it?

Mr. FISHER. Senator, thank you very much. That's a good question. Thank you for giving me the opportunity to answer that.

I came to public service actually quite early in my career, I believe in the early 30's, 30 years of age when I was first elected to the State House of Representatives. And I learned from my father, who was also a lawyer, and with whom I practiced for some years, that one of the ways that you gain success is to be fair with people. And I've always tried, whether it be as an attorney and an advocate for my client or in elected office, to be fair with all people.

And when I took elected office, I was elected, obviously, and have been elected as a Republican. But I represented all the people in my district—Republicans, Democrats, and Independents alike. And I treated them that way. And I think it was through working so closely with so many people of both parties that I not only learned that there were different problems that faced the people of Pennsylvania, but obviously it's far easier to get things done by having bipartisan support.

So I feel very fortunate that all throughout my career I think the level of support that I've received from State Attorneys General, both current and past, across the country indicates that although elected as a Republican, I've worked with a level of bipartisanship that has enabled me to gain the respect of many of my colleagues and peers.

Senator CRAIG. How do you plan to earn the same kind of respect from those who appear before you in the courtroom?

Mr. FISHER. Thank you, Senator. Obviously another good question. If given the opportunity to serve on the Court of Appeals for the Third Circuit, it will be a new role for me in serving in the third branch of Government, having already served in the legislative, now the executive, and with your support, hopefully the judicial branch. I think the most important thing that a judge can do is to look at every case, to be open-minded, to be fair, to give every party an opportunity to make their case, learn their case by reading the briefs, knowing the record, and when the opportunity arises at the appellate court level, to hear oral argument and to keep that open mind and to apply the law as fairly as humanly possible. And, you know, that's my view of what a good judge should do, and if this Committee and the full Senate gives me the opportunity to serve as a judge, I commit to you that that's the way I will carry out my duties.

Senator CRAIG. As Attorney General of Pennsylvania, I am looking at your record and it is substantial, phenomenal achievements, it is an impressive record. What stands out to me is something that speaks to the person and the character of the person. I understand that you co-authored Pennsylvania's version of Megan's law, which, of course, designates some criminals as sexual predators for life and requires the notification of neighbors when sex offenders move in. Is that correct?

Mr. FISHER. Senator, that is correct. I believe that as a member of the Senate in 1995, I was one of the co-authors in then–Governor Ridge's special session on crime and adopting Megan's law, and as Attorney General, I've had the opportunity through my deputies to appear in various courts in Pennsylvania to defend the provisions of Megan's law since then.

Senator CRAIG. Well, I know of nothing more frustrating and angering to all of us, those kinds of characters in our country who prey upon small and innocent children. I see that you fought child pornographers by forcing the Nation's largest Internet providers to block sites containing illegal photographs. Tell the Committee about that work, if you would, please.

Mr. FISHER. Senator, thank you very much for the opportunity to answer that question. It's a law that was recently passed by the General Assembly in Pennsylvania. It provides, upon complaint to our office, that we notify Internet service providers and, if necessary, or given the opportunity to seek a court order, directing the ISPs to block various websites that are carrying child pornography. And I can tell you that some of this, most of this material is absolutely the worst trash that anyone—anyone—can imagine. And my office has effectively carried out that mandate and a law that is, quite candidly, novel for the Nation.

Senator CRAIG. I have an FBI center in my State that specializes in that kind of analysis and examination and the work they do on behalf of keeping that kind of trafficking off the Internet. I agree with you, it is phenomenal stuff.

I note that your work as Attorney General has been impartial and fair. You have prosecuted a Republican former Senate colleague after what would become career-ending revelations that a

former colleague had patronized a prostitute. When a Republican former State Representative refused to step down after his 1999 conviction in Federal court on perjury charges, you successfully petitioned the Pennsylvania Supreme Court for his immediate removal.

Finally, Attorney General Fisher, you helped bring to justice the mastermind behind Voter–Gate, an effort by Republicans in one Pennsylvania county to illegally register 3,000 voters.

I did not know Republicans did that.

[Laughter.]

Senator CRAIG. Anyway, would you please tell the Committee more about your role in those cases?

Mr. FISHER. Thank you, Senator, for the opportunity to answer that question. One of the first cases I had when I was elected in 1997 was a case involving a State Senator who got caught up in an investigation that my office was doing of a prostitution ring in York County. And this was a person who I had served with. He was a member of the Senate Republican Caucus that I served in, and it was a test for me because, had I not obviously been able to prosecute that case effectively, my independence could have been very clearly called into question early in my career. We did bring those charges, and the Senator was convicted and subsequently left office.

In 1999, there was a case pending where Representative Serafini had been convicted in Federal court for perjury, had been sentenced, and refused to leave the State House of Representatives in violation of the Pennsylvania Constitution. His continued presence was important to maintaining the House majority at that time. I filed a suit, a quo warranto action, before the Supreme Court of Pennsylvania, which led to the Representative leaving office, as was required by the Constitution.

Third, in, I believe, 2000, there were allegations that the Republican Chairman in Pennsylvania's strongest Republican county, where I had had my largest vote plurality, was involved in illegalities in providing—in gaining voter registration for his county, and I brought—our office brought charges against that chairman. It wasn't very popular to bring those charges at that time, but the law required that the charges be brought.

Senator CRAIG. Well, thank you for those frank and open answers.

We have a vote underway. I am going to turn to Senator Leahy for at least one question or two before we recess to go vote, and then we will return, of course.

Senator LEAHY. Thank you, and I will have other questions for the record. I was interested in what you were saying on pornography. I think all of us—one thing that unites all of us up here, our disgust for not only the child pornography but the fact that children are so severely damaged through that. Senator Hatch and I have had a series of hearings on this, on the high-tech aspects of it, obviously, because it is not the shady story in the back alley anymore. It is computers in Wall Street law firms or small towns and everything else. And it is one of the things that unite all of us in trying to figure out how best you stop that.

When you were at Georgetown, did you have either Joe Snee or Ken Pye as—

Mr. FISHER. I had Joe Snee, Father Snee, who subsequently was a public defender in Philadelphia.

Senator CRAIG. That is an experience that one could write a book about.

I looked at your record, Attorney General, and I must say that one thing that there will be further questions on in follow-up to what Senator Specter has alluded to on the case and the judgment against you and others that is now still on appeal, as I understand. Am I correct on that?

Mr. FISHER. Post-trial motions.

Senator LEAHY. Post-trial motions. You served in the Pennsylvania House of Delegates for 22 years, then ran for Governor and Lieutenant Governor on several occasions, delegate to the Republican National Convention, successfully elected to your current position as Attorney General twice. You have had a long and distinguished public career. Why would you want to abandon the partisan political—and I do not say that in a derogatory fashion. I mean, I admire people in both parties who get into it and make the thing work, to get into the partisan political area. Why would you abandon that for the monastery of—

[Laughter.]

Senator LEAHY. I mean, seriously. And don't feel, Attorney General, I am singling you out. I mean, I have asked this of Democratic and Republican nominees who have been active in politics before. Why would you leave that for the monastery?

Mr. FISHER. Well, Senator, thank you, and that's a good question. I haven't heard it referred to before as "the monastery."

Senator LEAHY. Well, you know.

Mr. FISHER. I guess all of us could use a visit to the monastery sometime in our life. But I've had—all during my public career, which has now spanned almost—well, more than 30 years, together with my appointed time as an assistant district attorney. I've also been someone who has been very interested in the law. When I was in the State Legislature, because it was not, quote, a full-time job, I was able to practice law, first with my father's firm and then with another firm that I was a partner in for approximately 10 years. And in 1996, I made a decision at that time to leave the State Senate and to seek the office of Attorney General because it gave me an opportunity to merge my public career with my legal career.

And I have—the opportunity to serve as Pennsylvania's Attorney General has been a great opportunity. It's one of the best jobs in America.

Senator LEAHY. But understand—and I happen to agree. Both Senator Specter and I served as—in fact, that is when we first met, when we were both prosecutors. I loved that field. But, you know, you have to take strong political views, and I respect you for that. Some we disagree on. I disagree with your—at least as I have read your stated views on whether the death penalty is fairly applied in Pennsylvania and other places, but the disproportionate percentage of blacks on death row make me think that just on the face of it there has to be a problem.

But putting this aside, having taken this kind of a position—and please don't feel singled out in this. I have asked others the same question. Why would somebody come before not Attorney General Fisher but a Judge Fisher and say, "I want to be treated fairly, even though I happen to be a liberal Democrat" or "I happen to be a black who has been charged" or "I happen to be"—you see what I am getting at—as compared to saying, "My opponent is a traditional member of Attorney General Fisher's party. He has joined them on a number of these political statements."

How do you demonstrate you are going to set that aside—which, of course, you have to do—and have everybody who comes in there know, no matter who they are, no matter their color, no matter whether they are a plaintiff or defendant, no matter their political background, economic background or anything else, that a Judge Fisher will treat them fairly?

Mr. FISHER. Well, Senator, thank you, and that is an excellent question. I think that my reputation precedes me, that all during my public career I've tried to be fair with people. And in the formulation of public policy and the formulation of law in Pennsylvania, there are multiple sides. There are multiple sides in which you can come down, as an advocate or as a lawmaker. And I believe that my reputation has been that I have been fair in listening to people's positions. And I've been open-minded and willing to listen to all views before I formulate a position that in a different role, the role I have today, I might advocate. I think it's that together with my love of the law which enabled me at this stage in my career to have the necessary and requisite experience to serve in this position if this Committee and the Senate gives me the opportunity.

Senator LEAHY. Obviously, we have run out of time because of the vote on the floor. Mr. Chairman, I am going to submit other questions. I may be able to come back, I may not, but I will submit other questions.

Senator CRAIG. We will not reconvene until 11:45, and Senator Specter will chair at that time. We have another vote stacked after this vote, and then we will complete the hearing with the other two nominees and you, Attorney General. So if you will all please stand down for a bit, we do appreciate that, and thank you.

The Committee will stand in recess.

[Recess 11:02 a.m. to 11:50 a.m.]

Senator CRAIG. The Senate Judiciary Committee will reconvene. Let me apologize and trust that we can ask you for patience. The Senate is deliberating a very important issue at this moment as it relates to the supplemental appropriations with our involvement in Iraq and other issues, so it has taken more time than we had anticipated.

Attorney General Fisher, if you would please come back to the chair, we would appreciate it. Senator Specter is running a bit late, but he will be back in a few moments. I am going to turn to my colleague, Senator Feingold, for questions of Attorney General Fisher.

STATEMENT OF HON. RUSSELL D. FEINGOLD, A U.S. SENATOR FROM THE STATE OF WISCONSIN

Senator FEINGOLD. Thank you, Mr. Chairman.

Welcome, Attorney General Fisher, and I would like to thank you for appearing here today and giving us the opportunity to ask you about your record and your views.

I do think it is unfortunate, however, that our only opportunity to question Mr. Fisher directly comes while there is an open verdict against him in a Federal civil rights case. I do not see any reason why it could not have at least waited for the judge to rule on Mr. Fisher's possible motions challenging the jury's verdict against him. Of course, it is not my position that we should not delay a hearing whenever there is an open legal matter involving a nominee, but this lawsuit is clearly a serious matter. A Federal jury found that Attorney General Fisher retaliated against two former narcotics agents for exercising their First Amendment right to free speech. Moreover, the jury found that Attorney General Fisher had acted maliciously or wantonly toward the plaintiffs. They awarded $1 million in punitive damages against him and other defendants. In short, Mr. Fisher has been found liable by a jury for serious misconduct in office. We should all be concerned by this.

Now, whatever the ultimate outcome, the rulings on the post-trial motion will represent a significant piece of information about this nominee. Allegations of abuse of power should never be taken lightly, and I do not see what we gain by rushing the nomination through before the Committee has all the facts.

Now, if Mr. Fisher prevails in the trial court, that would obviously be a significant piece of information for us to consider. Should he lose, it will undoubtedly be the first time in our history that the Judiciary Committee considers a nominee who is appealing a finding of civil rights liability to the same court he hopes to sit on. This bizarre situation raises a number of serious concerns, questions which perhaps could have been resolved by the trial judge's ruling on post-trial motions had we waited to hear it.

I regret that we will conduct this hearing without having all the facts about this important issue before us, but since this may be our only opportunity to question Mr. Fisher, let me ask you a few questions and in the spirit of full disclosure let you know I have heard good things about you from my State of Wisconsin, and I would like to begin by asking you questions about a Washington Post report in March 2000 that you decided not to join the Republican Attorney Generals Association, RAGA. In the story, you were quoted as saying, "I'm a Republican. I try to keep politics out of my business as Attorney General."

Exactly what was your concern? And have your feelings about RAGA changed since that time?

Mr. FISHER. Thank you, Senator, and thank you for the opportunity to answer that question. The quote or the statement that you referred to was correct. When RAGA was initially formed, I think back in 1999, I was at that time in my first term as Attorney General from Pennsylvania, and I believe at that time also a member of the Executive Committee of the National Association of Attorneys General.

And I did not believe that RAGA, as it was proposed to be constituted, was something that was healthy for what I would refer to and continue to refer to as a very healthy camaraderie among Attorneys General as we meet, whether it be in discussion on cases

or at our regularly scheduled meetings throughout the course of the year. And I was concerned that a political organization whose purposes might be different than what NAAG was would in some fashion disrupt that collegiality, that camaraderie, and the really intense and sometimes very sensitive discussions about cases.

Senator FEINGOLD. Let me follow up on that. Apparently some Republican Attorneys General declined to join RAGA because of concern about conflicts of interest. Specifically was the concern that RAGA might solicit funds from companies that were the subject of criminal investigations or potential defendants in lawsuits by the States. Microsoft, for example, was at the time of the Washington Post article the target of an antitrust lawsuit joined by 19 States, according to its spokesperson, who was also a member of RAGA. Did you believe RAGA's fundraising structure created potential conflicts of interest?

Mr. FISHER. Senator, I was—I was never fully aware of what RAGA or the Republican National Committee was intending to do in raising money or how they were going to raise money. So I was not in a position to conclude whether or not it could or would not be a potential conflict of interest.

Senator FEINGOLD. Well, the article for which you were interviewed described RAGA's practice of soliciting donations for the Republican National Committee's soft money fund so that the companies that gave money as a result of being solicited by RAGA could not be identified. Did this contribute at all to your decision not to join RAGA? And do you believe a voter should be able to identify the companies that donate to the campaigns of their State Attorneys General?

Mr. FISHER. Senator—and I know that you've been a leader in this Congress in campaign financing reform. I applaud you for that. As a State official, I was never comfortable with the type of soft money fundraising that Federal campaigns and Federal parties were able to engage in. So to the extent that I had some discomfort with that, it was one of the reasons why I just didn't think that the formation of the organization was necessarily going to be healthy for what, as I said, which still remains a rather collegial atmosphere among us when we meet.

Senator FEINGOLD. I appreciate that answer.

Did you participate in RAGA events or fundraising activities at any time?

Mr. FISHER. Subsequent to—probably subsequent to the year 2000, I was asked to attend some RAGA events with other Republicans. I did attend them. But to the best of my recollection, I never had any involvement with any of the fundraising that RAGA was involved with.

Senator FEINGOLD. Thank you. Let me ask you a different subject matter. You sponsored an effort to expedite the execution process by establishing a timetable for the Governor to sign execution warrants. In 2000, you testified before the Pennsylvania Senate Judiciary Committee regarding a possible death penalty moratorium. You said, "The delay between the imposition of a death sentence and having carried it out is already far too great."

Of the 111 people on death row who have been exonerated since 1973, the average time between sentencing and exoneration was

8.91 years. Among the death row inmates exonerated so far in 2003, all had served at least 16 years and two had served 26.

Have your feelings about the need for speed changed at all in light of the numerous recent cases where proof of innocence turned up after conviction?

Mr. FISHER. Senator, thank you for that question. It's a good one. I have—I'm familiar with Pennsylvania's death penalty and the administration of the death penalty in Pennsylvania. And that's the only thing that I can really directly speak to. We have had a death penalty on the books in our State since 1978. I was one of the coauthors of that statute, and it's been upheld by the courts.

My testimony in 2000 I believe referred to the fact that, as a result of various administrative hurdles and frequent litigation in both the State and Federal court in Pennsylvania, that the administration of the death penalty had been unusually slow in our State. In fact, I think to this point there have only been three people who have been executed in Pennsylvania since 1978.

So I expressed concern about that delay. I expressed concern that that delay was not good for the system of justice. It certainly wasn't good for families of victims. And my opinion of at least Pennsylvania's administration of it has not changed.

Senator FEINGOLD. And the innocence cases don't have an effect on your view on that either?

Mr. FISHER. I am somewhat familiar with those cases. When I say "somewhat," our office was not directly involved in any of those cases that were overturned. You made reference to a number of 111, which I think in the history since 1978 are cases out of a group of close to 300 where the Supreme Court or some other court reversed a conviction. But in the vast majority of those cases, the defendant was either retried and perhaps resentenced to death or to life imprisonment, a guilty plea was entered by the defendant, and I believe the number four that you referenced or others have referenced indicate people that, for one reason or another, were neither reconvicted or did not plea. But the question of the guilt or innocence of those individuals is still somewhat up in the air.

Senator FEINGOLD. Well, actually, I think in most of those cases these people have been released, and—

Mr. FISHER. They have been.

Senator FEINGOLD. —are not going to be tried again. But let me ask, in fairness to you, a more Pennsylvania-specific question. After a 1998 report found that blacks in Philadelphia were 4 times more likely to get the death penalty than non-blacks, you insisted that race was not a factor in applying the death penalty in Pennsylvania. In March of this year, the Committee on Racial and Gender Bias in the Justice System, appointed by the Pennsylvania Supreme Court, called upon Governor Rendell to enact a moratorium on the death penalty until the State can study how race affects death penalty sentencing.

Among the committee's findings was that Pennsylvania prosecutors regularly remove as many blacks as possible from capital juries during the death-qualifying process of jury selection. Blacks make up 62 percent of Pennsylvania's death row inmates but only 10 percent of the State's population.

Have you changed your views on the death penalty in light of the Commission's work and the evidence it gathered?

Mr. FISHER. Senator, another good question. Pleased to have the opportunity to answer it. But the answer to your question is no. I have looked at those statistics. An overwhelming number of death penalty cases in our State have come from Philadelphia. The city of Philadelphia is one with the highest percentage of African-Americans of any—I believe of any city in our State. It also has the highest percentage of African-Americans who have been convicted and sentenced to death. But the one figure that I think is very key in all of that is that the complexion of the juries that have found those defendants guilty and have assessed the death penalty have an overwhelming number of blacks on those juries.

So it's hard to look at the race figures and really come to any firm conclusion. You almost have to look at every single case, look at who the victim was, look at who the defendant was, look at who the judge was, look at who the jury was, to come to any meaningful conclusion. And I have not found, at least from the work that my office and I have done, any racial discrimination in the application in those cases.

Senator FEINGOLD. I am over my time, so let me just ask one follow-up. Can you imagine any evidence that would convince you that the defendant's race is, in fact, a factor in the administration of the death penalty?

Mr. FISHER. Senator, I could imagine some, and I'm concerned about stories or allegations of improperly denying blacks—or striking blacks from jury pools, you know, but if that has happened—and I can tell you in those cases which my office has handled, you know, we've tried to make sure that our deputy AGs that are handling those cases do not pick jurors based on race. But that's the only possible way, and I think that Pennsylvania's system of justice has done a lot, particularly in recent years, to overturn that trend, if it has, in fact, existed in the past.

Senator FEINGOLD. I thank the nominee, and I thank the Chairman for being so generous with the time.

Senator CRAIG. Senator, thank you.

Attorney General Fisher, since the issue of the death penalty has been mentioned, let me ask you some questions and make a few notes, if I may, for the record.

First, I would note that Pennsylvania Governor Ed Rendell, a Democrat, who, as we know, has wholeheartedly supported your nomination, has said that he believes steps need to be taken to make sure that the death penalty is administered in a fair manner, but he is opposed to a moratorium in Pennsylvania. So, Attorney General, you are not alone in that position.

It is my understanding that in Pennsylvania the State Supreme Court has the power and duty to overturn death sentences when it sees evidence that race played a role in the imposition of a sentence. Is that correct?

Mr. FISHER. Senator, thank you for that question, and the answer to your question is yes. Under the law, which I helped to write in 1978, the Supreme Court conducts a de novo review of every case, every capital case that's brought to it on direct appeal.

And it has that authority to overturn a death sentence and has overturned a death sentence under those circumstances.

Senator CRAIG. Well, looking at your record, it seems clear that you recognize the need for equal justice for all Americans no matter what their race or their ethnic background. I note, for example, that you have advocated the passage of a State DNA post-conviction statute so that convicts on death row would have a right to have a DNA test on any relevant evidence that could lead to their exoneration.

Would you please tell the Committee more about that issue?

Mr. FISHER. Thank you, Senator, for the opportunity to answer that question. I advocated as Attorney General the passage of a Pennsylvania statute on post-conviction DNA testing. As Pennsylvania's chief law enforcement officer—and I can speak on behalf of myself and district attorneys all across Pennsylvania—none of us—and I emphasize none of us—want to see an innocent person spend 1 day in jail, and particularly not spend 1 day on death row if, in fact, there is evidence out there that can properly exonerate that individual. And that's why I advocated and the legislature concurred and last year passed a DNA testing statute that allows a defendant, anyone who's incarcerated to be able to petition the court at any time if they can show that there is evidence that, if tested, would lead to exculpatory evidence that would overturn their conviction; and if they don't have resources, that the DNA testing would be paid for by the State.

So I was very pleased to play a lead role in the advocacy and the passage of that legislation, and it's legislation which I hope the rest of this country will follow. And, in fact, I understand legislation similar to that has been introduced and is pending before this Committee.

Senator CRAIG. Well, I do thank you for those responses. I think they demonstrate a true sense of justice in the role you have played in your State, and I thank you for that.

I am going to turn the balance of the hearing and questions of you over to Senator Specter, and then he has agreed to hear Dale Fischer of the Central District of California and Gary Sharpe from the Northern District of New York. So, with that, Arlen?

Senator SPECTER. Thank you, Mr. Chairman.

Senator CRAIG. I am glad to see you back. Thank you.

Mr. FISHER. And I thank you, Mr. Chairman, Senator Craig, for chairing the hearing.

Senator CRAIG. Well, we have not had the privilege of meeting—or had not until this time, and I can tell you that it has been one that I have enjoyed. You have obviously demonstrated a phenomenal commitment to quality public service, and those of us in public service note that and respect it, and I thank you for it.

Mr. FISHER. Thank you, Mr. Chairman.

Senator SPECTER. [Presiding.] Thank you, Mr. Chairman.

Attorney General Fisher, on October 14, 1997, three employees of the Pennsylvania Attorney General's Office filed suit in the Middle District of Pennsylvania in a case captioned *McLaughlin* v. *Watson* in which the three alleged that officials of the State Department and others had conspired to thwart their investigation into Dominican drug dealer cases. And subsequently, on October

12, 1998, Agents McLaughlin and Micewski filed a case captioned *McLaughlin* v. *Fisher* in the Eastern District of Pennsylvania, claiming that they were transferred in retaliation for filing the *McLaughlin* v. *Watson* case.

Would you state what occurred leading to those two cases and what participation you had?

Mr. FISHER. Well, thank you, Senator, for the opportunity to answer that question. As you are well aware, I was sworn in as the Attorney General of Pennsylvania in January 1997. And at that time, I inherited a scandal in my office, which emanated out of the city of Philadelphia. That scandal arose as a result of decisions and public statements that were made in the spring of 1996, almost a year before I was sworn in as Attorney General, by the then–United States Attorney for the Eastern District of Pennsylvania and the District Attorney of Philadelphia, who found that agents in my Bureau of Narcotics—at that time the Bureau of Narcotics Investigation in Philadelphia were systematically denying the citizens of Philadelphia and the citizens of Pennsylvania their civil rights by falsely testifying or by falsely providing information on affidavits for search warrants.

The decisions by the then–United States Attorney and the district attorney led to their decision to no longer prosecute cases made by the Bureau of Narcotics Investigation in Philadelphia, and that was extremely harmful to the office because probably 90 percent of the cases in our narcotics unit in Philadelphia are prosecuted by one of those two offices.

In 1997, when I took office, as I said, I inherited this scandal. At the time I met with the U.S. Attorney and the district attorney. Their position had not changed, and it has not changed to date. And as a result, I then directed the employees in my office to try to determine what kind of assignments the individuals in question could be given because they could no longer work and make narcotics cases if they couldn't testify.

Senator SPECTER. Would you amplify the substance of your meeting with the United States Attorney for the Eastern District and the District Attorney of Philadelphia?

Mr. FISHER. I met with the United States Attorney in March or April of 1997.

Senator SPECTER. And his identity?

Mr. FISHER. Michael Stiles.

Senator SPECTER. And the DA, her identity?

Mr. FISHER. Lynne Abraham. I met with Ms. Abraham and spoke with her a couple times prior to August of 1997 and discussed this matter. It was a less formal meeting with Ms. Abraham, but it was a meeting with Mr. Stiles of some duration. And I inquired particularly from Mr. Stiles, who I knew to be the person that was investigating these allegations, as to whether or not their—because they had made a statement that they wouldn't take any cases from our office.

Senator SPECTER. Allegations as to the propriety of the conduct of the State Department of Justice employees?

Mr. FISHER. No. Actually, they were looking at the allegations involving the agents in our office, who, it was alleged, were falsely testifying and were making false affidavits on search warrants,

which led to the dismissal of over 125 cases in 1996. There were 125 cases—

Senator SPECTER. And that 425 drug cases were dismissed?

Mr. FISHER. Drug cases that they were involved with were either dismissed or nul-prossed, and a couple defendants were released from jail as a result of the action by the United States Attorney.

Senator SPECTER. Was that from both offices, Philadelphia DA and U.S. Attorney?

Mr. FISHER. Correct.

Senator SPECTER. And you had started to comment before I asked you for more specification about what action you took after you met with U.S. Attorney Stiles and DA Abraham.

Mr. FISHER. At least as to the United States Attorney, he had modified his position somewhat in that he was concerned about certain named agents, and he became comfortable with the fact that we had made changes in the leadership of that office, and if there's some way that we could figure out a way to not have the agents that the allegations were made about that he was investigating involved in drug cases, they would subsequently consider working with our office again.

Senator SPECTER. And you have not yet formally for the record identified who the agents were from your office whose conduct was being questioned.

Mr. FISHER. There were at least three and perhaps more at that time. There was Mr. McLaughlin, Mr. Micewski; there was another gentleman by the name of Mr. McKeefery, and there was a gentleman, I believe, by the name of Mr. Eggles, E-g-g-l-e-s, who were the people that were named at that time, which would have been in perhaps May of 1997 when I met with Mr. Stiles.

Senator SPECTER. And you then made an inquiry to make a determination for yourself as to the propriety of the conduct of these individuals?

Mr. FISHER. Well, Mr. Stiles informed me that, to the extent that he could, that there was an ongoing investigation and could not give me a timetable or give our office a timetable as to when that investigation would be concluded.

But it was clear from my meeting with Mr. Stiles that if those agents weren't involved in cases, that the United States Attorney's Office and the district attorney would begin working with our BNI office again.

Senator SPECTER. When you say Mr. Stiles was conducting an investigation, had he at that point not made a determination that these individuals had acted improperly?

Mr. FISHER. They had made an initial determination which led to the dismissal of cases, but they were conducting an investigation that could have led to the filing of charges against the individuals, and that was ongoing.

Senator SPECTER. But in the interim, they were not taking cases where these agents would have been witnesses for the prosecution?

Mr. FISHER. In fact, they were not taking cases from our office, period, regardless of who was involved.

Senator SPECTER. So what happened next on your part?

Mr. FISHER. We agreed that he would look at some alternatives and—but it became clear to us—we knew this already, but it be-

came more clear after the meeting with Mr. Stiles and discussions with Ms. Abraham that we had to find other assignments for the agents involved. And I instructed my personnel and chain of command to evaluate what other assignments within our office that the agents in question could be given that would not require their testimony in court, because that was the one problem that they were always going to have. If someone was questioning their credibility, they were never going to be able to come in the courtroom again and testify on a case.

As a result of my personnel department's review of available positions in the office, we made the decision to transfer two of the agents, Mr. Micewski and Mr. McLaughlin, to assignments that would allow them to continue to perform duties, would allow them to continue to be employed by the office, and not have to testify. And those transfers were made. Prior to them filing the suit of *McLaughlin, et al,* v. *Fisher*, they also—

Senator SPECTER. What different assignments did you make for those two men?

Mr. FISHER. As part of our ongoing process and evaluating the needs of the office, we decided that it was important to revive our criminal intelligence operation and a section of the office known as CrHIA, which did audits of police and DA compliance with the Criminal History Information Act.

Senator SPECTER. How many agents did you have in your office?

Mr. FISHER. Narcotics agents at that time, probably 180.

Senator SPECTER. And the total staff in your office?

Mr. FISHER. Over 900.

Senator SPECTER. And what happened? Where did you assign specifically Agent McLaughlin and Agent Micewski?

Mr. FISHER. As a result of the personnel recommendations that vacancies existed in the other Bureau of Narcotics Offices—because in addition to Philadelphia, we have seven others—McLaughlin was assigned to Greensburg to do CrHIA work and Micewski was assigned to Wilkes–Barre to do CrHIA work where there were vacancies. There were vacancies in those offices, and they were assigned—

Senator SPECTER. What kind of work were they assigned to do?

Mr. FISHER. CrHIA, as I said, is an acronym for a law in Pennsylvania which is known as the Criminal History Information Act, and the CrHIA process is one in which one agent in each region would be assigned to monitor—which was an obligation under CrHIA for the Attorney General to do—to monitor the compliance of police departments and DAs with the Criminal History Information Act. So it was essentially a desk job which would review files and review compliance data. But it was something that had not been done as well as it should have in the past, and it was something we felt that should have been done for which there was a vacancy, and these two gentlemen were transferred, continued to receive salary, received travel expenses, received subsistence for their work, and were transferred on a temporary basis, which the contract allowed us to do, to those locations.

Senator SPECTER. Had you made a determination at that point as to whether the complaints by the U.S. Attorney Stiles and DA Abraham were well founded?

Mr. FISHER. We did not have the information that they had, and they would not share with us the information they had that were part of a criminal investigation that the FBI was doing for Mr. Stiles. So we were not in a position to make a determination as to the legitimacy of those allegations. The only thing that we knew is that these two agencies, which were vital for our BNI office to operate, wouldn't take our cases. And we knew because of their public statements and because of the dismissal of cases involving McLaughlin—in fact, a Federal district judge in Philadelphia in one case in the opinion dismissed a case of Mr. Micewski, and in the opinion said that Micewski's at trial was not credible. To have that on the record in a case pretty much limited Micewski's ability to testify anywhere in the future.

Senator SPECTER. What judge made that statement?

Mr. FISHER. Judge William Yohn.

Senator SPECTER. William Yohn?

Mr. FISHER. Yes.

Senator SPECTER. That is in the Federal court.

Mr. FISHER. In the Federal court in Philadelphia.

Senator SPECTER. Well, had you made a determination that Mr. McLaughlin and Mr. Micewski were competent to handle the new assignments?

Mr. FISHER. We made a determination that, based on their experience, that they were competent to handle those new assignments.

Senator SPECTER. And you did not consider the allegations as to their integrity to be disqualifiers?

Mr. FISHER. We could neither confirm nor deny those allegations and weren't in a position to be able to disqualify them based on those allegations because that's what they remained at that point. And the issue of the transfers was first raised by these agents before the Pennsylvania Labor Relations Board in an unfair labor practice claim that they filed, and the Pennsylvania Labor Relations Board, which is a board under statute in Pennsylvania specifically empaneled to make determinations on labor claims of employees, found on the record and in their decision that every single decision that we made was appropriate, that it was non-retaliatory, and that they were based on good business purposes for the office, and accordingly found in our favor before the full PLRB on the unfair labor claims made by the two gentlemen that were subsequently made in an identical form in the lawsuit in Federal court.

Senator SPECTER. Were Mr. McLaughlin and Mr. Micewski questioned about the issues raised by the U.S. Attorney and DA?

Mr. FISHER. We did not question them about those allegations.

Senator SPECTER. Why not?

Mr. FISHER. There had been—my predecessor, Mr. Corbett, who was the Attorney General immediately preceding me, who was the Attorney General in the spring of 1996, I believe had one of the deputies in the office perform an investigation and there were some questions asked of the two gentlemen at that time. But we did not further question them because it was an ongoing investigation by the Federal Government.

Senator SPECTER. And what was the conclusion of the inquiry made by then–Attorney General Corbett?

Mr. FISHER. The conclusion was a limited one based on files and based on conversations with Micewski, McLaughlin, I believe Mr. Eggles, and maybe Mr. McKeefery. The conclusion was that the files in and of themselves did not show any wrongdoing, but there was obviously other information that the Federal authorities were looking at that was not available.

Senator SPECTER. And what happened then after the ruling by the Labor Relations Board?

Mr. FISHER. Then a second suit—you made reference to the fact that on October 14th of 1997 a suit had been filed against myself, Mr. Stiles, Ms. Abraham, I believe the CIA, various other parties whose names I don't have but I think are part of the record—

Senator SPECTER. How did the CIA get into the picture?

Mr. FISHER. The agents' position was that they were deemed—that the allegations Mr. Stiles and Ms. Abraham were referring to were as a result of a CIA–Dominican conspiracy that was funneling drug money to candidates for public office in both the Dominican Republic and in this country. And they alleged that because they were on the heels of exposing this conspiracy, that that's why Mr. Stiles made the allegations that he did.

Senator SPECTER. So they are saying that U.S. Attorney Stiles was involved with protecting drug smugglers?

Mr. FISHER. That was what their allegations were publicly, and that's what the allegations were in the October 14th complaint.

Senator SPECTER. That the CIA was involved in protecting Dominican drug smugglers?

Mr. FISHER. That's correct.

Senator SPECTER. And that you were involved in that?

Mr. FISHER. We weren't—that was before I was the Attorney General. We were not—we were a named party in that complaint only because we succeeded into office. But I was not the Attorney General at that time. You know, you could hardly find my name mentioned in the McLaughlin I complaint.

Senator SPECTER. And what then happened with the case of *McLaughlin* v. *Watson* which was filed on October 14, 1997?

Mr. FISHER. That case was dismissed as to all defendants in the district court, and the dismissal was affirmed by the United States Court of Appeals for the Third Circuit.

Senator SPECTER. What judge entered the dismissal in the district court?

Mr. FISHER. I am not certain.

Senator SPECTER. Would you provide that for the record, please?

Mr. FISHER. I can provide it.

Senator SPECTER. And do you know the panel on the Third Circuit which affirmed?

Mr. FISHER. I can get that information. I'm not—

Senator SPECTER. If you would provide that for the record, I would appreciate it.

Was there an application for cert to the Supreme Court of the United States?

Mr. FISHER. If there was, it was denied.

Senator SPECTER. Would you provide for the record whether it was?

Mr. FISHER. Yes.

Senator SPECTER. So at this point, you had reassigned Mr. McLaughlin and Mr. Micewski, and what happened next leading up to the October 12, 1998, filing of the case captioned *McLaughlin* v. *Fisher*?

Mr. FISHER. Senator, as I indicated, they also filed this unfair labor practice claim in front of the PLRB.

Senator SPECTER. Was that in between the two cases?

Mr. FISHER. That was in between the two cases, and the PLRB in 1999 ruled in our favor on all issues.

Senator SPECTER. So the case before the Labor Board was filed after the dismissal in *McLaughlin* v. *Watson*?

Mr. FISHER. The case before the Labor Board was filed probably while that first case was still pending.

Senator SPECTER. And what was the difference in the gravamen of the lawsuit of *McLaughlin* v. *Fisher* contrasted with *McLaughlin* v. *Watson*?

Mr. FISHER. The gravamen of the lawsuit *McLaughlin* v. *Fisher* was an allegation that they had been transferred because they filed the first suit and they alleged retaliation.

Senator SPECTER. Were they transferred after the filing of the first suit?

Mr. FISHER. Chronologically, they were. But the discussions and the meetings with them and the planning as to what we could do all took place before the filing of the first suit.

Senator SPECTER. Well, then, what was the gravamen of the first suit? They hadn't been transferred at that point.

Mr. FISHER. No, the first suit, which—

Senator SPECTER. What was the essential complaint then?

Mr. FISHER. The first suit, which was *McLaughlin* v. *Watson*, named all of the individuals I referred to, including the CIA. And it was a 1983 action alleging that all of these actors who were named defendants were in a conspiracy to deny them civil rights, which had smeared their name and prevented them from doing their work as narcotics detectives.

Senator SPECTER. They hadn't been transferred at that point.

Mr. FISHER. They had not been transferred.

Senator SPECTER. So what was their damage? Just that the issue had been raised as to their credibility in these cases where they were witnesses?

Mr. FISHER. That's—yes. Yes, Senator. That was the extent of their damages. They had no—in fact, to this day, and even before the jury in *McLaughlin* v. *Fisher*, they presented no evidence of compensatory damages.

Senator SPECTER. Amplify what was in the complaint of *McLaughlin* v. *Fisher, et al.?*

Mr. FISHER. That was strictly a complaint alleging that their transfer—their transfers were in retaliation for the filing of the first suit, *McLaughlin* v. *Watson*.

Senator SPECTER. We have the transcript of the record, obviously, in *McLaughlin, et al,* v. *Fisher, et al., but outline who the witnesses were and what the testimony was, please.*

Mr. FISHER. In the case, the plaintiffs testified, obviously. The defendants from my office testified, including myself; Mr. Pappert, my first deputy.

Senator SPECTER. What was the essential testimony given by Mr. McLaughlin?

Mr. FISHER. He talked about his—you know, his history as a narcotics detective in Philadelphia, and for our office, the fact that Mr. Stiles' and Ms. Abraham's actions forced him to no longer be able to investigate drug cases in Philadelphia; and that as a result of that and the filing of his lawsuit on October 14th, we improperly transferred him to a place away from his home.

Senator SPECTER. Were Stiles and Abraham defendants in the second suit?

Mr. FISHER. No, they were not.

Senator SPECTER. What was the essential testimony given by Mr. Micewski?

Mr. FISHER. Similar to Mr. McLaughlin's.

Senator SPECTER. And there was a third plaintiff whose case was dismissed?

Mr. FISHER. Mr. McKeefery, his case was dismissed.

Senator SPECTER. Was there any other plaintiff?

Mr. FISHER. There was no other plaintiff.

Senator SPECTER. And what was the rationale for the dismissal of McKeefery's case contrasted with McLaughlin and Micewski?

Mr. FISHER. McKeefery was given another assignment that he was able to do in Philadelphia, and, therefore, because he had not been transferred, the court ruled that there was absolutely no evidence of retaliation—there was nothing that could be retaliated against in McKeefery's case.

Senator SPECTER. And how many defendants were there in the case?

Mr. FISHER. There were, I believe, five.

Senator SPECTER. You testified?

Mr. FISHER. I testified. Mr. Pappert testified. William Ryan, who's the head of our Criminal Law Division, testified. David Kwait, who was a defendant, who's head of our Bureau of Investigations, testified. James Caggiano, head of our Bureau of Narcotics Investigation, testified. Charles Warner, who was in the Bureau of Narcotics Investigation, Eastern Pennsylvania, testified. And Michael Stiles, the United States Attorney, the former United States Attorney at that time for the Eastern District of Pennsylvania, testified. And I believe some—I believe Mr. Gordon's testimony from the Philadelphia DA's Office was stipulated to for the record.

Senator SPECTER. Where had he testified to have testimony to be accommodated by stipulation?

Mr. FISHER. I believe that they just stipulated as to what he would say if he were called.

Senator SPECTER. And what was the essential testimony which you gave?

Mr. FISHER. The testimony that I gave at that time was that I explained the background of the scandal that I inherited. I explained the steps that I took in meeting with Mr. Stiles and Ms. Abraham. I explained the ongoing decision that our personnel office undertook to find jobs that these gentlemen could undertake that would not include—would not require testimony. And I described the fact that the lawsuit that had been filed on October 14th had

absolutely nothing to do with the transfers, that the transfers—that that suit was irrelevant to any of our consideration, that we had been in the process of considering alternatives long before that, and that the transfers were made, as the PLRB found, for legitimate business reasons for the office.

Senator SPECTER. But you were a defendant in the October 14, 1997, lawsuit.

Mr. FISHER. I was—in fact, I was the only common defendant between the two lawsuits.

Senator SPECTER. How long did the jury deliberate?

Mr. FISHER. Three or four hours, I believe.

Senator SPECTER. And the result?

Mr. FISHER. They found as to me that I was responsible for, I believe, $12,000, $12,500 in compensatory damages against both defendants and $100,000 in punitive damages against both defendants.

Senator SPECTER. What evidence was presented as to a basis for compensatory damages?

Mr. FISHER. To my knowledge and recollection, Mr. Chairman, there was no evidence presented at all.

Senator SPECTER. And what evidence as to punitive damages?

Mr. FISHER. Mr. Chairman, to my knowledge and recollection, there was no evidence whatsoever as to punitive damages, and, in fact, counsel had made objection on the record as to the issue of punitive damages even being submitted to the jury.

Senator SPECTER. And what is the status of the case now? You have already testified that it is on post-trial motions?

Mr. FISHER. We filed post-trial motions before the district court judge, and those post-trial motions have not yet been briefed because it took quite a while to get the record transcribed. But we have post-trial motions, and I have no idea what the timetable will be before the court—

Senator SPECTER. When did the trial occur?

Mr. FISHER. The trial occurred in mid–February of 2003.

Senator SPECTER. And you do not know, you say, when the post-trial motions will be heard?

Mr. FISHER. I do not know when they'll be heard. I know that our brief on the post-trial motions is to be filed, I believe, sometime next week.

Senator SPECTER. What will be the anticipated conclusion of the case in the district court? I know it is speculative because it is a matter of how long the judge takes?

Mr. FISHER. It's hard to—it would be very hard to predict. The defendants would have 30 days—or the plaintiffs would have 30 days to file their brief, and obviously the court could decide to hear oral argument on the post-trial motions, and then whatever amount of time it would take for the court to deliberate on the issues before it.

Senator SPECTER. And then there is the appellate process to the Court of Appeals for the Third Circuit?

Mr. FISHER. That's correct, Mr. Chairman.

Senator SPECTER. And how long would that take, approximately?

Mr. FISHER. My experience on an appeal of that nature, if the case would get that far, is that it could take well in excess of a year for any matter like that to be—

Senator SPECTER. And the losing party then has the right to file an application for certiorari to the U.S. Supreme Court.

Mr. FISHER. And also a case like this could go to the court en banc of the Third Circuit and to the United States Supreme Court.

Senator SPECTER. Well, as I had indicated, and as is well known, we have access to all the transcripts, and we have already reviewed them. And as I had said at the outset, it was my preference to hear witnesses on the matter, including Mr. McLaughlin and Mr. Micewski and others who would be relevant, so that we would, in effect, be re-examining in that detail the jury's verdict. But the practice of the Committee is not to hear other witnesses, not even to allow the Governor to introduce you. And as I have said before, my office has already talked to counsel for the plaintiffs preliminarily to make arrangements to have them come in and testify, but to repeat, that is not to be permitted here. And to repeat again, I intend to talk to Mr. McLaughlin and Mr. Micewski myself to question them as to exactly what happened. I think it would be inappropriate for us to talk to the jurors, but to the extent that we can make an independent determination as to what happened, that is our duty. Our constitutional duty is to decide on your qualifications. Our job is to confirm or to reject confirmation, and that is our independent duty, aside from the judicial determination. But, of course, out of respect for the jury's verdict and the pendency of the case, we have made an inquiry far beyond what we customarily do. And we will take it to the extent of listening to Mr. Micewski and Mr. McLaughlin.

Anything else you would like to add, Attorney General Fisher?

Mr. FISHER. Not at this time, Mr. Chairman.

Senator SPECTER. Well, there are a couple of outstanding questions. We would appreciate if you would provide them for the record.

Mr. FISHER. And, Mr. Chairman, I want to thank you and the entire Committee for giving me the opportunity to have this hearing today, and I want to particularly thank you for your help, support, and guidance throughout this process.

Senator SPECTER. That concludes our hearing. Thank you.

We will now proceed to the hearings on Magistrate Judge Sharpe and Ms. Dale S. Fischer. Let's have Ms. Fischer come forward first. Thank you.

Judge Fischer and Judge Sharpe, will you raise your right hands? Do each of you solemnly swear that the testimony you will give before this Committee on the Judiciary of the United States Senate will be the truth, the whole truth, and nothing but the truth, so help you God?

Judge FISCHER. I do.

Judge SHARPE. I do.

Senator SPECTER. Judge Fischer, would you care to introduce relatives or friends who are in the hearing room?

STATEMENT OF DALE S. FISCHER, NOMINEE TO BE DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA

Judge FISCHER. Thank you, Mr. Chairman. I would. I have with me today my friend and former law partner, Allan Grossman; another friend, Ronnie Blumenthal; a friend and colleague on the Los Angeles Superior Court, Judge Judith Abrams; and another friend, Harriet Hess.

Thank you.

Senator SPECTER. Would those folks stand, please, to be recognized? Thank you for joining us.

[The biographical information of Judge Fischer follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

   Dale Susan Fischer; also known as Dale Susan Doenges from December 1971 through May 1980.

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

   Residence:
   Pasadena, CA

   Office:
   Los Angeles Superior Court
   Dept. 120
   210 W. Temple Street
   Los Angeles, CA
   90012

3. Date and place of birth.

   October 17, 1951
   Orange, NJ

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

   Divorced

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

Harvard Law School	1977 - 1980	J.D. 5/80
Univ. of South Florida	1975 - 1977	B.A. 6/77
Dickinson College	1969 - 1970	none

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

   Superior Court of California
   County of Los Angeles

111 N. Hill Street
Los Angeles, CA
90012
January 2000 - present

Municipal Court of California
Los Angeles Judicial District
110 N. Grand Avenue
Los Angeles, CA
90012
March 1997 - January 2000

Heller Ehrman White & McAuliffe
601 S. Figueroa Street
Fortieth Floor
Los Angeles, CA
90017
December 1996 - March 1997

Kindel & Anderson
555 S. Flower Street
Los Angeles, CA
90017
(this law firm dissolved in 1996)
September 1980 - November 1996

Seltzer Caplan Wilkins & McMahon
(now known as Seltzer Caplan McMahon & Vitek)
750 B Street #2100
San Diego, CA
92101
June 1979 - August 1979

American Civil Liberties Union of Massachusetts
99 Chauncy Street
Suite 310
Boston, MA
02111
June 1978 - August 1978

(For several months after graduation from college, I worked as a waitress at one or more local restaurants before beginning law school. I do not know which restaurants I worked in during the requested period.)

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

No

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

Not applicable

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

American Bar Association

American Judicature Society

American Association of Business Trial Lawyers

California Judges Association (Criminal Law and Procedure Committee - chair, 2000 - 2002)

Federal Bar Association

George McBurney Business Litigation Inn of Court (formerly known as Los Angeles Complex Litigation Inn of Court) (secretary/treasurer - 1996; president - 1997)

Judicial Council Traffic Adjudication Workshop Steering Committee

Judicial Council Traffic Advisory Committee (Chair - Subcommittee on Traffic Temporary Judge Training 2002 - 2003)

Legal Advisory Committee of the Huntington Collection/Senior Care Network, charitable organizations affiliated with the Huntington Memorial Hospital in Pasadena, CA

Los Angeles County Bar Association (member of the Attorney-Client Relations Committee - dates unknown)

Los Angeles Police Commission Task Force on the Mentally Disabled

National Association of Women Judges

National Institute of Trial Advocacy (faculty member - approximately 1991 - present)

Women Lawyers Association of Los Angeles

I have also served on, or chaired, numerous committees of the Municipal Court and Superior Court of Los Angeles County, including Access and Fairness Committee, Bail Committee, Executive Committee, Legislation Committee, Probation Committee, Rules Committee, Temporary Judge Committee, and Traffic Committee.

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

American Association of Retired Persons

California Judges Association

Judicial Council Traffic Advisory Committee

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

California - December 1980

United States Supreme Court - April 1990

Ninth Circuit Court of Appeals - November 1984

United States District Court

Central - February 1981

Eastern - May 1981

Northern - May 1981

Southern - September 1981

Membership terminated when I became a judge.

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

Bench Handbook on Jury Management (California Center for Judicial Education & Research ["CJER"] 2001) Consultant

California Judges Benchguide on Bail and Own-Recognizance Release (CJER 2000) Consultant

California Judges Benchguide on Felony Arraignments and Pleas (CJER 2003) Consultant

California Judges Benchguide on Misdemeanor Arraignment (CJER 2003) Consultant

These are attached.

I have not given speeches. I have taught continuing education classes to judicial officers. Substantive written materials I prepared for those classes are attached.

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

Excellent

April 2003

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

Judge of the Municipal Court of California, Los Angeles Judicial District - appointed March 1997, and elected March 2000 without appearing on the ballot. This was a limited jurisdiction trial court.

Judge of the Superior Court of California, Los Angeles County - by operation of law on the unification of the trial courts in Los Angeles County in January 2000. This is a general jurisdiction trial court.

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

(1) (a) People v. Steven Agler, L. A. Superior Court Case No. BA 183719 (first degree murder).

(b) People v. Saul Audelo, L. A. Superior Court Case No. BA 184831(first degree murder with special circumstances).

(c) People v. Desi Arnell Burns, L. A. Superior Court Case No. BA 191294 (multiple sex crimes).

(d) People v. Thomas Elam, L. A. Superior Court Case No. BA 194136 (rape of an unconscious person).

(e) People v. Armando Antonio Marroquin, L. A. Superior Court Case No. BA 224467 (continuous sexual abuse of a child).

(f) People v. Mohammed Shah, L. A. Superior Court Case No. BA 206956 (attempted murder with gang allegations).

(g) People v. Jaquan Simon, L. A. Superior Court Case No. BA 231654 (attempted wilful, deliberate, premeditated murder).

(h) People v. Joseph Weathington, L. A. Superior Court Case No. BA 182367 (first degree murder with special circumstances).

(i) People v. Harold Wesley, L. A. Superior Court Case No. BA 185508 (rape under the "one strike" law).

(j) People v. Jeffrey Wayne Wright, L. A. Superior Court Case No. BA 181715 ("three strikes").

There are no written opinions.

(2) Criminal Cases

(a) City of Los Angeles v. Superior Court (Theresa Ann Walker), B 150996. The Court of Appeal, in a writ proceeding, found "the trial court abused its discretion by finding that Walker made a showing of 'good cause for the discovery or disclosure sought' pursuant to Evidence Code section 1043, subdivision (b)(3)." Opinion attached.

(b) People v. Young, BR 37841. The Appellate Division of the Superior Court reversed defendant's conviction, finding the evidence was insufficient to support defendant's conviction for failure to provide support for his child. Opinion attached.

(c) People v. Lou, BR 37465. The Appellate Division of the Superior Court found harmless error in a modified jury instruction. Opinion attached.

(d) People v. Guizar, B 150112. The Court of Appeal found I reached the correct conclusion as to the appellant concerning a search and seizure motion, but for the wrong reason. Opinion attached.

(e) People v. Flores, B 148379. The Court of Appeal remanded the matter for determination of ability to pay attorney's fees, finding defendant was entitled to notice and a hearing on the issue. The matter was depublished on grant of review by the California Supreme Court. Opinion attached. On a similar issue in People v. Patton, B 148710, the Court of Appeal vacated the order for attorney's fees. Opinion attached.

(f) People v. Porter, B 154551. The Court of Appeal remanded for sentencing error. Opinion attached.

Cases related to bail bonds (I assumed responsibility for handling all motions to set aside summary judgments, etc. on bail bonds in Los Angeles County. I have handled hundreds of such motions. There may be cases in which I have been reversed or significantly criticized of which I am not aware.)

(a) People v. Ranger Ins. Co., 99 Cal. App. 4th 1229 (2002). The Court of Appeal found I erred by determining bail was forfeited and summary judgment was appropriately entered without considering the surety's request for extension.

(b) People v. Frontier Pacific Ins. Co., BV 21975. The Appellate Division found I erred by denying the request to vacate summary judgment. Opinion attached.

(c) People v. Frontier Pacific Insurance Co., B 129355. The Court of Appeal found I erred by denying the request to vacate summary judgment. Opinion attached.

(3) Not applicable

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

None

17. Legal Career:

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

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

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

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

a. 1. Not applicable

2. Not applicable

3. Heller Ehrman White & McAuliffe
601 S. Figueroa Street
Fortieth Floor
Los Angeles, CA
90017
December 1996 - March 1997
Special Counsel

Kindel & Anderson
555 S. Flower Street
Los Angeles, CA
90017
(this law firm dissolved in 1996)
September 1980 - November 1996
Associate from 1980 - 1986; partner from 1986 - 1996

Seltzer Caplan Wilkins & McMahon
(now known as Seltzer Caplan McMahon & Vitek)
750 B Street #2100
San Diego, CA
92101
June 1979 - August 1979
Summer intern

American Civil Liberties Union of Massachusetts
99 Chauncy Street
Suite 310
Boston, MA
02111
June 1978 - August 1978
Summer intern

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

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

b. 1. My practice generally remained the same throughout my 17 years as an attorney. One hundred per cent of my practice was civil litigation. As a volunteer for one month for the Office of the City Attorney in Los Angeles, I tried three misdemeanor cases.

2. The firm's clients were generally individuals and small to mid-size businesses, though we represented a substantial number of major corporations. The firm generally represented defendants, but it represented a significant number of plaintiffs as well. I handled general civil litigation. Though I also handled other types of litigation, I developed expertise in wrongful termination and employment discrimination, and trust and estate disputes.

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

2. What percentage of these appearances was in:
(a) federal courts;
(b) state courts of record;
(c) other courts.

3. What percentage of your litigation was:
(a) civil;
(b) criminal.

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

5. What percentage of these trials was:
(a) jury;
(b) non-jury.

c. 1. I appeared in court approximately three to six times per month. The frequency of appearances changed somewhat depending on the nature of the litigation I was engaged in from time to time.

2. (a) Approximately 40%

(b) Approximately 60%

(c) None

3. (a) Nearly 100%

(b) As an attorney, I handled three criminal trials.

4. I tried eight cases to verdict. I was sole counsel as to all.

5. (a) Three cases

(b) Five cases

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. Brown, et al. v. Velto, L.A. Superior Court No. C 715153, was a will contest asserting claims of undue influence and lack of testamentary capacity, which settled in approximately 1990. I represented the defendant.

Opp. counsel: David Rosner, Esq.
11377 W. Olympic Blvd.
Los Angeles, 90064
310-312-3755

Bruce Ross, Esq.
HOLLAND & KNIGHT
633 West Fifth St.
Suite 2100
Los Angeles, CA 90071
213-896-2400

Judge: Honorable Bruce Geernaert
JAMS/ENDISPUTE
350 S. Figueroa St. #990
Los Angeles, CA 90071
213-620-1133

2. Carpenters Health and Welfare Trust for Southern California, et al. v. The Prudential Insurance Company of America, U.S.D.C. (Central) CV 91-1629 WMB (Kx), was a bench trial on stipulated facts in approximately 1991 to determine the interpretation of an insurance policy in connection with an ERISA plan. I was lead counsel for the Trust. ERISA expertise was provided by my then partner, Allan I. Grossman now at O'Melveny & Myers, 400 S. Hope St., L.A. CA, 90071, 213-430-6173). Prudential prevailed.

Opp.counsel: David L. Bacon, Esq.
THELEN REID & PRIEST LLP
333 S. Grand Ave.
Los Angeles, CA 90071
213-576-8000

Co-counsel: John Thomas DeCarlo, Esq.
DECARLO CONNOR & SELVO
533 S. Fremont Ave. 9th Floor
Los Angeles, CA 90071
213-488-4100

Judge: Honorable Wm. Matthew Byrne, Jr.
UNITED STATES DISTRICT COURT
Central District
312 N. Spring St.
Los Angeles, CA 90012
213-894-3537

3. Eskenazi v. Eskenazi Merchandising, L.A. Superior Court No. C 421218, was a bench trial in approximately 1982 to determine the validity of a buy-sell agreement funded by an insurance policy. I was the sole counsel for the defendant. My firm's client prevailed on all issues.

Opp. counsel: James A. Kohn, Esq.
NEBENZAHL KOHN DAVIES & LEFF
10940 Wilshire Blvd., Suite 1500
Los Angeles, CA 90024
310-824-1700

Judge: Honorable Charles Older
LOS ANGELES SUPERIOR COURT
111 North Hill Street
Los Angeles, CA 90012
213-974-5600
(now retired - present address unknown)

4. Estate of Halicki, Court of Appeals, Second Appellate District, No. B 080784, was the appeal of a petition to determine ownership of real property. I was sole litigation counsel for the Special Administrator of the Estate. Probate expertise was provided by my then law partner, Valerie Merritt (now at 200 S. Los Robles St., # 678, Pasadena, CA, 91101, 626-395-7680). My firm's client prevailed. Various aspects of this estate litigation were pending through most of the 1990's.

Opp. counsel: Albert A. Dorn, Esq.
5710 W. Manchester Blvd.
Suite 202
Los Angeles, CA 90045
310-641-3566

Judges: Honorable Margaret Grignon,
Paul Turner, and Ramona Godoy Perez
CALIFORNIA COURT OF APPEAL
Second Appellate District
300 South Spring Street
Los Angeles, CA 90013
213-346-3002

5. Estate of Halicki, L.A. Superior Court No. P 737 358, a different aspect of the previously described matter, was the bench trial of a dispute over a significant creditor's claim. I was sole litigation counsel for the Special Administrator of the Estate. Probate expertise was provided by my then law partner, Valerie Merritt. My firm's client prevailed. Various aspects of this estate litigation were pending through most of the 1990's.

Opp. counsel: Albert A. Dorn, Esq.
5710 W. Manchester Blvd.
Suite 202
Los Angeles, CA 90045
310-641-3366

Judge: Honorable Leonard S. Wolf (Ret.)
413 Howland Canal
Venice, CA 90291
310-822-3600

6. Garb v. Pace Membership Warehouse, Inc., U.S.D.C. (Central CV 86-1116 CBM (MCx) was an action for violation of federal securities laws, which was resolved by settlement. I was sole counsel for the plaintiffs. The matter was litigated in 1986 - 87.

Opp. Counsel: Don Howarth, Esq.
HOWARTH & SMITH
800 Wilshire Blvd.
Suite 750
Los Angeles, CA 90017
213-955-9400

William Meeske, Esq.
LATHAM & WATKINS
633 W. 5th Street
Suite 4000
Los Angeles, CA 90071
213-485-1234

Judge: Honorable Consuelo B. Marshall
UNITED STATES DISTRICT COURT
Central District
312 N. Spring Street
Los Angeles, CA 90012
213-894-5288

7. John Mancino v. Murray H. Hutchison, L.A. Superior Court No. CA 001120, was a purported securities class action.

I was associate counsel for one of the defendants. My then partner Robert K. Baker was lead counsel. (I do not know how Mr. Baker can be located.) The matter was settled in approximately 1994.

Opp. Counsel: William S. Lerach, Esq.
MILBERG, WEISS, BERSHAD,
HYNES & LERACH
401 B Street, Suite 1600
San Diego, CA 92101
619-231-1058

Judge: Honorable
Barnet M. Cooperman
JAMS/ENDISPUTE
350 S. Figueroa St. #990
Los Angeles, CA 90071
213-620-1133

8. Midway Hospital Medical Center, Inc. v. Midway Emergency Physicians Medical Group, Inc., L.A. Superior Court No. C 696303, considered the ability of a hospital to terminate a contract with a service provider. I was sole counsel for the plaintiff. My firm's client prevailed on a motion for summary judgment. The matter was litigated in approximately 1989.

Opp. counsel: Barry G. West, Esq.
GAIMS, WEIL, WEST & EPSTEIN
1875 Century Park East
Suite 1200
Los Angeles, CA 90067
310-553-6666

Judge: Honorable Charles Jones
P.O. Box 1545
Alpine, CA 90901
(telephone unknown)

9. Texas Commerce Bank v. Garamendi (Executive Life), L.A. Superior Court Nos. BC 028482, BC 032768, et al., considered whether to approve the purchase of the assets of Executive Life. I represented the State of Texas - Insurance Commissioner. (The matter was extremely significant; however, scores of parties were involved and my role was comparatively small.) The matter was litigated in approximately 1991 - 92.

Opp. counsel: Karl L. Rubinstein, Esq.

RUBINSTEIN & PERRY
(The State Bar now lists Mr. Rubinstein's address as Corpus Christie, Texas. I was unable to locate a listing for him there.)

Judge: Honorable Kurt Lewin
(now retired)
LOS ANGELES SUPERIOR COURT
111 N. Hill St.
Los Angeles, CA 90012
213-974-5600
(sitting by assignment)

10. Tracy Building Corp. v. Texaco Anaheim Hills, Inc., Orange County Superior Court No. 42-40-17, was a bench trial of an action for specific performance of a contract to purchase real property in approximately 1985. I was sole trial counsel for the plaintiff. My firm's client prevailed on all issues.

Opp. Counsel: Honorable Marvin M. Lager
LOS ANGELES SUPERIOR COURT
111 N. Hill St. Dept. 38
Los Angeles, CA 90012
213-975-5651

Judge: Honorable Walter Charamza (Ret.)
2224 Port Durness Place
Newport Beach, CA 92550
(714) 644-1342

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

During the course of my career as an attorney, almost all of my time was devoted to litigation. In addition, I participated as a judge or "coach" in moot court programs for high school students and law school students. I also trained less experienced lawyers in both trial advocacy and deposition skills as a faculty member of the National Institute for Trial Advocacy.

As a judge I have dedicated a substantial portion of my time to judicial education, teaching the subjects of arraignment, bail, bail forfeiture, criminal voir dire, calendar management, and criminal trials to bench officers of the California courts.

I have also assumed responsibility, as chair of the Temporary Judge Committee of the Los Angeles Superior Court, for training and monitoring the nearly 1000 temporary judges serving our County. In that capacity, I teach a course entitled, "Fairness in the Courts." I also review and respond to each complaint made by a litigant or member of the public concerning temporary judges.

As part of my judicial duties, I hear all of the Court's motion to set aside summary judgments on bail bonds in Los Angeles County, and chair the Court's Bail Committee.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

   There may be pass-through interest from Kindel & Anderson, which dissolved in 1996. The amount attributed to me in 2002 was $159. I have a remaining capital account balance of $1721. I do not anticipate receiving a distribution of that amount. I am a participant in California's judicial retirement system, Judges' Retirement System II. The present amount is $52,318.56. This amount, plus any "investment earnings" is payable when I retire from the Los Angeles Superior Court. I have made no arrangements to be compensated in the future for any financial or business interest.

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

   Judicial officers should accept all matters properly before them, but should avoid even the appearance of impropriety. I will maintain a list of entities in which I have a financial interest and personally insure that I recuse myself in any matters involving those entities.

   I will follow the guidelines of the Code of Judicial Conduct.

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

   No

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

   See attached financial disclosure report.

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

   See attached net worth statement.

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

   No

AO-10 (w)
Rev. 1/2002

FINANCIAL DISCLOSURE REPORT
Nomination Report

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

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
Fischer, Dale S.	District Court - CA (Central)	05/03/2003
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5. Report Type (check type)**	**6. Reporting Period**
U. S. District Judge nominee	X Nomination, Date 05/01/2003 ___ Initial ___ Annual ___ Final	01/01/2002 to 04/30/2003
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.**	
210 W. Temple St. Los Angeles CA 90012	Reviewing Officer _____ Date _____	

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

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

☐ **NONE** (No reportable positions.)

	POSITION	NAME OF ORGANIZATION / ENTITY
1	Judge	Superior Court of California - County of Los Angeles
2		
3		

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

☐ **NONE** (No reportable agreements.)

	DATE	PARTIES AND TERMS
1	1996	Kindel & Anderson, possible liquidation payment, no control (doubtful)
2		
3		

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

☐ **NONE** (No reportable non-investment income.)

	DATE	SOURCE AND TYPE		GROSS INCOME (yours, not spouse's)
1	2001	Superior Court - County of LA	judicial salary and benefits	163052.13
2	2002	Superior Court - County of LA	judicial salary and benefits	170458.69
3	2003	Superior Court - County of LA	judicial salary and benefits	57607.48
4				

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Fischer, Dale S.	05/03/2003

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

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

☐ NONE (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1		EXEMPT
2		
3		
4		
5		
6		
7		

V. GIFTS

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

☐ NONE (No such reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1		EXEMPT	
2			
3			

VI. LIABILITIES

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

☒ NONE (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE
1			
2			
3			
4			
5			
6			

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

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Fischer, Dale S.	05/03/2003

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

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions.)									
1 Rollover IRA - Schwab	B	Dividend	M	Q	Exempt				
2 --AMGN common stock					"				
3 --AOL common stock					"				
4 --BBBY common stock					"				
5 --BRCD common stock					"				
6 --BRCM common stock					"				
7 --BVSN common stock					"				
8 --CDWC common stock					"				
9 --CHKP common stock					"				
10 --CHS common stock					"				
11 --CSCO common stock					"				
12 --DCLK common stock					"				
13 --EBAY common stock					"				
14 --ELAB common stock					"				
15 --ELK common stock					"				
16 --HD common stock					"				
17 --KSS common stock					"				

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

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

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

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Fischer, Dale S.	05/03/2003

VII. Page 2 INVESTMENTS and TRUSTS – income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions.)									
18 --LF common stock					"				
19 --MDT common stock					"				
20 --MSFT common stock					"				
21 --NTAP common stock					"				
22 --ORCL common stock					"				
23 --PFCB common stock					"				
24 --PAYX common stock					"				
25 --PWER common stock					"				
26 --QCOM common stock					"				
27 --QTRN common stock					"				
28 --SKIL common stock (ADR)					"				
29 --SPLS common stock					"				
30 --SMTF common stock					"				
31 --SBUX common stock					"				
32 --SNPS common stock					"				
33 --TQNT common stock					"				
34 --TWTR common stock					"				

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

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Fischer, Dale S.	05/03/2003

VII. Page 3 INVESTMENTS and TRUSTS– income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
35 --VRSN common stock					"				
36 --WPI common stock					"				
37 --Schwab Money Market	A	Dividend			"				
38 Credit Suisse Strategic Value Fund	A	Div & Int	L	T	"				
39 Credit Suisse Global Post-Venture Capital Fund		None	J	T	"				
40 Credit Suisse Global Technology Fund		None	J	T	"				
41 Brokerage Account - Schwab					"				
42 --Bender Growth Fund		None	J	T	"				
43 Contributory IRA - Schwab		None	J	T	"				
44 --Bender Growth Fund					"				
45 Vanguard 500 Index Fund - IRA	A	Dividend	K	T	"				
46 Wells Fargo Bank	A	Interest	J	T	"				
47 Deutsche Bank Alex Brown Brokerage					"				
48 --Rouse common stock	A	Dividend	J	T	"				
49 --Deutsche Bank Cash Reserve Fund	A	Dividend	J	T	"				
50 Rouse common stock	A	DIV&OID	J	T	"				
51 Fidelity Magellan Mutual Fund	A	Dividend	L	T	"				

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

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

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

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Fischer, Dale S.	05/03/2003

VII. Page 4 INVESTMENTS and TRUSTS-- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ **NONE** (No reportable income,assets, or transactions.)									
52 E*Trade Brokerage Account					"				
53 --E Trade Money Market Fund	A	Dividend	J	T	"				
54 --CAT Money Market Fund	A	Dividend			"				
55 --MMM common stock	A	Dividend	J	T	"				
56 --CAT common stock	A	Dividend	J	T	"				
57 --CVX common stock	A	Dividend	J	T	"				
58 --CSCO common stock		None	J	T	"				
59 --DELL common stock		None	J	T	"				
60 --DD common stock	A	Dividend	J	T	"				
61 --EK common stock	A	Dividend	J	T	"				
62 --XOM common stock	A	Dividend	J	T	"				
63 --GM common stock	A	Dividend	J	T	"				
64 --GT common stock	A	Dividend	J	T	"				
65 --IP common stock	A	Dividend	J	T	"				
66 --JPM common stock	A	Dividend	J	T	"				
67 --QQQ units in inv. fund		None	J	T	"				
68 --QCOM common stock		None	J	T	"				

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

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Fischer, Dale S.

Date of Report: 05/03/2003

VII. Page 5 INVESTMENTS and TRUSTS-- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-37 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions.)									
69 Judges' Retirement II - CalPERS	C	Interest	J	T	"				
70 457 Plan	A	Interest	J	T	"				
71 --SSGA S&P 500 Flagship Fund Series C					"				
72 --LA County Stable Income Fund					"				
73 401(k) Plan	A	Interest	J	T	"				
74 --T. Rowe Price International Stock Fund (TR-INS)					"				
75 --SSGA S&P 500 Flagship Fund Series C					"				
76 --Stable Value Fund (PC-SUF)					"				
77									
78									
79									
80									
81									
82									
83									
84									
85									

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

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Fischer, Dale S.	05/03/2003

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Fischer, Dale S.	05/03/2003

IX. CERTIFICATION

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

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

Signature Dale S. Fischer Date 5/3/03

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

FILING INSTRUCTIONS

Mail original and three additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		70	000	Notes payable to banks-secured			0
U.S. Government securities add schedule			0	Notes payable to banks-unsecured			0
Listed securities add schedule		134	000	Notes payable to relatives			0
Unlisted securities add schedule			0	Notes payable to others			0
Accounts and notes receivable			0	Unpaid rent or taxes		2	000
Due from relatives and friends		35	000	Unpaid income tax			0
Due from others			0	Other unpaid income and interest			0
Deposits [illegible] Account [illegible]		[illegible]	721	Real estate mortgages payable add schedule		150	000
Real estate owned add schedule		1[illegible]	000	Chattel mortgages and other liens payable			0
Total estate mortgages receivable			0	Other debts to include			0
Autos and other personal property		82	500				
Cash value life insurance			0				
Other assets include							
other retirement accounts		121	906				
securities funds and money markets		225	460	Total liabilities		152	000
				Net Worth	1	096	877
Total Assets	1	248	877	Total liabilities and net worth	1	248	877
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor			0	Are any assets pledged? (Add schedule)			no
On leases or contracts			0	Are you defendant in any suits or legal actions?			no
Legal Claims			0	Have you ever taken bankruptcy?			no
Provision for Federal Income Tax			0				
Other special debt			0				

Schedule of Listed Securities

3 M Co.	$3.120
Amgen Incorporated	5.332
AOL Time Warner Inc.	8.496
Bed Bath & Beyond	33.222
Broadcom Corp.	5.205
Brocade Communications Systems Inc.	1.920
Caterpillar Inc.	1.738
CDW Computer Centers	16.674
Check Point Software Tech	7.203
Chevron Texaco Corp.	1.343
Chicos FAS Inc	5.422
Cisco Systems Inc.	10.778
Dell Computer Corp.	2.950
Delphi Corp.	135
Du Pont E.I. De Nemour & Co.	1.241
Eastman Kodak Company	922
Ebay Inc.	2.820
EON Labs Inc.	6.638
Exxon Mobil Corp.	1.843
General Motors Corp.	822
Goodyear Tire & Rubber Co.	246

Home Depot Inc.	4.482
International Paper Co.	1.328
J. P. Morgan Chase & Co.	1.548
Kohls Corp.	20.909
Leapfrog Enterprises Inc.	4.700
Medtronic Inc.	5.261
Microsoft Corp.	3.620
Nasdaq - 100 Trust SR 1	5.560
Network Appliance Inc.	7.884
Oracle Corporation	7.724
PF Changs China Bistro	6.059
Paychex Inc.	5.810
Power-One Inc.	744
Qualcomm Inc.	10.393
Rouse Company	6.785
Skillsoft Pub. Ltd.	1.747
Staples Inc.	13.178
Starbucks. Corp	29.400
Synopsys Inc.	17.224
Tweeter Home Entertainment Group	1.458
Verisign Inc.	6.010
Watson Pharmaceuticals	6.186

Schedule of Real Estate Owned

Personal Residence	$498.000

Schedule of Real Estate Mortgages Payable

First Mortgage Corporation	$150.000

Schedule of Other Retirement Accounts

Judges' Retirement System II	$52. 808
457	$14.289
401(k)	$54.809

Schedule of Securities Funds and Money Markets

Credit Suisse Funds	
Strategic Value Fund	$ 90.137
Global Post-Venture Capital	1.698
Global Technology	8.198
Bender Growth Fund	15.089
E Trade Money Market	12.770
Fidelity Magellan	52.416
Schwab Money Market	2.336
Vanguard 500 Index Fund	42.806

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

As an associate with Kindel & Anderson, I provided services in connection with several pro bono matters handled by the firm, as well as through Public Counsel. Records of the amount of time I spent in these activities no longer exist, and I am not able to estimate the amount of time spent. As a partner in the firm, I assumed responsibility for supervising associates in our firm who wished to contribute their time to pro bono litigation matters. Again, referrals of such matters to these associates were generally made by Public Counsel. Records of the amount of time spent on these activities no longer exist, but I believe I spent 100 hours or more per year.

I also served on the Attorney-Client Relations Committee of the Los Angeles County Bar Association. Committee members attempted to resolve disputes over fees and services between disadvantaged clients and their attorneys. I served on the Committee for approximately one year and generally spent several hours per week.

I served on the Legal Advisory Committee of the Huntington Collection/Senior Care Network, charitable organizations affiliated with the Huntington Memorial Hospital, Pasadena California. The Committee met regularly (I believe once per month) for several hours.

I acted as probate volunteer panel counsel for the probate department of the Los Angeles Superior Court. On occasion I declined to request fees from the client or the Court. Each matter generally required only a few hours, though some involved numerous court appearances.

I handled litigation on a pro bono basis (though some fees eventually were paid by an insurer) for the Orton Dyslexia Society, Studio City, California. This was a significant litigation matter and involved a substantial amount of time.

In addition, I participated as a judge or "coach" in moot court programs for high school students and law school students. I also trained less experienced lawyers in both trial advocacy and deposition skills as a faculty member of the National Institute for Trial Advocacy. I generally spent 10 - 15 days per year on such activities.

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

   No

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

   There is a selection commission that recommended my nomination.

   I submitted a written application to the six person bi-partisan committee that evaluates applicants for the Central District of California. I was selected to be interviewed, and was unanimously recommended by the committee. I was interviewed by two additional persons and my name was forwarded to the White House. I was interviewed by various persons at the White House, the Department of Justice, and the Federal Bureau of Investigation.

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

   No

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

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

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

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

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

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

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

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

The United States Constitution establishes three separate and independent branches of government. This separation of powers is one of the great strengths of our Nation. It is the function and obligation of the members of the judicial branch to resolve the disputes properly before them by determining what the applicable law is, not what individual judges believe it should be.

If members of the judiciary do not remain faithful to this fundamental tenet, the public will lose confidence in our judicial system and the rule of law.

Senator SPECTER. Judge Sharpe, would you care to introduce relatives or friends who are in the hearing room?

STATEMENT OF GARY L. SHARPE, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF NEW YORK

Judge SHARPE. I would. Thank you, Senator. With me today is—

Senator SPECTER. Senator Thurmond used to say, "Pull the machine closer."

[Laughter.]

Judge SHARPE. With me today is my friend and supporter for the last 37 years, my wife, Lorraine.

Senator SPECTER. Thank you for joining us, Mrs. Sharpe.

Judge SHARPE. With me as well, Senator, by video, is my entire family: my two sons, Robert and Michael; their wives, Ann and Anne; and my two grandchildren, Jake and Colby.

[The biographical information of Judge Sharpe follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

   Gary Lawrence Sharpe

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

   Residence:
   Homer, New York

   Office:
   Federal Building and Court House
   100 South Clinton Street
   Syracuse, New York 13261

3. Date and place of birth.

   January 1, 1947
   Cortland, New York

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

   Married.
   Lorraine V. Sharpe nee DelNero

   Independent Contractor
   New York State Electric & Gas (NYSEG)
   1 Corporate Drive
   Kirkwood, New York 13904

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

   Cornell Law School 1971-1974 JD May 1974
   Ithaca, New York

University of Buffalo Buffalo, New York	1970-1971	BA	*Magna Cum Laude* August 1971
Ohio University Athens, Ohio	1969-1970		
Miami of Ohio Oxford, Ohio	1965-1966	Full navy scholarship Enlisted in navy active reserve	

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

1997-2003	U.S. Courts, Northern District of New York U.S. Magistrate Judge
1982-1997	United States Attorney's Office, Northern District of New York
1982-1984	Assistant U.S. Attorney
1984-1992	Supervisory Assistant U.S. Attorney
1992-1994	United States Attorney
1994-1997	Senior Litigation Counsel and Supervisory Assistant U.S. Attorney
1981-1982	New York State Attorney General's Office Special Assistant New York State Attorney General
1974-1981	Broome County District Attorney's Office
1974-1976	Assistant District Attorney
1976-1981	Senior Assistant District Attorney
1978-1982	Binghamton University and Broome Community College (Adjunct Professor)

Other Activities:

U.S. Court of Appeals, Second Circuit
Systems and Technology Committee, 2001-2003

U.S. District Court, Northern District of New York
Criminal Justice Committee, Co-Chair, 2000-2003
Systems and Technology Committee, Chair, 2001-2003
Security Committee
Federal Magistrate Judge's Association, 1997-2003

United States Attorney's Office
Onondaga County Substance Abuse Commission - funded by DOJ grant, 1992-1994
Onondaga County Youth Court, 1992-1994

Broome County Bar Association, 1976-1981
Criminal Justice Committee

New York State District Attorney's Association, 1975-1981

National College of District Attorneys, 1978-1981

Broome County District Attorney's Office
P.R.O.B.E. (Prisoner Rehabilitation Board), 1976-1981

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

1966-1968	U.S. Army, E-5, US 52966202, Honorable Discharge, Viet Nam Veteran
1965-1966	U.S. Naval Reserve, E-2, 9980666 USNR, Honorable Discharge

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

Phi Beta Kappa

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

Second Circuit

Systems and Technology Committee

U.S. District Court, Northern District of New York

Criminal Justice Committee, Co-Chair, 2000-2003
Systems and Technology Committee, Chair, 2001-2003
Security Committee

Federal Magistrate Judge's Association, 1997-2003

New York State Bar Association

Broome County Bar Association, 1976-1981

Criminal Justice Committee

National College of District Attorneys, 1978-1981

New York State District Attorney's Association, 1975-1981

Legislative Affairs Subcommittee

Onondaga County Substance Abuse Commission - funded by DOJ grant, 1992-1994

Executive Board

Onondaga County Youth Court, 1992-1994

Executive Board

P.R.O.B.E. (Prisoner Rehabilitation Board), 1976-1981

Executive Board

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

None

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

Supreme Court of the United States	May 15, 1978
United States Court of Appeals, Second Circuit	April 3, 1984
United States District Court, NDNY	February 18, 1975
New York State, Third Department	February 18, 1975

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all

speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Publications: Federal Practice (copy attached).

Speeches: I have often been asked to speak at public functions, typically about federal courts, prosecution or other matters related to criminal justice. I have not retained copies except for the two that I am enclosing. The first, "The Struggle for Justice," was delivered to the Broome County Bar Association on Law Day 1992, and was the recipient of the American Bar Association Judge Edward R. Finch Law Day U.S.A. Speech Award, First Place. The second, "Celebrate Your Freedom: Democracy and Diversity," was delivered to the Broome County Bar Association on Law Day 2000.

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

Excellent
April 7, 2003

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

United States Magistrate Judge, 1997-Present, Northern District of New York, appointed.

28 U.S.C. § 636 generically defines magistrate jurisdiction. Criminal jurisdiction generally includes authority over petty and misdemeanor offenses, complaints, search warrants, initial appearances, arraignments and bail. Civilly, magistrates exercise jurisdiction over non-dispositive matters and retain dispositive jurisdiction upon consent of the parties. Jurisdiction also includes authority over dispositive matters referred by the district court for report and recommendation. In the Northern District of New York, all civil cases are co-assigned to a magistrate who is responsible for all preliminary matters, including case management,

scheduling, non-dispositive motions and settlement efforts. Additionally and by local rule, all prisoner civil rights actions, state habeas corpus petitions and social security appeals are referred for report and recommendation.

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

(1) Opinion Citations:

1. *Ehrich v. Binghamton City School Dist.*, 02-CV-62, 210 F.R.D. 17 (N.D.N.Y. Oct. 15, 2002) (copy enclosed)

2. *Murray v. Warden, FCI Raybrook*, 01-CV-255, 2002 WL 31741247 (N.D.N.Y. Dec. 5, 2002) (copy enclosed)

3. *Campney v. David*, 9:00-CV-80, 2001 WL 1860964 (N.D.N.Y. Oct. 3, 2001) (copy enclosed)

4. *United States v. Carswell*, 144 F. Supp. 2d 123 (N.D.N.Y. 2001)

5. *United States v. Newkirk, 97*-CR-4469, 2000 WL 374933 (N.D.N.Y. Apr. 6, 2000) (copy enclosed)

6. *United States v. Carretero*, 98-CR-418, 1999 WL 1034508 (N.D.N.Y. Nov. 4, 1999) (copy enclosed)

7. *Carter v. Herbert*, 00-CV-1821, 2002 WL 975309 (N.D.N.Y. Jan. 8, 2002) (copy enclosed)

8. *Baldwin v. Wiley*, 9:99-CV-336, 2001 WL 1860888 (N.D.N.Y. Sept. 19, 2001) (copy enclosed)

9. *Donhauser v. Goord*, 9:01-CV-1535, 2003 WL 158765 (N.D.N.Y. Jan. 22, 2003) (copy enclosed)

10. *Delisser v. Goord*, 902-CV-00073, 2003 WL 133271 (N.D.N.Y. Jan. 15, 2003) (copy enclosed)

(2) Appellate Reversals and Modifications

1. *Grotto v. Herbert*

Summary: In a state habeas corpus petition, I recommended dismissal, finding that the trial court's failure to grant a continuance did not violate the petitioner's due process rights. The District Court disagreed, and granted the petition. The Second Circuit reversed the District Court.

Grotto v. Herbert, 9:98-CV-0627, 2001 WL 1860882 (N.D.N.Y. Jan. 24, 2001) (report and recommendation) (copy attached)

Grotto v. Herbert, 203 F.Supp.2d 142 (N.D.N.Y. 2002) (District Court opinion)

Grotto v. Herbert, 316 F.3d 198 (2d Cir. 2003) (Second Circuit opinion)

2. *Wallace v. Nash*

Summary: In a federal habeas corpus petition challenging the loss of good-time credits, I recommended dismissal because a pool cue, given the manner in which it was used, was a weapon as defined by the federal regulations. The District Court concurred, and the Second Circuit reversed.

Wallace v. Nash, 9:00-CV-0598 (unpublished) (report and recommendation) (copy attached)

Wallace v. Nash, 9:00-CV-0598 (unpublished) (District Court Decision and Order) (copy attached)

Wallace v. Nash, 311 F.3d 140 (2d Cir. 2002) (Second Circuit opinion)

3. *Alder v. Apfel*

Summary: Reviewing Social Security's denial of disability benefits, I recommended remand of the proceedings for a further hearing and findings. The District Court rejected the recommendation, and affirmed the denial of benefits.

Alder v. Apfel, 98-CV-136 (unpublished) (report and recommendation) (copy attached)

Alder v. Apfel, 99-CV-136, 1999 WL 1458368 (N.D.N.Y. Aug. 13, 1999) (District Court opinion) (copy attached)

4. *Hameed v. Coughlin*

Summary: In a prisoner civil rights action, I recommended granting the defendants' summary judgment motion as to all claims except an administrative segregation Due Process claim which I found was not moot. The District Court adopted the report, but rejected the recommendation concerning the surviving claim because it found that it was moot.

Hameed v. Coughlin, 37 F.Supp.2d 133 (N.D.N.Y. 1999) (District Court opinion and report and recommendation)

5. *Shaw v. Commissioner of Social Security*

Summary: Reviewing Social Security's denial of disability benefits, I recommended dismissal of the appeal for failure to file a brief in compliance with the Local and Federal Rules. The District Court rejected the recommendation, and granted additional time to file the brief.

Shaw v. Commissioner of Social Security, 98-CV-27 (unpublished) (report and recommendation) (copy attached)

Shaw v. Commissioner of Social Security, 98-CV-27, 1998 WL 809080 (N.D.N.Y. Nov. 17, 1998) (District Court opinion) (copy attached)

6. *Carpetmaster of Latham, LTD. v. Dupont Flooring Systems, Inc.*

Summary: On referral from the District Court and after two hearings and two report and recommendations, I recommended dissolution of a state court temporary restraining order and the denial of plaintiff's application for a preliminary injunction. The District Court remanded the first report and recommendation for a further hearing in light of newly discovered evidence. The District Court adopted the second report and recommendation as to the dissolution of the temporary restraining order and one component of the application for a preliminary injunction. The District Court rejected the recommendation as to the second component of the preliminary injunction, and granted it.

Carpetmaster of Latham, LTD. v. Dupont Flooring Systems, Inc., 97-CV-1807 (N.D.N.Y. Feb. 10, 1998) (first report and recommendation) (copy enclosed)

Carpetmaster of Latham, LTD. v. Dupont Flooring Systems, Inc., 12 F.Supp.2d 257 (N.D.N.Y. 1998) (District Court opinion and second report and recommendation)

7. *Rabb v. Lt. McMaher et. al.*

Summary: In a prisoner civil rights action, I recommended that a summary judgment motion be granted because a prisoner's Due Process rights had not been violated during a prison disciplinary hearing. Citing a change in the law after the report was issued, the District Court remanded the matter for further consideration.

Rabb v. Lt. McMaher et. al., 94-CV-614, 1998 WL 214425 (N.D.N.Y. Ap. 24, 1998) (District Court opinion and report and recommendation)

(3) Constitutional Issues:

I would not interpret any of my opinions as addressing "significant" federal or state constitutional issues.

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

1974-1981	Broome County District Attorney's Office, Assistant and Senior Assistant District Attorney, appointed
1981-1982	New York State Attorney General's Office, Special Assistant Attorney General, appointed
1982-1997	United States Attorney's Office, Northern District of New York, appointed
	Senior Litigation Counsel and Supervisor (1994-1997)
	United States Attorney (Interim) (1992-1994)
	Supervisory Assistant U.S. Attorney and Assistant U.S. Attorney (1982-1992)

No candidacies for elective office.

17. Legal Career:

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

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

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

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

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

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

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

2. What percentage of these appearances was in:
   (a) federal courts;
   (b) state courts of record;
   (c) other courts.

3. What percentage of your litigation was:
   (a) civil;
   (b) criminal.

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

5. What percentage of these trials was:
   (a) jury;
   (b) non-jury.

17(a) Chronological Law Practice and Experience:

I have never served as a judicial law clerk nor have I ever practiced alone.

From 1974-1981, I was employed as an Assistant District Attorney and Senior Assistant District Attorney.

Broome County District Attorney's Office
Press Building, 7th Floor
19 Chenango Street
Binghamton, New York 13902

From 1981-1982, I was employed as a Special Assistant Attorney General in Syracuse, New York. The actual Office of the Special Prosecutor was located in leased space, and the work of the office terminated in 1982. I presume that personnel records are retained in Albany at the address provided.

New York State Attorney General's Office
The Capitol
Albany, New York 12224

From 1982-1997, I was employed by the United States Attorney's Office, Northern District of New York. From 1982-1992 and from 1994-1997, I worked principally in Binghamton, and was designated at various times as an Assistant U.S. Attorney, Supervisory Assistant U.S. Attorney and Senior Litigation Counsel. From 1992-1994, I was the Interim U.S. Attorney and worked in Syracuse.

United States Attorney's Office
Northern District of New York
Federal Building and Courthouse
100 South Clinton Street
Syracuse, New York 13202

- and -

319 Federal Building and Courthouse
15 Henry Street
Binghamton, New York 13901

From 1997-present, I have been a United States Magistrate Judge in the Northern District of New York.

Federal Building and Courthouse
100 South Clinton Street
Syracuse, New York 13261

17(b)(c) General Character of Law Practice, Litigation Experience and Court Appearances:

My legal practice and experience from 1974-1997 was almost entirely in the local, state and federal public sector, principally as a prosecutor and primarily focused on federal and New York criminal law and procedure. Additionally, I was an adjunct professor at Binghamton University and Broome Community College from 1978-1982, and taught business law, constitutional law and criminal substantive and procedural law. Since 1997, I have been a federal magistrate judge in the Northern District of New York.

From 1974-1981, I was a local prosecutor serving the public and crime victims, and had daily interaction with various local, state and federal police agencies. I appeared in state courts of record almost daily, and tried literally hundreds of jury and non-jury criminal cases as sole counsel. I also appeared before the New York Appellate Division, Third Department (felonies), or the Broome County Court (misdemeanors) as sole appellate counsel on all appeals. 99% of my appearances were in criminal litigation, and in state courts of record. 1% of my appearances involved civil litigation, and most of that in state courts of record although there were infrequent civil appearances in federal court, principally related to post-conviction collateral proceedings. I estimate that I tried more than 100 jury trials during that period.

From 1981-1982, I was hired to litigate a single criminal case then indicted by the New York State Attorney General, Office of the Special

Prosecutor. That trial was conducted in Syracuse, and lasted three months. I had daily interaction with members of the New York State Police Task Force assigned to that office. 100% of my time was devoted to that case which was assigned to a Special Term of the New York State Supreme Court.

From 1982-1997, I was a federal prosecutor, serving the public and crime victims. I had almost daily interaction with federal courts and with various local, state and federal police agencies. I appeared almost exclusively in federal court (99%) with 95% of my time devoted to criminal matters, and 5% devoted to civil litigation. The actual number of trials were far less than in earlier years, although the investigations and prosecutions were far more complex. Considerable time was devoted to the investigatory phases, grand jury practice and pre-trial motions. I was typically assigned to investigate and prosecute large-scale criminal organizations extant in the Binghamton area. Examples include the racketeering conviction of thirty-two members and associates of the Upstate Chapter of the Hell's Angels Motorcycle Club, the racketeering conviction of members of the Bufalino Organized Crime Family and local chapters of the Teamsters' and Laborers' Unions, the mail fraud conviction of a former IRS agent and others for having defrauded more than five hundred victims of over $8 million dollars in a bogus oil well scheme, and the convictions of forty-eight members of a Binghamton drug organization for various charges, including arson-murder, weapons possession and operating a continuing criminal enterprise. In each of these cases, I was the sole prosecutor during the pre-trial stages, but utilized associate trial counsel because of the length of each trial and the number of witnesses. I estimate that I tried approximately twenty cases to verdict during this period, and also briefed and argued the majority of appeals before the Second Circuit. In the civil arena, I estimate that I tried approximately five cases to verdict, all non-jury. 100% of my court appearances were in federal court.

From 1992-1994, I was the interim United States Attorney for the Northern District of New York. I was in charge of three offices, thirty attorneys and a seventy member support staff. I was responsible for all decisions in criminal and civil cases prosecuted on behalf of the United States, and I had routine liaison responsibilities with the Department of

Justice, all federal agencies and various community groups. I was co-trial counsel in a criminal matter in federal court during that period. 95% of my responsibilities were administrative in nature, including the supervisory review of all civil and criminal matters.

From 1997-2003, I have been a magistrate judge, and have presided over five civil jury trials upon consent, and numerous hearings and other proceedings referred by the District Court. Currently, I am responsible for all criminal matters arising in the Binghamton filing division, and share bi-monthly responsibility for all criminal matters arising in the Syracuse and Utica filing divisions. From 1997-1999, I was responsible for all criminal matters arising in the Syracuse, Binghamton, Watertown and Utica filing divisions. I estimate that 90 % of my time is devoted to civil matters and 10% to criminal matters. Given magistrate responsibilities in this district, my civil responsibilities encompass a broad range of federal question and diversity subjects, the latter principally involving New York substantive law.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

    (a) the date of representation;
    (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
    (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

    1. *United States v. Archie L. Joyner et. al.*

    Citations:

    Docket No. 3:95-CR-00232 (N.D.N.Y.)

United States v. Barrett et. al., 997 F.Supp 312 (N.D.N.Y. 1998) (McAvoy, C.J.) (decision on motion for new trial)

United States v. Joyner et. al., 201 F.3d 61 (2d Cir. 2000) (affirming convictions in part, reversing in part, and remanding in part), 313 F.3d 40 (2d Cir. 2002) (denying petitions for rehearing following remand)

Capsule Summary:

This investigation was commenced to solve the arson-murder of an elderly invalid who resided in an apartment over a Binghamton tavern. The arson-murder was committed by members of one drug gang competing with another for control of the tavern. Forty-eight (48) members of the gang were convicted on various charges of arson-murder, engaging in a continuing criminal enterprise, weapons offenses and drug dealing, all occurring from 1989-1995.

Party Represented, Participation and Dates:

On behalf of the United States and as the prosecutor in charge of the Binghamton office of the United States Attorney's Office, this was a joint federal, state and local investigation coordinated by me as sole prosecutor during the investigatory, grand jury, motion and preliminary plea stages. Over 112 witnesses testified during a two month trial, and another Assistant U.S. Attorney provided trial support. All defendants except six plead, and the first trial ended in the conviction of all except two defendants (hung jury) who were thereafter convicted following a re-trial. The trial convictions were handled on appeal by the Department of Justice's Appellate Section after I became magistrate judge. The investigation began in November 1994, and after three indictments, numerous pleas and the two trials, my participation ended in November 1997.

Courts and Judges:

Hon. Thomas J. McAvoy, Chief District Court Judge, Northern District of New York (Trial)

Hon. Ralph K. Winter, Jr., C. J., Richard J. Cardamone, and Fred I. Parker, Circuit Judges, Second Circuit Court of Appeals

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2. *United States v. Axelrod et. al.*

Citations:

Docket No. 5:92-CR-00342 (N.D.N.Y.) (Criminal)

Docket No. 5:99-CV-00499 (N.D.N.Y.) (Collateral Relief)

United States v. Axelrod et. al., 47 F.3d 1157 (2d Cir. 1995) (Table) (aff'ing convictions) and 48 F.3d 72 (2d Cir. 1995) (*Per Curiam*) (aff'ing convictions of Noel and Marsh in separate opinion, but remanding Marsh for re-sentencing), *cert. den. sub nom. Noel v. United States*, 514 U.S. 1073 (1995), and *sub. nom. Marsh v. United States*, 514 U.S. 1073 (1995), and *habeas corpus den. by Marsh v. United States*, 99-CV-499, 1999 WL 450937 (N.D.N.Y. Je. 21, 1999), *aff'd* 162 F.3d 1149 (1998), *cert. den.* 523 U.S. 1054 (1998).

Capsule Summary:

This was a drug manufacturing and distribution conspiracy involving more than one hundred pounds of methamphetamine and fifteen defendants who manufactured the drug in Colorado mines with precursor chemicals obtained in Mexico, and then distributed it nationally in

California, Texas, Colorado and New York. Five defendants were convicted after trial, and the remainder plead guilty.

Party Represented, Participation and Dates:

On behalf of the United States and while I was interim United States Attorney, I was co-counsel during trial preparation and a two month trial in 1993. At the time, there was a reduction in force in the Department of Justice, and the office was understaffed. All defendants were convicted. The appellate and post-conviction proceedings were handled by Mr. West.

Courts and Judges:

Hon. Howard G. Munson, District Court Judge, Northern District of New York (trial and post-conviction proceedings)

Hon. Wilfred Feinberg, Ellsworth A. VanGraafeiland, John M. Walker, Jr., Amalya L. Kearse, and Jack B. Weinstein, District Judge, sitting by designation, Circuit Judges, Second Circuit Court of Appeals

Other Counsel:

Note: Electronic storage of Northern District dockets post-dates this conviction. I recall trial counsel, but not those who represented the pleading defendants.

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3. *United States v. Anthony F. Guranieri et. al.*

Citations:

Docket No. 89-CR-194 (N.D.N.Y.)

United States v. Guarnieri et. al., 89-CR-194, 1990 WL 15256 (N.D.N.Y. Feb. 6 1990) (McAvoy, D.J.) (decision on omnibus motions)

United States v. Pavlisak et. al., 89-CR-194, 1990 WL 208705 (N.D.N.Y. Dec. 7, 1990) (McAvoy, D.J.) (decision on Fed. R. Cr. P. 44(c) conflict hearing)

United States v. Pavlisak et. al., 89-CR-194, 1991 WL 111232 (N.D.N.Y. Apr. 25, 1991) (McAvoy, D.J.) (decision on stay of execution of sentence pending appeal)

United States v. LoVaglia et. al., 954 F.2d 811 (2d Cir. 1992) (aff'ing convictions of Pavlisak, Clune and LoVaglia), and 946 F.2d 882 (2d Cir. 1991) (Table) (aff'ing other convictions), *cert. den. sub. nom. Mosco v. United States*, 503 U.S. 941 (1992)

Capsule Summary:

This was a mob and union racketeering and extortion case involving thirteen defendants, including a capo and soldier of the Bufalino Crime Family, the president and business agent of the local Laborers' Union and the president of the local Teamsters' Union. Among other charges, the indictment focused on the mob infiltration of the unions during a multi-million dollar interstate construction project in Binghamton and union extortion of various construction companies and their own members for more than a decade. Four defendants were indicted on lesser charges ranging from perjury before the grand jury to filing false documents to hide their failure to pay prevailing wage rates. All mob and union defendants were convicted, three after trial and the rest by plea. The four lesser defendants were acquitted after trial.

Party Represented, Participation and Dates:

On behalf of the United States and as the prosecutor in charge of the Binghamton office of the United States Attorney's Office, this was a joint federal, state and local investigation coordinated by me as sole prosecutor through the investigatory, grand jury, motion and preliminary plea stages. Over 100 witnesses testified during a three month trial, and another Assistant U.S. Attorney provided trial and post-trial appellate support. The investigation began in 1988, and the remaining proceedings concluded in 1999 although I ceased handling those matters in 1997 when I became magistrate judge.

Courts and Judges:

Hon. Thomas J. McAvoy, District Court Judge (Trial)

Hon. James L. Oakes, C.J., Wilfred Feinberg and Thomas J. Meskill, Circuit Judges, Second Circuit Court of Appeals

Other Counsel:

Note: Electronic storage of Northern District dockets post-dates this conviction. I recall trial counsel, but not those who represented the pleading defendants.

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4. *United States v. Thomas H. Hornick et. al.*

Citations:

Docket No. 88-CR-190 (Criminal)

Docket No. 3:94-CV-01523 (Collateral proceedings)

United States v. Hornick et. al., 88-CR-190, 1989 WL 49793 (N.D.N.Y. May 10, 1989) (McAvoy, D.J.) (decision on pretrial motions)

United States v. Miller, 730 F.Supp. 1207 (N.D.N.Y. 1990) (McAvoy, D.J.) (bail application pending appeal)

United States v. Hornick et. al., 942 F.2d 105 (2d Cir. 1991), *cert. den. by Hornick v. United States*, 502 U.S. 1061 (1992) (Delores Hornick), and *appeal after remand*, *United States v. Hornick*, 963 F.2d 546 (2d Cir. 1992) (*aff'ing* Thomas Hornick sentence foll. remand), *cert. den. by Hornick v. United States*, 506 U.S. 926, *pet. for rehearing den.* 506 U.S. 1029 (1992)

United States v. Hastings, 953 F.2d 635 (2d Cir. 1991) (Table) (*aff'ing* conviction of Hastings in separate decision)

Hornick v. United States, 891 F.Supp. 72 (N.D.N.Y. 1995) (McAvoy, C.J.) (denying motion to modify sentence)

United States v. Hornick et. al., 182 F.R.D. 9 (N.D.N.Y. 1998) (McAvoy, C.J.) (denial of *ex parte* application to disclose grand jury materials to I.R.S.)

Untied States v. Hastings, 173 F.3d 847 (1999) (*aff'ing* district court denial of *coram nobis*), *cert. den.*, 528 U.S. 987 (1999)

Capsule Summary:

This was a mail and wire fraud case involving a former I.R.S. agent and six others who defrauded over 500 investors of more than $8 million

dollars through the sale of bogus oil well investments. Three defendants were convicted after trial, and four plead guilty.

Party Represented, Participation and Dates:

On behalf of the United States and as the prosecutor in charge of the Binghamton office of the United States Attorney's Office, this was a federal investigation coordinated by me as sole prosecutor through the investigatory, grand jury, motion and preliminary plea stages. Over 100 witnesses testified during a three month trial, and another Assistant U.S. Attorney was trial co-counsel. The appellate and post-conviction collateral proceedings were handled by me until I left the office in 1997. The investigation began in 1987, and the final post-conviction proceedings concluded in 1999.

Courts and Judges:

Hon. Thomas J. McAvoy, Chief District Court Judge (Trial)

Hon. Richard J. Cardamone, John M. Walker, Jr., Daniel M. Friedman, United States Circuit Judge for the Federal Circuit sitting by designation, Wilfred Feinberg, Ralph K. Winter, Frank X. Altimeri, Jose A. Cabranes, and Nicholas Tsoucalas, United States Court of International Trade, sitting by designation, Circuit Judges, Second Circuit Court of Appeals

Other Counsel:

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United States Attorney's Office
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Co-Counsel

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David J. Menke, Esq..
Attorney for Defendant Youkett
Deceased

Joseph F. Cawley, Esq.
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Vincent Sgueglia, Esq. (Now)
Hon. Vincent Sgueglia
Attorney for Defendant Miller
Tioga County Court Judge
20 Court Street
Owego, New York 13827
(607) 687-0544

5. *United States v. Patrick L. Largie*

Citations:

Docket No. Unknown (N.D.N.Y., 1985-1986) (McMahon, D.J., S.D.N.Y., sitting by designation) (Criminal)

United States v. Largie, 841 F.2d 1117 (2d Cir. 1988) (Table)

Capsule Summary:

This was a mail and wire fraud case involving a defendant who falsely claimed to be a licensed CPA, and defrauded hundreds of victims by appearing on their behalf before the Internal Revenue Service. The defendant was convicted after trial.

Party Represented, Participation and Dates:

On behalf of the United States and as the prosecutor in charge of the Binghamton office of the United States Attorney's Office, this was a federal investigation coordinated by me as sole prosecutor throughout all proceedings. The investigation began in 1985 and all proceedings concluded in 1988.

Courts and Judges:

Hon. Lloyd McMahon, District Court Judge (deceased)

Other Counsel:

Joseph J. Joch, Esq.
Attorney for Defendant Largie
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Ithaca, New York 14851
(607) 272-7279

6. *United States v. Cheeseman et.al.*

Citations:

Docket No. 85-CR-66

United States v. LoFranco, 620 F.Supp. 1324 (N.D.N.Y. 1985) (Munson, C.J.) (district court bail decision)

United States v. Cheeseman et. al., 620 F.Supp. 1327 (N.D.N.Y. 1985) (Munson, C.J.) (district court decision denying application to stay bail orders)

United States v. Deitz, 629 F.Supp. 655 (N.D.N.Y. 1986) (Munson, C.J.) (district court decision denying bail pending appeal)

United States v. Cheeseman et. al., 783 F.2d 38 (2d Cir. 1986) (appeal of bail issues)

Capsule Summary:

This was a racketeering, drug and weapons prosecution of thirty-two members and associates of the Upstate Chapter of the Hell's Angels Motorcycle Club ("HAMC"). All defendants plead except two who were convicted after trial. The verdict constituted the first national racketeering conviction of the HAMC.

Party Represented, Participation and Dates:

On behalf of the United States and as the prosecutor in charge of the Binghamton office of the United States Attorney's Office, this was a federal, state and local investigation coordinated by me as sole prosecutor throughout all pre-trial proceedings. Co-counsel assisted at trial and with the appellate work. The investigation began in 1983, was indicted in 1985 and resulted in the conviction of all except two defendants by plea in 1985-1986, and conviction of the remaining two following trial in 1986.

Courts and Judges:

Hon. Howard G. Munson, Chief District Court Judge, Northern District of New York

Hon. William H. Timbers, Ellsworth A. VanGraafeiland, and Jon O. Newman, Circuit Judges, Second Circuit Court of Appeals

Other Counsel:

Note: Electronic storage of Northern District dockets post-dates this conviction. I recall trial counsel, and have listed the others I either recollect or have been able to identify from the reported cases.

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Chief, Organized Crime Unit
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Hon. John J. Brunetti
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New York Supreme Court Justice
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120 E. Washington Street
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(315) 474-0772

Remo A. Allio, Esq.
Attorney for Defendant Cirzeveto
Deceased

7. *United States v. Rexer, Pappas and Pasquale.*

Citations:

Docket No. Unknown (1983) (N.D.N.Y., Munson, C.J.) (Criminal)

Capsule Summary:

This was a $5 million fraud case involving five defendants who were convicted of diverting federal food destined for the Binghamton and Endicott, New York, school lunch programs into local, commercial restaurants.

Party Represented, Participation and Dates:

On behalf of the United States and as the prosecutor in charge of the Binghamton office of the United States Attorney's Office, this was a federal investigation coordinated by me as sole prosecutor throughout all proceedings. The investigation began in 1982 and all proceedings concluded in 1984.

Courts and Judges:

Hon. Howard G. Munson, Chief District Court Judge

Other Counsel:

Note: Electronic storage of Northern District dockets post-dates this conviction. I have listed those I recollect.

N. Theodore Sommer, Esq.
Attorney for Defendant Rexer
Hinman, Howard & Kattell
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700 Security Mutual Building
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(607) 723-5341

Martin E. Smith, Esq. (Now)
Hon. Martin E. Smith
Attorney for Defendant Pasquale
Broome County Court Judge
60 Hawley Street
Binghamton, New York 13902
(607) 778-2418

Stanley B. Reiter, Esq.
Attorney for Defendant Pappas
Deceased

8. *United States v. Carrier*

Citations:

Docket No. 81-CR-70

United States v. Carrier, 517 F.Supp. 644 (N.D.N.Y. 1981) (Munson, D.J.) (dismissing indictment), *rev'd* 672 F.2d 300 (2d. Cir.), *cert. den.*, 457 U.S. 1139 (1982), *aff'd foll. trial*, 708 F.2d 77 (2d Cir. 1983).

Capsule Summary:

This case involved the conviction of a Binghamton woman who traveled to Virginia where then President Reagan rode horses, and then threatened to murder him. She was convicted after trial.

Party Represented, Participation and Dates:

On behalf of the United States, I was assigned trial responsibility after the District Court's earlier dismissal and the Circuit's reversal. I tried the case in 1982, and prosecuted the post-conviction appeal.

Courts and Judges:

Hon. Howard G. Munson, Chief District Court Judge (Pre-trial)

Hon. Roger J. Miner, then District Court Judge, now Sr. Circuit Judge, Second Circuit Court of Appeals (trial)

Hon. William H. Timbers, Amalya L. Kearse, Richard J. Cardamone, Lawrence W. Pierce and John W. Peck, Senior Judge of the United States Court of Appeals for the Sixth Circuit, sitting by designation, Circuit Judges, Second Circuit Court of Appeals

Other Counsel:

Ronald J. Benjamin, Esq.
Attorney for Defendant Carrier
126 Riverside Drive
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(607) 772-1442

9. *People v. Bragman et. al.*

Citations:

Docket No. Unknown (1980-81) (Supreme Court, Onondaga County, Extraordinary and Special Term, Lyman H. Smith, Justice)

Capsule Summary:

This case alleged political corruption by two defendants involved in the financing and construction of a solid waste plant in the City of Syracuse. Both defendants were acquitted after a three month trial.

Party Represented, Participation and Dates:

I was hired as a Special Assistant Attorney General by the Special Prosecutor to try this indicted case. From 1981-1982, I was the sole prosecutor responsible for trial preparation and trial.

Courts and Judges:

Hon. Lyman H. Smith, Justice, New York Supreme Court

Other Counsel:

Paul J. Shanahan, Esq.
Attorney for Defendant Bragman
Deceased

Richard Grossman, Esq
Attorney for Defendant Stephan
2 Clinton Square
Syracuse, New York 13202
(315) 421-1000

10. *People v. Zikuski et.* al. and *People v. Bowles*

Note: I have selected two separate "litigated matters" from my early days which, in my view, are significant because they stand for the proposition that justice applies equally to everyone.

Citations:

Docket Nos. Unknown, *Zikuski* (1978), *Bowles* (1979), Broome County Court, Binghamton, New York, Hon. Stephen Smyk, Broome County Court Judge

People v. Zikuski, 65 A.D.2d 905 (Sup. Ct., App. Div., 3d Dep't 1978)

Capsule Summary:

Zikuski was a robbery prosecution and conviction that involved three men, one of whom was the son of a local attorney and another, the brother of a detective in the local police department. *Bowles* was a sexual assault and burglary conviction involving a female victim who was destitute, had just been released from prison after serving a sentence for armed robbery, and who had a lengthy criminal record for prostitution.

Party Represented, Participation and Dates:

On behalf of the People of New York and while I was Senior Assistant District Attorney, these cases were prosecuted by me in 1978 and 1979 from inception through trial, and in the case of *Zikuski*, through appeal.

Courts and Judges:

Hon. Stephen Smyk, Broome County Court Judge (retired)

Hon. Kane, Main, Larkin, Mikoll and Herlihy, Associate Justices, Appellate Division, Third Department (*Zikuski*)

Other Counsel:

Earl D. Butler, Esq.
Attorney for Bowles
231 Main Street
Vestal, New York 13850
(607) 748-9907

James M. Zaccaria, Esq.
Attorney for Defendant Zikuski
Address Unknown

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

While employed by the Broome County District Attorney from 1974-1981, I was a member of the Broome County Bar Association's Criminal Justice Committee, and worked to ensure cohesion between the courts, defense bar and prosecution. From 1976-1981, I was a member of the executive board of a non-profit organization affiliated with the Y.W.C.A. (PROBE), and worked on educational and employment programs designed to rehabilitate those charged and convicted of crime. I lectured at numerous seminars attended by the defense bar, prosecutors and police, and taught annually at a New York Law Enforcement Academy. I also participated in the New York State District Attorney's Association, and was an active member of the Legislative Affairs Subcommittee which drafted proposed substantive and procedural criminal legislation.

As a prosecutor with the United States Attorney's Office (1982-1997), I did the same things, but on an expanded geographic basis throughout the thirty-two Upstate New York Counties. I served on the Executive Board of the Onondaga County Substance Abuse Commission from 1992-1994. The Commission was funded by a Department of Justice grant, and was designed to integrate all segments of the community into a cohesive and comprehensive approach to substance abuse. We conducted bi-weekly meetings, met with all community, business, religious, and educational leaders and representatives of community-based groups, and designed numerous programs to deal with substance abuse. From 1992-1994, I also served on the Executive Board of the Onondaga County Youth Court. The Youth Court was created to divert youngsters from the traditional criminal justice system into an arena governed by their peers. Also, I sponsored numerous victims' rights events and frequently served as a spokesperson for numerous Upstate victims' rights organizations. I frequently appeared before various civic and business organizations to discuss criminal justice issues.

As a magistrate judge since 1997, I have continued to participate as a lecturer and contributor to educational programs sponsored by the Broome and Onondaga County Bar Associations, the New York State Bar Association and this district's federal bar counsel. I have also actively participated in various judicial committees designed to improve the delivery of judicial resources to the litigants who appear before the court, including the Criminal Justice Committee's efforts to improve the quality of

representation to indigents. I am an active participant in the district's security committee which, in coordination with other federal agencies, focuses on security issues in the federal buildings and courthouses. I am also an active participant in the Second Circuit and Northern District technology committees, both of which focus on the appropriate use of, and security of, court technology systems.

Because the Northern District of New York engages in full utilization of its magistrate judges, I have routinely engaged in judicial duties during the last six years focused on the full range of substantive federal litigation typically handled by the District Court. For example, I have had extensive experience in litigation involving Title VII (race, age, gender and employment discrimination), civil rights discrimination, disability discrimination under the Americans with Disabilities Act, intellectual property, products liability, social security review, habeas corpus and exclusive federal claims under the Federal Tort Claims Act and the Federal Employers Liability Act. In diversity and pendant federal question cases, I have also had extensive civil experience in substantive New York law.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

There are no future compensation arrangements of any kind related to prior employment except my vested interest in the federal FERS retirement system.

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

Since I am already a judicial officer, I will continue to employ the procedures currently in effect nationally and in this district. Here, all civil filings are randomly assigned, but pre-screened electronically for potential conflicts. For years, I have been an annual filer of the Financial Disclosure Report required by the Ethics in Government Act of 1978. When the Report is filed, I update the database to add any entities that would create a conflict if an action was randomly assigned to me, thereby excluding the assignment in the first place. Naturally, I must also continue to monitor case assignments where the United States is a party to ensure that the underlying matter was not pending when I was an employee of the United States Attorney's Office. Since more than five years have now elapsed, there are far fewer such conflicts requiring my recusal.

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

   No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

   Attached is my Financial Disclosure Report.

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

   Attached is net worth statement.

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

   No.

FINANCIAL STATEMENT

NET WORTH

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

ASSETS		LIABILITIES	
Cash on hand and in banks	$ 8,676	Notes payable to banks-secured	$ 17,075
U.S. Government securities-add schedule	$ 0	Notes payable to banks-unsecured	$ 0
Listed securities-add schedule	$ 3,528	Notes payable to relatives	$ 0
Unlisted securities--add schedule	$ 0	Notes payable to others	$ 0
Accounts and notes receivable:	$ 0	Accounts and bills due	$ 0
Due from relatives and friends	$ 0	Unpaid income tax	$ 0
Due from others	$ 0	Other unpaid income and interest	$ 0
Doubtful	$ 0	Real estate mortgages payable-add schedule	$ 137,937
Real estate owned-add schedule	$ 200,000	Chattel mortgages and other liens payable	$ 0
Real estate mortgages receivable	$ 0	Other debts-itemize:	
Autos and other personal property	$ 123,600	Toyota Motor Credit Corporation	$ 27,200
Cash value-life insurance	$ 0		
Other assets itemize:			
1998 Boat	$ 6,000		
IRA (Morgan Stanley)	$ 25,000		
Federal Retirement (FERS)	$ 300,486	Total liabilities	$ 182,212
Putnam 401(K) (Lorraine)	$ 205,000	Net Worth	$1,009,078
American Express (IRA) (Lorraine retirement; *see notes*)	$ 319,000		
Total Assets	$1,191,290	Total liabilities and net worth	$1,191,290
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor	$ 0	Are any assets pledged? (Add schedule)	NO
On leases or contracts	$ 0	Are you defendant in any suits or legal actions?	NO
Legal Claims	$ 0	Have you ever taken bankruptcy?	NO
Provision for Federal Income Tax	$ 0		
Other special debt	$ 0		

AO-10
Rev. 1/2002

FINANCIAL DISCLOSURE REPORT
FOR CALENDAR YEAR 2002

Report Required by the Ethics in Government Act of 1978, (5 U.S.C. App. §§101-111)

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
SHARPE, GARY L.	U.S. District Court, NDNY	4/29/03
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Court Judge - Nominee	**5. Report Type (check appropriate type)** X Nomination, Date 4/28/03 __ Initial __ Annual __ Final	**6. Reporting Period** 01/01/2002 to 04/29/2003
7. Chambers or Office Address Federal Building & Courthouse PO Box 7346, 100 S. Clinton St. Syracuse, NY 13261-7346	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.** Reviewing Officer _____ Date _____	

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

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

	POSITION	NAME OF ORGANIZATION/ENTITY
X	**NONE** (No reportable positions.)	
1		
2		
3		

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

	DATE	PARTIES AND TERMS
X	**NONE** (No reportable agreements.)	
1		
2		
3		

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

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
	NONE (No reportable non-investment income.)		
1	2002 - March 31, 2003	New York State Electric & Gas ("NYSEG")	$
2	April 1 - 29, 2003	Alternative Business Systems, Inc. (Independent	$
3		Contractor For NYSEG)	$
4			$
5			$

Senator SPECTER. Okay. Thank you very much.

Judge Fischer, what is your current occupation?

Judge FISCHER. Thank you, Senator. I'm a judge of the Los Angeles Superior Court. That's the trial court level in Los Angeles.

Senator SPECTER. And how long have you held that position?

Judge FISCHER. I started off as a judge of the municipal court, which was a limited jurisdiction court, in March of 1997. When our two trial court levels unified in January of 2000, I became a judge of the superior court.

Senator SPECTER. Which is your law school?

Judge FISCHER. Harvard Law School.

Senator SPECTER. And when did you graduate?

Judge FISCHER. 1980, Senator.

Senator SPECTER. And, briefly, what has your practice been since graduation from law school to becoming a judge?

Judge FISCHER. Senator, I immediately jointed the law firm of Kindel and Anderson, which practiced exclusively in the civil area. I did volunteer briefly for the Los Angeles City Attorney's Office and prosecuted misdemeanors as a special project that office had, but my practice was exclusively civil in both the State and Federal courts until my appointment to the bench in 1997. Since that time, I have done only criminal matters.

Senator SPECTER. Do you do only criminal court as a State trial judge?

Judge FISCHER. That's correct, Senator. We have a very large court with quite a number of judges.

Senator SPECTER. I note that, in addition to your judicial duties, you spend time educating people on judicial issues, that you were Chair of the Temporary Judge Committee in Los Angeles County where you have nearly 1,000 temporary judges under your tutelage. Tell us about that Committee and your work on it.

Judge FISCHER. Thank you, Senator, for your interest in that subject. Our court serves so many people that we employ—or I shouldn't use the term "employ"—use the services of attorneys in our community who go through an extensive training program and serve in our Small Claims and Traffic Courts, and I undertook the responsibility of training them and setting up a program to monitor them and to counsel them, if appropriate, and to ensure that the service that they provide to our citizens in Los Angeles County is the best possible service.

Senator SPECTER. In your questionnaire, Judge Fischer, you noted that you had participated as a judge or coach in moot court programs for high school and law school students. What motivated you to become active in those programs?

Judge FISCHER. Thank you, Senator, for the opportunity to address that. I think it's important for both attorneys and judges to participate in making the system better and improving the quality of both lawyers and judges, and by doing so, I think we improve the amount of respect that our citizens have for the judicial process and that branch of Government. And I consider that very important and plan to continue to do that.

Senator SPECTER. You are well aware of the standard approach that judges should interpret the law and not make law. What as-

surances can you give the Senate that you will abide by that stricture?

Judge FISCHER. Thank you, Senator, and that is a very important issue. I think the thing that the Senate would look at most carefully would be my record in the six and a half years that I served on the Los Angeles court, and in doing that, they would see that that's exactly what I have done. That's what I've taken an oath to do, and I assure the Senators that I will continue to do that if I'm fortunate enough to be confirmed.

Senator SPECTER. What do you do when you come to a question which hasn't been decided by a court? Let's just say hypothetically that, say, the State of California says that doctors can administer marijuana as painkillers, and the Attorney General of the United States hypothetically under the Clinton administration decides to prosecute those doctors, and that case comes before you on an injunction to restrain the Department of Justice from conducting those prosecutions, no precedents in the field. What do you do?

Judge FISCHER. Thank you, Senator, and I recognize that that is a very important type of question. The canons of judicial ethics in California prohibit me from answering that specific question. If it would be acceptable, I would be happy to answer how I might approach an issue of first impression. But other than that, I couldn't comment.

Senator SPECTER. Do you want to reframe the question?

Judge FISCHER. If you'd like.

Senator SPECTER. No, no. It is not what I would like. It is what you would like. You want to reframe the question. Go ahead. Answer your question.

Judge FISCHER. Thank you. In deciding an issue that had not yet been decided by controlling authority, the Court of Appeal, the California or U.S. Supreme Court, I would, first of all, presume the constitutionality or legality of the law or statute. I would then look to the legislative history or legislative intent, if there were any for me to review. I would consider, to the extent there was any similar case law, similar analysis given by courts of appeals in my line of precedent, and I would, to the best of my ability, draw a conclusion based on all of those factors, of course, after hearing from the attorneys and reviewing any law they provided.

Senator SPECTER. When you cite the California canons of judicial ethics, my question goes to what you would do as a Federal judge. Are there any Federal standards which would be applicable, perhaps supersede the State court?

Judge FISCHER. Thank you, Senator. I believe it's similar—

Senator SPECTER. Under the Supremacy Clause.

Judge FISCHER. Certainly the general analysis would be the same. I would follow any precedent that existed. If it were a case of first impression, I would again presume constitutionality or validity. I would look to similar cases, language interpreting perhaps similar statutes or laws and, again, apply that to the best of my ability.

Senator SPECTER. Sometimes Senators insist on answers to questions, notwithstanding the reasons you gave. We had a case involving a man named Miguel Estrada where there was an insistence on answering question. What do you think about all that? Not to

embroil you in the political thicket, but what do you think about all that?

Judge FISCHER. I think that I would not be willing to violate my oath of office on the California court.

Senator SPECTER. Even if it cost you a Federal judgeship?

Judge FISCHER. That's correct, Senator.

Senator SPECTER. Meritorious.

Judge Sharpe, tell me a little bit about your background. You are now a Federal magistrate judge?

Judge SHARPE. I am, Senator.

Senator SPECTER. And how long have you had that position?

Judge SHARPE. For the past 6 years, since 1997.

Senator SPECTER. And which is your law school?

Judge SHARPE. Cornell.

Senator SPECTER. What year?

Judge SHARPE. 1974, Senator.

Senator SPECTER. And what have you done generally since graduation from law school to becoming a magistrate judge?

Judge SHARPE. I was a local prosecutor in the Broome County District Attorney's Office, which is located in Binghamton, New York, on the Pennsylvania border, Senator.

Senator SPECTER. Where from?

Judge SHARPE. Just north of Scranton is Binghamton, and I was there from 1974 to 1981.

Senator SPECTER. You were from Pennsylvania?

Judge SHARPE. No, no, no. I'm sorry. What I was suggesting is the Broome County DA's Office—

Senator SPECTER. I see.

Judge SHARPE. —handled matters in Broome County, which borders Pennsylvania.

Senator SPECTER. We try to export as many criminals as we can to New York State.

[Laughter.]

Judge SHARPE. I was there from 1974 to 1981. I then left there for a year and was a special prosecutor for the New York State Attorney General's Office in Syracuse, New York, for a year. I then joined the United States Attorney's Office in the Northern District of New York, which is the upstate 32 counties, from 1983 to 1997. While I was there, I was at various times a supervisory Assistant United States Attorney, senior litigation counsel, and from 1992 to 1994, I was the Interim United States Attorney.

Senator SPECTER. With the experience you have had both as a judge and prosecutor, what elements of judicial temperament do you consider most important?

Judge SHARPE. Senator, when it comes to judicial temperament, I think one of the first elements is the ability to listen. People feel that they have received the kind of fundamental fairness they're looking for in the courts when they have the opportunity to be heard. And in order to allow somebody to be heard, you have to listen. You have to treat them with respect. And you have to approach anything they say with respect.

In addition to that, one of the quintessential factors, I think, that has placed me in good stead for the last 6 years is to maintain a sense of humor. I think a sense of humor can defuse a lot of the

animosity and a lot of the angst that can occur as a result of litigation.

So all of those things, the ability to listen, obviously some common sense, and a sense of humor, will take you a long way with a judicial temperament.

Senator SPECTER. How did you find the transition from prosecutor to judge?

Judge SHARPE. I found it a very simple transition, Senator. Though my background had long been prosecution, it was all in litigation. Therefore, I spent my entire career in courtrooms in front of a number of judges, State and Federal. And the biggest thing in my background I lacked when I assumed the position as magistrate judge was the extensive civil experience, and civil experience in the kinds of substantive areas that I would deal with in Federal court.

Obviously, the last 6 years has given me the opportunity to deal with those issue. As I say, I brought with me the knowledge of litigation, and I have spent 6 years now in the substantive arena dealing with those kinds of laws I'd deal with as a district court judge.

Senator SPECTER. The speech you made on the struggle for justice was of considerable interest to the staff and to the Committee, and you talk about fundamental fairness and human decency, and you comment that that is sometimes omitted for victims of crimes. Would you amplify what you meant by all that?

Judge SHARPE. Senator, as you see from the questionnaire I submitted to the Committee, as a prosecutor I advocated on a daily basis for victims of crime. I always felt that part of the function of prosecution was advocating on behalf of defendants, too. Most cases do not end up in trial, as I know you're aware, Senator. They end up with a plea. And, therefore, the essential fairness that's brought to the table in prosecution has to do with disposition, and it has to do with dealing with the human condition, both those who violate the law and those who suffer from those violations.

I always had a special place in my heart for victims of crime because though there are now laws in places and various jurisdictions that give them the right to be heard over the trauma they've experienced as a result of crime, those kinds of laws were slow in coming. I was with the Department of Justice when Congress enacted many of those provisions in the mid–1980's which added to United States Attorney's Office's victim advocates, where they would meet with victims and explain the court process to them, explain delays that might be engendered, explain the entire process.

Those are things that were absent in this country for two centuries from the onset of our Constitution until very recently. And, therefore, that's been a special thought of mine.

Senator SPECTER. Judge, let me ask you the question about interpreting versus making law. What assurances will you give to the Committee that in your judicial role you will interpret rather than make law?

Judge SHARPE. Let me go to my sense of humor, if I may, Senator, and say to you I have no interest whatsoever in legislating. So there is my first commitment to the Committee, that I understand the constitutional process and I have an abiding respect for it.

Senator SPECTER. I am going to ask both of you a final question, and I had intended to ask Attorney General Fisher this question but got deeply involved in the specific case which we were discussing. That is, Senator Thurmond, when I first joined this Committee, posed a question, and he said, "The more power a person has, the more courteous a person should be." And then he would ask the judicial nominees: "Do you promise to be courteous?" And I thought, "What kind of a question is that? What do you expect judicial nominees to do except say, 'Yes, I promise to be courteous.'"

But after I thought about it, I concluded that that was really a very, very profound question that goes to some of what you have said, Judge Sharpe, and I have always propounded that question or tried to always propound it. So I ask you, Judge Fischer: Do you promise to be courteous?

Judge FISCHER. Thank you, Senator. I do.

Senator SPECTER. Do you also promise to be "courteous"?

Judge FISCHER. Yes, I do.

Senator SPECTER. Judge Sharpe, do you promise to be both courteous and "courteous"?

Judge SHARPE. I do, Senator.

Senator SPECTER. Well, I have had nominees say to me years after the hearing, "I remember that question. I don't remember anything else, but I remember the Thurmond question." Strom was an extraordinary U.S. Senator, and I thought that question was very profound. So I want you to think about it on those days when you have got some lawyers before you—and you have both seen this—and they are off the mark, they are not prepared, they are late, or witnesses who ramble. Senator Thurmond expects you to be "courteous."

Thank you both.

Judge FISCHER. Thank you, Senator.

Judge SHARPE. Thank you, Senator.

[Whereupon, at 1:01 p.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Mike Fisher
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Oct.21, 2003

Via Fax (202) 228-1698

The Honorable Orrin Hatch
Chair, Senate Judiciary Committee
104 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Hatch:

Enclosed are responses to follow-up questions by Sens. Leahy, Kennedy and Feingold following my hearing before the Senate Judiciary Committee on Wednesday, Oct. 15, in Washington, D.C.

If you have any further questions, please do not hesitate to contact me.

Very truly yours,

Mike Fisher
Attorney General

Cc: Senator Patrick J. Leahy

Not Printed at Public Expense

Responses To Senator Patrick Leahy's Questions for D. Michael Fisher

1. **In February 2003, a federal jury in the U.S. District Court for the Middle District of Pennsylvania found that you and four other officials in your office (the Pennsylvania Office of the Attorney General) violated the civil rights of two plantiffs, who were former narcotics agents with the Bureau of Narcotics Investigation in Philadelphia. See *McLaughlin v. Fisher et al.*, No. 3:00-CV-521. The jury found that you and the other defendants, in violation of 42 USC 1983, retaliated against the agents for expressing their First Amendment right to freedom of speech and acted maliciously or wantonly. The jury awarded damages, including punitive damages, against you in the amount of $112,500 for each plaintiff. You and your top two officials were collectively found liable for $1 million in punitive damages and for $425,000 in compensatory damages. You have filed a post-trial motion and have stated that you are considering other post trial and appellate options.**

   a. **Given that the main purpose of the federal courts is to uphold the Constitution, why do you believe that it is appropriate to confirm someone to be a judge on the federal court of appeals, the court right below the Supreme Court, who has been found by a jury to have deprived individuals of their constitutional rights?**

   Response:

   It is important to understand that a large governmental employer, such as a state attorney general, is by the nature of his position subject to numerous lawsuits, many pursuant to 42 U.S.C. § 1983. As such, it is appropriate to evaluate each case on its merits, taking all relevant facts and circumstances into consideration.

   When I took office, I was presented with a very serious problem that I inherited from my predecessor, a scandal involving the two agents (and others) involved in the McLaughlin suit. The Philadelphia District Attorney and the United States Attorney for the Eastern District of Pennsylvania told me in no uncertain terms that these agents had engaged in conduct which violated the civil rights and civil liberties of citizens of our state and that as a result, these prosecutors would not accept for prosecution any case in which these agents had in any way been involved. Members of my administration worked to find positions in the office where these agents could work, with the severe restriction and limitation that they could not perform any function which could in any way result in them having to testify in court. The only options available to us necessitated the agents' transfer out of the Philadelphia office. When these agents filed an Unfair Labor Practice charge contending that the transfers were retaliatory, the Pennsylvania Labor Relations Board

reviewed every personnel action taken with respect to the agents and unanimously concluded that everything that our office did was proper, lawful and not retaliatory. In fact, the PLRB stated that everything done by my office was motivated by legitimate business reasons, namely complying with the positions taken by the prosecutors in Philadelphia. I would respectfully contend that the jury in this case erred in reaching the verdict it did and that the PLRB ruled correctly.

b. **What will you do to be vigilant in protecting the civil and constitutional rights of the parties who will appear before you, if you are confirmed? How can we have confidence that you will fully enforce 42 U.S.C. § 1983.**

Response:

As I stated above, public employers in positions like mine are sued fairly regularly, many times under 42 U.S.C. § 1983. Neither that fact, however, nor the fact that a judgment has, at least for the present time, been entered against me and other members of my office, has in any way changed my view on the merits and value of 42 U.S.C § 1983 and any other similar laws. As an appeals court judge, if confirmed by the Senate, I would interpret and enforce these statutes as I would any other law—by respecting precedent and applying the law fairly and evenly to the facts of the case before me.

c. **Given the unusual posture of having been found by a jury to have violated 42 U.S.C. § 1983, will you recuse yourself from cases involving § 1983, if confirmed?**

Response:

For the reasons stated in response to question 1b above, I would not seek a "blanket recusal" from all cases brought pursuant to 42 U.S.C. § 1983 and I would enforce that law, and all other laws, fairly and evenly based on the facts of the case and the application to those facts of whatever statute is involved.

d. **If confirmed, will you recuse yourself from federal civil rights cases and unlawful retaliation cases that come before the court? Are there other cases from which you would recuse yourself, if you are confirmed?**

Response:

As stated in response to questions 1b and 1c above, I would not recuse myself from civil rights and retaliation cases generally. If confirmed, there may be cases where I would recuse myself in accordance with the rules governing recusal, my ethical obligations as a judge and the practices of the court. For instance, I would obviously recuse myself from any involvement whatsoever in the *McLaughlin* case, should it (or any part of it) reach the court of appeals if I were a member of that court. There may be other matters that my office is, pursuant to its responsibilities, currently handling that may reach the court and I would take whatever steps are required and appropriate in all such matters to avoid even the appearance of impropriety.

e. **If confirmed, will you recuse yourself from reviewing decisions of the trial court judge deciding your pending civil rights case motions?**

Response:

If confirmed, I would recuse myself from any aspect of the *McLaughlin v. Fisher* case. I would not recuse myself from all other decisions rendered by the District Court Judge who presided over the case. The judge in question is a well qualified judge, confirmed by this Senate, and any decision made by him that I have an opportunity to review will be done so fairly and in accordance with precedent and the law applicable to that case.

2. **You publicly opposed a death penalty moratorium in Pennsylvania and, at your hearing, reiterated your view that there is not racial discrimination in the application of the death penalty in Pennsylvania, despite repeated evidence that innocent people have been convicted in capital offenses in this country and a report showing that African Americans in Philadelphia were four times more likely to get the death penalty. At your hearing, in response to Sen. Feingold, you stated that the only evidence that would convince you that race is a factor in the administration of the death penalty is that of "improperly denying blacks – or striking blacks from the jury pools." While you said you try to ensure that your deputy AGs do not pick jurors based on race, a 2003 report by the Committee on Racial and Gender Bias in the Justice System, did, in fact, find that race was a major factor in capital jury selection, with Pennsylvania prosecutors striking African Americans from the jury twice as often as non-African Americans. The Committee found that this jury selection strategy skews jury sentencing decisions toward increasing the frequency of death sentences. In light of this evidence, do you maintain your view that race is not a factor in the administration of the death penalty?**

Response:

I take the imposition of the death penalty very seriously and have been concerned that it is applied fairly in Pennsylvania. However, I have joined Governor Rendell in opposing a moratorium on the death penalty in Pennsylvania because there is no evidence that innocent people are being sentenced in capital cases. In fact, each and every case in Pennsylvania is reviewed by the state Supreme Court, which can overturn a death sentence and order a new trial. The state Supreme Court can overturn a death sentence if it determines that racial bias played a part in the conviction or sentence of a defendant. During my confirmation hearing, I acknowledged that prohibiting African Americans from serving on a jury would be grounds for the Supreme Court to consider overturning a death sentence. The Supreme Court's Committee on Racial and Gender Bias focused its study of jury selection in Philadelphia, a major city with a higher percentage of African Americans called to jury duty than in the rest of Pennsylvania. If the Supreme Court determines that African Americans were struck from a jury because of their race, that would be grounds for the Supreme Court to consider overturning any conviction and ordering a new trial.

3. You have indicated that even mentally retarded individuals should be subject to the death penalty, despite the Supreme Court's ruling to the contrary last year in *Atkins v. Virginia*. When the *Atkins* case was decided, you expressed concern that there would be an increase in false claims of mental retardation by death row inmates in Pennsylvania. In your experience since *Atkins*, has there been an increase in false claims and in your view have they been successful? Are there not safeguards, such as State selected psychiatrists, to protect against such false claims?

Response:

The Supreme Court in *Atkins v. Virginia* held that the execution of the mentally retarded violates the Eighth Amendment. Since the *Atkins* decision was rendered, my office has noted that at least 20 post-conviction appeals have been filed seeking relief under Atkins in several counties across the Commonwealth. My office has sought to ensure that those individuals who legitimately qualify under *Atkins* are granted relief. In some cases, including one handled by my Capital Appeals Unit, prosecutors have conceded that the individual is indeed mentally retarded and should be re-sentenced to life in prison. In other cases, prosecutors are challenging the defense claims that the defendants are mentally retarded. Most of those cases are in the beginning stages of the appeals process.

In Pennsylvania, the General Assembly has not yet passed a statute that addresses the provisions of the *Atkins* decision. My office is working with the General Assembly to ensure that there are safeguards to protect against false claims, including requiring more than one witness to determine mental retardation and to consider life experiences along with IQ to determine mental ability.

4. Among the most important matter you will be called upon to decide, if confirmed to the Third Circuit, will be balancing rights in cases involving terrorism. Please give us a sense of how you will approach and analyze cases arising in that setting and, in particular, how you would analyze an appeal of the decision by Judge Brinkema to dismiss the conspiracy and 9/11-related charges filed against Moussaiou in light of the Government's refusal to allow access to what might prove to be exculpatory evidence.

Response:

There is no question that one of the most pressing issues for our system of justice in the "post-9/11" world is the balance to be struck between our need for enhanced homeland security measures and the protection of the civil rights and civil liberties afforded to all Americans. I believe that improving our national security and safeguarding the rights of our citizens are not mutually exclusive propositions. Therefore, in approaching and analyzing terrorism-related cases, including an appeal of Judge Brinkema's decision in the Moussaoui case, I would seek to apply the Constitution, relevant statutes, and binding precedent to the facts of the particular case in order to reach the correct result.

5. In an interview during the 2002 Pennsylvania gubernatorial campaign, you indicated your opposition to gay rights with the following statement: "I would not support a bill that would recognize gay marriages. I would not do anything to provide funding that would promote that, whether it would be for the expansion of benefits for state employees or the provision of money to provide those benefits to homosexual partners."

As you are aware, the Supreme Court this term, in *Lawrence v. Texas*, overruled the case of *Bowers v. Hardwick*. In striking the Texas statute that made it a crime for two persons of the same gender to engage in intimate sexual conduct, Justice Kennedy wrote for the majority that, "[t]he petitioners are entitled to respect for their private lives. The state cannot demean their existence or control their destiny by making their private sexual conduct a crime. Their right to liberty under the Due Process Clause gives them the full right to engage in their conduct without intervention of the government." It is a promise of the Constitution that there is a realm of personal liberty which the government may not enter.'" The Supreme Court stated expressly that, "*Bowers* was not correct when it was decided, and it is not correct today."

a. Do you believe the Supreme Court was correct in its decision to overturn *Bowers* and recognize that gays and lesbians have a constitutional right to be free from government intrusion into their

private lives? Do you have any concerns that the Court interpreted the Due Process Clause too broadly in this decision? What is your view of the strength and persuasiveness of the dissent in this case by Justice Scalia?

Response:

With the *Lawrence* opinion, the Supreme Court overturned *Bowers*, therefore *Lawrence* is the law of the land and, if confirmed, I would uphold *Lawrence*. Since Justice Scalia's opinion is a dissent, it would have no impact on my opinions as a judge.

b. **What assurances can you give this Committee that, if confirmed as a judge, you will aside your personal views on this topic and follow the Supreme Court precedent set forth in *Lawrence*?**

Response:

As attorney general for the past seven years, I have defended and upheld the laws of the Commonwealth of Pennsylvania, regardless of what my personal or political views of a particular law may be. As a judge, I would do the same and follow the law. *Lawrence* is the law of the land and I would uphold *Lawrence*.

c. **Please describe your current understanding of the scope of the constitutional right to privacy. What do you believe to be the key elements of that right?**

Response:

The right of privacy was first acknowledged in *Griswold v. Connecticut*, and later in cases including *Roe v. Wade*, *Casey v. Planned Parenthood*, and recently in *Lawrence v. Texas*. The right as articulated by the Supreme Court of the United States is found in the 5th and 14th Amendments. The Supreme Court has described this right in various ways. For example the Court has said, "It is true that in *Griswold* the right of privacy in question inhered in the marital relationship .... If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child." *Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972).

6. In the Senate Questionnaire, judicial nominees are asked to provide their views on the role of judicial activism and the federal judiciary. In your questionnaire, you wrote that "A judge needs to look at the text of the law, as only the words themselves can really explain what the legislature intended the law to mean."

a. Your comment suggests that, as a judge, you would reject anything other than the bare words of the Constitution or a statute in interpreting its meaning. Is that correct?

Response:

I believe that judges should apply the law as written as it relates to the facts of a particular case. As a former state lawmaker, I believe the principal focus to interpret a law are the words of a statute. That is why precision in drafting a law is so important. No review of a statute can take place in a vacuum, but precedent, other prior court decisions and the application to the facts of a case would dictate any decision I would make if confirmed.

b. What is your view on the use of legislative history to help interpret the meaning of a statute that is ambiguous or unclear?

Response:

As a former legislator, I understand the significance and thought that lawmakers take in creating a legislative history. When a statute is ambiguous or unclear referring to the legislative history can be instructive, but unless it is clearly supportive of the words of a statute, it should not control.

7. In the past few years, the Supreme Court has struck down a number of federal statutes most notably several designed to protect the civil rights of Americans, as beyond Congress's power under Section 5 of the Fourteenth Amendment, for example, *Flores v. City of Boerne*, 117 S. Ct. 2157 (1997), *Kimel v. Florida Board of Regents*, 120 S. Ct. 631 (2000), and *Board of Trustees v. Garrett*, 19 S. Ct. 2240 (1999). The Supreme Court has also recently struck down statutes as being outside the authority granted to Congress by the Commerce Clause, such as in the case of *U.S. v. Lopez*, 115 S. Ct. 1624 (1995) and *U.S. v. Morrison*, 120 S. Ct. 1740 (2000). The Court has struck down other federal statutes as being a violation of the 10th Amendment or the 11th Amendment under the Court's expansive view of states' rights. These cases have been described as creating new power for state governments, as federal authority is being diminished.

a. **What is your view of these developments? In your opinion, do they constitute "judicial activism?" What is your understanding of the scope of congressional power under Article I of the Constitution, in particular, the Commerce Clause, and under Section 5 of the Fourteenth Amendment?**

Response:

The cases you cite have been decided by the Supreme Court, and as such, are the law of the land. If confirmed as a judge of the Court of Appeals, I would be sworn to uphold them. However, the Supreme Court also has held that Congress has broad powers when legislating pursuant to both the Commerce Clause and Section 5 of the Fourteenth Amendment. *See Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159, 173 (2001); *Saenz v. Roe*, 526 U.S. 489, 508 (1999). Of course, all laws passed by Congress are entitled to a strong presumption of constitutionality, but are ultimately judged based on the Constitution and precedent as articulated by the Supreme Court.

b. **The New York Times has said that the present Supreme Court has "struck down more Federal laws per year than any Supreme Court in the last half of the century." Are there any federal statutes or sections of federal legislation that have not yet been ruled upon by the Supreme Court that go beyond Congress' enumerated powers under the Constitution, in your view?**

Response:

I am not familiar with all federal statutes or recent legislation, but there are none of which I am presently aware.

c. **In *Reno v. Condon*, 528 U.S. 141 (200), you joined an *amicus brief* in support of the State of South Carolina, arguing that Congress could not require states to keep driver's license information private and that states should have a free hand to sell such information to whomever they wanted. I believe the federal government has an important responsibility to ensure that U.S. citizens' privacy is protected. It troubles me that you believed that Congress did not have the power to pass this statute. It troubled the Supreme Court too, since the Court unanimously disagreed with the position you took in an opinion by Chief Justice Rehnquist. The brief you signed argued that this law "commandeered" the states and was therefore unconstitutional. Please explain how in your view a law forbidding States from selling driver's license information is at odds with the allocation of power established by our founding fathers in the Constitution.**

Response:

The privacy of citizens of Pennsylvania and the United States is also important to me, that is why I have fought so hard as a state Legislator and Attorney General to protect the people of Pennsylvania through many efforts, most recently my advocacy of the Pennsylvania "Do Not Call" list. The amicus brief, which I joined, was done so on behalf of my client, the Commonwealth of Pennsylvania, and dealt with an issue important to the Commonwealth and other states as to future interpretations of the 10th Amendment, in light of the federalism principles enunciated in *New York v. United States* and *Printz v. United States*. The federal Privacy Protection Act in question in this case had been struck down by the District Court in South Carolina and the Fourth Circuit Court of Appeals. The Supreme Court's decision was helpful in clarifying Congress' authority to regulate state activities.

Responses to Senator Edward M. Kennedy's Questions for D. Michael Fisher

1. During you confirmation hearing, you indicated that it could be years before McLaughlin v. Fisher is finally decided on appeal. You and your fellow defendants have made multiple requests for extensions of time for the filing of briefs on post-trial motions. The verdict was rendered in February 2003, but your briefs were not due until October 20, 2003, because the transcript was not ready. Transcripts of even very lengthy proceedings can be completed in less than several months. Given the concerns you expressed during your hearing regarding the length of time it will take for the McLaughlin case to be resolved, what, if any specific efforts did you make to expedite the transcript and motion.

Response:

The verdict in this case was handed down by the jury on February 7, 2003, and the court entered judgment on February 12, 2003. Post trial motions were filed on February 25, 2003. Defendants' filed Motions for Extension of time to file our brief on March 12, 2003, May 1, 2003, July 2, 2003 and August 18, 2003. A copy of Motions 3 and 4 are attached to this response as Exhibit's 1 and 2, and they explain the reasons given for the delay by the court reporter and the requests made to the court to expedite the transcripts. In addition to the Motions, beginning in March, staff for Defendants' counsel called the court's secretary asking for assistance on the transcript on nine other occasions. Finally, defendants' counsel took the rather unusual step of writing directly to the trial judge in an effort to expedite our receipt of the trial transcript. (Counsel's letter to the court dated Aug. 12, 2003, is attached as Exhibit 3.) The transcript was finally completed on or about September 8, 2003.

Wouldn't it be possible, with your cooperation, to see a conclusion to McLaughlin v. Fisher in less time than you stated may be necessary at your hearing? Could you not seek to have the motions and any appeal considered on an expedited basis?

Response:

It is impossible to estimate the time required to conclude this case through post trial motions and any possible appeals by either side. The Plaintiffs' Brief on post trial motions will be due on November 10, 2003 and Defendants have the opportunity to file a reply brief. Counsel for defendants has advised that a request for oral argument should be made on the post trial motions. It is impossible to determine whether such a request will be granted or how long it will take the court to dispose of the Motions. We would have no reason to cause a delay in the disposition of the case, but likewise we are not in a position to force an expedited decision. The time needed to dispose of an appeal to the Court of Appeals by either party, even if expedited by the court, is impossible to determine.

If the Committee and the Senate process and approve your nomination while this case in still pending, we could face a situation in which this verdict for civil rights violations against you is reviewed by the Third Circuit while you are a member of that court. Even if you recuse yourself from deciding the appeal, do you agree that this would put the other judges on the Third Circuit in a difficult position? Can you understand why the plaintiffs and others would have concerns about whether the case would be fairly heard? Do you agree that it be better for all if the case was resolved before a decision on your nomination, and if not, why not?

Response:

If the Senate confirms me to be a judge on the U.S. Court of Appeals for the Third Circuit, it is possible that this case could be before that Court. I would recuse myself from any involvement in the case, but I have full faith and confidence that other members of the court would be able to review the case in a fair and open minded fashion. Ultimately it is the Senate's decision when to vote on my nomination. However, I believe all of our actions involving the Plaintiffs were lawful and proper as was determined by the Pennsylvania Labor Relations Board (PLRB), which found that our actions were non retaliatory and motivated by solely legitimate business reasons.

2. While campaigning for governor in 2002, you indicated in an Archdiocese of Philadelphia candidate questionnaire that you do not agree with a blanket exception from the death penalty for the mentally retarded. As you may be aware, in Atkins v. Virginia, 122 S Ct. 2242 (2002), the Surpeme Court recently restricted states' ability to execute mentally retarded individuals based on the Eighth Amendment's prohibition against cruel and unusual punishment.

a. Do you believe that Atkins was correctly decided?

Response:

The decision of Atkins v. Virginia was decided by the Supreme Court of the United States and as such is the law of the land on the question of the application of the death penalty to those who are mentally retarded. If given the opportunity by the Senate to serve as a judge, I would be sworn to follow this decision. Mental retardation has been and continues to be an extenuating circumstance in Pennsylvania's death penalty statute. Currently I am working with the Pennsylvania Legislature to change our death penalty statute so that it fully complies with the Atkins decision.

b. What assurances can you provide that you will follow the law in death penalty cases?

Response:

As a judge of the Court of Appeals for the Third Circuit, if confirmed by the Senate, I would be sworn to follow the law as determined by the Supreme Court of the United States in all cases. If the Pennsylvania Legislature or other states in the Third Circuit do not amend their death penalty statutes to comply with Atkins, any death penalty cases coming before me will be decided in accordance with the law as decided in Atkins.

3. During your 1994 gubernatorial campaign, your campaign created a radio advertisement criticizing the efforts of the Boston Irish gay community to march in the St. Patrick's Day Parade. In that advertisement, you said, "While I'm governor, no small and biased band of bigots will rewrite our religious and cultural history."

a. To whom were you referring as a "small and biased band of bigots?" Do you believe that gays and lesbians who wish to participate in a parade are bigots?

Response:

The radio advertisement in question made reference to a dispute and controversy in 1994 of certain individuals disrupting the Boston St. Patrick's Day Parade. The ad referred to those who disrupted or threatened to disrupt the parade. I do not believe that anyone who wishes to participate in a parade or other celebration is a bigot, but I do believe that the attempt to disrupt such a celebration by any group could under the definition in Webster's constitute bigotry.

b. What in your record as Attorney General or a state legislator suggests, in contrast to this campaign ad, that you will be fair to gay and lesbian Americans who litigate before you if you are confirmed?

Response:

As a legislator and attorney general I have supported issues that are important to gay and lesbian Americans. As a Senator in 1995, I voted to repeal the Pennsylvania law on Sodomy. In 1998 as Pennsylvania's Attorney General I hosted the first statewide conference for law enforcement on hate crimes and helped to educate our agents and police across Pennsylvania on the need to be aware of hate crimes against gays, lesbians and others. As Attorney General, I also successfully urged the General Assembly to include sexual orientation in the definition of hate crimes.

Responses to Senator Russ Feingold's Questions for D. Michael Fisher

1. A federal jury in the U.S. District Court for the Middle District of Pennsylvania found that you and four of your high-level officials of the Pennsylvania Office of the Attorney General violated the civil rights of two plaintiffs, who were former narcotics agents with the Bureau of Narcotics Investigation (BNI) in Philadelphia. See *McLaughlin v. Fisher et al.*, No. 3:00-CV-521.

a. As a general matter, do you believe that it would be appropriate for the Senate to confirm someone to be a federal judge who has been found in a final judgment, upheld on appeal, to have deprived individuals of their constitutional rights?

Response:

As a nominee, I would not presume to tell the Senate what it should take into account when deciding whether to confirm an individual. I would like to note that individuals who serve as large public employers are frequently sued. Executive branch officials at all levels of government, including police chiefs, mayors, district attorneys, attorneys general, state police commissioners and federal officials are all, by the very nature of their positions, subject to lawsuits, particularly under 42 U.S.C. § 1983. As I testified before the Committee, I believe that all of my personnel decisions with respect to the plaintiffs, particularly in light of the very serious scandal involving these agents that I inherited from my predecessor, were appropriate, lawful and non-retaliatory. The Pennsylvania Labor Relations Board (PLRB) reviewed every decision made by my office and unanimously held that each action was proper and motivated solely by legitimate business reasons. Namely, the PLRB recognized that the office accommodated the ultimatum issued to our office by the Philadelphia District Attorney and United States Attorney for the Eastern District of Pennsylvania that they would not accept for prosecution any case in which either of these agents were involved due to the prosecutors' belief that the agents had, in a number of ways, violated the civil rights and civil liberties of citizens of our state.

b. In your case, you still have trial and appellate options open to challenge the jury's verdict. Do you think that the Judiciary Committee and the full Senate should await the final outcome of the case before making a decision on your nomination? If not, why not?

Response:

Ultimately, that is a decision that the Committee will make. However, as I outlined in response to question 1.a. above, there are practical issues related to the length of the post trial and appellate process. Although the case is not final, the Committee has been provided with much of the information related to the case, including the opinions of the Pennsylvania Labor Relations Board and the transcript of the actual trial.

c. **In light of this verdict, can you understand how a plaintiff claiming a violation of his or her constitutional rights might be concerned about your impartiality or fairness if you are confirmed to the federal bench? What in your record as Attorney General or as a state legislator would you point to in order to convince potential litigants that they should not have such concerns?**

Response:

If confirmed, I would commit myself to being a fair and impartial judge. This verdict, even if subsequently upheld on appeal, is not in any way a reflection on my lengthy career in public service. When considered in the context of that career, no party or litigant should have any concerns whatsoever about my ability to be fair and impartial as a judge. I have always taken the view that one of the ways that you gain success in life is to be fair with people. I have always done that, in whatever position I have been in—be it as a practicing attorney, a legislator or most recently as Attorney General. Those who have worked with me throughout my career know that I have always approached an issue or problem with an open mind and a healthy respect for all sides of the issue. I believe this is the reason that I have enjoyed the support of so many people on a bipartisan basis. Should the members of the Judiciary Committee and the full Senate vote to confirm my nomination, I would bring the same approach to my work as a judge.

2. **When you were running for governor of Pennsylvania, your campaign sent an email to approximately 6,000 people which included the text of a newspaper article about your religious beliefs, and the beliefs of your opponent, Ed Rendell, who is Jewish. The subject line of the email was "A Clear Difference." When asked what this referred to, your campaign manager said, "The difference is Mike Fisher believes in Heaven and Ed Rendell doesn't."**

a. **Was this email sent on your instructions or with your knowledge? If not, did you reprimand or take other action against the person or persons responsible for sending it?**

Response:

The email was sent with neither my instructions nor my knowledge. The email was sent to persons who had signed up through my campaign website to receive regular emails on campaign updates and newspaper articles regarding my campaign. The email in question was an article written in the Allentown Morning Call. I was not aware that my campaign manager had emailed the article until the next day when a reporter asked me about it while I was campaigning. While the article itself was simply on my and Ed Rendell's religious beliefs, the subject line on the email should have never been added and my campaign manager's response to a reporter's question about the subject line was inappropriate. I told my campaign manager that I was upset and disappointed with his comments and that he was to avoid any future references to religion as a campaign issue. I do not believe that the religious beliefs of a political candidate (or anyone else) should have any bearing on his or her qualifications or that they have any relevance to their qualifications or ability to hold public office.

b. **Do you believe that the religious views of candidates are relevant to their ability to successfully perform the duties of public office?**

Response:

No. (See above)

c. **Do you believe your campaign manager's comments were appropriate?**

Response:

No. (See above)

SUBMISSIONS FOR THE RECORD

STATEMENT OF U.S. SENATOR BARBARA BOXER ON THE NOMINEE FOR THE U.S. DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA: DALE SUSAN FISCHER

Mr. Chairman, Senator Leahy, and members of the Senate Committee on the Judiciary, I am pleased to offer my support for the nominee for the Central District Court of California before you today -- Judge Dale Susan Fischer. Judge Fischer is well regarded by those who know her work. I am confident that, should she be confirmed, she will discharge her responsibilities with dignity, integrity and intelligence.

I first want to comment on the process that has brought this nominee, as well as several other accomplished individuals, before this Committee over the past several years. In a truly bipartisan fashion, the White House Counsel, Senator Feinstein and I worked together to create four judicial advisory committees for the State of California, one in each federal judicial district in the state.

Each committee has a membership of six individuals: three appointed by the White House, and three appointed jointly by Senator Feinstein and me. Each member's vote counts equally, and a majority is necessary for recommendation of a candidate. Judge Fischer was reviewed by the Central District Committee and was strongly recommended for this position. I continue to support this excellent bipartisan process and the high quality nominees it has produced.

Judge Fischer has an impressive background and has served the people of California with distinction for several years. She is a graduate of Harvard Law School and the University of South Florida. She had extensive civil experience as a private attorney before she was appointed to the Los Angeles Municipal Court in 1997. She currently sits on the Los Angeles Superior Court where she is well-regarded for her knowledge of bail issues. She also serves as Chair of the Los Angeles Superior Court's Temporary Judge Committee, training and monitoring approximately 1000 temporary judges in Los Angeles County.

The Central District will benefit greatly from the exemplary service of Judge Fischer. I fully support her nomination and swift confirmation.

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL
HARRISBURG, PA 17120

IKE FISHER
NEY GENERAL

16TH FLOOR
STRAWBERRY SQUARE
HARRISBURG, PA 17120
(717) 787-3391

October 20, 2003

Via Fax (202) 228-1698

The Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Hatch:

During my hearing last week, I was asked by Senator Specter to provide the following information regarding the outcome of McLaughlin v. Watson as the case related to me.

On November 25, 1998, Federal District Court Judge Caputo dismissed the case. On September 21, 1999, the Third Circuit Court of Appeals, by Judges Mansmann, McKee, and Stapleton, affirmed the dismissal generally, but reversed and remanded as to one obscure and unrelated issue. On March 1, 2002, Judge Caputo again dismissed the case.

Plaintiffs filed an appeal from the second dismissal of their case by Judge Caputo, but, after counsel for plaintiffs failed to respond to a jurisdictional inquiry from the Third Circuit, the Court, by its Clerk, entered an Order on May 22, 2002, as follows: "Procedurally Terminated Without Action; Default."

Very truly yours,

Mike Fisher

Mike Fisher
Attorney General

cc: Senator Patrick J. Leahy

News Release

JUDICIARY COMMITTEE

United States Senate • Senator Orrin Hatch, Chairman

October 15, 2003 Contact: Margarita Tapia, 202/224-5225

Statement of Senator Orrin G. Hatch, Chairman
Before the United States Senate Committee on the Judiciary
Hearing on the Nominations of

DALE S. FISCHER TO BE UNITED STATES DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA
and
GARY L. SHARPE TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF NEW YORK

We will now consider our final panel of witnesses, two nominees for the federal district court bench.

Dale Susan Fischer is our nominee for the Central District of California. Judge Fischer is a Harvard Law graduate. She was a practicing attorney for 17 years before her appointment to the Los Angeles Municipal Court in 1997. Three years later, she became a judge on the Los Angeles Superior Court, where she currently sits. Judge Fischer has more than 20 years of legal experience and will be a fine addition to the federal bench.

Our Northern District of New York nominee is **Gary Sharpe**. Prior to his appointment as a federal magistrate judge in 1997, he served as a prosecutor at both the federal and state levels for a combined total of more than twenty years, including two years as interim U.S. Attorney for the Northern District of New York. His impressive trial experience and judicial knowledge will serve him well as a federal district judge.

It is my privilege to welcome these fine nominees to the Committee. I look forward to hearing their testimony.

# # #

U.S. SENATOR PATRICK LEAHY

CONTACT: David Carle, 202-224-3693 VERMONT

Statement of Senator Patrick Leahy,
Ranking Member, Senate Judiciary Committee
Judicial Nominations Hearing
October 15, 2003

Over the course of this year in the Judiciary Committee, we have seen a number of firsts. At the first nominations hearing of the year, for the first time ever, Republicans unilaterally scheduled three controversial circuit court nominees at one hearing contrary to a long-established agreement and practices of the Committee. Then we saw Republicans declare that the longstanding Committee rules protecting the rights of the minority would be broken when Rule IV was violated. A rule that was adopted 25 years ago -- in order to balance the need to protect the minority Members of the Committee with the desire of the majority to proceed -- was unilaterally reinterpreted to override the rights of the minority for the first time in our history. For the first time ever this year Republicans insisted on proceeding on nominations that the Committee had previously voted upon and rejected after full and fair hearings and debate. Of course that followed the first ever resubmission by a President of the names of defeated nominees for appointment to those same judgeships.

Several other practices were reversed from when a Democratic President was making nominations in light of the Republican affiliation of the current President. This Committee has proceeded on nominations that did not have the approval of both home-state Senators. Moreover, this Committee altered its prior practice and overrode the objections of home-state Senators to vote on the nominations of Carolyn Kuhl in spite of the opposition of both home-state Senators. Then, in connection with a nomination to the circuit court from Michigan, this Committee for the first time proceeded with a hearing in spite of the opposition of both home-state Senators.

The hearing on the nomination of Michael Fisher to the U.S. Court of Appeals for the Third Circuit is also unprecedented. Never before to my knowledge has a President nominated to a lifetime position on a federal circuit court or this Committee held a hearing on a judicial nominee with an outstanding jury verdict naming him as personally liable for civil rights violations. In February 2003, a federal jury in the U.S. District Court for the Middle District of Pennsylvania found that Mr. Fisher and other high level officials of the Pennsylvania Office of the Attorney General violated the civil rights of two plaintiffs, former narcotics agents with the Bureau of Narcotics Investigation (BNI) in Philadelphia. Never before in the history of federal judicial nominees of which I am aware, has a nominee ever come before this Committee with an outstanding judgment against him for so serious a claim.

senator_leahy@leahy.senate.gov
http://leahy.senate.gov/

The jury verdict is so recent that the trial transcript has only been delivered to the parties within the last several weeks, and so complex that even Mr. Fisher and his lawyers have asked for extensions of time in order to complete their post-trial motions. Soon a federal district court trial judge will be called upon to review the verdict against a person the President has nominated to the Court of Appeals that review all appeals from that trial judge's court. In addition, if the jury verdict is sustained by the trial court, an appeal would lie to the very court to which Mr. Fisher has been nominated. These, too, appear to be unique circumstances.

Accordingly, this is a most unusual proceeding. As the Administration and Republican majority have abandoned traditional practices and standards we are being confronted with more and more difficulties. The few judicial nominations on which the Senate has withheld a final vote this year have each presented extraordinary circumstances or nominees with extreme positions. During the years in which President Clinton was in the White House, Republicans attempted a number of filibusters and, when they were in the majority, successfully prevented votes on more than 60 judicial nominees, including a number of nominees to the federal courts in Pennsylvania.

I begin this hearing without having reached a determination about this nomination. I am troubled by the jury verdict. I have heard from a number of supporters of Mr. Fisher whose opinions I value that they believe him qualified to serve as a judge of the Third Circuit nonetheless.

Today, we will also hear from two distinguished district court nominees. Magistrate Judge Sharpe comes to the Committee with the support of both of his home state Senators. He served as a prosecutor for over two decades before being selected to be a magistrate judge in the Northern District of New York. Not surprisingly, Judge Sharpe received a unanimous well-qualified rating from the ABA.

The other district court nominee before us today, Judge Dale Fischer, also received the ABA's highest rating and has significant judicial experience. She is nominated to a newly-created seat in the Central District of California and was recommended by the bipartisan selection commission established by Senators Feinstein and Boxer. The senators from California have worked hard to maintain this local mechanism that recommends consensus nominees for the district courts in their state. Judge Fischer is the latest example of the outstanding nominees to emerge from the California bipartisan selection commission. We welcome both district court nominees and their families to the hearing today.

# # # # #

Oct-07-03 10:33am From-Hon. Tim Murphy 202-225-1844 T-155 P.002/003 F-925

Congress of the United States
Washington, DC 20515
June 23, 2003

The Honorable Orrin Hatch
Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Bldg
Washington, DC 20515

The Honorable Patrick Leahy
Ranking Member
Senate Judiciary Committee
224 Dirksen Senate Office Bldg
Washington, DC 20515

Dear Chairman Hatch and Ranking Member Leahy:

As members of the Pennsylvania congressional delegation, we respectfully urge you to confirm expeditiously the Honorable Michael Fisher, who was nominated by President Bush to serve on the United States Court of Appeals for the Third Circuit. Mike Fisher is currently the Attorney General for Pennsylvania and previously served for 22 years as a member of the Pennsylvania House and Senate.

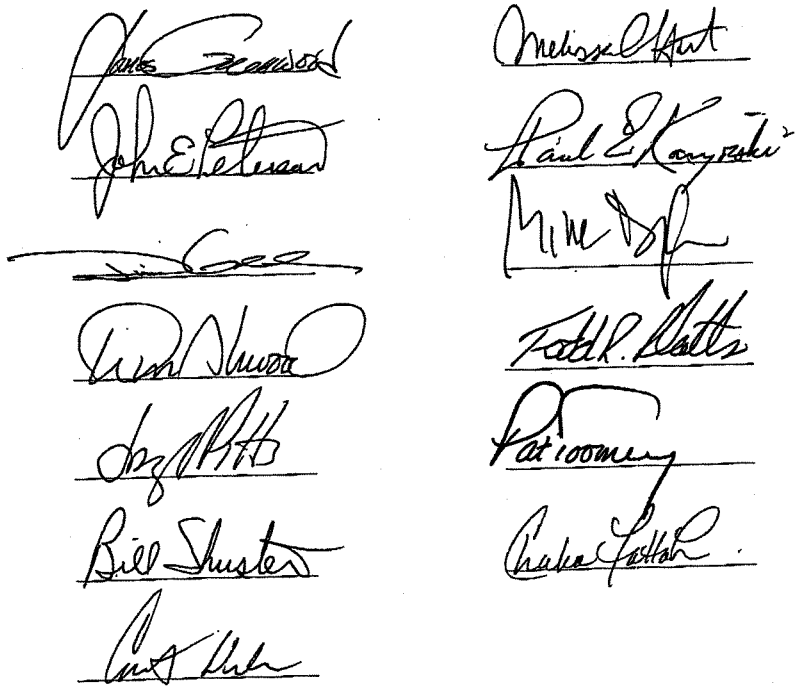
Many of us have served with Mike Fisher in the Pennsylvania General Assembly or have worked with him closely on matters of importance to our Commonwealth. Mike Fisher is held in high esteem by both parties and the people of Pennsylvania. He is known for his strong work ethic, keen legal mind, dedication to the field of law, his personal integrity, and for his sense of fairness. We are all pleased that the President has nominated such a distinguished attorney, public servant, and Pennsylvanian to serve on the Third Circuit. We urge the Judiciary Committee to approve his nomination.

Thank you for your consideration.

Sincerely,

PRINTED ON RECYCLED PAPER

Oct-07-03 10:33am From-Hon. Tim Murphy 202-225-1844 T-155 P.003/003 F-925



Statement

Sen. Rick Santorum

on the Nomination of the D. Michael Fisher
for the U.S. Court of Appeals for the Third Circuit

October 15, 2003

Mr. Chairman and members of the Committee,

Thank you for the opportunity to introduce Attorney General Mike Fisher and speak on behalf of his nomination by President Bush. General Fisher is well qualified to be a Circuit Court Judge. It is my honor to introduce him to the Committee and strongly recommend him as a dedicated and experienced attorney and public servant. General Fisher has served as Attorney General of Pennsylvania since 1997. Prior to serving as Pennsylvania's chief law enforcement officer, General Fisher served 22 years in the Pennsylvania General Assembly, serving six years in the State House and 16 years as a member of the State Senate. During his Senate career, he was a leader in criminal and civil justice reform. He was also an architect of many major environmental laws as the Chair of the Senate Environmental Resources and Energy Committee. General Fisher has received a majority "Well Qualified" rating by the American Bar Association which is their highest rating.

General Fisher is from Pittsburgh, Pennsylvania. He graduated from Georgetown University and received his Juris Doctorate from Georgetown University Law Center. During law school he served as a staff assistant to the late Congressman James G. Fulton of Pennsylvania, and as a law clerk at the U.S. General Accounting Office. While in law school, he enlisted in the D.C. National Guard, and transferred to an Army Reserve unit in Pennsylvania upon graduation. He remained an active reservist until 1975.

General Fisher served as an Assistant District Attorney of the Allegheny County District Attorney's Office for four years. He worked his way up through the office, eventually trying major felony and homicide cases. He had his own law practice at Brenlove & Fisher and Fisher & McGinley for 10 years. General Fisher was also a partner at Fisher & Flynn in Upper St. Clair, PA and a shareholder at Houston Harbaugh, P.C. Attorneys in Pittsburgh, PA where he concentrated on general civil litigation, commercial law, estate planning, and real estate until 1997. General Fisher also has significant appellate experience, including appearing before the U.S. Supreme Court.

I am pleased to inform the committee that General Fisher's nomination has broad support -- from both parties and all quarters of Pennsylvania. The entire Pennsylvania delegation of the U.S. House of Representatives has endorsed General Fisher. In a letter signed by 19 House members, including all seven Democrats, they stated: "Mike Fisher is held in high esteem by

both parties and the people of Pennsylvania. He is known for his strong work ethic, keen legal mind, dedication to the field of law, his personal integrity, and for his sense of fairness. We are all pleased that the President has nominated such a distinguished attorney, public servant, and Pennsylvanian to serve on the Third Circuit."

Pennsylvania Governor Edward Rendell, a Democrat who defeated General Fisher in Pennsylvania's 2002 gubernatorial race, "strongly recommended" Mike Fisher for the Third Circuit, stating "I believe he would be extremely fair on the bench and, most importantly, would truly listen to the arguments of lawyers from both sides without any preconceived notions." Dozens of State Attorneys General have written in support of General Fisher's nomination including more than a dozen Democrats. I can provide a more comprehensive list of impressive and bipartisan endorsements by those who know his character and the quality of his work from throughout Pennsylvania and across the country.

In closing, I would like to thank my colleagues for scheduling this hearing and ask for your support for his nomination. I am confident that you will be impressed with General Fisher's qualifications and his commitment to serving the public in the judiciary. I am pleased that the President continues to nominate highly qualified judicial candidates with strong bipartisan support such as General Fisher. I look forward to the full Senate's consideration of his nomination and his confirmation to the United States Circuit Court of Appeals for the Third Circuit in the near future. Thank you.

NOMINATIONS OF JUDITH C. HERRERA, OF NEW MEXICO, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW MEXICO; F. DENNIS SAYLOR, OF MASSACHUSETTS, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF MASSACHUSETTS; SANDRA L. TOWNES, OF NEW YORK, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK; AND DOMINGO S. HERRAIZ, OF OHIO, NOMINEE TO BE DIRECTOR OF THE BUREAU OF JUSTICE ASSISTANCE, DEPARTMENT OF JUSTICE

WEDNESDAY, NOVEMBER 12, 2003

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:03 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Mike DeWine presiding.

Present: Senators DeWine, Kennedy, and Schumer.

OPENING STATEMENT OF HON. MIKE DEWINE, A U.S. SENATOR FROM THE STATE OF OHIO

Senator DEWINE. Our meeting will come to order. Today we have the nomination of three Federal District Court Judges, as well as a nominee to be Director of the Bureau of Justice Assistance for the United States Department of Justice.

I will dispense with any other proceeding, and we will start. We have three of my colleagues from the United States Senate who join with us, and I know they are extremely busy, and we will defer to them for their introductions of some of the nominees.

Senator Bingaman, we will start with you.

PRESENTATION OF JUDITH C. HERRERA, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW MEXICO, BY HON. JEFF BINGAMAN, A U.S. SENATOR FROM THE STATE OF NEW MEXICO

Senator BINGAMAN. Thank you very much, Mr. Chairman. I am here to join with Senator Domenici in support of Judith Herrera for our District Court Judgeship position in New Mexico.

She is extremely well qualified. She was recommended by Senator Domenici to the President for this position, and she is well thought of in the bar. She has great experience as a trial lawyer, before that as a prosecutor. She served on our City Council in Santa Fe with great distinction, and she served on our Board of Regents at the University of New Mexico for a substantial period. She has strong bipartisan support, and I think it is a very good appointment, and I commend the President for the appointment and recommend that the Committee confirm her as quickly as possible.

Senator DEWINE. Senator Domenici, thank you for joining us.

PRESENTATION OF JUDITH C. HERRERA, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW MEXICO, BY HON. PETE V. DOMENICI, A U.S. SENATOR FROM THE STATE OF NEW MEXICO

Senator DOMENICI. Thank you, Mr. Chairman. I thought that we were going to go according to seniority, which means Senator Kennedy should go next.

Senator KENNEDY. That is all right. I want to hear from you. I can never hear enough from you.

[Laughter.]

Senator DOMENICI. I am only here only to give you three words.

[Laughter.]

Senator DOMENICI. Let me first say I think you know it is not unusual when a young lady like this comes to this city to have a hearing on this kind of an offer by the President that families would be excited and thrilled, and we have her with her, her husband, Mickey Baird; her children Andrew and Jennifer; and her parents, William and Corine Herrera; her sister and brother-in-law. I wonder if, Mr. Chairman, they might all stand together so you can see them and their enthusiasm in behalf—

Senator DEWINE. We welcome them to the Committee. Thank you, Senator, very much for introducing them.

Senator DOMENICI. Mr. Chairman, Senator Bingaman has briefly outlined the qualifications of this women to be a member of our bench in New Mexico. We have a very good Federal bench in our State, and with the passage of each year and appointment of more judges, I believe we are just getting to be a more and more astute bar and more and more recognized. This nominee will do all of that justice.

Her background is excellent. You surely do not want a Federal judge that has done only one thing as a member of the bar in her life. You want somebody with diversity of activity, somebody who has been both done something political, if possible, and tried lawsuits, and prosecuted if possible, along with many civil cases, and looking back on all those to find that the nominee has done all those things well. That is the case. All of those things she has done, and all of them she has done well.

She is a graduate of Georgetown University Law Center and our University of New Mexico. She comes from the city of Santa Fe which means that another part of our State is represented from the standpoint of the people having a good feeling for the fairness of the Federal bar, and when you add all that up, all I can do is join Senator Bingaman in saying we would hope that the Committee

would approve her quickly and we could get her to the floor before we go on recess, and send her on her way to be a judge.

Thank you very much, Mr. Chairman.

Senator DEWINE. Senator Domenici, thank you very much for that very strong statement. We appreciate it very much.

Senator Kennedy.

PRESENTATION OF F. DENNIS SAYLOR, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF MASSACHUSETTS, BY HON. EDWARD M. KENNEDY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator KENNEDY. Thank you, Mr. Chairman. I appreciate the courtesy that you give us in letting us present our nominees before the Committee.

It is a real privilege to present Dennis Saylor to the Committee and to recommend him to the Committee, the Senate, for the appointment to U.S. District Court for the District of Massachusetts.

I also welcome his wife, Catherine Fiske, and I would ask if she would be good enough to stand? We thank you very much for being here today. She serves as an attorney for the Environment and Natural Resource Division of the Department of Justice in their Massachusetts office.

Mr. Saylor comes well recommended by many lawyers in my State whose judgment I trust most. They are confident of his fairness, his legal mind, and feel he will be an effective judge in our District Court.

Mr. Saylor has had past Government experience in the Executive Branch. I am confident he understands the importance of the independence of the Judicial Branch. Mr. Saylor is currently a partner of Goodwin Procter in Boston, and after graduating from Harvard Law School he joined the firm as an associate, and later served as an Assistant U.S. Attorney in Boston. From 1990 to 1993 he was the chief of staff for Assistant Attorney General Robert Mueller in the Criminal Division of the Department of Justice here in Washington, providing litigation and public policy advice, and acting as a liaison to Congress and to outside organizations.

He returned to his law firm as a partner and currently works in white-collar criminal defense cases, other legal issues for individuals and corporations.

In sum, Mr. Saylor's impressive credentials and legal experience supports his confirmation, inspires confidence that he will be a judge whom all of us in Massachusetts can be proud of.

The U.S. District Court in Massachusetts is one of the most efficient and effective District Courts in the country. Its members are dedicated and wise in the law. It is well run, and the judges take pride in their collegiality on and off the bench. It dispenses justice fairly and it takes its role as part of an independent branch of Government seriously.

Mr. Chairman, I urge the Committee to approve this nomination. Perhaps at the end of the 30-hour extravaganza that opens this evening, he can join the ranks of the 168 judicial nominees the Senate has confirmed, since in this case the President has decided to pick a judge with the Senate, as the Constitution directs, rather

than picking a fight with the Senate, as he has done with the 2 percent whom we have declined to endorse.

I thank you, Chair.

Senator DEWINE. Senator Kennedy, thank you very much. We thank all three of you very much for a your very fine statements, and certainly the Committee will give great deference to those statements. We thank you very much.

We turn to Senator Schumer for his introduction.

PRESENTATION OF SANDRA L. TOWNES, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK, BY HON. CHARLES SCHUMER, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator SCHUMER. Thank you, Mr. Chairman, and I appreciate your scheduling this hearing to consider the nomination of Sandra Townes to the Federal Court for the Eastern District of New York—that is my home district in Brooklyn—and for inviting me here to introduce her to the Committee.

First I want to let the Committee know, and Sandra Townes know, that Senator Clinton would have been here as well, but she has a mark-up in the EPW Committee that she must attend, and she has asked me to convey her apologies to the Judge and to the Committee. She wishes to acknowledge her strong support for this nomination.

Mr. Chairman, Judge Townes' family and friends also could not be here today, but I know how proud they must be of her accomplishment.

Coming here today to introduce Judge Townes is a particular pleasure for me because her nomination is an example of what happens when the process works right. We are filling every vacancy on New York's Federal Courts with nominees who have broad, bipartisan support. All of the relevant parties, the White House, Governor Pataki, Senator Clinton and myself, are not only comfortable supporting all of the judges we have put on New York's Federal bench, but we believe each of them will do the Nation a credit as members of the Judiciary. So the idea that we cannot get together, the idea that we cannot find comity, is I think just undone by the experience we have had in some of the States. All I had asked is that the White House and the Governor reach out and come talk to us ahead of time and come to agreement. I do not agree with the views of a good number of the judges we are supporting in New York, but I believe they are within the legal mainstream.

Again, the idea that it has to be my way or the highway, which seems to be the subject of tonight's confirmation project, or tonight's talkathon, is just wrong, and what I am going to keep underscoring is that of 172 nominations, this Senate has approved 168. That does not indicate obstructionism. That does not indicate a failure to bend, and what the White House and the Majority are asking is, through whatever procedural mechanism, we approve every single one. That is not, in my judgment, not, not, not what the Founding Fathers intended.

But I do not want to bring Judge Townes in under this discussion because she is an example of someone who should be a judge and who people in both parties in our State can agree.

Let me tell you a little bit about her. She spent the first decade of her professional career as an Onondaga County prosecutor, where she held several supervisory positions. While in that office she was known for being both tough on crime, but fair to defendants. Since 1988, Judge Townes has held a series of ascending seats on New York's Court, rising recently to her current post on the New York Supreme Court, the Appellate Division, which is the second highest level of courts in New York State.

As the Committee knows, I have three standards when I evaluate judicial candidates: excellence—the candidate should be legally excellent; moderation—I do not like judges too far right or too far left, because those types of judges tend to want to make law rather than interpret law; and diversity—I do not think the bench should all be white males. Judge Townes clears the bar easily on all three. She has a distinguished record of excellent judgment, of moderate thinking, and of course she will add diversity to the Eastern District Bench, where she will have the distinction of being only the second African–American jurist to serve.

I am proud to support her nomination, proud to commend her to the Committee, and I look forward to her swift confirmation by the full Senate.

Mr. Chairman, I would ask unanimous consent the Senator Leahy's entire statement be—

Senator DEWINE. That will be made part of the record.

Senator SCHUMER. Thank you, Mr. Chairman.

Senator DEWINE. Senator Schumer, thank you very much for that very good and strong introduction.

Let me invite the three nominees for the District Court to now come up, and if you will remain standing, I will swear you in. If you will raise your right hand, please.

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

Ms. HERRERA. I do.

Mr. SAYLOR. I do.

Justice TOWNES. I do.

Senator DEWINE. You may be seated. Let me welcome all three of you to the Committee. We appreciate you being here. This will be rather painless, I think. All three of you have been introduced to us by the Senators from your respective States. Each one of you has the opportunity now to make an opening statement or to introduce any other family members that have not been introduce.

Justice Townes, why do we not start with you, and then we will just go right across the panel?

STATEMENT OF SANDRA L. TOWNES, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK

Justice TOWNES. Well, I do not intend to make an opening statement, but I would like to thank Senator Schumer for the wonderful introduction. I would like to thank the President for nominating me. And I would like to thank this Committee for convening the confirmation process.

I do have two children, Lauren Townes and James Townes, and unfortunately they were unable to be with me in person, but they are here in spirit, and they have assured me of that.

Thank you.

[The biographical information of Justice Townes follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

   My full name is Sandra Lynn Townes, but I also use Sandra K. Townes. My maiden name was Sandra Lynn Knuckles.

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

   My residence is Syracuse, New York.

   My offices are located at Onondaga County Courthouse, 401 Montgomery Street, Room 405, Syracuse, NY 13202

   and

   New York State Supreme Court, Appellate Division, Second Judicial Department, 45 Monroe Place, Brooklyn, NY 11201.

3. Date and place of birth.

   I was born on September 29, 1944 in Spartanburg, S.C.

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

   I was divorced from Dr. James W. Townes by judgment dated August 12, 1996.

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

I attended the following colleges and Law school:

A. Johnson C. Smith University, Charlotte, N.C. from August 1962 to January 1966. I received the Bachelor of Arts degree in May of 1966.

B. University of South Carolina, Spartanburg, S.C. from September 1966 to June 1967. I was enrolled in one course per semester while I was employed full time and no degree was received.

C. University of the District of Columbia, D.C. Teachers College Washington, D.C. from January 1969 to June 1969. I only attended one semester and enrolled in one course. No degree was received.

D. Syracuse University College of Law from August 1973 to May 1976. I received the Juris Doctor Degree on May 16, 1976.

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

A. Since March 2001 to the present, I have been employed as Associate Justice, State of New York Supreme Court, Appellate Division, Second Judicial Department.

B. From January 1, 2000 to March 2001, I was employed by the State of New York as a Justice of Supreme Court.

C. From January 1, 1988 to December 31, 1999, I was employed by the State of New York as a Judge of the City Court of Syracuse at 511 South State Street, Syracuse, NY 13202.

D. From August 1977 to December 31, 1987 I was employed by the Onondaga County District Attorney's Office at 401 Montgomery Street, Twelfth Floor, Syracuse, NY 13202. During that period, I held the positions of Investigator, Assistant District Attorney, Senior Assistant District Attorney and Chief Assistant District Attorney.

E. From January 1992 to December 1999 and from January 2001 to May 2001 I was employed as an Adjunct Professor at Onondaga Community College, 4941 Onondaga Road, Syracuse NY 13215.

F. From 1987 to 1994, each Spring Semester I was employed as an Adjunct Professor at Syracuse University College of Law at White Hall, Main Campus, Syracuse, NY 13244.

G. From May 12, 1975 to June 30, 1975, I was employed as a long-term substitute teacher at P.E.A.C.E. Learning Center, 401 East Castle Street, Syracuse, NY.

H. From January 1973 to June 1973, I was employed as a Special Education Teacher at P.E.A.C.E. Learning Center, 401 East Castle Street, Syracuse, NY.

I. From April 1971 to June 1972, I was employed as a teacher of English at Corcoran High School, 919 Glenwood Avenue, Syracuse, NY.

J. From September 1967 to June 1970, I was employed as a teacher of English at Dunbar High School, First and N Streets, N.W., Washington, D.C.

K. From January 1969 to June 1970 I was employed as a teacher of English at Cardozo Adult Evening School, 13th Street, N.W., Washington, D.C.

L. From September 1966 to June 1967, I was employed as a teacher of English at Cummings Junior High School, Spartanburg, SC.

M. From January 1966 to June 1966, I was employed as a teacher of English at Carver High School, 589 South Liberty Street, Spartanburg, SC.

N. I have been a member of the following boards:

(1) Board of Trustees, Onondaga County Public Library,
Approximately 2000 - 2001

(2) Board of Trustees, Young Women's Christian Association
Approximately 1993 - 2001

(3) Board of Trustees, Cazenovia College
Approximately 1990 - 1995

(4) Board of Trustees, Public Broadcasting Council of Central New York
Approximately 1990 - 1994

(5) Board of Trustees, Crouse Irving Memorial Hospital
Approximately 1984 - 1993

(6) Board of Directors / Secretary, Syracuse Theatre Corp, Syracuse Stage
Approximately 1994 - 1998

(7) Board of Directors, NYS Association of Women Judges
Approximately 1996 - Present

(8) Board of Directors, Visiting Nurse Association of Central New York, Inc.
Approximately 1993 - 1995

(9) Board of Directors, Syracuse University Alumni Association
Approximately 1992 - 1996

(10) Board of Directors, Paul Robeson Performing Arts Co.
Approximately 1995 - 2000

(11) Board of Directors, Housing Visions Unlimited, Inc.
Approximately 1992 - 1997

(12) Board of Directors, Iroquois Nursing Home
Approximately 1997 - 1998

(13) Board of Directors, Urban League of Onondaga County
Approximately 1995 - 1998

(14) Board of Directors, Samaritan Center
Approximately 1997 - 2000

(15) Board of Directors, Catholic Charities
Approximately 1996 - 2000

(16) Board of Directors, Elmcrest Children's Center
Approximately 1998 - 2000

(17) Board of Directors, Young Men's Christian Association
Approximately 1986 - 1988

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

I have not completed military service.

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

While in law school, I received the African American Studies fellowship all three years.

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

I am a member of the following bar associations: American Bar Association, New York State Bar Association, Onondaga County Bar Association, and the Central New York Women's Bar Association. I am a member of the Judicial Section of each, but I have held no offices.

I was a member of the Gender Fairness Committee for the Fifth Judicial District from approximately 1989 to 2000. I was chairperson of the committee in 1993 and 1994. From 1988 to 2000, I was a district representative of the Anti-Discrimination Panel for Courts in the Fifth Judicial District. Additionally, since approximately 1996, I have been a member of the Judges Legislative Group of the State of New York Judiciary. Headed by the New York State Chief Administrative Judge, this group annually presents legislative proposals regarding the Courts and Judges. We also meet with state legislators to discuss the proposed legislation.

Since approximately 1996, I have been a director and member of the New York Association of Women Judges.

Other organizations of which I am a member but have held no offices are the Association of Justices of the Supreme Court of the State of New York, Association of Justices of the Supreme Court of the City of New York, the New York State Trial Lawyers Association, and National Organization of Black Law Enforcement Executives.

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

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

A. Board of Visitors, Syracuse University College of Law

B. Parishioner, Cathedral of the Immaculate Conception, Syracuse, NY
C. Member, Kings County Catholic Lawyers Guild

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

I was admitted to the Bar of the Supreme Court of the United States on April 5, 1999.

I was admitted to practice in the State of New York on September 12, 1977 in the Fourth Judicial Department.

There has been no lapse in membership of the bar of either court.

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

I have not published any books, articles, reports or other materials.

I am listing speeches and presentations that I have given to the best of my recollection. I generally speak about my experiences and my occupation so that I am not required to write speeches or memorize anything. When I speak about the law, I do not prepare written materials for the participants, this is done by the program sponsor. I have never kept my notes used during my presentations.

1978 - 1999 I spoke to local neighborhood groups while I was an assistant district attorney and city court judge. The topic of my speeches always involved the procedures followed in cases filed in criminal courts. The groups include the following:

A. Together Against Crime
B. Syracuse United Neighbors
C. Citizens for a Crime Free Community
D. Northside Neighborhood Group
E. West Genesee Neighborhood Watch
F. Syracuse Housing Authority Units for Senior Citizens

1980 - 1987 I was a faculty member at continuing judicial education seminars for New York State Town and Village Justices. During this period, I have spoken on various occasions about presiding over preliminary hearings, handling trials of traffic matters, presiding over cases involving children as witnesses, sexual crimes, domestic violence and charges of driving while intoxicated. Additionally, I have spoken about the ethical conduct for judges.

1983 I taught a class at the New York State Police Academy at Albany about investigating and charging sexual crimes. This included statutory requirements of various sexual crimes as well as requirements necessary to protect the integrity of collected evidence.

1984 - 1990 I was a faculty member for the Unified Court System Annual Judicial Seminars. During this period, I spoke on various occasions about landlord and tenant law as it applied to Upstate New York communities, domestic violence and ethical conduct for judges.

1985	I spoke about presenting criminal cases to the Grand Jury for the New York State Division of Criminal Justice Services Basic Prosecutor's Course.
6-6-87	I was the speaker at the National Council of Negro Women Scholarship Award Luncheon. My general theme was that with hard work and self-confidence, success has no limits.
10-2-87	I was a speaker at the Women in Government Seminar at the Corinthian Club, 930 James Street, Syracuse, New York. I spoke about child abuse in today's society.
12-16-87	I was a speaker at a town meeting to commemorate the 200th Anniversary of the United States Constitution. The program was held at LeMoyne College, Syracuse, New York. I spoke about the impact of the Constitution on the rights of the accused.
1-23-88	I gave welcoming remarks and introduced program performers at the Syracuse University Dr. Martin Luther King, Jr. tribute.
June, 1988	I was the commencement speaker at Nottingham High School in Syracuse, New York. I spoke generally about the graduates' bright futures and stressed that with hard work and determination, they would find success.
11-1-89	I was the speaker at the Central New York Hospital Association Annual Meeting. I spoke about child and elder abuse. Included in my speech was information about some legal liability concerns and reporting requirements. This was held at the Sheraton Inn in Liverpool, New York.

1990	I was the luncheon speaker at a seminar sponsored by the Onondaga County Medical Society Auxiliary. The topic was "Parenting in the 90s: Everyone's Responsibility". I spoke about the responsibility of every citizen for our youth, and the need for groups to work together.
1990	I was the speaker at the annual Vera House Awards dinner. I spoke about the historical evolution of domestic violence from a private matter to actionable criminal conduct.
2-17-91	I was a speaker at Cultural Fest, a program for low-income youth who resided in public housing. My speech was short and inspirational.
6-22-91	I was the commencement speaker at Fowler High School in Syracuse, NY. I spoke generally about the bright futures of the graduates.
6-17-91	I was the speaker at the PEACE Inc. Awards Dinner. I presented the award and spoke about the need for community volunteers.
'ebruary 1992	I was a panel member on a program about minorities in academics at the State University of New York Health Science Center in Syracuse, NY
3-17-1995	I was a panel member on a program about women in politics at Niagara Mohawk Power Corporation in Syracuse, NY.
2-23-98	I was a panel member on a cable television show about African-Americans in law enforcement professions.

5-1-2000	I was the speaker at the Law Day program presented by the Onondaga County Bar Association. The theme was "Celebrate Your Freedom: Democracy and Diversity". I spoke about how precious our freedom is and about the historical expansion of the meaning of the words of the Preamble to the Constitution, "We the People".
3-2-2002	I was the speaker at the University of South Carolina Black Law Student Association's Annual dinner. I spoke about the challenges and the joys associated with the practice of law. I included personal references about my career since law school.
Fall, 1987	New York State Bar Association Seminar, Speaker: "Practical Skills: Basic Criminal Practice"
October, 1990	Syracuse University College of Law and Central New York Psychiatric Center Seminar Principal Faculty Member: "A Program in Expert Witness Examination"
1990	New York State Bar Association Fair Trial / Free Press Conference Panel Member: Law and the Press Seminar
1991	Unified Court System Faculty Member: Training Seminar for Newly Elected Judges, New York City
January, 1992	Onondaga County Bar Association Seminar for Newly Admitted Attorneys Speaker: "Civil Actions in the Local Courts"
1992	Unified Court System Training Seminar for Judges Faculty: "Topics of Interest for Local Court Judges"
May 8, 1992	New York State Bar Association Seminar Speaker: "Examination of Witnesses and the Rape Trauma Syndrome"

Fall, 1993	New York State Bar Association Seminar Speaker: "The Trial of a Felony Case"
November 2, 1994	Onondaga County Bar Association Continuing Legal Education Reality 101 Series Speaker: "Handling the Smaller Civil Action"
December 7, 1994	The Syracuse Area Domestic Violence Conference On the Family Protection and Domestic Violence Intervention Act of 1994 Speaker: "How the Legislation Affects the Courts"
November 2, 1996	Onondaga County Bar Association Seminar for Legal Assistants Speaker: "Paralegalism: An Informed Courtship for Paralegals"
April 1, 2000	Oneida County Bar Association Continuing Legal Education Seminar Speaker: "Matrimonial Law Update"

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

    My health is excellent. The date of my last physical examination was August 11, 2003.

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

    A. I have held the position of Associate Justice, New York State Supreme Court, Appellate Division, Second Judicial Department from March 2001 to the present. I am an elected Supreme Court Justice appointed to the Appellate Division by Governor George Pataki.

The Appellate Division hears appeals from the Supreme Court, county, surrogate and family courts, the court of claims and the appellate terms for the judicial department in which the court is located. Original jurisdiction also includes the admission and supervision of attorneys; commencement of actions on submitted facts that require deciding only questions of law; and some Article 78 proceedings against a Supreme Court Justice.

B. I was elected to the position of New York State Supreme Court Justice in November 1999.

The term of service is 14-years which began on January 1, 2000.

Supreme Court is a statewide court of general jurisdiction. It has all of the jurisdiction the state can confer except cases of which exclusive jurisdiction has been conferred on the federal courts by Congress and actions against the state.

C. I was elected Judge of the City Court of Syracuse in November 1987 and re-elected November 1997. Each term was for a period of ten years with the first beginning January 1, 1988 and the second January 1, 1998.

The civil monetary jurisdiction of a city court is fifteen thousand dollars ($15,000) or more and small claims jurisdiction over money claims of three thousand dollars ($3,000) or less. City Courts also have criminal jurisdiction of misdemeanors and below.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues,

together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

1. I have provided the citations for published opinions or decisions that I have written and attached copies of those that have not been published

   A. Godoy v Abamaster of Miami, 302 AD2d 57, 754 NYS2d 301

   B. Sheffield Towers Rehabilitation and Health Care Center et al. v Antonia Novello, as Commissioner of the New York State Department of Health, et al, 293 AD2d 182, 741 NYS2d 103

   C. Lesley M. Hayes v Raymond J. Hayes, nonpublished (attached)

   D. Ronald H. Egerbrecht v Phyllis A. Egerbrecht, nonpublished (attached)

   E. Phyllis A. Sick n/k/a Phyllis A. Dale v Dennis N. Sick, nonpublished (attached)

   F. Lisa A Edmonds v Brian A. Edmonds, 184 Misc.2d 928, 710 NYS2d 765

   G. People of the State of New York v Mark J. Falco, nonpublished (attached)

   H. People of the State of New York v Mark L. Zurbregg, nonpublished (attached)

   I. People of the State of New York v Ronald Collins, nonpublished (attached), Affirmed by Onondaga County Court, Application for Leave to Appeal to the Court of Appeals of New York denied 76 NY2d 984, 565 NE2d 522, 563 NYS2d 773.

   J. Ted Wagner v Fremont Fence Co. d/b/a Bottle Fence Co., nonpublished (attached)

2. My decisions were reversed on four occasions. Copies of the following appellate reversals are attached or citations are listed:

   A. Linquist v Knowledge Systems and Research, Inc., 295 AD2d 889.

      Judgment was entered upon a jury verdict in favor of plaintiff awarding damages for injuries sustained in a motor vehicle accident. The Appellate Division, Fourth Judicial Department reversed, granted the motion to set aside the verdict, and dismissed the complaint. The Court determined that the plaintiff failed to prove that she suffered a serious injury under New York State Insurance Law.

   B. Ispahani v Ispahani, 277 AD2d 1057, 715 NYS2d 353

      Plaintiff husband and defendant wife were granted joint legal custody of their son during protracted divorce proceedings in New York State Supreme Court, Onondaga County. This temporary order directed that the child's primary residence remain with the plaintiff. The parties had custody of the child on alternating weekends and alternating days during the week.

      Plaintiff, a naturalized citizen of this country, was born and educated in Pakistan. On July 5, 2000, while plaintiff's sister visited from Pakistan, plaintiff took the child to Connecticut where he applied for an expedited passport to take the child out of the country on July 19, 2000, although the trial was scheduled to begin on July 24, 2000. No return date was given and the defendant was not informed of plaintiff's actions.

      Based upon these facts, there was a fear that plaintiff intended to abduct the child since custody had become a disputed issue in the

court proceedings. A hearing was scheduled. Defendant brought an order to show cause seeking an order restraining the plaintiff from taking the child from Onondaga County and a transfer of sole custody to the defendant until a hearing could be held. The order was signed with a hearing scheduled for the next day. On that evening the attorney representing defendant suffered a heart attack and was hospitalized. The hearing was adjourned and plaintiff appealed. The change of custody order was reversed by the Appellate Division and remitted for a hearing.

C. People v Robert Martinez, Index No. 96-3579
Nonpublished, copy is attached

The victim was relocated by an agency from New York City to Syracuse to escape from defendant's alleged brutality. He found her and came to Syracuse. He was arrested at the victim's home and an order of protection was issued at his arraignment requiring him to remain away from her. The Judge who issued the order did so pursuant to the incorrect section of the Criminal Procedure Law. Defendant again went to the victim's home. His subsequent conviction for Criminal Contempt in the Second Degree was reversed and the Information was dismissed.

D. People v Vincent Gandino, Index No. 94/3597
Nonpublished, copy is attached

Shortly after completing a sentence imposed for conviction of a similar charge, the defendant was accused of grabbing the victim in a public place in violation of an order of protection. He was arrested almost immediately. Prior to his first conviction, the defendant had gone to the victim's home and made threats to her through the closed door. On many other occasions, in person, by telephone and through the mail, the defendant had threatened to kill himself, the victim and her small children. After a hearing, I

ruled that the victim could testify about certain of these prior bad acts and crimes committed by the defendant against her, as they were probative of the issue of the defendant's intent. County Court ruled that the defendant was denied a fair trial as a result of my ruling and the conviction was reversed. Additionally, although the defendant was in the courtroom during a bench conference, the Court ruled that I erred by failing to note his presence on the record.

3. I have presided over many criminal cases that involve Constitutional issues. See as an example the copy of People v Mark J. Falco attached to number (1) above.

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

I have not held any public office other than judicial office.

17. Legal Career:

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

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

I have not served as a clerk to a judge.

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

I have never been a sole practitioner.

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

Since graduating from law school, I have held the following positions with the Onondaga County District Attorney's office, 421 Montgomery Street, 12th Floor, Syracuse, New York

November 1976 to January 1977
Volunteer Law Clerk

August 1977 to September 1977
Investigator

1977 to 1982
Assistant District Attorney,
Felony Trial Unit

1983 to 1986
Senior Assistant District Attorney
Director, Career Criminal Unit
Director, Sexual Crimes Unit

1986 to 1987
Chief Assistant District Attorney
Director, Prosecution of Domestic Violence and Sexual Abuse of Children Unit

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

My legal practice while a prosecutor was limited to criminal law.

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

I represented the People of the State of New York.

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

I appeared in court almost daily.

2. What percentage of these appearances was in:
(a) federal courts;
(b) state courts of record;
(c) other courts.

I spent 100% of my time in state courts of record.

3. What percentage of your litigation was:
(a) civil;
(b) criminal.

One hundred percent of my litigation experience was in criminal law.

(a) civil - 0
(b) criminal - 100%

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

I have tried to verdict approximately 60 cases as sole counsel.

5. What percentage of these trials was:
   (a) jury;
   (b) non-jury.

   Approximately 95-percent of the trials were tried by jury. Approximately 5 percent were non-jury.

18. Litigation: Describe the ten most significant litigated matters that you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

   (a) the date of representation;
   (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
   (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

   I litigated the following cases as an Assistant District Attorney so I always represented the People of the State of New York. No co-counsel assisted me during the trials. Counsel for each defendant is listed with each case summary. None had the assistance of co-counsel.

A. People v. Michael L. McKinney
   Indictment No 87-346-1
   Index No. 87/678

   This case was tried before a jury in New York State Supreme Court from August 19 to August 25, 1987. Acting Supreme Court Justice Walter Gorman presided.

Defense Counsel was Thomas J. Miller, Esq., 214 East Fayette Street, Syracuse, NY 13202. His telephone number is (315) 448-0126.

The defendant committed an armed robbery. He was convicted of Robbery in the First Degree, Robbery in the Second Degree, Assault in the Second Degree, and Criminal Possession of a Weapon in the Third Degree.

B. People v Marion A. Phoenix
Indictment No 87-265-1
Index No. 87/648

This case was tried before a jury in Onondaga County Court from August 24 to August 31, 1987 before Judge Patrick J. Cunningham. Defense Counsel was James P. McGinty, Esq., 217 Montgomery Street, Syracuse, NY. His telephone number is (315) 474-0566.

During a domestic argument, this defendant stabbed his girlfriend through the neck with a butcher knife. She died immediately. He was convicted of the lesser, included charge of Manslaughter in the First Degree.

C. People v Elbert Bryant And James O. Robertson
Indictment No. 87-85-1,2
Index No. 87/168

This case was tried before a jury in Onondaga County Court from July 10 to July 22, 1987, before Judge J. Kevin Mulroy. Defense Counsel for defendant Bryant was Hurclee Maye, Esq., 351 South Warren Street, Syracuse, NY 13202. His telephone number is (315) 471-5533. Defense Counsel for defendant Robertson was Thomas F. Shannon, Esq., 101 South Salina Street, Syracuse, NY 13202. His telephone number is (315) 474-1267.

Defendants abducted a sixteen-year-old female and pulled her into the back of their van. They put a stocking over her head and a gun to her head while the two men repeatedly raped her over a period of several hours.

Each defendant was convicted of Rape in the First Degree, Sexual Abuse in the First Degree, Unlawful Imprisonment in the First Degree and Criminal Use of a Firearm in the First Degree.

D. People v Eddie Kellams

Indictment No. 87-86-1
Index No. 86-2275

This case was tried before a jury in Onondaga County Court before Judge William J. Burke from May 4 to May 7, 1987. Defense Counsel was Thomas J. Miller, Esq., 214 East Fayette Street, Syracuse, NY 13202. His telephone number is (315) 448-0126.

The defendant and another man abducted a fifteen-year-old female from her school bus stop, and drove her to a desolate location where both raped her. He was convicted of Rape in the First Degree and Unlawful Imprisonment in the First Degree.

E. People v Mark S. Froats Indictment No. 85-891-1
Index No. 85/2111

This case was tried before a jury in New York State Supreme Court, Onondaga County from April 29 to May 6, 1986. Acting Supreme Court Justice Walter Gorman presided. Defense counsel was Robert Wildridge, 104 Gadwell Court, Daytona Beach, Florida 32199. His telephone number is no longer listed.

This defendant forced a female stranger to the rear of a home. He committed oral sodomy, assault and attempted to rape the victim while armed with a weapon. He was convicted of Sodomy

in the First Degree, Attempted Rape in the First Degree, Criminal Possession of a Weapon in the Third Degree and Assault in the Second Degree.

F. People v Gerald Stripling

Indictment No. 85-538-1
Index No. 85/1132

The case was tried before a jury in Onondaga County Court before Judge William J. Burke in January 1986. Defense Counsel was Joseph D. Dosa, Esq., 333 East Onondaga Street, Syracuse, NY 13202. His office telephone number is (315) 474-7447.

The defendant committed the crimes of rape, sodomy, and sexual abuse, against the wife of the defendant's friend. He used a knife to threaten the victim. He was convicted of Rape in the First Degree, Sodomy in the First Degree (2 counts), and Criminal Possession of a Weapon in the Fourth Degree.

G. People vs. Richard Bonaparte

Indictment No. 85-226-1
Index No. 85/338

The case was tried before a jury in Onondaga County Court in September 1985 before Judge William J. Burke. Defense Counsel was James Weeks, Esq., 8025 Summerview Drive, Fayetteville, NY 13066. His telephone number is (315) 637-2141.

This defendant committed acts of oral and anal sodomy, and sexual abuse on the person of a seven-year-old male. He was convicted of Sodomy in the First Degree (2 counts), Sexual Abuse in the First Degree and Endangering the Welfare of a Child.

H. People v Anthony C. Smith

Indictment No 84-961-2
Index No. 84-1961

This case was tried before a jury in Onondaga County Court from June 3 to June 10, 1985 before Judge Wallace Van Auser. Defense Counsel was John R. Rinaldi, Esq., 1101 North Salina Street, Syracuse, NY 13208. His telephone number is (315) 475-2143

Defendant and another male committed robbery at a restaurant during the late morning hours. Defendant Smith was armed with a loaded revolver that he fired into the ceiling to frighten employees who did not gather the money fast enough. He was convicted of Robbery in the First Degree, Grand Larceny in the Second Degree, and Criminal Possession of a Weapon in the Third Degree.

I. People v Christopher Block

Indictment No. 84-38-1
Index No. 84-1045

This case was tried before a jury in New York State Supreme Court from July 23 to August 1, 1984, before Acting Supreme Court Judge Walter Gorman. Defense Counsel was John A. DeFrancisco, Esq., One Park Place, Syracuse, NY 13202. His telephone number is (315) 423-7100.

The defendant abducted two women after leaving a nightclub where he was introduced to them. He raped and sexually abused both women. After the second woman escaped, defendant forced the other woman to accompany him to another location where he unlawfully entered a home. When discovered by police officers, defendant held them at bay by threatening to kill his victim with a weapon he held to her neck. He was convicted of Kidnapping

in the Second Degree (2 counts), Rape in the First Degree, Sexual Abuse in the First Degree, Criminal Possession of a Weapon in the Third Degree (2 counts), and Burglary in the Second Degree.

J. People v. Marcella Phipps

Indictment No.1 80-53-2
Index No. 80/116

This case was tried before a jury in Onondaga County Court from August 26 to September 3, 1981, before Judge William J. Burke. Defense Counsel was James F. Greenwald Esq., Federal Public Defender's Office of the Northern District of New York and the District of Vermont, 4 Clinton Square, Syracuse, NY 13202. His telephone number is (315) 701-0080.

The defendant and another person robbed a jewelry store in a local mall. She fired the gun she used into the ceiling as she escaped. She was convicted of Robbery in the First Degree.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation that did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question. Please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

My most significant legal activities involved working with children who were victims of abuse in both family and criminal courts. I was part of a group of prosecutors and law enforcement officials who urged revocation of the statutory corroboration requirement for the testimony of children who testified under oath about criminal sexual conduct committed against them. We also discussed and urged ways to allow children to testify on closed circuit television where necessary.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

   I participate in the New York State Deferred Compensation Plan. My current payroll contributions equal 10% of my pre-tax salary.

   I am entitled to receive my state retirement benefits if I retire from the State of New York to become a United States District Judge. I have not yet made any arrangements to collect such benefits, but I would do so after I retire. With almost twenty-eight years of service, I would receive benefits of approximately $85,000 per year according to the most recent annual report from the State Comptroller.

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

   If my personal interests conflict with my professional duties so that my judgment is or appears to be affected, I will follow guidelines of the Code of Judicial Conduct and remove the conflict or recuse myself. I do not, however, anticipate any categories of litigation nor financial arrangements that are likely to present potential conflicts of interest.

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

   I do not have any plans, commitments or agreements to pursue outside employment.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

   See attached Financial Disclosure Report.

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

   See attached financial net worth statement.

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

   I have not held a position or played a role in a political campaign, other than to purchase tickets and attend fundraisers for candidates.

FINANCIAL STATEMENT
NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks	13	748	87	Notes payable to banks-secured	N O N E		
U.S. Government securities-add schedule	NA			Notes payable to banks-unsecured	N O N E		
Listed securities-add schedule	NA			Notes payable to relatives	N O N E		
Unlisted securities--add schedule	NA			Notes payable to others	N O N E		
Accounts and notes receivable:	NA			Accounts and bills due	13	419	00
Due from relatives and friends	N O N E			Unpaid income tax	N O N E		
Due from others	N O N E			Other unpaid income and interest	N O N E		
Doubtful	N O N E			Real estate mortgages payable-add schedule	91	421	67
Real estate owned-add schedule	110	250	00	Chattel mortgages and other liens payable	N O N E		
Real estate mortgages receivable	N O N E			Other debts-itemize:	N O N E		
Autos and other personal property	15	700	00				
Cash value-life insurance	6	100	00				
Other assets itemize:							
NYS Deferred Compensation	189	019	06				
TIAA Retirement Annuity	87	127	62				
MetLife Securities Ira #1	73	713	10	Total liabilities	143	540	67
MetLife Securities IRA #2	56	318	27	Net Worth	408	436	25
Total Assets	551	976	92	Total liabilities and net worth	551	976	92
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor	N O N E			Are any assets pledged? (Add schedule)	NO		
On leases or contracts	38	700	00	Are you defendant in any suits or legal actions?	NO		
Legal Claims	N O N E			Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax	N O N E						
Other special debt	N O N E						

Assets

Cash on hand and in banks:

1. State Employees Federal Credit Union

Checking	$1,400.00
Savings	$9,580.97

2. Syracuse Federal Credit Union

Savings	$1,415.70

3. State Street Research, Money Market Class E

Savings	$1,352.20
	$13,748.87

Real Estate Owned:

1. Residence: Syracuse, NY 13214 $102,000.00

2. Former parents home now owned by my three siblings and me in Spartanburg, SC 29301.

Fair Market value $33,000

$ 8,250.00

$110,250.00

Other Assets

1. New York State Deferred Compensation

A.	Stable Income Fund	$97,079.00
B.	T Rowe Price Equity Income Fund	$43,828.61
C.	Fidelity OTC Portfolio	$36,923.05
D.	PBHG Emerging Growth Fund	$ 1,826.61
E.	Janus Fund	$ 5,959.75
F.	Putnam International Growth Fund	$ 3,402.04
		$189,091.06

2. TIAA Traditional Retirement Annuity $87,127.62

3. MetLife Securities IRA #1

A.	Money Market Account	$ 65.18
B	Cdc Nvest Star Growth Fund	$ 7,461.14
C.	Cdc Nvest Bond Income Fund	$ 11,006.51
D.	Cdc Nvest Government Securities Fund	$ 5,865.69
E.	Cdc Nvset Strategic Income Fund	$ 6,575.96
F.	Capital World Growth & Income Fund	$ 7,247.24
G.	Putnam International Capital Opportunities Fund	$ 6,514.53
H.	State Street Research Investment Trust Fund	$ 7,976.27
I.	State Street Large Cap Value Fund	$ 6,619.50
J.	State Street MidCap Value Fund	$ 7,116.76
K.	State Street Research Asset Allocation Fund	$ 7,264.32
		$ 73,713.10

Other Assets (continued)

4. MetLife Securities IRA #2

A.	Money Market Account	$ 14.40
B.	Cdc Nvest Bond Income Fund	$3,233.21
C.	Cdc Nvest Government Securities	$6,934.58
D.	Cdc Nvest Strategic Income Fund	$3,976.34
E.	Capital World Growth & Income Fund	$5,636.83
F.	Putnam International Capital Opportunities Fund	$5,066.96
G.	State Street Research Investment Trust Fund	$6,697.60
H.	State Street Research Aurora Fund	$8,424.27
I.	State Street Large Cap Value Fund	$5,148.60
J.	State Street MidCap Value Fund	$5,535.38
K.	State Street Research Asset Allocation Fund Class	$5,650.10
		$56,318.27

Contingent Liabilities:

1. On leases or contracts

M & T Bank home equity loan secured by the former marital residence, Syracuse NY 13210. I deeded my interest in this residence to my former spouse pursuant to our agreement regarding equitable distribution. He agreed to pay the loan and hold me harmless from any liability arising from the loan transaction. The balance is approximately

$38,700.00.

Liabilities:

Accounts and bills due -

Real Estate Mortgage on my residence $91,421.67
Chase Mortgage
PO Box 79046
Phoenix AZ 85062

The original amount mortgaged was $92,400 will be paid in monthly installments beginning April 1, 2003 until March 1, 2018. I pay $1,111.03 per month that includes taxes and escrow payments.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

   1.A. From 1997 to 2000, I served as a member of the Board of Directors of the Samaritan Center, Inc. The not for profit agency serves daily hot nutritious meals. The typical diner includes economically distressed elderly persons on fixed incomes and homeless persons. Parents who are employed, but unable to meet the needs of their families, also come to the center for meals.

   I met with other members of the board at least one and one half hours per month. I have worked as a server on several occasions.

   1.B. From 1996 to October 2000, I served as a member of the Board of Directors of Catholic Charities, Onondaga County. Among the programs operated for the poor by the agency are Bargains Galore Thrift Stores, Expanded In-Home Services for the Elderly Program, The Oxford Inn for Homeless Men and Neighborhood and Family Services.

   I spent approximately three hours per month at board and committee meetings.

   1.C. From approximately 1992 to 1997, I served on the Board of Directors of Housing Visions Unlimited, Inc., a not for profit agency. Housing Visions develops low-income housing for the poor.

   1.D. From September 1997 to 1999, I was an advisory board member to the Reach-Out and Read Program at State University of New York Health Science Center. To promote early childhood literacy, the program ensured that children treated at the

center received a new book. In addition to attending monthly meetings, I occasionally volunteered as a model reader to children brought to the Outpatient Department or the Pediatric and Adolescent Center.

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

   I do not currently belong, nor have I belonged, to any organization that discriminates on the basis of race, sex, or religion.

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

   There is no selection commission in New York. I was interviewed by the Counsel to the President along with members of his staff. Additionally, I was interviewed by the Department of Justice and the Federal Bureau of Investigation. Governor George Pataki has established a Federal Judicial screening committee to advise him of the qualifications of candidates who wish to be recommended for a federal judgeship. I have submitted a questionnaire, but my appearance before the committee has not been scheduled yet.

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

No one involved in the judicial nominating process has questioned me, directly or indirectly about how I would rule on any specific case, legal issue or question.

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

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

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

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Governmental authority is divided among the legislative, executive and judicial branches of government with the powers of each branch defined and limited by the Constitution. The function of the judiciary is not to legislate or administrate. It is to determine what the law is, interpret it, and apply that law to a concrete set of facts. The court must then apply that law to adjudicate issues that have been fully and finally framed and brought before the court by one injured as a result of the alleged illegal conduct of the defendant.

Consideration of the doctrine of stare decisis is crucial in this process. If citizens are to have confidence in the judicial branch and order in conducting their lives, they must be able to rely upon past judicial precedents as predictors of future rulings on the same or similar issues.

AFFIDAVIT

I, SANDRA LYNN TOWNES, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

AUGUST 15, 2003
(DATE)

Sandra Lynn Townes
(NAME)

Karen E Foley
(NOTARY)
ONONDAGA COUNTY
#01W14627859 - Expires 7/31/200

AO-10
Rev. 1/2002

FINANCIAL DISCLOSURE REPORT
FOR CALENDAR YEAR 2002

Report Required by the Ethics in Government Act of 1978, (5 U.S.C. App., §§101-111)

1. Person Reporting *(Last name, first, middle initial)*	2. Court or Organization	3. Date of Report
Townes, Sandra L.	U.S. District Court, Eastern District, New York	August 5, 2003
4. Title *(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)* US District Judge - Active Status	5. ReportType (check appropriate type) _X_ Nomination, Date 08/01/03 ___ Initial ___ Annual ___ Final	6. Reporting Period January 1, 2002 - July 31, 2003
7. Chambers or Office Address Onondaga County Courthouse 401 Montgomery Street, Room 405 Syracuse, New York 13202	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date_____	

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

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

	POSITION	NAME OF ORGANIZATION/ENTITY
[ ]	**NONE** (No reportable positions.)	
1	Associate Justice	Appellate Division, Second Dept., NYS Supreme Court
2	Adjunct Professor	Criminal Justice Dept., Onondaga Community College
3	Board of Trustees	Onondaga County Public Library SEE ATTACHED SHEET

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

	DATE	PARTIES AND TERMS
[X]	**NONE** (No reportable agreements.)	
1		
2		
3		

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

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
[ ]	**NONE** (No reportable non-investment income.)		
1	2002-7/11/03	Associate Justice Annual Salary	$ 144,000
2			$
3			$
4			$
5			$

Sandra L. Townes
August 5, 2003

I. Positions

4. Board of Trustees	Young Women's Christian Association
5. Board of Visitors	Syracuse University College of Law
6. Board of Directors	N.Y.S. Association of Women Judges
7. Advisory Board	Syracuse University Legal Assistant Program

AO-10
Rev. 1/2002

FINANCIAL DISCLOSURE REPORT
FOR CALENDAR YEAR 2002

Report Required by the Ethics in Government Act of 1978, (5 U.S.C. App., §§101-111)

1. Person Reporting *(Last name, first, middle initial)*	2. Court or Organization	3. Date of Report
Townes, Sandra L.	U.S. District Court, Eastern District, New York	August 5, 2003
4. Title *(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)* US District Judge - Active Status	5. ReportType (check appropriate type) _X_ Nomination, Date 08/01/03 ___ Initial ___ Annual ___ Final	6. Reporting Period January 1, 2002 - July 31, 2003
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IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.

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

	POSITION	NAME OF ORGANIZATION/ENTITY
[ ]	**NONE** (No reportable positions.)	
1	Associate Justice	Appellate Division, Second Dept., NYS Supreme Court
2	Adjunct Professor	Criminal Justice Dept., Onondaga Community College
3	Board of Trustees	Onondaga County Public Library

SEE ATTACHED SHEET

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

	DATE	PARTIES AND TERMS
[X]	**NONE** (No reportable agreements.)	
1		
2		
3		

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

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
[ ]	**NONE** (No reportable non-investment income.)		
1	2002-7/11/03	Associate Justice Annual Salary	$ 144,000
2			$
3			$
4			$
5			$

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Sandra L. Townes	August 5, 2003

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.
(Includes those to spouse and dependent children. See pp. 25-27 of Instructions.)

☐ **NONE** (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1	Exempt	
2		
3		
4		
5		
6		
7		

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

☐ **NONE** (No such reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1	Exempt		$
2			$
3			$
4			$

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

☐ **NONE** (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE*
1	M & T Bank	Home equity loan	K
2			
3			
4			
5			
6			

*Value Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000 N=$250,001-$500,000
O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Sandra L. Townes	August 5, 2003

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

	A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	Place "(X)" after each asset exempt from prior disclosure.	(1) Amt. Code1 (A-H)	(2) Type (e.g., div., rent or int.)	(1) Value Code2 (J-P)	(2) Value Method Code3 (Q-W)	(1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐	NONE (No reportable income,									
1	NYS Deferred Compensation Account		none	M	T					
2	TIAA Retirement Annuity		none	L	T					
3	Federal Credit Union Accounts	A	int.	J	T					
4	MONY Cash Value Life Ins.	A	div.	D	T					
5	MetLife Securities IRA (#1)	B	div.	L	T					
6	Components:									
7	Money Market	A	div.	J	T					
8	CDC Nvest Star Growth		none	J	T					
9	CDC Nvest Bond Income	A	div.	J	T					
10	CDC Nvest Govt. Fund	A	div.	J	T					
11	CDC Nvest Strategic Inc.	A	div.	J	T					
12	Capital World Growth Inc.	A	div.	J	T					
13	Putnam International Voyager		none	J	T					
14	State Street Investment Trust		none	J	T					
15	State Street Large Cap Value	A	CG	J	T					

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

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Sandra L. Townes	August 5, 2003

VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

	A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
		(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
	Place "(X)" after each asset exempt from prior disclosure.	Amt. Code1 (A-H)	Type (e.g., div., rent or int.)	Value Code2 (J-P)	Value Method Code (Q-W)	Type (e.g., buy, sell, merger, redemption)	(2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
	☐ **NONE** (No reportable income, assets, or transactions)									
16	State Street Mid Cap Value	A	CG	J	T					
17	State Street Asset Allocation	A	div.	J	T					
18	MetLife Securities IRA #2	B	div.	L	T					
19	Components:									
20	Money Market	A	div.	J	T					
21	CDC Nvest Bond Income	A	div.	J	T					
22	CDC Nvest Govt Securities	A	div.	J	T					
23	CDC Nvest Strategic Inc.	A	div.	J	T					
24	Capital World Growth Inc.	A	div.	J	T					
25	Putnam International Voyager		none	J	T					
26	State Street Investment Trust		none	J	T					
27	State Street Aurora	A	CG	J	T					
28	State Street Large Cap Value	A	CG	J	T					
29	State Street Mid Cap Value	A	CG	J	T					
30	State Street Asset Allocation	A	div.	J	T					
31	State Street Research Money Mkt	A	div.	J	T					
32	(Monthly automatic purchases)									
33										

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

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Sandra L. Townes	August 5, 2003

VII. Page 3 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure.	Amt. Code1 (A-H)	Type (e.g., div., rent or int.)	Value Code2 (J-P)	Value Method Code (Q-W)	Type (e.g., buy, sell, merger, redemption)	(2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ **NONE** (No reportable income, assets, or transactions)									
34									
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1	Income/Gain Codes: (See Col. B1, D4)	A=$1,000 or less F=$50,001- $100,000	B=$1,001-$2,500 G=$100,001-$1,000,000	C=$2,501-$5,000 H1=$1,000,001-$5,000,000	D=$5,001-$15,000 H2=More than $5,000,000	E=$15,001-$50,000
2	Value Codes: (See Col. C1, D3)	J=$15,000 or less N=$250,001-$500,000 P3=$25,000,001-$50,000,000	K=$15,001-$50,000 O=$500,001-$1,000,000	L=$50,001- $100,000 P1=$1,000,001-$5,000,000 P4=More than $50,000,000	M=$100,001-$250,000 P2=$5,000,001-$25,000,000	
3	Value Method Codes: (See Col. C2)	Q=Appraisal U=Book value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Sandra L. Townes	August 5, 2003

VII. Page 4 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure.	Amt. Code1 (A-H)	Type (e.g., div., rent or int.)	Value Code2 (J-P)	Value Method Code (Q-W)	Type (e.g., buy, sell, merger, redemption)	(2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ **NONE** (No reportable income, assets, or transactions)									
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69									

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

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Sandra L. Townes	August 5, 2003

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

Re III. Non-investment Income - I did not include the salary received as an adjunct professor as noted in "Positions I" because my salary was less than $5,000.

Re VI. Liabilities - The home equity loan is secured by the former marital residence. I deeded my interest in this residence to my former spouse pursuant to our agreement regarding equitable distribution of our marital property. My former spouse agreed to pay the loan and hold me harmless from any liability arising from the loan transaction.

IX. CERTIFICATION.

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

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

Signature Sandra L. Townes Date August 5, 2003

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. App., § 104.)

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

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

Senator DEWINE. Mr. Saylor?

STATEMENT OF F. DENNIS SAYLOR, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF MASSACHUSETTS

Mr. SAYLOR. Thank you, Mr. Chairman.

Again, I do not wish to make an opening statement. I do want to thank Senator Kennedy for his very kind remarks and introduction. I want to thank President Bush for the honor that I received of this nomination, and thank the Committee for giving us this hearing today.

I also want to say that I have three children, who are 10-, 8- and 5-years-old, and they are back home in Massachusetts, I hope at elementary school, rather than here making trouble in the back of the room.

[Laughter.]

Mr. SAYLOR. Thank you.

[The biographical information of Mr. Saylor follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Frank Dennis Saylor IV; F. Dennis Saylor IV

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

Residence: Weston, MA

Office: Goodwin Procter LLP
Exchange Place
Boston, MA 02109

3. **Date and place of birth.**

July 3, 1955
Royal Oak, Michigan

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

Married to Catherine Adams ("Addie") Fiske
Spouse's occupation: lawyer
Spouse's employer: United States Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
One Gateway Center
Newton Corner, MA 02458

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

Northwestern University (1973-1977) (B.S.J., 1977)
Harvard Law School (1978-1981) (J.D., 1981)

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

Chicago Crime Commission
Chicago, IL
staff associate (1977-1978)

Frank D. Saylor & Son
Birmingham, MI
factory worker (summer 1978)

Waller, Lansden, Dortch & Davis (law firm)
Nashville, TN
summer associate (summer 1979)

Goodwin Procter LLP (law firm)
(formerly known as Goodwin, Procter & Hoar)
Boston, MA
summer associate (summer 1980)
associate (1981-1987)
partner (1993 to date)

F. Dennis Saylor IV Professional Corporation
Boston, Mass.
professional corporation (2001 to date)

United States Attorney's Office
District of Massachusetts
Boston, MA
Assistant U.S. Attorney (1987-1990)

United States Department of Justice
Criminal Division
Washington, DC
Special Counsel and Chief of Staff to
Assistant Attorney General (1990-1993)

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

None

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

None

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

American Bar Association
- Criminal Justice Section Council (Department of Justice representative) (1992-1993)
- DOJ Liaison, Criminal Justice Standards Committee (1992-1993)
- Member, ABA Advisory Committee on the Prosecution Function (1992)

Massachusetts Bar Association
Boston Bar Association

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

a. Lobbying organizations - none to my knowledge, other than bar associations

b. Other organizations:
- Horseless Carriage Club of America
- Veteran Motor Car Club of America
- Antique Automobile Club of America
- Valley Pond Corporation (private swimming and recreation club in Weston and Lincoln, MA) (wife is a member of Board of Directors)

c. My wife and I have donated money to organizations over the years that have listed us as "members" (e.g., The Nature Conservancy); we are not active members of any such organizations.

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

Massachusetts (1981)
U.S. District Court for the District of Massachusetts (1982)
U.S. Court of Appeals for the First Circuit (1982)
U.S. Court of Appeals for the Second Circuit (1994)
U.S. Court of Appeals for the Ninth Circuit (1992)
Supreme Court of the United States (1991)

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

Articles:

"Putting a Square Peg in a Round Hole: The Application of Model Rule 4.2 to Federal Prosecutors" (with J. Douglas Wilson), 53 U. Pitt. L. Rev. 459 (1992)

"The Thornburgh [Memorandum] Muddle," The [San Francisco] Recorder, Oct. 7, 1998

Chapters:

Chapter 12, "Federal Sentencing Guidelines," in "Environmental Crimes" (N.Y. State Bar Ass'n, 1995; Michael S. Elder, editor)

Chapter 5, "Sanctions," in "Federal Civil Litigation in the First Circuit," (Massachusetts Continuing Legal Education, 1995, 1998, [update pending]; Hon. Robert B. Collings, Joan A. Lukey, Hon. Michael A. Ponsor, Max D. Stern, editors)

Speeches/Panels:

Speaker at various Department of Justice Money Laundering/Asset Forfeiture Conferences (1988-1992) (subjects: corporate criminal liability and money laundering); no prepared texts or transcripts

Speaker at Federal Bar Council, Nevis, February 1992 (subject: communications with represented parties); no prepared text or transcript

I have also participated over the years as a panelist or panel chair in programs sponsored by the ABA, the Massachusetts Bar Association, and the Boston Bar Association on a variety of topics, including developments in business litigation, money laundering, and attorney ethical rules. To my knowledge, there are no prepared texts or transcripts of my presentations or remarks.

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

Excellent; last physical examination was April 14, 2003

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

None.

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

Not applicable

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

Josiah Smith Tavern Committee (historic preservation), Town of Weston, Massachusetts (member) (2003 to date)

17. **Legal Career:**

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

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

No.

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

No.

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

(i) Goodwin Procter LLP
(formerly known as Goodwin Procter & Hoar)
Exchange Place
Boston, MA 02109
(1981-1987)
Title: Associate, Litigation Department

(ii) United States Attorney's Office
District of Massachusetts
U.S. Courthouse, Suite 9200
1 Courthouse Way
Boston, MA 02210
(1987-1990)
Title: Assistant U.S. Attorney

(iii) United States Department of Justice
Criminal Division
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
(1990-1993)
Title: Special Counsel and Chief of Staff to Assistant Attorney General

(iv) Goodwin Procter LLP
(formerly known as Goodwin Procter & Hoar)
Exchange Place
Boston, MA 02109
(1993 to date)
Title: Partner

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

Associate, Goodwin Procter:
My practice was typical of a litigation associate in a large firm. I prepared research memoranda and briefs, took depositions, reviewed documents, and assisted partners and other senior attorneys with preparing cases for trial. I personally tried two cases (one bench trial and one jury trial), both involving commercial disputes.

Assistant United States Attorney (D. Mass.):
I was a member of the Economic Crimes Unit, generally responsible for prosecuting tax, money laundering, fraud, embezzlement, and other white-collar offenses, both at trial and on appeal. I also handled one firearm prosecution.

Special Counsel to AAG, Criminal Division:
I was generally responsible for assisting Assistant Attorney General Robert S. Mueller III in the performance of his duties. My duties were widely varied, but included, among other things, providing advice and assistance on significant federal criminal prosecutions nationwide; assisting in various policy and legislative initiatives; acting as a liaison with the American Bar Association and

defense counsel organizations; and acting as a liaison with Congress on specific investigations or prosecutions.

Partner, Goodwin Procter:
My practice consists principally of white collar criminal defense; conducting internal investigations; compliance-related work; and civil business litigation. I represent both corporate and individual clients in federal and state courts.

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

Typical corporate clients include companies such as Blue Cross and Blue Shield of Massachusetts (health insurer), Countrywide Home Loans (mortgage lender), and Polaroid Corporation (manufacturer). I have also represented numerous individuals (typically, those who are criminal defendants or subjects or targets of investigations) and other organizations (e.g., Massachusetts Port Authority).

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

1981-1987: occasionally
1987-1990: frequently
1990-1993: rarely (one appearance)
1993 to date: varies between occasionally and frequently

2. **What percentage of these appearances was in:**
   (a) federal courts;
   (b) state courts of record;
   (c) other courts.

1981-1987:	federal courts (10%)
	state courts (90%) (est.)
1987-1990:	federal courts (100%)
1990-1993:	federal courts (100%)
1993 to date:	federal courts (67%)
	state courts (33%) (est.)

3. **What percentage of your litigation was:**
   (a) civil;
   (b) criminal.

1981-1987:	civil (95%)
	criminal (5%) (est.)
1987-1990:	criminal (100%)
1990-1993:	criminal (100%)
1993 to date:	civil (50%)
	criminal (50%) (est.)

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

   Cases tried to verdict: 9
   I was sole counsel in 7, and co-counsel in 2.

   In addition, I had two jury trials as criminal defense counsel that resulted in mistrials after the close of the evidence: *United States v. Alzanki* (mistrial after 12 days of trial) and *United States v. Prasad* (mistrial after 25 days of trial). I also was co-counsel for plaintiff in *GPMRI v. RIMRIN, et al.*, a major antitrust trial that settled after 26 days of trial.

5. **What percentage of these trials was:**
   (a) jury;
   (b) non-jury.

Jury:	8 of 9	(89%)
Bench:	1 of 9	(11%)

18. **Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:**

    (a) the date of representation;
    (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
    (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

In alphabetical order:

1. Greater Providence MRI v. Rhode Island Magnetic Resonance Imaging Network, et al.
   Civil No. 94-0318-P (D.R.I.)
   Court: United States District Court, District of Rhode Island (Hon. Raymond J. Pettine, U.S.D.J.)

   Summary:
   This was a civil antitrust lawsuit. Our client, plaintiff GPMRI, opened a free-standing magnetic resonance imaging (MRI) center in Providence, Rhode Island. At the time, the Rhode Island MRI Network (RIMRIN), which was owned by all of the acute care hospitals in Rhode Island, had a monopoly on MRI services in Rhode Island. RIMRIN and its affiliated hospitals conspired to prevent GPMRI from operating in the market, principally by preventing all radiologists in the state from interpreting MRI images on behalf of GPMRI.

   Reported opinions: none

   Nature of participation: co-counsel with Don M. Kennedy (partner at Goodwin Procter). Mr. Kennedy and I divided duties at the trial, with each examining approximately half the witnesses.

   Final disposition: Case settled after 26 days of trial.

   Date of representation: 1995-1996

Co-counsel: Don M. Kennedy (Goodwin Procter partner)
James J. Berriman (Goodwin Procter associate)
Christopher T. Holding (Goodwin Procter associate)
Goodwin Procter LLP
Exchange Place
Boston, MA 02109
(617) 570-1000

Opposing counsel: William L. Patton
Ropes & Gray
One International Place
Boston, MA 02110
(617) 951-7000
(represented Rhode Island Hospital)

Evan Slavitt
Bodoff & Slavitt LLP
77 North Washington Street
Boston, MA 02114
(617) 742-9969
(represented RIMRIN)

Neil P. Motenko
Nutter McClennen & Fish, LLP
155 Seaport Boulevard
Boston, MA 02110
(617) 439-2216
(represented Rhode Island Medical Imaging, Inc.)

2. United States v. Abair Alzanki, et al.,
CR. No. 93-10309-Z (D. Mass.)
Court: United States District Court, District of Massachusetts (Hon. Rya W. Zobel, U.S.D.J.)

Summary:
This was a prosecution for involuntary servitude. Alzanki (a 19-year old Kuwaiti national) and her husband were charged with holding their maid, a Sri Lankan national, in involuntary servitude in a suburban Boston apartment.

Reported opinions: 54 F.3d 994 (1st Cir. 1995), cert. denied, 516 U.S. 1111 (1996) (affirming conviction of husband)

Nature of participation: I represented the defendant wife through pretrial proceedings and 12-day jury trial.

Final disposition: Ms. Alzanki gave birth to a baby after the close of the evidence, leading to the declaration of a mistrial. The case proceeded as to the husband, who was convicted. The government dropped charges as to the wife and she was not re-tried.

Date of representation: 1993-1994.

Co-counsel: Jacqueline Scott Corley
(Goodwin Procter associate)
c/o The Hon. Charles R. Breyer
U.S. District Court for the Northern District of California
2nd Floor
450 Golden Gate Avenue
San Francisco, CA 94102
(415) 522-3187

Michael A. Collora
Dwyer & Collora, LLP
600 Atlantic Avenue
Boston, MA 02210
(617) 371-1000
(represented Talal Alzanki)

Opposing counsel: S. Theodore Merritt (AUSA, D. Mass.)
U.S. Attorney's Office
1 Courthouse Way
Boston, MA 02210
(617) 748-3100

Steven M. Dettelbach (Trial Attorney, Civil Rights Division)
U.S. Attorney's Office
801 West Superior Avenue
Suite 400
Cleveland, OH 44113
(216) 622-3600

3. United States v. Michael Carpenter
CR. No. 88-148-T
Court: United States District Court, District of Massachusetts (Hon. Joseph L. Tauro, U.S.D.J.)

Summary:
This was a prosecution of a so-called "tax protestor," who purported to believe that his wages were not income and therefore not taxable. A principal issue at trial was whether the defendant held that belief in good faith.

Reported opinions: None.

Nature of participation: I handled the prosecution at trial.

Final disposition: conviction (no appeal).

Date of representation: 1988

Co-counsel: None.

Opposing Counsel: Charles P. McGinty
Assistant Federal Defender
408 Atlantic Avenue, 3rd Floor
Boston, MA 02210
(617) 223-8080

4. United States v. Richard Dray and Paul Ochs, Jr.
Appeal Nos. 87-1465, 87-1501; Appeal No. 89-1024
Court: United States Court of Appeals for First Circuit (Hon. Hugh Bownes, Bailey Aldrich, Juan Torruella, Circuit Judges); United States District Court, District of Massachusetts (Hon. David Mazzone, U.S.D.J.); United States Court of Appeals for First Circuit (Hon. Bruce Selya, Bailey Aldrich, Conrad Cyr, Circuit Judges)

Summary:
This was a prosecution for mail fraud, arising out of the bribery of a City of Boston official. Defendants, a lawyer and a developer, were prosecuted for paying a bribe to obtain a building permit from the City of Boston for a fraudulently low fee by deliberately underestimating the cost of the project. The case was tried and appealed twice; the first conviction was overturned after the Supreme Court issued its ruling in McNally v. United States, 483 U.S. 350 (1987),

which held that the deprivation of honest services did not constitute a mail fraud under the statute.

Reported opinions: 842 F.2d 515 (1st Cir. 1988) (first appeal); 901 F.2d 1132 (1st Cir. 1990) (second appeal).

Nature of participation: I represented the government in the first appeal, second trial, and second appeal.

Final Disposition: Both defendants convicted. One conviction affirmed on appeal; other defendant did not appeal.

Date of representation: 1987-1990

Co-counsel: None

Opposing counsel: Earle C. Cooley
Cooley Manion Jones LLP
21 Custom House Street
Boston, MA 02110
(617) 737-3100
(represented Paul Ochs)

William D. Homans, Jr.
(deceased)
(represented Richard Dray)

5. United States v. Paul Gallerani and Herbert Gray
Appeal No. 94-1365, 94-1366 (2d Cir.)
Court: United States Court of Appeals for the Second Circuit (Hon. John Walker, Amalya Kearse, Ellsworth Van Graafeiland, Circuit Judges)

Summary:
This was an appeal of a criminal conviction for bank fraud. Gallerani and Gray allegedly used their positions as directors and officers of several banks for unlawful purposes on various loan transactions, including obtaining loan proceeds without disclosing their personal interests, and submitting false reports to federal bank examiners concerning those loans. The principal appellate issues were the trial court's failure to instruct the jury on the object of the conspiracy and an improper Pinkerton instruction on co-conspirator liability.

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Reported opinions: 68 F.3d 611 (2nd Cir. 1995)

Nature of participation: I handled the appeal for defendants Paul Gallerani and Herbert Gray.

Final disposition: The Court of Appeals reversed the convictions. Both defendants subsequently entered into plea agreements.

Date of representation: 1994-1995

Co-counsel: Robert N. Driscoll (Goodwin Procter associate)
Allston & Bird LLP
601 Pennsylvania Avenue, N.W.
North Building, 10th Floor
Washington, DC 20004
(202) 756-3300

Donald E. O'Brien
[last known address]
231 South Union Street
P.O. Box 876
Burlington, VT 05402
(802) 863-6879
(trial counsel for Gallerani)

John T. Sartore
Paul, Frank & Collins, P.C.
One Church Street
P.O. Box 1307
Burlington, VT 05402
(802) 658-2311
(trial counsel for Gray)

Opposing counsel: Paul J. van de Graaf (AUSA, D. Vt.)
United States Attorney's Office
P.O. Box 570
Burlington, VT 05402
(802) 951-6725

6. United States v. Edmund M. Hurley, et al.,
CR. No. 89-68-H (D. Mass.)
Court: U.S.D.C., District of Massachusetts (Hon. Edward F. Harrington, U.S.D.J.)

Summary:
This was a prosecution of three attorneys (Edmund M. Hurley, Charles R. Burnett, and Joseph J. Balliro) and a financial advisor (David Gorwitz). All were prosecuted for tax conspiracy for laundering millions of dollars of drug profits on behalf of Salvatore Michael Caruana, a fugitive organized crime figure, through an elaborate network of corporations in the United States, the Bahamas, and Panama. A related post-trial proceeding involved the District Court's refusal to release juror names to the press.

Reported opinions: 957 F.2d 1 (1st Cir.), cert. denied, 506 U.S. 817 (1992) (appeal of convictions); In re Globe Newspaper Co., 920 F.2d 88 (1st Cir. 1990) (press access to jurors).

Nature of participation: with AUSA Robert L. Ullmann, I handled prosecution of the matter from indictment through trial. Mr. Ullmann and I divided duties at the trial, with each examining approximately half the witnesses.

Final disposition: The trial court directed a verdict in favor of defendant Balliro at the close of the government's evidence; Gorwitz was acquitted; and Hurley and Burnett were convicted.

Date of representation: 1989-1990

Co-counsel: Robert L. Ullmann (AUSA, D. Mass.)
Nutter McClennen & Fish, LLP
155 Seaport Boulevard
Boston, MA 02110
(617) 439-2262

Opposing counsel: Richard Egbert
99 Summer Street
Boston, MA 02110
(617) 737-8222
(represented Balliro)

Anthony Cardinale
Cardinale & Di Mauro, LLC
655 Summer Street
Boston, MA 02210
(617) 345-5400
(represented Burnett)

Albert F. Cullen, Jr.
30 Massachusetts Avenue
North Andover, MA 01845
(978) 794-5658
(represented Hurley)

Richard Wynn
385 Broadway
Revere, MA 02151
(781) 284-5900
(represented Gorwitz)

7. United States v. Jose Orlando Lopez
Appeal No. 91-10274, 91-10393 (9th Cir.)
Court: United States Court of Appeals for the Ninth Circuit (Hon. Betty B. Fletcher, Cecil F. Poole, Thomas G. Nelson, Circuit Judges)

Summary:
This was an appeal of a dismissal of a narcotics trafficking indictment on grounds of prosecutorial misconduct. The principal appellate issue was the propriety of the conduct of the Assistant United States Attorney. The AUSA had received a direct communication from a criminal defendant asking to meet with him outside the presence of his counsel, whom he did not trust because of a possible conflict of interest. The AUSA referred the defendant to a United States magistrate, who authorized the meeting between the defendant and the AUSA.

Reported opinions: 989 F.2d 1032 (9th Cir. 1993); 4 F.3d 1455 (9th Cir. 1993) (amended opinion).

Nature of participation: I handled the appeal for the United States.

Final disposition: The Court of Appeals affirmed the dismissal of the indictment.

Date of representation: 1992-1993

Co-counsel: J. Douglas Wilson (Department of Justice, Criminal Division, Appellate Section)
U.S. Department of Justice
Office of Intelligence Policy & Review
Room 6150
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
(202) 353-3097

Opposing counsel: William L. Osterhoudt
135 Belvedere Street
San Francisco, CA 94117
(415) 664-4600

8. United States v. Aluru J. Prasad,
CR. No. 95-10015-RCL (D. Mass.)
Court: U.S.D.C., District of Massachusetts (Hon. Reginald C. Lindsay, U.S.D.J.)

Summary:
This was a prosecution for espionage. Prasad was an Indian national who owned a manufacturing firm in India that supplied products to the Indian military. He was charged with attempting to obtain classified national defense information from U.S. companies on behalf of the former Soviet Union.

Reported opinions: none

Nature of participation: I represented the defendant through pre-trial proceedings and 25-day jury trial.

Final disposition: Mistrial declared at close of evidence, based on government's failure to establish predicates for admission of co-conspirator hearsay; Prasad subsequently pleaded *nolo contendere* and accepted deportation to India.

Date of representation: 1995-1996

Co-counsel: Claire Smith (Goodwin Procter associate)
9 Shepard Street
Marblehead, MA 01945
(781) 631-5525

Opposing counsel: Kevin Cloherty (AUSA, D. Mass.)
Testa Hurwitz & Thibeault, LLP
125 High Street
Boston, MA 02110
(617) 248-7000

Alexandra Leake (AUSA, D. Mass.)
[last known address]
19 Larch Road
Cambridge, MA 02138
(617) 354-5527

9. United States v. Laban Quimby and Eugenia Quimby
Cr. No. 87-321-F (D. Mass.)
Court: United States District Court, District of Massachusetts (Hon. Frank Freedman, U.S.D.J.)

Summary:
This was a prosecution for tax conspiracy. Defendants Laban and Eugenia Quimby, husband and wife, were tax promoters who created schemes to defraud the IRS on behalf of paying clients. The schemes were complex, using various entities created in the Bahamas, Panama, Liechtenstein, and other countries, and devices such as phony reinsurance companies. The prosecution was based on a lengthy undercover operation conducted by the IRS.

Reported opinions: none

Nature of participation: Deputy U.S. Attorney Robert S. Mueller III was lead counsel; I was co-counsel. I examined the government's expert witness and handled various tax and other technical issues.

Final disposition: Both defendants convicted.

Date of representation: 1987-1989

Co-counsel: Robert S. Mueller III (Deputy U.S. Attorney)
Director
Federal Bureau of Investigation
J. Edgar Hoover Building
935 Pennsylvania Avenue, N.W.
Washington, DC 20535
(202) 324-3420

Opposing counsel: Leonard H. Cohen
66 West Street
Pittsfield, MA
(413) 443-4771
(represented Laban Quimby)

Edmund Lyons
The Lyons Law Firm
1526 Gilpin Avenue
P.O. Box 579
Wilmington, DE 19806
(302) 777-5698
(represented Eugenia Quimby)

10. United States v. Stephen Twomey
Cr. No. 87-294-WD (D. Mass.)
Court: United States District Court, District of Massachusetts (Hon. Douglas P. Woodlock, U.S.D.J.)

Summary:
This was a prosecution for possession of a firearm by a felon. The principal issues were (1) the lawfulness of the search and (2) whether various Massachusetts convictions for breaking and entering offenses qualified as prior convictions under the then-existing federal felon-in-possession statute, which imposed a mandatory minimum 15-year sentence for three prior convictions for robbery or burglary.

Reported opinions: 884 F.2d 46 (1st Cir. 1989).

Nature of participation: I handled the prosecution at trial and on appeal.

Final disposition: Conviction affirmed.

Date of representation: 1988-1989

Co-counsel: none

Opposing counsel: Robert D. Richman (Assistant Federal Defender)
Margulies & Richman, PLC
2520 Park Avenue South
Minneapolis, MN 55404
(612) 872-4900

19. **Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)**

Goodwin Procter: White Collar Criminal Defense

In addition to the matters outlined above in response to Question 18, I have represented a variety of corporations and individuals in criminal prosecutions and other government investigations. The majority of the matters have involved representation of clients at the grand jury or other investigative stage. Many such matters led to declinations by the U.S. Attorney's Office, or otherwise were not pursued by investigative agencies, and thus have remained confidential. An example of such a matter that was reported in the press is the following:

Blue Cross and Blue Shield of Massachusetts: Blue Cross was investigated during the period 1996-1997 by the Office of the Inspector General -- Health Care Financing Administration and the United States Attorney's Office in Boston regarding an alleged government contract fraud. The principal claim was that a Blue Cross employee, Sandra Wolf, had allegedly forged a document in connection with an application to HCFA for a Medicare risk contract. Blue Cross fired Ms. Wolf and self-reported the violation. This government eventually declined to prosecute Blue Cross.

Goodwin Procter: Internal Investigations

I have conducted internal investigations for corporate clients on multiple occasions, independent of the existence of any prior government investigation. The existence and conclusions of such investigations generally have been privileged.

Goodwin Procter: Corporate Compliance Programs

I have helped several corporate clients develop and implement corporate compliance programs. Such programs are designed to prevent regulatory and criminal violations from occurring (e.g., through training, education, and appropriate supervision) and to detect violations as promptly as possible (e.g., through audit and reporting mechanisms).

Goodwin Procter: Commercial Litigation

I have handled a variety of commercial civil litigation matters, including disputes involving contracts, corporate governance, health care, securities, and patents and intellectual property, among other subjects. Recent examples including the following:

> Massachusetts Businessmen's Association v. Blue Cross and Blue Shield of Massachusetts, Inc. (trial): I represented Blue Cross as defendant in a civil lawsuit brought by a former insurance intermediary alleging wrongful termination of a contract. After a 5-day jury trial in Norfolk Superior Court in January, 2001, the jury found for the plaintiff, but awarded relatively minor damages.
>
> Blue Cross and Blue Shield of Massachusetts, Inc. v. Caremark Rx, Inc., (arbitration): I represented Blue Cross as plaintiff in an arbitration proceeding against a physician practice management company arising out of the termination of a contract. After 8 days of arbitration in August and October, 2002 in Boston, the matter settled.

Goodwin Procter: Other Matters

I have also handled a variety of other matters at Goodwin Procter. Examples of these include the following:

County of Oneida v. Oneida Indian Nation, 470 U.S. 226 (1985): This was a lawsuit involving Indian land claims in New York state based on treaties dating back to the 1790's. We represented local governments defending against the claim. As a junior associate, I was the principal drafter of a petition for certiorari and briefs in the United States Supreme Court, as well as in the lower courts. The principal legal issues were implied preemption, ratification, abatement, statutes of limitation, and justiciability.

Commonwealth v. Katherine Ann Power (Suffolk Superior Court, Mass.): This was a state prosecution for murder of a police officer, arising out of a 1970 bank robbery committed to obtain funds for a radical revolutionary group. Katherine Ann Power had been a fugitive from justice for 23 years when she turned herself in to face prosecution. With Peter Gelhaar of Donnelly, Conroy & Gelhaar, I represented the widow and children of Walter Schroeder, the slain police officer. Among other things, I drafted a victim impact statement that was read by Clare Schroeder, the eldest daughter, at the sentencing.

Wilfred Sherman v. Goodwin, Procter & Hoar (Suffolk Superior Court, Mass.): This was a claim for legal malpractice brought by a disgruntled former client of Goodwin Procter. The plaintiff claimed that the firm improperly merged certain corporations together, placing certain assets at risk in a subsequent bankruptcy proceeding. I represented the firm at trial. After a 7-day trial in Suffolk Superior Court before the Hon. David Roseman in May 1999, the jury found for the firm in all respects.

In re September 11 Litigation (United States District Court, S.D.N.Y.): Together with other attorneys at Goodwin Procter and O'Melveny & Myers, I represent Massachusetts Port Authority, the operator of Boston Logan Airport, in litigation arising out of the September 11, 2001 terrorist attacks on the World Trade Center. The matter is ongoing.

U.S. Attorney's Office: Tax Evasion and Other White-Collar Crime Prosecutions

While at the U.S. Attorney's Office from 1987 to 1990, I investigated and prosecuted a variety of white-collar criminal offenses. I had principal responsibility within the office for supporting the IRS, and thus handled many tax evasion and money laundering prosecutions. The majority of such criminal tax matters resulted in pleas of guilty, although occasionally such cases went to trial. In addition to the prosecutions listed in response to Question 18, an example of such a prosecution is the following:

> United States v. Angelo del Priore (plea): prosecution of certified public accountant for tax evasion, accomplished in part through multiple use of false social security numbers; principal legal issue was ability of defendant to use evidence of mental condition, not qualifying as insanity, to negate mens rea.

Criminal Division: Various

While at the Department of Justice in Washington, I was the principal assistant to then-Assistant Attorney General Robert S. Mueller III in the Criminal Division. My duties were highly varied, but among other things I handled many matters relating to ongoing criminal prosecutions, generally consisting of assisting field prosecutors or assisting the AAG in his review and approval functions, and I served as the principal liaison on criminal justice issues to the American Bar Association. With resepect to the latter, I served as a member of the Criminal Justice Section Council, as a member of the Advisory Committee on the Prosecution Function, and as the Department of Justice representative to the Criminal Justice Standards Committee.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

   At the time of my resignation as a partner from Goodwin Procter, I expect to receive an amount representing my share in firm profits for the year up to that point and a return of my invested capital. I also expect to roll over retirement funds directly held in the Goodwin Procter Partnership Profit Sharing Savings Plan to an independent IRA. Otherwise, I will receive no future benefits from previous business relationships, professional services, firm memberships, former employers, clients, or customers.

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

   I would follow the requirements of 28 U.S.C. § 455 and other relevant ethical rules in all respects. Thus, for example, to the extent I might have a financial conflict of interest (e.g., arising from ownership of stock), I would automatically recuse myself in all instances. I have no financial arrangements, other than through ownership of investments or property, that are likely to present potential conflicts. I would expect that a comparison of my investments against the names of the parties, as supplemented by the disclosures mandated by Local Rule 7.3, would suffice in virtually all instances to alert me to possible financial conflicts.

   I would also recuse myself from matters in which I have personal knowledge and matters involving colleagues from Goodwin Procter (my current law firm) or friends, family members, or other persons with whom I have a personal relationship. Because my

wife is employed by the Environmental Enforcement Section of the Environment and Natural Resources Division, DOJ, I would recuse myself from cases brought by the ENR Division.

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

   No.

4. **List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)**

   See attached Financial Disclosure Report.

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

   See attached Net Worth Statement.

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

   No.

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		208	009	Notes payable to banks-secured			0
U.S. Government securities-add schedule			0	Notes payable to banks-unsecured			0
Listed securities-add schedule		219	368	Notes payable to relatives			
Unlisted securities--add schedule			0	Notes payable to others			0
Accounts and notes receivable:				Accounts and bills due			0
Due from relatives and friends			0	Unpaid income tax			0
Due from others			0	Other unpaid income and interest			0
Doubtful			0	Real estate mortgages payable-add schedule		426	972
Real estate owned-add schedule	1	306	900	Chattel mortgages and other liens payable			
Real estate mortgages receivable			0	Other debts-itemize:			0
Autos and other personal property		165	600				
Cash value-life insurance		10	510				
Other assets itemize:							
Goodwin Procter LLP Capital		192	152				
IRAs (FDS)		100	676				
IRAs (CAF)		24	620				
Goodwin Procter Profit Sharing Savings Plan		302	960	Total liabilities		426	972
Thrift Savings Plan		111	000	Net Worth	2	214	826
Total Assets	2	641	798	Total liabilities and net worth	2	641	798
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor			0	Are any assets pledged? (Add schedule)			No

On leases or contracts			0	Are you defendant in any suits or legal actions?			No
Legal Claims			0	Have you ever taken bankruptcy?			No
Provision for Federal Income Tax			0				
Other special debt			0				

III. GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

My principal pro bono work over the past few years has consisted of Criminal Justice Act (CJA) appointments in federal court for indigent defendants. (Although counsel is permitted to bill the court for CJA work at highly reduced rates, I have not done so, preferring instead to perform the work free of charge.) Examples include clients Adebowale Balogun (29.7 hours), Jose Mercado-Rivera (106.2 hours), David LaPointe (43.8 hours), and Nicos Tsakalakis (96.1 hours). In each instance, associates at my firm have also spent substantial time working on those matters under my supervision. I have also supervised several post-conviction relief matters for indigent clients.

I am a member of Goodwin Procter's Pro Bono Committee, which meets monthly and generally supervises the firm's pro bono programs and projects. Periodically, I supervise or consult with junior attorneys at the firm on civil pro bono matters (e.g., evictions). Finally, I have represented indigent parties in state court proceedings on several occasions; most recently I was appointed to represent the interests of a former foster child in a civil lawsuit arising out of the foster placement.

Although not qualifying pro bono work on behalf of indigents, from time to time I have represented individuals with limited resources in criminal matters at greatly reduced rates. Examples include Stephen Furber (94.3 hours), Paul Gallerani (236.1 hours), and Thomas Campbell (109.7 hours). I also represented the Schroeder family free of charge in connection with the Katherine Ann Power murder prosecution (97.9 hours).

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

   No.

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

   There is no selection commission in Massachusetts to recommend candidates for nomination to the federal courts. A summary of my experience in the judicial selection process to date has been as follows:

   On April 1, 2003, an article appeared in the Boston Globe listing possible candidates for the federal bench in Massachusetts. At some point thereafter, I was advised by Ralph F. Boyd, Jr., Assistant Attorney General – Civil Rights Division, that he had recommended that my name be added to the list. Some time later, I received a telephone call from the Chief Counsel to Governor Mitt Romney requesting my permission to submit my name to the White House, which I gave. On April 11, 2003, articles appeared in the Boston Globe and Boston Herald with a further list of potential candidates, which included my name. In mid-April, I received a call from the White House Counsel's Office inviting me to an interview in Washington. On April 24, 2003, I had an interview with Deputy White House Counsel David Leitch, counsel staff, and a representative of the Justice Department Office of Legal Policy. On May 16, 2003, I received a phone call from the White House Counsel's Office stating that my potential nomination had progressed to a stage where I needed to prepare responses to background questionnaires, which were forwarded to me by overnight

delivery. I submitted my responses to the Justice Department and the FBI shortly thereafter.

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

No.

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

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

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

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

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

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

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

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

Courts should be cognizant of the importance of separation of powers in our constitutional framework, and avoid exercising the powers of, or unduly interfering with, either the legislative or executive branches. Similarly, they should be appropriately respectful of the proper roles of the states in our federalist system.

A trial court is generally presented with a specific controversy to resolve, and the judge should attempt to resolve it by applying specific statutes, rules, and binding precedent applicable to that particular dispute.

A trial court must, however, remain faithful to the source of the authority granting it the power to act in the first instance. Legislation in particular is often the product of a compromise of competing interests, and trial courts may not simply substitute their own judgments for those arising from the democratic process. Likewise, trial courts should not strain to reach issues not presented by the case or not argued by the parties. Finally, trial courts should exercise their powers with caution and restraint and with full cognizance of their institutional and practical limitations.

That is not to say that courts should hesitate to exercise their full responsibilities where appropriate, such as when faced with a statute that is contrary to the Constitution. Nonetheless, courts should approach such a task with great caution, and should do so only where narrower, less intrusive solutions are not appropriate.

SCHEDULES TO FINANCIAL STATEMENT
F. Dennis Saylor IV

ASSETS

Listed securities			
Minnesota Mining & Mfg. (CAF)		$ 1,281.26	(5/22/03)
Wilmington Trust (CAF)		$ 5,546.14	(5/22/03)
Cedar Fair LP (CAF)		$ 448.97	(5/22/03)
Fidelity Mutual Funds			
Growth Co. (FDS)		$ 6,931.20	(5/22/03)
Small Cap Independence (FDS)		$ 9,500.86	(5/22/03)
Mid-Cap Stock (FDS)		$ 14,444.03	(5/22/03)
Growth Co. (Joint)		$ 13,188.50	(5/22/03)
Asset Manager Growth (CAF)		$ 15,647.56	(5/23/03)
Janus Worldwide Fund (CAF)		$ 4,700.90	(5/22/03)
Third Avenue Value Fund (CAF)		$ 6,036.19	(5/22/03)
Vanguard 500 Index Fund (Joint)		$ 3,574.49	(5/22/03)
Vanguard US Growth Fund (Joint)		$ 8,875.56	(5/22/03)
Templeton World Fund A (CAF)		$ 2,673.36	(5/22/03)
T. Rowe Price New Horizons (CAF)		$ 6,852.92	(5/22/03)
Vanguard 500 Index Fund (JFS/UTMA)		$ 8,493.74	(5/22/03)
Vanguard 500 Index Fund (CFS/UTMA)		$ 8,493.74	(5/22/03)
Vanguard 500 Index Fund (ABS/UTMA)		$ 8,493.74	(5/22/03)
Fidelity UFund College Investing Plan (JFS)		$ 31,747.50	(5/22/03)
Fidelity UFund College Investing Plan (CFS)		$ 31,747.50	(5/22/03)
Fidelity UFund College Investing Plan (ABS)		$ 30,690.47	(5/22/03)
	Subtotal:	$ 219,368.63	
Real estate owned			
Residence, Weston, MA (CAF)		$1,306,900.00	
Other assets			
IRAs (FDS)			
Fidelity Mutual Funds			
Contrafund II		$ 24,971.72	(5/22/03)
Japan		$ 2,951.70	(5/22/03)
Puritan		$ 66,453.70	(5/22/03)
Aggressive Growth		$ 6,299.64	(5/22/03)
	Subtotal:	$ 100,676.76	

IRAs (CAF)			
Fidelity Mutual Funds			
Contrafund II		$ 5,977.96	(5/23/03)
Magellan		$ 10,067.29	(5/23/03)
Blue Chip Growth		$ 8,575.34	(5/23/03)
	Subtotal:	$ 24,620.59	(5/23/03)
Goodwin Procter LLP Partnership Profit Sharing Savings Plan (FDS)			
Fidelity Mutual Funds			
Aggressive Growth		$ 3,508.40	(5/22/03)
Blue Chip		$ 68,840.06	(5/22/03)
Capital Appreciation		$ 32,747.29	(5/22/03)
Contrafund		$ 74,815.40	(5/22/03)
Equity-Income II		$ 22,095.65	(5/22/03)
Fidelity Fund		$ 36,003.43	(5/22/03)
Magellan		$ 19,453.14	(5/22/03)
Mid-Cap Stock		$ 6,798.01	(5/22/03)
Real Estate		$ 5,964.72	(5/22/03)
Value		$ 32,734.88	(5/22/03)
	Subtotal:	$ 302,960.98	

LIABILITIES

Real estate mortgages payable	$ 425,000.00	(7/24/03)
Washington Mutual (Residence, Weston, MA)		

NOTES

1. FDS = F. Dennis Saylor IV
   CAF = Catherine Adams Fiske (wife)
   JFS = John F. Saylor (minor son)
   CFS = Charles F. Saylor (minor son)
   ABS = Alexander B. Saylor (minor son)
   Joint = F. Dennis Saylor IV and Catherine Adams Fiske
   UTMA = Uniform Transfer to Minors Act

2. Real estate: Valuation based on current tax assessment.

3. My wife, Catherine Adams Fiske, is one of nine beneficiaries of a trust created under the will of Robert B. Fiske dated April 20, 1990, F/B/O Dorothy Frances Fiske. The total balance of funds held by the trust as of 12/31/02 was $4,682.99, of which a one-ninth share is $520.33. The funds are held at Fleet National Bank in Connecticut.

AFFIDAVIT

I, F. DENNIS SAYLOR IV, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

7/25/03
(DATE)

(NAME)

(NOTARY)

MY COMMISSION EXPIRES: 1/15/04

AO-10
Rev. 1/2002

FINANCIAL DISCLOSURE REPORT

Calendar Year 2002

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (Last name, First name, Middle initial) Saylor, F. Dennis IV	2. Court or Organization U.S. District Court, Mass	3. Date of Report 7/31/2003
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge-(Nominee)	5. Report Type (check appropriate type) (●) Nomination. Date 7/30/2003 ( ) Initial ( ) Annual ( ) Final	6. Reporting Period 1/1/2002 to 7/25/2003
7. Chambers or Office Address Goodwin Procter LLP Exchange Place Boston, MA 02109	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date_____	

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

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions)

☐ NONE - (No reportable positions.)

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Partner	Goodwin Procter LLP
2.	Member	Josiah Smith Tavern Committee, Town of Weston

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions)

☐ NONE - (No reportable agreements.)

	DATE	PARTIES AND TERMS
1.		I will resign from the partnership of Goodwin Procter LLP as of the date of my confirmation. It is my understanding and expectation that [cont'd at Part VIII.]

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

☐ NONE - (No reportable non-investment income.)

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1.	2001-03	U.S. Department of Justice [trial attorney]	
2.	2001-03	Goodwin Procter LLP [law practice]	$1,622,441 (total)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Saylor, F. Dennis IV	7/31/2003

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

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

☐ **NONE** - (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1.	Exempt	

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

☐ **NONE** - (No such reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1.	Exempt		

VI. LIABILITIES. (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)

☑ **NONE** - (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE
1.			

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Name of Person Reporting	Date of Report
Saylor, F. Dennis IV	7/31/2003

VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
						If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ **NONE** (No reportable income, assets, or transactions)									
1. Fleet Bank	A	Interest	J	T	exempt				
2. Fleet Bank	A	Interest	J	T	exempt				
3. Fidelity Cash Reserves	C	Dividend	N	T	exempt				
4. Fidelity Cash Reserves	A	Dividend	J	T	exempt				
5. 3M Common Stock		None	J	T	exempt				
6. Wilmington Trust Common Stock	A	Dividend	J	T	exempt				
7. Fidelity Growth Co. Mutual Fund		None	J	T	exempt				
8. Fidelity Small Cap Independence Mutual Fund		None	J	T	exempt				
9. Fidelity Mid Cap Stock Mutual Fund	A	Dividend	K	T	exempt				
10. Fidelity Growth Co. Mutual Fund		None	J	T	exempt				
11. Fidelity Asset Manager Growth Mutual Fund	A	Dividend	J	T	exempt				
12. Janus Worldwide Mutual Fund	A	Dividend	J	T	exempt				
13. Third Avenue Value Mutual Fund	A	Dividend	J	T	exempt				
14. Vanguard 500 Index Mutual Fund	A	Dividend	J	T	exempt				
15. Vanugard US Growth Mutual Fund	A	Dividend	J	T	exempt				
16. Templeton World Fund A Mutual Fund	A	Dividend	J	T	exempte				
17. T. Rowe Price New Horizons Mutual Fund		None	J	T	exempt				
18. Vanguard 500 Index Mutual Fund	A	Dividend	J	T	exempt				

1. Income Gain Codes: (See Columns B1 and D4)
A = $1,000 or less; B = $1,001-$2,500; C = $2,501-$5,000; D = $5,001-$15,000; E = $15,001-$50,000; F = $50,001-$100,000; G = $100,001-$1,000,000; H1 = $1,000,001-$5,000,000; H2 = More than $5,000,000

2. Value Codes: (See Columns C1 and D3)
J = $15,000 or less; K = $15,001-$50,000; L = $50,001-$100,000; M = $100,001-$250,000; N = $250,001-$500,000; O = $500,001-$1,000,000; P1 = $1,000,001-$5,000,000; P2 = $5,000,001-$25,000,000; P3 = $25,000,001-$50,000,000; P4 = More than $50,000,000

3. Value Method Codes (See C2 and D5)
Q = Appraisal; R = Cost (Real Estate Only); S = Assessment; T = Cash/Market; U = Book Value; V = Other; W = Estimated

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Name of Person Reporting	Date of Report
Saylor, F. Dennis IV	7/31/2003

VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure	Amount Code 1 (A-H)	Type (e.g. div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g. buy, sell, merger, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
19. Vanguard 500 Index Mutual Fund	A	Dividend	J	T	exempt				
20. Vanguard 500 Index Mutual Fund	A	Dividend	J	T	exempt				
21. Fidelity UFund 429 Plan		None	K	T	exempt				
22. Fidelity UFund 429 Plan		None	K	T	exempt				
23. Fidelity UFund 429 Plan		None	K	T	exempt				
24. IRAs Fidelity: Contrafund II Mutual Fund	A	Dividend	K	T	exempt				
25. IRAs Fidelity: Japan Mutual Fund		None	J	T	exempt				
26. IRAs Fidelity: Puritan Mutual Fund	A	Dividend	L	T	exempt				
27. IRAs Fidelity: Aggressive Growth Mutual Fund		None	J	T	exempt				
28. IRAs Fidelity: Contrafund II Mutual Fund	A	Dividend	J	T	exempt				
29. IRAs Fidelity: Magellan Mutual Fund	A	Dividend	J	T	exempt				
30. IRAs Fidelity: Blue Chip Mutual Fund	A	Dividend	J	T	exempt				
31. MONY: Life Insurance Policies	A	Dividend	J	T	exempt				
32. Goodwin Procter -- interest on capital	D	Interest	M	T	exempt				
33. Goodwin Procter Partnership Profit Sharing Savings Plan:									
34. Fidelity Funds: Aggressive Growth Mutual Fund		None	J	T	exempt				
35. Fidelity Funds: Blue Chip Mutual Fund	A	Dividend	L	T	exempt				
36. Fidelity Funds: Capital Appreciation	A	Dividend	K	T	exempt				

1. Income/Gain Codes: (See Columns B1 and D4)	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000	
	F = $50,001-$100,000	G = $100,001-$1,000,000	H1 = $1,000,001-$5,000,000	H2 = More than $5,000,000		
2. Value Codes. (See Columns C1 and D3)	J = $15,000 or less	K = $15,001-$50,000	L = $50,001-$100,000	M = $100,001-$250,000		
	N = $250,000-$500,000	O = $500,001-$1,000,000	P1 = $1,000,001-$5,000,000	P2 = $5,000,001-$25,000,000		
	P3 = $25,000,001-$50,000,000		P4 = $More than $50,000,000			
3. Value Method Codes (See Column C2)	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash Market		
	U = Book Value	V = Other	W = Estimated			

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Name of Person Reporting	Date of Report
Saylor, F. Dennis IV	7/31/2003

VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-37 of filing instructions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
						If not exempt from disclosure			
Place "(N)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
37. Fidelity Funds: Contrafund	A	Dividend	L	T	exempt				
38. Fidelity Funds: Equity-Income II	A	Dividend	K	T	exempt				
39. Fidelity Funds: Fidelity Fund	A	Dividend	K	T	exempt				
40. Fidelity Funds: Magellan	A	Dividend	K	T	exempt				
41. Fidelity Funds: Mid-Cap Stock	A	Dividend	J	T	exempt				
42. Fidelity Funds: Real Estate	A	Dividend	J	T	exempt				
43. Fidelity Funds: Value	A	Dividend	K	T	exempt				

1. Income/Gain Codes: (See Columns B1 and D4)	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000
	F = $50,001-$100,000	G = $100,001-$1,000,000	H1 = $1,000,001-$5,000,000	H2 = More than $5,000,000	
2. Value Codes: (See Columns C1 and D3)	J = $15,000 or less	K = $15,001-$50,000	L = $50,001-$100,000	M = $100,001-$250,000	
	N = $250,000-$500,000	O = $500,001-$1,000,000	P1 = $1,000,001-$5,000,000	P2 = $5,000,001-$25,000,000	
	P3 = $25,000,001-$50,000,000		P4 = $More than $50,000,000		
3. Value Method Codes: (See Column C2)	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash Market	
	U = Book Value	V = Other	W = Estimated		

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Saylor, F Dennis IV	7/31/2003

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

[continued from Part II]...
in connection with my resignation, I will receive a return of my invested capital in the firm, to be paid in a lump sum, and payment of a to-be determined amount reflecting my share of the firm's profits for the then-current fiscal year, also to be paid in a lump sum. I also understand and expect that my Goodwin Procter Partnership Profit Sharing Savings Plan will be rolled over into an Individual Retirement Account (or other appropriate tax-deferred arrangement)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Saylor, F. Dennis IV	7/31/2003

IX. CERTIFICATION.

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

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

Signature _____ Date 7/31/03

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

Senator DEWINE. Ms. Herrera?

STATEMENT OF JUDITH C. HERRERA, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW MEXICO

Ms. HERRERA. Thank you, Mr. Chairman. I also do not have an opening statement to make.

But I would join the others in thanking the Committee for considering my nomination today, and I also want to thank Senator Domenici, Senator Bingaman, for their kind words and their words of encouragement, and President Bush for nominating me for this position.

And I do want to thank my family for making the effort in traveling to Washington. I appreciate that very much. And I do want to recognize my two nieces who are here but weren't mentioned earlier, Monica and Katie Lewis.

Senator DEWINE. We welcome them.

Ms. HERRERA. Thank you, Mr. Chairman.

[The biographical information of Ms. Herrera follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

   Judith Claire Herrera
   Judith C. Herrera
   Judy Herrera
   Judith C. Baird (married name)

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

   Residence:
   Santa Fe, New Mexico

   Employment:
   Herrera, Long, Pound & Komer, P.A.
   2200 Brothers Road
   Santa Fe, New Mexico 87505

3. **Date and place of birth.**

   April 28, 1954
   Chicago, Illinois

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

   Married
   Michael D. Baird
   Vice President and General Counsel
   Las Campanas Limited Partnership
   218 Camino La Tierra
   Santa Fe, New Mexico 87506

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

08/76 - 05/79	Georgetown University Law Center	Juris Doctor 05/79
08/72 - 05/76	University of New Mexico	B.A. 05/76

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

   1. Herrera, Long, Pound & Komer, P.A., Santa Fe, New Mexico, shareholder and president,1987-present.

   2. Jones, Gallegos, Snead & Wertheim, P.A., Santa Fe, New Mexico, shareholder and member of board of directors. I was employed with the Jones Firm from 1980-1986.

   3. University of New Mexico Board of Regents, Albuquerque, New Mexico, 1999-2003.

   4. St. Michael's High School Foundation Board of Directors, Santa Fe, New Mexico, 2000-current.

   5. St. Vincent Hospital Board of Trustees, Santa Fe, New Mexico, 1993-2000.

   6. National Forest Foundation Board of Directors, 1992-1994.

   7. Santa Fe City Council, Santa Fe, New Mexico, 1981-1986.

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

   No.

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

   None.

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

   American Bar Association
   State Bar of New Mexico

New Mexico Trial Lawyers Association
American Trial Lawyers Association (previously)

Committees:
Federal Advisory Committee, District of New Mexico
Federal Committee on Admissions and Grievances, District of New Mexico
Federal Magistrate Selection Panel, District of New Mexico
New Mexico Appellate Judges Nominating Commission
First Judicial District Nominating Commission
Oliver Seth Inn of Court

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

I currently belong to no organizations that lobby before public bodies. Previously I served as a Regent at the University of New Mexico (1999-2003) and as a Santa Fe City Councilor (1981-1986) and both organizations hired lobbyists to work with the state legislature.
Other organizations:
New Mexico State Bar Association
American Bar Association
St. Michael's High School Foundation Board of Directors
Parishioner, St. Francis Cathedral

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

New Mexico Bar (August 1979)
United States District Court for the District of New Mexico (February 1980)
United States Court of Appeals for the Tenth Circuit (November 1980)

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

I have not authored any books, articles, columns or publications.

I have delivered no speeches on issues involving constitutional law or legal policy.

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

My health is excellent. My last examination was April 4, 2003.

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

I have not held a judicial office.

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

Not applicable.

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

In 1981 I was appointed to the Santa Fe City Council. In 1982 I ran to retain my position on the City Council, and was elected to a four-year term.

I have not been a candidate for any other elective public office.

17. **Legal Career:**

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

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

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

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

August 1979-May 1980
First Judicial District Attorney's Office
327 Sandoval Street
Santa Fe, New Mexico 87501
Assistant District Attorney

June 1980-March 1987
Jones, Gallegos, Snead & Wertheim, P.A.
215 Lincoln Avenue
Santa Fe, New Mexico
Associate 1980-1983
Shareholder 1983-1987

April 1987–present
Herrera, Long, Pound & Komer, P.A.
2200 Brothers Rd.
Santa Fe, New Mexico
Shareholder; president

I have not served as a judicial clerk, nor have I practiced alone.

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

August 1979-June 1980: prosecution of criminal felonies and misdemeanors.

June 1980-present: civil litigation. At the Jones Firm (1980 to 1987) I handled plaintiff's cases, primarily in the education law area. At my current law firm, I have a defense practice, largely defending employers in wrongful discharge and discrimination cases.

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

My typical clients are employers, largely in the governmental context. Many of my cases are assigned to me by the insurance carriers, such as the State Risk Management Division. The majority of my work the past ten years or so has been employment law.

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

My litigation practice involves frequent court appearances. I appear regularly for settlement conferences, scheduling conferences and hearings. In the past several years I have had 1-2 jury trials per year and 1-2 bench trials per year.

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

(a) federal courts;
75%

(b) state courts of record;
24%

(c) other courts.
1%

3. **What percentage of your litigation was:**
(a) civil;
(b) criminal.

1979-1980: 100% criminal
1980-1987: 99% civil; 1% criminal
1987 - current: 100% civil

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

I have not kept records of exact numbers. I have tried approximately 28 cases to verdict. I have tried approximately 25 cases to judgment by obtaining summary judgment. In addition, during the 1980s, I tried several domestic relations cases to judgment.

5. What percentage of these trials was:
(a) jury;
(b) non-jury.

Jury trials - 85%
Non jury trials - 15%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

(1) Jayme Kay v. Arthur Bustos, et al.,
Cause No. 88-244

In this sex harassment case, I represented the defendant who was the San Miguel County District Attorney. The plaintiff was an employee of the District Attorney's Office who accused the District Attorney of rape. The District Attorney admitted to a sexual relationship with the plaintiff, but contended it was consensual. After a trial of nearly a month, the jury found in favor of the defendants. My participation was extensive. I conducted all the discovery and handled all hearings. About three months before trial, my co-counsel became involved to assist me with the trial. I handled most of the trial, including any legal argument, opening statement, the examination of major witnesses and closing argument.

a) 1988-1989
b) United States District Court for the District of New Mexico
The Honorable Santiago Campos
c) Co-Counsel: Nancy R. Long
Herrera, Long, Pound & Komer, P.A.
P.O. Box 5098
Santa Fe, New Mexico 87502-5098
(505) 982-8405

Attorney for Co-Defendant
Carl Armijo: John L. Lenssen
405 N. Paseo De Onate
Espanola, New Mexico 87532
(505) 747-6018
Opposing Counsel: Steven G. Farber
Box 2473
Santa Fe, New Mexico 87504
(505) 988-9725

(2) Livesay, et al. v. Shollenbarger, et al.,
Cause No. 90-769

I represented the defendants in this employment discrimination case. Plaintiff was a female building inspector who was terminated from her employment. She contended she was terminated because of her gender and because she took enforcement action against powerful people. A federal jury award plaintiff over $1 million. After trial I prepared post-trial motions seeking the setting aside of the verdict and a new trial. The motion was granted and plaintiff appealed. The case settled on appeal. I handled all aspects of this case, all briefing, trial and the appellate brief. This case was significant in my practice because the post verdict, pre-appeal practice was extensive.

a) 1990-1991
b) United States District Court for the District of New Mexico
The Honorable Chief Judge James A. Parker
c) No Co-Counsel
Opposing Counsel: Vernon W. Salvador
3800 Rio Grande Boulevard, NW
PMB #541
Albuquerque, New Mexico 87107
(505) 363-5868

Kent Winchester
Post Office Box 7906
Albuquerque, New Mexico 87194-7906
(505) 247-3800

(3) Stevens, et al. v. Valencia, et al.
Cause No. 90-351

I represented the Sheriff of Valencia County, the Sheriff of Socorro County and each of the Counties in this civil rights case alleging the rape of a female inmate at the county jail by a male jailer. I did not represent the jailer. After a jury trial a verdict and judgment were entered for the plaintiff. The case settled while on appeal. I handled the discovery and a colleague assisted in drafting pre-trial motions. I was sole counsel at trial representing my clients. I drafted the appellate brief, with a colleague assisting on editing.

a) 1990-1992
b) United States District Court for the District of New Mexico
The Honorable Senior Judge Juan G. Burciaga
c) Co-Counsel: Nancy R. Long
Herrera, Long, Pound & Komer, P.A.
P.O. Box 5098
Santa Fe, New Mexico 87502-5098
(505) 982-8405

Attorney for Co-Defendant
Mark Leyba: John L. Lenssen
Espanola City Attorney
405 N. Paseo de Onate
Espanola, New Mexico 87532
(505) 747-6018

Opposing Counsel: Mary Y. C. Han
Paul J. Kennedy
Kennedy & Han
1122 Central Avenue, SW
Albuquerque, New Mexico 87102
(505) 842-8662

Joseph P. Kennedy
Kennedy & Oliver PC
1000 2nd Street, NW
Albuquerque, New Mexico 87102
(505) 244-1400

(4) Martinez v. Mafchir, et al.
35 F.3d 1486 (10th Cir. 1994)

I represented the defendants in this federal civil rights case. This case involved the issue of the right of the state to remove a child's legal (not physical) custody from the parent when the child may be in danger. Here, the child was sexually molested by a juvenile friend of the family. The child was scheduled for medical care but after several missed appointments, the child protective services intervened, obtaining legal custody of the child. After proper medical attention was delivered, the child's legal custody was restored to the parent. The plaintiff challenged the state's action and also alleged she received inadequate notice. Defendants obtained summary judgment which was appealed to the Tenth Circuit Court of Appeals. The summary judgment was affirmed.

I was lead counsel, with some assistance on the discovery. I prepared all the legal briefs both in the district court and on appeal.

a) 1991-1992

b) United States District Court for the District of New Mexico
The Honorable Chief Judge James A. Parker; United States Court of Appeals for the Tenth Circuit

c) Co-Counsel: Nancy R. Long
Herrera, Long, Pound & Komer, P.A.
P.O. Box 5098
Santa Fe, New Mexico 87502-5098
(505) 982-8405

Deborah A. Moll
New Mexico Legal Bureau/RMD
Post Office Drawer 26110
Santa Fe, New Mexico 87502-110
(505) 827-2202

Opposing Counsel: Fred Abramowitz
Abramowitz & Franks
115 Gold Avenue, SW, #205
Albuquerque, New Mexico 87102
(505) 247-9011

Elizabeth E. Simpson
Tomita & Simpson
4253 Montgomery Boulevard, NE, #205
Albuquerque, New Mexico 87109
(505) 883-4993

(5) Jacque M. Oldfield; Gilbert L. Oldfield; Jessica Rose Oldfield, Shamra Michelle Oldfield v. Salvador Benavidez, Arthur Fuldauer, Georgia Sanchez
116 N.M. 785 (1994)

In this case, I represented the defendants, along with co-counsel Nancy Long. Plaintiff Jacque and Gilbert Oldfield are the parents of each of the other plaintiffs. The defendants were the former Cibola County Sheriff, Salvador Benavidez and social workers Fuldauer and Sanchez. The plaintiff children were removed from their parents' home and custody when one of the children reported to a teacher that her parents and the children smoked marijuana at home. After the children were returned, plaintiffs filed the lawsuit alleging violation of civil rights.

We filed a motion for summary judgment based upon qualified immunity. The trial court denied the motion and we took a writ of error to the New Mexico Supreme Court.

This case is significant because it established the procedure in New Mexico by which immediate appeals may be taken for the denial of qualified immunity.

My participation was as co-counsel and I was involved in investigation, discovery and court appearances. I conducted voir dire at the trial which never went beyond jury selection because the New Mexico Supreme Court granted the writ of error and terminated the trial. With the granting of the writ of error, qualified immunity was applied and the case was concluded in favor of the defendants.

a) 1992

b) First Judicial District Court, County of Santa Fe, State of New Mexico
The Honorable Arthur Encinas; New Mexico Supreme Court.

c) Co-Counsel: Nancy R. Long
Herrera, Long, Pound & Komer, P.A.
P.O. Box 5098
Santa Fe, New Mexico 87502-5098
(505) 982-8405

Opposing Counsel: Kent Winchester
P.O. Box 7906
Albuquerque, NM 87194
(505) 247-3800

Vernon W. Salvador
2400 Rio Grande Blvd.
Albuquerque, NM 87104
(505) 363-5868

(6) Mata v. City of Santa Fe, et al.
Cause No. 96-1079

This case was a federal civil rights case alleging employment discrimination against a municipal judge in Santa Fe, New Mexico. I represented the defendants. The plaintiff alleged she was discriminated against based upon her gender in that she was exposed to a hostile work environment, and she alleged she was retaliated against for cooperating with a co-employee who alleged sex harassment. I was lead counsel during discovery and sole counsel at trial. The jury returned a verdict for the plaintiff. This case was significant in the community because it was a high profile case involving a popular municipal judge.

a) 1996-1997

b) United States District Court for the District of New Mexico
The Honorable Bruce D. Black

c) Co-Counsel: Nancy R. Long
Herrera, Long, Pound & Komer, P.A.
P.O. Box 5098
Santa Fe, New Mexico 87502-5098
(505) 982-8405

Opposing Counsel: John C. Bienvenu
Post Office Box 2455
Santa Fe, New Mexico 87504
(505) 982-3813

(7) Leyba v. City of Santa Fe,
Cause No. 97-1186

In this employment case I represented the defendants. Plaintiff contended she was discriminated against on the basis of her race and that she was retaliated against for complaining about matters at work and for complaining about race discrimination. She resigned and alleged constructive discharge. This case went to trial and resulted in a defense verdict. I was lead counsel throughout, trying the case with another lawyer in my office. This case was significant because of the complex civil rights issues that were raised, briefed and tried.

a) 1997-1999
b) United States District Court for the District of New Mexico
The Honorable Chief Judge James A. Parker
c) Co-Counsel: Mark Komer
Herrera, Long, Pound & Komer, P.A.
P.O. Box 5098
Santa Fe, New Mexico 87502-5098
(505) 982-8405

Opposing Counsel: Merit Bennett
Stephen E. Tinkler
Tinkler & Bennett
309 Johnson Street
Santa Fe, New Mexico 87501
(505) 986-0269

(8) Thomas Fiorina - Judicial Standards Commission
Cause No.95-07; New Mexico Supreme Court Cause No. 22,782

This case involved administrative proceedings seeking the removal of a sitting municipal judge on charges of sex harassment and malfeasance in office. This case was vigorously contested, and resulted in a week-long trial before the Judicial Standards Commission. After trial, the commission dismissed the sex harassment charges, but recommended that the judge be removed from office for malfeasance. After oral argument to the New Mexico Supreme Court, the court did not remove the judge from office but ordered that he be monitored by respected, retired members of the judiciary. (This matter is related to the case identified above, Mata v. City of Santa Fe, et al.).

a) 1995
b) Judicial Standards Commission
c) No Co-counsel

Opposing Counsel: Ann Yalman
304 Catron St.
Santa Fe, New Mexico 87501
(505) 988-8838

(9) Donna Garcia-Montoya v. Michael Montoya, Robert Anderman and the State of New Mexico Treasurer's Office
130 N.M. 25 (2001)

I represented the defendants in this employment case alleging primarily First Amendment retaliation issues and to a lesser degree sex discrimination. Plaintiff alleged she was transferred to a lesser position in retaliation for having supported the political opponent of her boss, the newly elected State Treasurer. Summary judgment was granted to the defendants on all counts. Plaintiff appealed and the New Mexico Supreme Court affirmed on all counts except the sex discrimination claim (plaintiff was replaced by a male). After remand, the case was tried before a jury. A defense verdict was reached and the case concluded.

This case is significant because it produced a New Mexico Supreme Court decision addressing First Amendment political speech and clarified those levels of employees that are protected by the First Amendment.

a) 1996-2001.
b) Trial Judge: Petra Jimenez-Maez, then transferred to Jill Hall. The case was also in the New Mexico Supreme Court.
c) No Co-counsel

Opposing Counsel: Jack N. Hardwick
Sommer, Fox, Udall, Othmer & Hardwick
P.O. Box 1984
Santa Fe, NM 87504
(505) 982-4676

(10) Frank Trujillo and Loraine Trujillo v. Northern Rio Arriba Electric Cooperative, Emery Maez
131 N.M. 607 (2001)

I represented the defendants in this case brought for discrimination based upon a disability and medical condition under the New Mexico Human Rights Act. Plaintiff contended he was discriminated against when he was terminated from his employment. I was lead counsel at all pre-trial stages, and at trial. The plaintiff obtained a verdict before the Rio Arriba County jury; we appealed and the New Mexico Supreme Court reversed the verdict and the defendants ultimely prevailed in the litigation.

This case was significant because it clarified the New Mexico law regarding the applicability of the statute to significant, identifiable conditions and brought the New Mexico Act closer to the application of the Americans with Disabilities Act.

a) 1997-2001.
b) First Judicial District Court, County of Rio Arriba, State of New Mexico
The Honorable Stephen Pfeffer; New Mexico Supreme Court.
c) Co-counsel in pretrial stages: Eugene Zamora
Co-counsel on appeal: Mark Komer

Opposing Counsel: Linda Hemphill
834 Dunlap St.
Santa Fe, NM 87501
(505) 986-8515

Annie- Laurie Coogan
1520 Paseo de Peralta
Santa Fe, New Mexico 87501
(505) 820-7139

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

One of the most significant cases I handled that did not progress to trial was a plaintiff's case . It involved a young woman who was a passenger in a car and was injured in a one-car accident. She suffered significant injuries including brain injuries. She was hospitalized for weeks, then went into in-patient therapy for many more weeks. After settling with the driver for his minimal policy limits, the plaintiff made a claim against her own coverage under the uninsured/under-insured motorist provisions. Normally this is a matter for arbitration. For unknown reasons, the attorney representing the insurance company simply ignored this case despite repeated letters from me, including a draft complaint alleging bad faith. Thereafter, a quick settlement was reached.

One of the most personally satisfying legal matters I was involved in was a pro bono matter I handled a number of years ago for an elderly man whose son moved him out of his life-long home in Santa Fe to a city 275 miles away, and took control of his assets. The son moved him into a nursing home and seldom visited him. The elderly man was healthy enough that he had lived alone, had many relatives in Santa Fe and managed his own affairs. The man believed his son was after his assets. He was extremely lonely in a strange city and became depressed. He begged me to help. I did, and he was soon back in his own home with many relatives at his side. His joy and

gratitude was all the payment I needed. Sadly, the son never re-entered his father's life and did not visit him on his death bed or attend his funeral. I will never forget how a little work by me made a huge impact on this man's life.

Litigation aside, I believe my opportunity to serve on legal committees has been significant. In my work on the Federal Advisory Committee for the District of New Mexico, I participated in a study of our federal district court and the formulation of the plan for compliance with the Civil Justice Reform Act. I participated in interviewing lawyers and judges and our subcommittee made specific recommendations to the District Court. The plan was adopted.

My activities in the various judicial selection panels has also been significant. In the state court system I have served on the Appellate Judges Nominating Commission that interviews all candidates and make recommendations to the governor for appointment to both the New Mexico Court of Appeals and the New Mexico Supreme Court. I have also served in the same capacity on the selection commission for state district court judges in this area. At the federal level, I have served on the Federal Magistrate Selection Panel. That panel reviews applications and interviews candidates for federal magistrate judge, and makes recommendations to the active Article III judges. The impact this work has on the judiciary in New Mexico is significant.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

   I have no anticipated revenue from any previous relationships, with two exceptions 1) I may receive a buyout of my ownership interest in my law firm, but this has not been addressed at this point. 2) My husband and I own the office building that houses my law firm. I expect to receive rental income which is currently $6,300.00 per month.

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

   I will establish a list of people and/or entities or businesses I have recently represented and I will recuse myself for an appropriate period of time. I will also place on the recusal list attorneys who are my current law partners and any attorneys who are close friends of mine.

   Any potential conflicts-of-interest may involve former clients. I will follow the Code of Judicial Conduct, 28 U.S.C. § 455.

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

   No.

4. **List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)**

   Please see the financial disclosure report.

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

   See attached Financial Statement of Net Worth.

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

   I have only been involved in my own campaign for election to the Santa Fe City Council in March of 1982. It was a non-partisan position and the four candidates who received the most votes were elected. I was elected and served a four year term.

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		10	000	Notes payable to banks-secured auto		9	500
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		430	583	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due (credit cards)		8	500
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		992	000
Real estate owned-add schedule	2	511	322	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		25	000	Auto Lease		11	000
Cash value-life insurance		139	508	Profit Sharing Plan loan		4	800
Other assets itemize:							
IRAs		26	160				
Profit Sharing Plan balance (minus life insurance)		82	071				
Husband's 401(k)		41	485	Total liabilities	1	025	800
Husband's Profit Sharing Plan (minus life insurance)		14	067	Net Worth	2	254	396
Total Assets	3	280	196	Total liabilities and net worth	3	280	196
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor - law firm line of credit (paid by law firm)		25	000	Are any assets pledged? (Add schedule)	Yes. See attached Schedule, Section II.		
On leases or contracts		No		Are you defendant in any suits or legal actions?		No	
Legal Claims		No		Have you ever taken bankruptcy?		No	
Provision for Federal Income Tax		No					
Other special debt		No					

Judith C. Herrera/Michael D. Baird
Schedule to Financial Statement

I. ASSETS

Real Property

Residence Santa Fe, NM	$693,904 (tax valuation)
Office building at 2200 Brothers Road Santa Fe, NM 87505	$667,418 (tax valuation)
15% ownership of 70 acres of vacant land	$1,150,000

Investment Accounts

Michael Baird and Judith Herrera Joint Tenant Charles Schwab Account		$291,633.00 (as of 7/20/03)
Cabot Oil & Gas	$26,690.00	
Cisco Systems Inc	$22,361.25	
Dell Computer Corp	$66,560.00	
Fidelity Natl Finl Inc	$18,952.96	
Intel Corp	$19,728.00	
Intl Game Technology	$20,712.00	
Janus Worldwide Fund	$12,870.36	
MCDATA Corporation CL A Class A	$ 343.65	
Microsoft Corp	$54,160.00	
N B T Y Inc	$21,420.00	
Stewart Info Svcs Corp	$15,620.00	
Total Cash	$12,214.63	

Edith Baird Inheritance Account		$138,950.00 (as of 7/20/03)
Charles Schwab Account		
AOL Time Warner Inc	$ 3,348.00	
Avaya Inc Odd Lot Offer	$ 13.70	
Caremark RX Inc	$ 7,539.00	
D S T Systems Inc	$ 7,330.00	
Dell Computer Corp	$19,968.00	
Globix Corp	$ 2.10	
Gulfterra Energy Ptnrs	$ 8,442.79	
Intel Corp	$ 7,398.00	
Intl Game Technology	$20,712.00	
Johnson & Johnson	$13,395.96	
Latin Amern Discovery FD	$ 5,712.00	
Lowes Companies Inc	$ 9,406.00	
M G I C Investment Corp	$11,102.94	
MCDATA Corporation CL A Class A	$ 165.90	
Pfizer Incorporated	$10,017.00	
Worldcom Inc Worldcom Group	$ 15.30	
Worldcom Inc - MCI Group	$ 1.99	
Total Cash	$14,378.79	

II. Pledged Assets

Real estate mortgages:	
Residence	$447,000
Home Comings Financial	
Office Building	$545,000
Bank of America	
Auto loan:	
2002 GMC Envoy	
Capital One	$10,000

III. GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

   I serve on the St. Michael's High School Foundation Board of Directors. The Foundation's purpose is to financially assist those students who are unable to otherwise afford the tuition at St. Michael's. (St. Michael's is a Catholic High School run by the Christian Brothers). As an attorney, I provide legal advice to the board and assist with the drafting of policies, agreements, contracts, etc. In addition, I participate in fund-raising activities both in volunteering my time and with financial contributions. I would estimate the time I spend on Foundation business annually is 45 hours. My financial contributions to this foundation are approximately $500.00 per year.

   My law firm contributes to the annual fund drive for the Legal Services Corporation in New Mexico.

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

   No.

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

   No, there is no selection commission. I was contacted on May 30, 2003 and asked if I was willing to be considered for a position on the United States District Court. I was asked to send my resume to Senator Domenici. I was thereafter contacted by The White House Counsel's Office who arranged an interview with me at The White House on June 5, 2003. Also on June 5, 2003, I was interviewed by Senator Pete Domenici. On June 23, 2003, I met with Senator Jeff Bingaman.

   On July 17, 2003, The White House informed me that I would be contacted by the Department of Justice for the beginning of the various background investigations. I received various documents from the Department of Justice, including this document, the Form 86 regarding National Security Clearance, consent forms authorizing the FBI investigation, access to my income tax returns, my credit records, medical records and my fingerprints.

After submitting the foregoing forms to the Department of Justice on July 25, 2003, I was interviewed by the Department of Justice and the FBI. I received several (four or five) follow up calls from the FBI.

On September 23, 2003, I was notified by The White House that the President intended to nominate me to the United States District Court, and he did so that day.

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

No, no such discussions have occurred.

5. **Please discuss your views on the following criticism involving "judicial activism."**
The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped-many of the prerogatives of other branches and levels of government.

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

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

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

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

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

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

Our nation's governmental structure of three separate but equal branches of government depends, in part, on each branch respecting the powers and duties of the other. Judges are not legislators; judges are not policy makers. Judges should limit their decisions to the case and facts before the court, which may require the interpretation of legislation or policy, but not the creation or expansion of it.

Because judges are the interpreters of the law and not the creators of it, it is important that judges act on cases for which there is an actual matter in controversy between parties who have standing or an actual stake in the outcome of the case.

In acting on cases, judges must rely on precedent, both in following established case law, and in analyzing legal issues for which no clear precedent exists that is precisely on point.

If courts stray from these basic principles the danger exists that the courts will become policy makers rather than adjudicators of the actual dispute at hand.

AO 10
Rev. 1/2002

FINANCIAL DISCLOSURE REPORT
FOR CALENDAR YEAR 2002

Report Required by the Ethics in Government Act of 1978, (5 U.S.C. App., §§101-111)

1. Person Reporting *(Last name, first, middle initial)*	2. Court or Organization	3. Date of Report
Herrera, Judith C.	United States District Court, New Mexico	9/26/03
4. Title *(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)* District Judge - Nominee	5. ReportType (check appropriate type) X Nomination, Date 9/23/03 X Initial ___ Annual ___ Final	6. Reporting Period 1/1/2002 to 9/1/2003
7. Chambers or Office Address 2200 Brothers Road Santa Fe, NM 87505	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date_____	

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

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

	POSITION	NAME OF ORGANIZATION/ENTITY
[ ]	NONE (No reportable positions.)	
1	Partner	Herrera, Long, Pound & Komer, P.A.
2	Regent	University of New Mexico
3		

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

	DATE	PARTIES AND TERMS
[X]	NONE (No reportable agreements.)	
1		Will roll over profit sharing account out of law firm.
2		
3		

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

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
	NONE (No reportable non-investment income.)		
1	2002	Herrera, Long, Pound & Komer, P.A. (Salary)	$ 138,202.00
2	2003	Herrera, Long, Pound & Komer, P.A. (Salary)	$ 48,161.88
3	2002	Las Campanas Limited Partnership (Salary-Spouse)	$
4	2003	Las Campanas Limited Partnership (Salary-Spouse)	$
5			$

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Herrera, Judith C.

Date of Report: 9/26/03

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.
(Includes those to spouse and dependent children. See pp. 25-27 of Instructions.)

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

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

	SOURCE	DESCRIPTION	VALUE
	NONE (No such reportable gifts.)		
1	Exempt		$
2			$
3			$
4			$

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

	CREDITOR	DESCRIPTION	VALUE CODE*
	NONE (No reportable liabilities.)		
1	Bank of America	Office Building-Rental Property #1	O
2			
3			
4			
5			

*Value Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000 N=$250,001-$500,000

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Herrera, Judith C.

Date of Report: 9/26/03

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-37 of Instructions.)*

	A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	Place "(X)" after each asset exempt from prior disclosure.	(1) Amt. Code1 (A-H)	(2) Type (e.g., div., rent or int.)	(1) Value Code2 (J-P)	(2) Value Method Code3 (Q-W)	(1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
	NONE (No reportable income.)					Exempt				
1	Rental Property #1 Santa Fe, NM (2003)	G	Rent	O	S					
2	Prtnrshp Int - Law Firm, SF, NM		None	K	W					
3	Family Prtnrshp #1 Santa Fe, NM		None	P1	W					
4	Cabot Oil & Gas-Common		None	K	T					
5	Cisco Systems Inc.-Common		None	K	T					
6	Dell Computer Corp-Common		None	L	T					
7	Fidelity Natl Finl Inc.-Common		None	K	T					
8	Intel Corp-Common	A	div	K	T					
9	Intl Game Technology-Common		None	K	T					
10	Janus Worldwide Fund-Mutual Fund	A	div	J	T					
11	MCDATA Corp CL A Class A		None	J	T					
12	Microsoft Corp-Common		None	L	T					
13	N B T Y Inc.-Common		None	K	T					
14	Stewart Info Svcs Corp.-Common		None	K	T					
15	AOL Time Warner Inc-Common		None	J	T					
16	Avaya Inc Odd Lot Offer		None	J	T					

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

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Herrera, Judith C.

Date of Report: 9/26/03

VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-37 of Instructions.)*

	A. Description of Assets (including trust assets) *Place "(X)" after each asset exempt from prior disclosure.*		(2) Type (e.g., div., rent or int.)			D. Transactions during reporting period (1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day		(5) Identity of buyer/seller (if private transaction)
						Exempt			
17	Capital One Financial Corp-Common	A	div						
18	Baker Hughes Inc	A	div						
19	Caremark RX Inc.-Common		None	J	T				
20	D S T Systems Inc.-Common		None	J	T				
21	Gulfterra Energy Ptnrs-Common		None	J	T				
22	Johnson & Johnson-Common	A	div	J	T				
23	Latin Amern Discovery FD		None	J	T				
24	Lowes Companies Inc.-Common		None	J	T				
25	M G I C Investment Corp - Common		None	J	T				
26	Pfizer Incorporated-Common		None	J	T				
27	Profit Sharing Plan		None	L	T				
28	Spouse's 401(k)		None	K	T				
29	Spouse's Profit Sharing Plan		None	J	T				
30	Intl Game Technology		None	K	T				
31	NW Mutual Life Ins.		None	K	T				
32	NW Mutual Life Ins.		None	K	T				
33	NW Mutual Life Ins.		None	K	T				
34	NW Mutual Variable Extra Ordinary Life: Aggressive Growth Stock		None	J	T				

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

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Herrera, Judith C.

Date of Report: 9/26/03

VII. Page 3 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

	A. Description of Assets (including trust assets) *Place "(X)" after each asset exempt from prior disclosure.*				D. Transactions during reporting period			
		(2) Type (e.g., div., rent or int.)			(1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day		(5) Identity of buyer/seller (if private transaction)
					Exempt			
35	NW Mutual Variable Extra Ordinary Life: Small Cap Growth	None	J	T				
36	NW Mutual Variable Extra Ordinary Life: Aggressive Growth	None	J	T				
37	NW Mutual Variable Extra Ordinary Life: Small Cap Growth	None	J	T				
38	NW Mutual Variable Extra Ordinary Life: Aggressive Growth	None	J	T				
39	NW Mutual Variable Extra Ordinary Life: Small Cap Growth	None	J	T				
40								
41								
42								
43								
44								
45								
46								
47								
48								
49								
50								
51								
52								

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

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Herrera, Judith C.	9/26/03

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

IX. CERTIFICATION.

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

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

Signature Judith C. Herrera Date 9/26/03

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. App., § 104.)

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

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

Senator DEWINE. Thank you very much.

Justice Townes, you have served on the bench at three different levels. I wonder if you could tell us what that experience has taught you that would help you to be a good Federal judge? Maybe another way of saying it is what have you learned not to do? What have you learned to do? What has that taught you?

Justice TOWNES. Well, thank you, Mr. Chairman, for the opportunity to answer that question.

I simply love the law, and I have been a judge now for 15 years in various capacities. One thing that being a judge has taught me that I think will be helpful is how to listen and how to listen to everyone fairly and impartially before making any decision in the court.

I've also learned how to negotiate and settle cases with attorneys. I learned how to be fair and impartial and to have a judicial, a good judicial temperament. I respect all of the litigants and the attorneys and the employees in my court, and I give them that respect, and I find that they give it in return.

I have learned how to manage cases and take care not to have backlogs as much as possible, because the courts where I have worked have been very, very busy courts also. I have learned many legal principles that I will also carry to the Federal Court. Although I have been a State Court Judge throughout my career until this period, many legal principles I will carry with me from the State, and in fact, as an Assistant District Attorney before I became a judge, I did work with some Assistant U.S. Attorneys in their preparation of cases, criminal cases that began or that occurred on military bases, with cases such as rape cases, and I did help them to prepare in order to try those cases. I have also taught trial practice at Syracuse University College of Law, and I use the Federal Rules there.

So I think that the vast amount of experience that I've had, even as a teacher of high school students for 7 years before I became a lawyer, helped me in learning how to deal with people, how to supervise my employees. Thank you.

Senator DEWINE. Very good.

Mr. Saylor, you have had the opportunity to observe judges over a long career. What have you learned not to do?

Mr. SAYLOR. Thank you, Mr. Chairman. I certainly have learned the virtues, from the judicial standpoint, of patience, of constraint, of diligence. I think it's important for judges to be patient even when there are ample opportunities not to be, to be constrained and to be diligent to do the heavy work of the court, to make decisions and to move cases along either toward trial or toward settlement.

I hope that answers your question, Mr. Chairman.

Senator DEWINE. Well, Mr. Saylor, you do not have to say names, but in all seriousness, you have to have been irritated by judges at one time or another. I was when I practiced law. I mean life is about learning. You usually learn when you see things you do not like, at least that is how I have learned, and I have learned by my own mistakes.

Now, you have not had the opportunity to make mistakes as a judge because you have not been a judge. One of the advantages

this Committee has, or when we as Senators try to help the President pick someone to be on the Federal Bench, when we are looking at a judge such as Justice Townes, we have a track record to look at. When we have someone who has not been on the bench, we do not have a track record. So it is kind of interesting to talk to someone and say, well, you have looked at a lot of judges, you practice law, you have tried cases. What is good? What is bad? What do you like? What do you not like? That way we can sort of get into your mind a little bit and try to understand.

Mr. SAYLOR. Mr. Chairman, that is an excellent observation, and I guess I would answer it this way. My single greatest frustration as an attorney, as a practicing attorney with judges have been those who take too long in making decisions. I have often thought in my head, give me a good decision, give me a bad decision, just give me a decision so that we can move on. And judges are often overwhelmed, as I'm sure, Mr. Chairman, you're aware. The caseloads are very, very busy in many parts of our judicial system, and I'm not seeking to blame anyone, but that would be my single greatest frustration.

Senator DEWINE. Same question to you, Ms. Herrera.

Ms. HERRERA. Thank you, Mr. Chairman.

I would say that my, one of my frustrations is not only that perhaps sometimes decisionmaking is a little longer than it should be, but I'd say what I want in judges is to know that I've been heard or that my client has been heard. So again, agree or disagree with our position, but it's important to me as a lawyer and to my clients as parties to the lawsuit, to feel that they've had a fair shake.

Senator DEWINE. You actually serve on a commission that is involved in the selection of judges. Tell me about that.

Ms. HERRERA. Yes, Mr. Chairman. I serve on what's called the Appellate Judges Nominating Commission in New Mexico, and it is a commission that reviews the applicants to either the Court of Appeals or the New Mexico Supreme Court, and makes recommendations to the Governor.

Senator DEWINE. And what do you look for? You have done that. What do you look for? What do you not like? What do you like? How do you sift through people?

Ms. HERRERA. Mr. Chairman, I look for people who are willing to work hard. I look for people who are fair-minded, who I also consider to be open-minded, who don't come to the court with an agenda, so to speak. I look for people who I consider to be well prepared for the court. In other words, they've practiced law in the trenches, so to speak. Those are—and I look for integrity. I look for candidates who have displayed integrity and have high, well-regarded reputations.

Senator DEWINE. You find this a difficult job?

Ms. HERRERA. Selecting, making recommendations?

Senator DEWINE. Yes.

Ms. HERRERA. I find it an important job, Mr. Chairman, but we have been fortunate in New Mexico to have a very good pool of candidates.

Senator DEWINE. Justice Townes, let me ask you, and I will ask the other candidates too, and again you, from your own experience, the other candidates from their observation, tell me what your phi-

losophy is in regard to the settlement of civil cases? How do you approach that issue? There is kind of—every judge, I assume, develops a philosophy of—not only a philosophy but a method of how you go about settling cases. Some spend a lot of time on settlement. Some do not spend a lot of time. Some say, "Let us just try them." How do you deal with that?

Justice TOWNES. Well, in New York we are required to have a preliminary conference. That is the first thing we do. And we sit and talk with the attorneys and determine what the real issues are, if there are any that can be settled, or whether there are all of them that can be settled. And I find that very often the attorneys want to judge to come in and listen to the facts and make recommendations.

What I do is review the entire file before the attorneys appear before me so that I have familiarity with it. I give each of them an opportunity to talk to me about the case. And I will tell them what I would recommend. And if they accept that, fine. If they do not, I do believe that attorneys have the right to try their cases, and the fact that they don't settle when I think they should is not something that I would hold against them. But I do like to move cases and I do like—having prior experience, I'm able to point out certain problems that an attorney might have with his or her case, and make recommendations.

Senator DEWINE. Mr. Saylor, how do you envision, when you are a Federal Judge, how will you handle this? You have watched other judges. How are you going to do it?

Mr. SAYLOR. Mr. Chairman, I certainly would not expect, if I'm fortunate enough to be confirmed, to be a judge who would not give someone a trial date because I think the case ought to be settled. I think people have a right to a trial and not every case can be so settled. In Massachusetts we're fortunate to have a deep pool of senior status judges who serve as mediators for settlement purposes. It's very effective. One of the advantages of that is the parties will be more open if they're in front of a judge who they are not going to try the case in front of. I would expect to make use of those retired judges, and generally speaking, do what I can within reasonable bounds to bring the parties together, and to mediate disputes where I think it's appropriate.

Senator DEWINE. Ms. Herrera?

Ms. HERRERA. Mr. Chairman, in New Mexico, in the Federal District Court there, every case is sent to a United States Magistrate Judge for a mandatory settlement conference, so every civil case is automatically sent for a settlement conference. So that has been an effective settlement tool. Many, many, many cases settle as a result of the mandatory settlement conferences, and the success has been so overwhelming that I of course would continue to use that process.

Senator DEWINE. We talk a lot about judicial temperament. I do not know how you define it. I have never heard a good definition of it, but I will let you try. Ms. Herrera, how would you define that and how do you look at that as a component of being a judge?

Ms. HERRERA. Mr. Chairman, that's a very good question. I look at judicial temperament basically as the judge's opportunity to treat the attorneys and the litigants who appear in his or her

courtroom in a respectful way. I see myself as a person who treats, in my practice of law, treat opposing counsel always with respect, and I find that I treat the opposing parties the same way also with respect. And I would—I am certain that if you saw fit to confirm me as a Federal Judge, I would continue and treat people with the same level of respect that I do currently, again, always with the idea in mind that I'm giving somebody a fair shake in hearing them.

Senator DEWINE. Mr. Saylor?

Mr. SAYLOR. I would echo what Ms. Herrera said. I think it's important to be respectful, to be constrained, to be open-minded certainly, not to come on the bench with any particular personal agenda, not to allow one's interests or one's ego to get in the forefront. To be patient certainly is an important piece of it, and generally to be constrained and respectful and to do the work of the court.

Senator DEWINE. Justice Townes?

Justice TOWNES. Mr. Chairman, I believe that judicial temperament is one of the most important aspects of a judge. I believe that disrespect of the litigants or the attorneys or anyone else who comes before the court brings disrespect to the judicial process. Civility is very important to me, and the attorneys know it, and I am a person who requires that the attorneys are civil to one another also, and that the parties are civil to one another when they are before the Court. I just believe that this is very, very important, one of the most important aspects of a judge.

Senator DEWINE. Judge, many years ago I was a county prosecuting attorney, and one of the things that I always wanted a judge to enable me to do is to try my case. That sometimes means different things for different lawyers, and I suppose sometimes that means too much latitude in a courtroom. But I would like to ask each one of you how you approach that, for you, Justice Townes, and for the other two members of the panel, how you will approach that whole issue of how much latitude does a judge or do the litigants get. Sometimes there is a difference, I have noticed, in a trial court in a State court level and in the Federal Bench. Sometimes there is, sometimes there is not. But what is your general philosophy? How do you handle it now? How do you intend to handle that?

Justice TOWNES. My general philosophy is that there are certain procedural rules which have to be obeyed, but as far as the handling of the case itself and the issues involved, I believe that attorneys should be allowed to try their cases. I think that they know what they want to do, what their clients expect of them. And as long as that is within the bounds of the rules of the court, then the attorneys try their cases in front of me, and I would continue to do that in Federal Court.

Senator DEWINE. Mr. Saylor?

Mr. SAYLOR. Mr. Chairman, I too have tried many cases in Federal and State court, and would expect if I'm confirmed, not to be one of those judges that does get in the way of the lawyers trying the case. I think the judge needs to serve as an impartial referee or umpire, so to speak. There are rules of evidence and rules of procedure that need to be enforced scrupulously, but for the most part I think attorneys should be permitted to try their cases.

I might be a little stricter with an Assistant U.S. Attorney and allow a little more latitude to criminal defense counsel in a close case, but beyond that I think attorneys all ought to be treated the same.

Senator DEWINE. Ms. Herrera?

Ms. HERRERA. Mr. Chairman, I too have tried many cases in State and Federal Court, and I do prefer that a judge let me try the case. So I expect I would be the type of judge that would allow the attorneys to try the case, certainly with regard to the rules of civil procedure and rules of evidence in mind. Thank you, Mr. Chairman.

Senator DEWINE. There is one boilerplate question that always gets asked in these proceedings, and we always know the answer, but we still have to ask the question, and that is following precedent. If you are selected to serve and the Senate confirms your nomination to serve on the Federal Bench, will you agree to follow the precedent of the Federal Courts? Justice Townes.

Justice TOWNES. Mr. Chairman, I will certainly agree to follow precedent. I believe that the only way that citizens can have any faith in our Court is through the belief that everyone will be treated the same, and through precedent that will occur.

Senator DEWINE. Mr. Saylor.

Mr. SAYLOR. Mr. Chairman, absolutely. It is the role of the District Court to follow the precedent of the United States Supreme Court and his or her circuit, and absolutely I will do that.

Senator DEWINE. Ms. Herrera?

Ms. HERRERA. I absolutely, Mr. Chairman, would follow precedent, and agree with the comments made by the other panel members.

Senator DEWINE. I want to thank you very much for being here. We will try to proceed with your nominations as quickly as possible. We will leave the record open for any additional written questions that any Senators may wish to submit to you so you may have some questions, you may not. We will see. If you do get written questions, I would ask you to try to respond to those written questions as quickly as you can. That will help us and it will also help you.

Statements of Senators will be accepted into the record. I have an additional statement from Senator Clinton which will, without objection, be made a part of the record.

So again, we thank you very much, and we appreciate you being here. You are excused. You are welcome to stay for the rest, or my suggestion would be you may want to relax and leave, but you are welcome to stay if you want to.

Ms. HERRERA. Thank you, Mr. Chairman.

Mr. SAYLOR. Thank you.

Justice TOWNES. Thank you.

Senator DEWINE. Thank you very much.

We would ask Mr. Herraiz to come up now. Raise your right hand.

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

Mr. HERRAIZ. I do.

Senator DEWINE. Please be seated.

PRESENTATION OF DOMINGO S. HERRAIZ, NOMINEE TO BE DIRECTOR OF THE BUREAU OF JUSTICE ASSISTANCE, DEPARTMENT OF JUSTICE, BY HON. MIKE DEWINE, A U.S. SENATOR FROM THE STATE OF OHIO

Senator DEWINE. I have a short introduction for you and then we will proceed.

I am pleased to introduce today Mr. Domingo Herraiz, a native in my home State of Ohio, whom President Bush has nominated to be the Director of the Bureau of Justice Assistance.

Since August of 2003 he has been the Deputy Director of programs for the Bureau of Justice Assistance in the Department of Justice. In this position he is responsible for overseeing a National Criminal Justice Grant portfolio of almost 18,000 active grants involving over $9.6 billion that support State and local crime policies and programs.

Mr. Herraiz comes to us with a long history of distinguished service, and I am proud to say that he received his college degree from Ohio University, has spent most of his career working on issues for the people of the State of Ohio.

Prior to his current assignment he served for 3 years in Ohio Governor Bob Taft's cabinet as the Director of the Ohio Office of Criminal Justice Services. In this position he led Ohio's Criminal Justice Planning Agency as it administered over $30 million in State and Federal funding, conducted research and evaluations, and designed justice technologies systems and other initiatives for use at the local level. The Ohio Justice of Criminal Services Director, he also served on the Governor's Council on Juvenile Justice and the State of Ohio Security Task Force, addressing terrorism and homeland security issues within the State.

Mr. Herraiz also has served as the Executive Director of the Ohio Crime Prevention Association, the largest crime prevention association in the country, and as the Director of the Ohio School Resource Officers.

I would also like to welcome Mr. Herraiz's parents who are here today, Domingo and Tonia, who I know certainly are very proud of their son. If you could stand up please? Thank you very much for coming. We are very glad to see you here today. I know you are very proud of your son's accomplishments for not just the State of Ohio, but for our country, and we welcome you.

I wonder if you would like to introduce the rest of your family for us?

STATEMENT OF DOMINGO S. HERRAIZ, NOMINEE TO BE DIRECTOR OF THE BUREAU OF JUSTICE ASSISTANCE, DEPARTMENT OF JUSTICE

Mr. HERRAIZ. Thank you, Mr. Chairman.

Senator DEWINE. I know your children are not here today, I guess.

Mr. HERRAIZ. My wife Jamie, and my children, and I will name them for you. You have a big family, so I am sure you can appreciate this. My son Brendan, who is in college; my daughters Megan and Genna, in high school; and my daughter Madison who's in ele-

mentary school; and my son Manuel who is 2-years-old, are home with their mother, going to school and tending to those duties.

Senator DEWINE. We miss them. Give them our very best regards.

Mr. HERRAIZ. Thank you.

[The biographical information of Mr. Herraiz follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

   Domingo Santo Herraiz

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

   Permanent Residence: Westerville, OH
   Temporary Residence: Alexandria, VA
   Office: 810 7th Street, NW, Washington, DC

3. Date and place of birth.

   Born: October 9, 1960, in Canton, Ohio

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

   Married: Jamie Yvette Barbour, Human Resource Manager, Checkfree Corporation, 6000 Perimeter Loop, Dublin, Ohio

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

   Ohio University, attended 9/78 to 6/82. Degree: Bachelor of Arts in Political Science, Minor in Business Administration, degree granted 6/82. Also attended Ohio University from 9/82 to 2/85 working towards a Master's in Public Administration – not completed.

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

U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, Deputy Director of Programs	8/03 to Present
State of Ohio, Office of Criminal Justice Services Director	8/00 to 7/03
Ohio Crime Prevention Association	
Executive Director	9/86 to 7/00
Program Director	2/85 to 8/86
Ohio University, Department of Residence Life Resident / Area Director	8/82 to 1/85
American Crime Prevention Association Executive Director	1999

Ohio School Resource Officers' Association Executive Director	1997
National Rural Crime Prevention Center Staff Assistant	1997 – 2000
International Society of Crime Prevention Practitioners Executive Director	1990 – 1993
National Criminal Justice Association Executive Board Member	7/01 to 7/03
Crohns and Colitis Foundation of America – Columbus Chapter President	1995
Crime Prevention Coalition of America Steering Committee Member / Chair	1994 – 1999
City of Westerville, Charter Commission Member	1999 – 2000

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

   I have had no military service.

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

   Honorary Lifetime Memberships:
   - Ohio Crime Prevention Association
   - Miami Valley Crime Prevention Association
   - New England Crime Prevention Community Police Partnership

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

   I have no membership in bar associations or legal related committees.

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

I am not a member of any organization that is active in lobbying.

Current Organizational memberships:
- Republican National Committee, sustaining member
- Republican Ohio Hispanic Assembly, member
- Northside Christian Fellowship Presbyterian Church, Member
- Buckeye State Sheriffs' Association, Member
- National Sheriff's Association, Member
- Phi Delta Theta Fraternity, Member

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

I have not been admitted to any court.

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

Various publications have been distributed with my name identified as the director when I served at the Ohio Office of Criminal Justice Services. Additionally, I have written brief articles within these publications and on my previous organization's web site.

Documents include:
- OCJS Agency Informational Brochure
- Inside Justice – OCJS Newsletter
- Ohio Homeland Security Information and Resources - State of Ohio Security Task Force
- What Citizens can do to increase Safety and Security – Heighten Awareness in Ohio Communities
- Methamphetamine Awareness Guide
- Criminal Justice Information Systems at OCJS – Informational Brochure
- OCJS Grant Opportunities – Informational Brochure
- Grant Writing – Identification and Writing for Funding in a Competitive Market
- Family Violence Prevention Center at OCJS – Informational Brochure
- Children Who Witness Family Violence – Informational Brochure
- Los Ninos que son Testigos de Violencia Familiar
- Teen Dating and Violence
- Statewide Media Campaign Tool Kit, Ohio Violence Prevention Center
- Family Violence in Ohio – 2000 Data

Published writings continued

- Ohio Domestic Violence Shelter County Listing
- The Ohio Domestic Violence Benchbook
- Ohio Family Violence Needs Assessment – Executive Summary
- Ohio Juvenile Justice Needs Assessment – Executive Summary
- Ohio Drug Court Evaluation
- Ohio College Initiative to Reduce High Risk Drinking – Evaluation Report
- Beyond…Beyond Bean Counting – Reporting Crime in the 21st Century
- OCJS Web Site – Message from Director and Agency Mission

Following is a list of presentations that I have made within this criminal justice field:

- National League of Cities - Public Safety at the Local Level - Importance of Crime Prevention
- National Governors Association - Promoting Criminal Justice Information Systems
- Office of Justice Programs – National Hispanic Heritage Month – Keynote Address
- National Institute of Justice - Crime Prevention Strategies
- National Alliance for the Mentally Ill – Ohio Chapter – Annual Conference – Opening Remarks
- National Criminal Justice Association Annual Conference – Techniques for Managing Technology Projects on Time and on Budget
- Boys and Girls Clubs of America – Annual Conference – Working with State Agency Directors
- Bureau of Justice Assistance Annual Conference - Working with your Local and State Crime Prevention Organization
- Bureau of Justice Assistance State Administering Agency Annual Training
- Crime Prevention Coalition of America - Regional Symposiums and State Leader Forums - Leadership in a Crime Prevention Association
- National Crime Prevention Council Annual Conference – Opening Remarks; Crime Prevention and Community Policing: A Vital Partnership; and facilitated discussions on the future of crime prevention
- National Association of Attorney's General - Crime Prevention: A work in progress
- International Society of Crime Prevention Practitioners - Program Management and Association Management; Fundraising and Program Development
- U.S. Department of Housing and Urban Development - Public Housing Conference - Community Mobilization
- American Association of Retired Persons / National Sheriffs Association - Triad National Conferences - Triad as a Community Policing Program; Community Policing and the Elderly
- Corporation for National and Community Service - Public Safety and the VISTA Associate
- New England Community-Police Partnership - Managing an Association; Fundraising; Budgeting; Strategic Planning
- New England Narcotics Officers Association - Association Management; Fundraising and Budgeting

Presentations continued

- New England Community Police Partnership - Crime Prevention and Community Policing: A Vital Partnership; Community Mobilization; Collaboration and Partnership Development; and Fundraising
- North Carolina Crime Prevention Officers Association - Association Management
- North Carolina Department of Public Safety - Public Housing Conference - Community Mobilization
- Arizona Crime Prevention Association - Adapting Programs to Local Communities
- California Crime Prevention Association - Future Direction of Crime Prevention in America
- Georgia Crime Prevention Association - Elderly Crime Prevention; Crime Prevention Programs that Work
- South Carolina State Association of Crime Prevention Officers - Elderly Crime Prevention
- New York State Crime Prevention Coalition - Leadership Development
- Iowa Crime Prevention Association - Fundraising and Program Development
- Crime Prevention Association of Western Pennsylvania - Crime Prevention and Community Policing: A Vital Partnership
- State of Rhode Island - Governor's Justice Commission -The Future of Crime Prevention: A Bridge to the Future
- Rhode Island Crime Prevention Officers Association – Association Management
- Mississippi Crime Prevention Association - Association Management
- Oregon Crime Prevention Association - Association Management; Strategic Planning
- Washington Crime Prevention Association - Fundraising and Program Development
- Crime Prevention Association of Michigan - Association Management; Fundraising and Program Development
- Crime Prevention Association of Michigan - Crime Prevention and Community Policing: A Vital Partnership; Making your Programs work at the Local Level
- Crime Prevention Association of Western Michigan - Marketing your Association
- Virginia Crime Prevention Association - Crime Prevention Certification
- Kentucky Crime Prevention Coalition - Partnership Development; Community Mobilization
- Indiana Crime Prevention Coalition - Crime Prevention Programs in the United States
- Florida Crime Prevention Association - Crime Prevention and Community Policing: A Vital Partnership
- New Jersey Crime Prevention Officers Association - Managing Multiple Priorities and Time Management
- Ohio Council of Retail Merchants - Security Committee - Crime Prevention Through Environmental Design (CPTED)
- Ohio Parents for Drug Free Youth – Ohio College Initiative to Reduce Binge Drinking
- Ohio Citizens for Law Related Education – Youth for Justice Summit – Opening Remarks
- Akron Street Law Summit - Opening Remarks
- City of Columbus Refugee Conference – Crime Prevention and Refugees
- Ohio Community Policing Consortium Annual Conference – Opening Remarks
- Brain Injury Association of Ohio – How to Protect Yourself: Homeland Security

Presentations continued

- Ohio Police Executive Leadership College – Keynote Address – Law Enforcement Leadership
- Pickaway / Ross County Joint Vocational School District – Career Day Remarks
- Ohio Fraternal Order of Police Labor Council – Introductory Remarks
- Ohio Association of Drug Court Professionals – Introductory Remarks
- Ohio Drug and Alcohol Substance Abuse Institute – Introductory Remarks
- Ohio Senate Testimony
  - SB 5 – Sex Offender Registration Notification Bill – Proponent Testimony
  - SB7 – Methamphetamine Bill – Proponent Testimony
  - HB 94 – Ohio 2001 Budget Bill – Agency Testimony
  - HB 95 – Ohio 2003 Budget Bill – Agency Testimony
- Ohio House of Representatives Testimony
  - HB 5 – Sex Offender Registration Notification Bill – Proponent Testimony
  - HB7 – Methamphetamine Bill – Proponent Testimony
  - HB 94 – Ohio 2001 Budget Bill – Agency Testimony
  - HB 95 – Ohio 2003 Budget Bill – Agency Testimony
- State of Ohio Controlling Board – Budget increase requests

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

The present state of my health is excellent. My last physical examination was July 2000.

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

Appointed:
Deputy Director, Office of Justice Programs Bureau of Justice Assistance, U.S Department of Justice August 2003 to Present

Director, Ohio Office of Criminal Justice Services, appointed by Ohio Governor Bob Taft August 2000 to July 2003

15. Legal Career:

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

I have not had a legal career.

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

I have not served as a law clerk

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

I have not practiced law

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

Office of Justice Programs, Bureau of Justice Assistance, U.S. Department of Justice – Deputy Director of Programs 810 7th Street, NW, Washington, DC, 20531	8/03 to Present
Ohio Office of Criminal Justice Services, Director, 400 E. Town Street, Suite 300, Columbus, Ohio, 43215	8/00 to 7/03
Ohio Crime Prevention Association, Executive Director, 53 N. Union Street, Delaware, Ohio, 43015	2/85 to 7/00
Ohio University, Department of Residence Life, Resident Director, 150 Chubb Hall, Athens, Ohio, 45701	6/82 to 2/85

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

I have not had a law practice.

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

I have not had any clients

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

I have not appeared in court.

a. What percentage of these appearances was in:

(a) federal court;	0%
(b) state courts of record;	0%
(c) other courts.	0%

b. What percentage of your litigation was:

(a) civil;	0%
(b) criminal.	0%

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

No cases in courts of record were tried to verdict or judgement; and no cases were tried either by sole counsel or with associate counsel.

a. What percentage of these trials was:

(a) jury;	0%
(b) non-jury.	0%

16. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

1. the date of representation;
2. the name of the court and the name of the judge or judges before whom the case was litigated; and
3. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

I have not been involved in litigation, however below lists several professional associates:

- Mr. Robbie Callaway, Vice President of Government Relations, Boys and Girls Clubs of America, 301-251-6676
- Mr. Cabell Cropper, Executive Director, National Criminal Justice Association, 202-628-8550
- Mr. Jack Calhoun, Executive Director, National Crime Prevention Council, 202-261-4118
- Mr. Thomas J. O'Reilly, Administrator, Department of Law and Public Safety, NJ Office of the Attorney General, 609-292-9660
- Mr. Raymond T. Slaughter, Director, Division of Criminal Justice, Colorado Department of Public Safety, 303-239-4451

Professional Associates continued

- Mr. Joe Andrews, Executive Assistant for Public Safety and Criminal Justice for Ohio Governor Bob Taft, 614-644-0913
- Dr. Todd Wurschmidt, Executive Director, Ohio Association of Chiefs of Police, 614-761-0330
- Mr. Robert Cornwell, Executive Director, Buckeye State Sheriffs' Association, 614-431-5500
- Mr. Michael Heldman, Sheriff, Hancock County, Ohio, 419-424-7232
- Mr. Patrick Oliver, Chief of Police, City of Fairborn, Ohio, 937-754-3067

17. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

I have had no legal activities, however I have highlighted my qualifications.

It is an honor to be considered for the position of Director of the Bureau of Justice Assistance. I believe I am qualified to serve as the BJA Director based on my experience, education and proven work ethic.

My interest in public service began at an early age, as I witnessed my father's commitment as a firefighter and the intrinsic value that he received from his chosen profession. Throughout my youth, the ethic of serving others for the public good was implanted in my belief system. As a teenager, this ethic was manifested in my community involvement with boy scouts and church activities. As an adult, this ethic became even more enlightening as I chose a degree in political science / public administration and a career path of non-profit administration and government employment.

During my career, I have had the opportunity to collaborate with various national, state and local criminal justice partners including non-profit and governmental entities. I have been both a grantee and a grantor of federal funds, giving me a unique criminal justice planning experience.

The following represents the seven key components of the professional standard I have developed and practiced during more than twenty years of criminal justice leadership at the local, state and national levels.

- Conveying Loyalty. From my experience as Executive Director working with the Board of Directors for the largest state crime prevention association in the nation, to my cabinet appointment with the Ohio Office of Criminal Justice Services, I accurately invested in the vision established by the Administration to ensure its success and provide effective constituent services.

- Managing by Performance. Performance management requires the true balance of critical projects and deadlines with employees and their basic human needs. In my numerous positions and career volunteer assignments, I have led individuals, expected results, and delivered outcomes for the criminal justice community.

- Streamlining Processes. Beyond budgets or specific projects, organizations and individuals that find the most effective way of performing their jobs all the time more effectively meet constituent needs and free up time for other initiatives. Eliminating unnecessary grant paperwork at the Ohio Office of Criminal Justice Services not only reduced the actual number of staff hours needed for grants administration, but expedited other agency projects ahead of schedule and below budget.

- Collaborating with Local, State and National Partners. Collaborations that include all elements of the community—from citizens to law enforcement, government, faith and service-based agencies—provide insight and strength for positive, long-term changes that reduce and prevent crime. My own professional collaborations mirror this model and serve as an invaluable network for cutting-edge ideas and well-founded strategies.

- Sharing Information. Clear communication within and outside an agency eliminates confusion and builds consensus for multi-disciplinary, multi-jurisdictional opportunities. At the Ohio Office of Criminal Justice Services, I employed this communication standard, from consistent e-updates to constituents to Ohio's new criminal justice search engine, OJIN, for secure and affordable data sharing among local and state criminal justice agencies.

- Evaluating Criminal Justice Initiatives. While research analysis may be interpreted in different ways, it is still essential to evaluate criminal justice projects for the effectiveness of future efforts: funding without evaluation often produces guesswork initiatives. The common theme in publications and products I have proposed for state and national use focuses on practical "what works" data to maximize limited criminal justice resources.

- Recognizing Change is Constant. By preparing for the expected and anticipating the unexpected, change has managed to stay ahead of the justice curve. A fluid work environment may quickly identify and amend projects or processes that aren't working. Whether exploring offender reentry issues, DNA testing or anti-terrorism training for law enforcement, good change is about incorporating a more creative, efficient way of doing business into an agency's established mission.

An overview of major accomplishments:

- Led Ohio's criminal justice planning and assistance agency responsible for awarding, administering and evaluating over $35 million in state and federal funds.
- Pursued a performance-based model for OCJS, building staff capacity while focusing on constituent needs as well as results.
- Created a streamlined grants process, including applications, awards and performance reports, measurably decreasing the time and paperwork required to apply for and manage criminal justice grants in Ohio.
- Developed the Ohio Justice Information Network (OJIN), Ohio's state-of-the-art justice and public safety search engine, with a minimal technology budget and unprecedented timeframe.
- Maximized state and local law enforcement, courts, corrections and service provider collaborations for vital information and resource sharing.
- Pursued practical "what works" criminal justice research, providing timely best practices to practitioners and communities across Ohio in order to help direct funds to the greatest need.
- Led the largest Crime Prevention Association in the country for over fifteen years, building national recognition for the Association and crime prevention.
- Chaired the Crime Prevention Coalition of America Executive Committee, designing a national crime prevention strategy and the McGruff the Crime Dog Campaign while working with a variety of national collaborators.
- Introduced and led the Ohio Community Policing Stakeholders initiative, developing a curriculum, training and publications for law enforcement and citizens.
- Directed the International Society of Crime Prevention Practitioners, consulting with over forty states and other countries on crime prevention policy and program management.
- Designed the first-ever State Crime Prevention Certification, professionalizing crime prevention through testing and continuing education standards.
- Led the nation's largest Americorps / VISTA summer public safety program initiative creating crime prevention centers through Ohio.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

   I anticipate no receipts from deferred income, pensions, or stock options, nor do I expect to derive any benefit from previous relationships, memberships, employers, etc. No arrangements have been made to compensate me for any financial or business interests. I have employer and employee contributions in the State of Ohio Public Employee Retirement System.

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

   In the event of a potential conflict of interest, I will consult with the ethics official for the Department of Justice.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

   There are no plans or commitments to pursue outside employment.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

   I am submitting a copy of my financial disclosure report.

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

   See attached.

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

   Campaign Volunteer, Ohio Get Out the Vote, Bush for President – 2000
   Campaign Volunteer, Ohio Republican Party, 2002 – 2003
   Campaign Volunteer, Taft-Bradley for Ohio Governor, 2002

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

   I have volunteered my time to a variety of causes including American Red Cross blood drives, food pantry collections, health disorder organizations, school and children's athletic organizations, various church activities, and serving as a board member on the City of Westerville City Charter Commission. These assignments include special project organization, participation in fundraising events, working committees, media outreach, and public education. Approximately ten hours per month of volunteer commitment are associated with civic activities.

2. Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion - through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies.

   I have not and do not belong to any organization that discriminates.

FINANCIAL STATEMENT
NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks	5,000			Notes payable to banks-secured	25,000		
U.S. Government securities-add schedule	N/A			Notes payable to banks-unsecured - Autos	5,000		
Listed securities-add schedule	31,152			Notes payable to relatives	N/A		
Unlisted securities--add schedule	N/A			Notes payable to others	N/A		
Accounts and notes receivable:				Accounts and bills due	1,000		
Due from relatives and friends	N/A			Unpaid income tax	N/A		
Due from others	N/A			Other unpaid tax and interest	N/A		
Doubtful	N/A			Real estate mortgages payable-Countrywide Mortgage	159,000		
Real estate owned-Ohio Residence	220,000			Chattel mortgages and other liens payable	N/A		
Real estate mortgages receivable	N/A			Other debts-itemize:			
Autos and other personal property	7,000			Dentist	2,300		
Cash value-life insurance	10,985			Credit Cards	7,000		
Other assets itemize:	54,000						
State of Ohio Pension Fund							
				Total liabilities	199,300		
				Net Worth	128,837		
Total Assets	328,137			Total liabilities and net worth	328,137		
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts - Autos	15,000			Are you a defendant in any suits or legal actions?	No		
Legal Claims	N/A			Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax	N/A						
Other special debt	N/A						

Schedule of Securities Listing

Domingo Santo Herraiz

- Wachovia Securities IRA – Total Value - $7,722.53

Name		Value	Amt. Inc	Type Inc.
Alger Midcap Growth B	EIF	1,721.88	0	Cap Gain
G/S Small Cap Value FD B	EIF	2,165.79	0	Cap Gain
PIMCO Renaissance Fund Class B	EIF	1,838.36	0	Cap Gain
RYDEX SEC Rotain FD CL C	EIF	1,306.37	0	Cap Gain

- Wachovia Securities IRA # 2 – Total Value - $23,429.95

Name	Value	Amt. Inc	Type Inc.
Cardinal Health	6,550.50	$ 13.00	Div.
Checkfree Corporation	4,087.50	$ 0.00	
Electronic Data Systems	1,529.45	$ 35.00	Div.
General Electric Company	1,468.00	$ 38.00	Div.
Merck & Co.	1,421.25	$ 36.00	Div.
Microsoft Corporation	2,735.70	$ 9.00	Div.
Proctor and Gamble	2,309.25	$ 41.00	Div.
Wal-Mart Stores Inc	2,693.00	$ 18.00	Div.

U.S. Department of Justice

Washington, D.C. 20530

SEP 10 2003

Ms. Amy L. Comstock
Director
Office of Government Ethics
Suite 500
1201 New York Avenue, NW
Washington, DC 20005-3919

Dear Ms. Comstock:

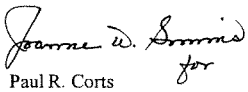
In accordance with the provisions of Title I of the Ethics in Government Act of 1978 as amended, I am forwarding the financial disclosure report of Domingo S. Herraiz, who has been nominated by the President to serve as Director, Bureau of Justice Assistance, Department of Justice.

We have conducted a thorough review of the enclosed report. The conflict of interest statute, 18 U.S.C. 208, requires that Mr. Herraiz recuse himself from participating personally and substantially in a particular matter in which he, his spouse, minor children or anyone whose interests are imputed to him under the statute, has a financial interest. We have counseled him to obtain advice about disqualification or to seek a waiver before participating in any particular matter that could affect his financial interests.

If confirmed, Mr. Herraiz will resign from the Ohio Office of Criminal Justice Services prior to his appointment, and he will resign from the National Criminal Justice Association. For a minimum of one year after the termination of these positions, he will not participate in any particular matter involving specific parties in which either of these organizations is a party of represents a party, unless he is authorized to participate pursuant to 5 C.F.R. 2635.502.

Based on the above agreements and counseling, I am satisfied that the report presents no conflicts of interest under applicable laws and regulations and that you can so certify to the Senate Judiciary Committee.

Sincerely,



Paul R. Corts
Assistant Attorney General
for Administration and
Designated Agency Ethics Official

Enclosure

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved:
OMB No. 3209 - 0001

Date of Appointment, Candidacy, Election, or Nomination *(Month, Day, Year)*	Reporting Status (Check Appropriate Boxes)	Incumbent ☐	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate ☒	Termination Filer ☐ Termination Date *(If Applicable)(Month, Day, Year)*
Reporting Individual's Name	Last Name: Herraiz			First Name and Middle Initial: Domingo S.	
Position for Which Filing	Title of Position: Director of Bureau of Justice Assistance			Department or Agency *(If Applicable)*: U.S. Department of Justice	
Location of Present Office (for forwarding address)	Address *(Number, Street, City, State, and ZIP Code)*: 400 E. Town Street, Suite 300 Columbus, OH 43215			Telephone No. *(Include Area Code)*: 614-466-4470	
Position(s) Held with the Federal Government During the Preceding 12 Months *(If Not Same as Above)*	Title of Position(s) and Date(s) Held: N/A				
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination: Judiciary			Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No	
Certification: I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	Signature of Reporting Individual			Date *(Month, Day, Year)*: 6/5/03	
Other Review (If desired by agency)	Signature of Other Reviewer			Date *(Month, Day, Year)*: 9/9/03	
Agency Ethics Official's Opinion: On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).	Signature of Designated Agency Ethics Official/Reviewing Official			Date *(Month, Day, Year)*: 9.9.03	
Office of Government Ethics Use Only	Signature			Date *(Month, Day, Year)*	

Comments of Reviewing Officials *(If additional space is required, use the reverse side of this sheet)*

(Check box if filing extension granted & indicate number of days _____) ☐

(Check box if comments are continued on the reverse side) ☐

Fee for Late Filing
Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a $200 fee.

Reporting Periods
Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

Nominees, New Entrants and Candidates for President and Vice President:

Schedule A--The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.

Schedule B--Not applicable.

Schedule C, Part I (Liabilities)--The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

Schedule C, Part II (Agreements or Arrangements)--Show any agreements or arrangements as of the date of filing.

Schedule D--The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Agency Use Only
JUL 14 2003

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SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: Domingo S. Herraiz

SCHEDULE A

Assets and Income — BLOCK A

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse).

None ☐

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

Assets and Income (Block A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples: Central Airlines Common				x												x						x										
Examples: Doe Jones & Smith, Hometown, State			x																												Law Partnership Income $130,000	
Examples: Kempstone Equity Fund					x								x										x									
Examples: IRA: Heartland 500 Index Fund							x						x											x								
1 State of Ohio																															Salary 120,834.60	
2 (see attached) IRA Wachovia Securities		X																														
3 (see attached) IRA Wachovia Securities			X																													
4 (401K - spouse) JP Morgan Common Stock Fund		X											X								X											
5 (401K - spouse) Checkfree Corp. Stock		X														X					X											
6 Checkfree Corp. - spouse																															Salary	

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Reporting Individual's Name: Domingo S. Herraiz

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Washington Mutual Inv. Fund American Funds - Daughter	A	X											X									X										
2	(Universal Life) Life Ins - Allamerica Fin.		X																X			X											
3	(See attached) State of Ohio Pension Plan				X														X		X												
4	Checking Acct - Bank One		X																		X												
5																																	
6																																	
7																																	
8																																	
9																																	

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Reporting Individual's Name: Domingo S. Herraiz

SCHEDULE C

Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at **any time** during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None [x]

	Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x): $10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			x								
	John Jones, 123 J St., Washington, DC	Promissory note	1999	10%	on demand					x						
1																
2																
3																
4																
5																

*This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None [ ]

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1	State of Ohio Public Employees Retirement System	State of Ohio and Filer	8/21/00
2	Will leave my funds in the State of Ohio sponsored plan; no further	contribution will be made on my behalf	
3			
4			
5			
6			

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Reporting Individual's Name	SCHEDULE D	Page Number
Domingo S. Herraiz		5 of 5

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization *(Name and Address)*	Type of Organization	Position Held	From *(Mo., Yr.)*	To *(Mo., Yr.)*
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	Ohio Office of Criminal Justice Services	Government Agency	Director *	8/00	Present
2	National Criminal Justice Association	Non Profit Agency	Board Member *	7/01	Present
3	* will resign positions upon confirmation				
4					
5					
6					

Part II: Compensation in Excess of $5,000 Paid by One Source

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

None ☐

	Source *(Name and Address)*	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	State of Ohio, Office of Criminal Justice	Director, oversee and manage agency - presently holding position
2	400 E. Town Street, Suite 300, Columbus, OH	
3		
4		
5		
6		

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Executive Branch Personnel Public Financial Disclosure Report

Domingo Santo Herraiz

Schedule A (continued – page 2 of 5)

- #2 Wachovia Securities IRA – Total Value as of 6/5/03 - $7,722.53

Name		Value	Amt. Inc	Type Inc.
Alger Midcap Growth B	EIF	1,721.88	0	Cap Gain
G/S Small Cap Value FD B	EIF	2,165.79	0	Cap Gain
PIMCO Renaissance Fund Class B	EIF	1,838.36	0	Cap Gain
RYDEX SEC Rotain FD CL C	EIF	1,306.37	0	Cap Gain

- #3 Wachovia Securities IRA – Total Value as of 6/5/03 - $23,429.95

Name	Value	Amt. Inc	Type Inc.
Cardinal Health	6,550.50	$ 13.00	Div.
Checkfree Corporation	4,087.50	$ 0.00	
Electronic Data Systems	1,529.45	$ 35.00	Div.
General Electric Company	1,468.00	$ 38.00	Div.
Merck & Co.	1,421.25	$ 36.00	Div.
Microsoft Corporation	2,735.70	$ 9.00	Div.
Proctor and Gamble	2,309.25	$ 41.00	Div.
Wal-Mart Stores Inc	2,693.00	$ 18.00	Div.

Schedule A (continued – page 3 of 5)

- #3 State of Ohio Pension Plan. Defined benefit plan that is not currently vested. Minimum age to draw pension is age 60 with five years of service. The current value of the plan is $54,000. There is no individual income from this pension.

AFFIDAVIT

I, Domingo S. Herraiz, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

10/9/03
(DATE)

(NAME)

(NOTARY)

Senator DEWINE. We thank you very much for joining us. You have a wonderful background for this position. As you know, I had the opportunity for a number of years when I was Lieutenant Governor of the State of Ohio to oversee the Office of Criminal Justice Services. I am very familiar with what that job entails. So we are just glad to have you with us and we invite you to give an opening statement or make any comments that you would wish.

Mr. HERRAIZ. Thank you, Mr. Chairman. I would first like to thank you as the Chair of the Committee and Senator from Ohio for introducing me today and giving me this opportunity; thank the President for offering the nomination; the Attorney General for supporting that nomination; my immediate family who is home for their commitment and support to my passion of public service, allowing that to happen; and my parents, and particularly my father, who it's his drive and being a retired firefighter that drove me into public service, and my mother for her support, faith and strong work ethic that carried me along the way.

Senator DEWINE. What do you feel are the biggest challenges that you will face in this new position? It is a broad question, but just kind of give us the overview of what you will be facing.

Mr. HERRAIZ. Mr. Chairman, my experience, as you have mentioned, comes from a local level in the sense of running a nonprofit organization. I potentially am the first Director, or could be if I am fortunate enough to receive the Senate's confirmation, the first Director of BJA who actually served as a local grantee of Federal funds, and administered them at the State level, from pass-through from Federal dollars, and then certainly would do that pass-through to the State dollars into localities at the Federal level.

In that regard I have seen the system at all levels and can say that the communication is probably the most important piece, that many laws change, different rules, different processes, in particular different appropriation levels year to year, the—our advantage to try to communicate that information back to the States and to the localities so that they're constantly informed of what's happening on the agenda that affects them on a daily basis. I think equally important in that communication is to be able to move the funds. Once Congress has appropriated the funds, it's imperative that the agency distribute those funds quickly. It's most important that they go to use at the local level.

As part of that we do not need to create additional bureaucracy and additional rules in our agency that would inhibit local grantees from applying for those funds. So being able to communicate and streamline the process is extremely important.

Senator DEWINE. I know while at the Ohio Criminal Justice Services you were responsible for funding mental health courts, drug courts, dual-diagnosis courts. How did you find these courts affecting the overall administration of justice at the local level, and what Federal funding sources did you find most useful for these programs?

Mr. HERRAIZ. Mr. Chairman, I appreciate the question. Again, my opportunities at the State level, we did fund drug courts, mental health courts, problem-solving courts including domestic violence courts, reentry courts, et cetera. The experience showed great value with creating specialty dockets as well as intensive case man-

agement at the local level. The greatest concern we have is we continue to see the crime rate drop to its lowest in 30 years. We still have individuals who are incarcerated and as they re-enter back into society, and what we can do to make sure that that continues so we don't see repeat victimization, if you will, repeat offending.

In regards to the actual process for systems like drug courts and specialty courts such as mental health courts, what we have seen is primarily through funding through the Byrne program, and several initiatives in Ohio have received the Federal funds available that you made available, and seen great benefit at the local level. They have been able to create intensive focus on that issue and education for judges and case workers so that we can prevent them from continuing in the system.

Senator DEWINE. I know that you also worked on Ohio's Justice Information Network, which allows Ohio's Criminal Justice Systems to really communicate with each other. Indeed, this system provides information directly to police officers on the front line in their police cruisers. Can this model be replicated, do you think, at the Federal level, and what Federal funding assisted in creating this network?

Mr. HERRAIZ. Mr. Chairman, we were able to use the—in Ohio, in the experience at Criminal Justice Agency and the Ohio Justice Information Network, we utilized the CEDA funds and the National Criminal History Improvement Program funds, the NCHIP funds, in order to make this happen. Those funds—and in addition, some Byrne funds. Those funds were essential. Prior to the creation of those funding sources, law enforcement were not communicating. What we have found in Ohio is to be able to take, even in disparate systems and coming from a State where we believe in strong and local control, having local police departments records management systems, and local courts having their court management systems communicate together, so that truly when an officer needs to know information, they have it at their fingertips, and it's important not to develop just the sharing of information—and technology today gives us that opportunity—without creating a separate database, but to connect disparate systems. And so an extreme utilization of very precious resources so that those officers, from a public safety perspective, would know everything they needed to know about a suspect as they pulled them over in the cruiser or responded to a call for service.

Senator DEWINE. You worked on Ohio's Victims of Violent Crime Advisory Board. Victims' rights are certainly important. What insights can you share from your work on that board and what can we do more at the Federal level that we are not already doing? What do we do to focus more, for example, on domestic violence?

Mr. HERRAIZ. Mr. Chairman, as you know, the domestic violence issue continues to remain an important crime concern in our society today, even though as I referenced the 30-year reduction in crime. The greatest concern that we must have as well is the perception of crime. Now, the perception of crime for our senior citizens still is of a great concern. We need to look at, from a domestic violence perspective, that citizens themselves are educated on what their options are and how we can break that cycle of violence and prevent it from happening in the future. Various treatment and

education programs that exist, creating more funding for domestic violence shelters throughout the country so that these folks have a safe haven, a safe place to go, which has happened through various pieces of Federal legislation, and at the same time look at victims in a very positive light, and understanding their value in an equal part of the criminal justice system.

Senator DEWINE. You also worked on Ohio's Guidebook to Community Policing. Do you want to discuss what conclusions you can draw about community policing versus what we call the traditional model? And what role does the Federal Government play or should play in such programs?

Mr. HERRAIZ. Mr. Chairman, the Federal Government has played a wonderful role in community policing, and has stimulated it back into the State system as well as to the localities. The experience in Ohio has been we have seen growth through education and training efforts of community policing initiatives where we see the law enforcement officers gaining a partnership, empowering citizens, mobilizing community, and really enlisting their support in every-day public safety concerns. That certainly will have positive ramifications in the future for us, whether it's every-day public safety issues or homeland security issues that we may face in the future.

Senator DEWINE. You worked on a multi-agency collaboration to develop a strategic plan to integrate services for homeland security. What did you learn from this and how does that apply to what we are doing here in Washington, and really what can we do to ensure that the money we spend on homeland security goes to where it is most needed?

Mr. HERRAIZ. Mr. Chairman, the initiative in Ohio was directed by Governor Taft at the time, knowing that there were five separate agencies, including my own at Criminal Justice Services, that would receive funds from the Federal Government for homeland security. What became apparent is we must share information, number one. We must prevent duplication, and coordinate and collaborate on our activities. So it required, from that strategic planning process, for each of the directors of those five agencies to sit down together and make sure that we didn't duplicate our efforts on what we were funding in utilizing those Federal resources.

I would believe that the same thing has to be done here in Washington. In my own department that I currently serve within the Bureau of Justice Assistance, that we continue on the efforts to communicate with the Homeland Security and with the Department of Justice and other players in this field.

Senator DEWINE. Mr. Herraiz, I cannot tell you how happy I am that you have been nominated by the President for this position. To have someone who not only has had Federal experience, but to me more important, or at least equally important is that you have had such extensive experience at the local level, State level, dealing with the exact area you are going to be dealing with here in Washington. In other words, you understand that what you are doing here, how it is going to really play out back in Ohio and Indiana and California and New York, and all the States. And as anybody listening could tell by the questions I asked, you have been involved in so many different things. I know my own experience with

the Office of Criminal Justice Services, that office is involved in so much planning and has its fingers in so many different aspects of law enforcement in the State of Ohio, that you just have a wealth of knowledge and experience of coordination in regard to law enforcement.

Law enforcement, one of the keys to law enforcement I think is better coordination, and everyone today in regard to the aftermath of September 11th is talking about we have to have better coordination. But that has been a problem, that has been a challenge for us for years and years and years, with all our different jurisdictions. A State like Ohio, and there are many States like ours, we have so many different jurisdictions. And it is not just the State and the Federal and the local, it is all the other jurisdictions that we have. So you bring the ability I think to really understand that, and so you are just perfectly fitted I think for this position, and I am just delighted that the President has made this decision.

Mr. HERRAIZ. Thank you, Mr. Chairman.

Senator DEWINE. We hope to act on your nomination very quickly. We appreciate you being here. This will conclude our hearing today. Thank you very much.

[Whereupon, at 10:24 a.m., the Committee adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

SANDRA L. TOWNES
ASSOCIATE JUSTICE

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Second Judicial Department
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February 25, 2004

The Honorable Orrin G. Hatch
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Hatch:

Attached are my responses to the written follow-up questions of Senator Durbin.

Very truly yours,

Sandra L. Townes

Sandra L. Townes
Associate Justice

cc: Senator Patrick J. Leahy
/w
att

Responses of to the Written Follow-up Questions of Senator Richard J. Durbin

You may be aware from press accounts that the Senate Sergeant at Arms is currently conducting an investigation of the Senate Committee on the Judiciary and the wide-scale incidents of theft of memorandums and other work products drafted by Democratic staff members of the Committee. It has been reported in the press and confirmed by the Sergeant-At-Arms that thousands of staff documents were stolen by Republican staff, and that the illegal activities took place over the past several months and perhaps years.

Additionally, at least one of the alleged perpetrators, a former Republican staff member on the Judiciary Committee, has publicly admitted that many of the documents he stole and/or read related to judicial nominations. The former staff member was one of many Republican staff members who worked on judicial nominations matters for Committee Chairman Hatch and subsequently for Majority Leader Frist.

Because of your current status before the Judiciary Committee, I would like to ask you a series of questions concerning these unfortunate criminal incidents.

1. In preparation for your confirmation hearing before the Senate Judiciary Committee, did you meet with any staff of the Senate Judiciary Committee? If so, during those meetings, did any staff of the Senate Judiciary Committee share, reference, or provide you with information that you were led to believe were obtained or derived from Democratic sources? Did any staff of the Senate Judiciary Committee provide you any documents or excerpts from documents that appeared to you to have been drafted or prepared by Democratic staff? If so, please explain the circumstances and what action, if any, you took in response to being presented with such information or documents.

   Response: I did not meet with any staff of the Senate Judiciary Committee in preparation for my confirmation hearing. Further, no staff of the Senate Judiciary Committee provided documents nor excerpts from documents that appeared to me to have been drafted or prepared by Democratic staff.

2. In preparation for your confirmation hearing before the Senate Judiciary Committee, did you meet with any staff of the U.S. Department of Justice? If so, during those meetings, did any staff of the Justice Department share, reference, or provide you with information that you were led to believe were obtained or derived from Democratic sources? Did any staff of the Justice Department provide you any documents or excerpts from documents that appeared to you to have been drafted or prepared by Democratic staff? If so, please explain the circumstances and what action, if any, you took in response to being presented with such information or documents.

Response: I met with staff of the U.S. Justice Department in preparation for my confirmation hearing. During that meeting staff of the Justice Department did not share, reference, or provide me with information that I was led to believe was obtained or derived from Democratic sources or was drafted or prepared by Democratic staff. Further, staff of the U.S. Justice Department did not provide me with any documents or excerpts from documents that appeared to me to have been drafted or prepared by Democratic staff.

3. In preparation for your confirmation hearing before the Senate Judiciary Committee, did you meet with any staff of the White House? If so, during those meetings, did any staff of the White House share, reference, or provide you with information that you were led to believe were obtained or derived from Democratic sources? Did any staff of the White House provide you any documents or excerpts from documents that appeared to you to have been drafted or prepared by Democratic staff? If so, please explain the circumstances and what action, if any, you took in response to being presented with such information or documents.

Response: I believe that I met with staff of the White House in preparation for my confirmation hearing before the Senate Judiciary Committee. White House staff did not share, reference or provide me with information that I was led to believe was obtained or derived from Democratic sources. Further, no staff of the White House provided me documents or excerpts from documents that appeared to me to have been drafted or prepared by Democratic staff.

4. In preparation for your confirmation hearing before the Senate Judiciary Committee, did you meet with anyone associated with individuals, groups, or organizations outside of government that support, endorse, or advocate in any way on behalf of the confirmation of President Bush's judicial nominees? If so, during those meetings, did any of these individuals, groups, or organizations share, reference, or provide you with information that you were led to believe were obtained or derived from Democratic sources? Did any of these individuals, groups, or organizations provide you any documents or excerpts from documents that appeared to you to have been drafted or prepared by Democratic staff? If so, please explain the circumstances and what action, if any, you took in response to being presented with such information or documents.

Response: In preparation for my confirmation hearing before the Senate Judiciary Committee, I did not meet with anyone associated with individuals, groups, or organizations outside of government that support, endorse, or advocate in any way on behalf of the confirmation of President Bush's judicial nominees. Nor did any individuals, groups, or organizations provide me any documents or excerpts from documents that appeared to me to have been drafted or prepared by Democratic staff.

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February 25, 2004

By Facsimile

The Honorable Orrin G. Hatch
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Hatch:

Attached are my responses to the written follow up questions of Senator Durbin.

Sincerely yours,

F. Dennis Saylor IV

FDS/ng
Enclosure
cc: Senator Patrick J. Leahy

LIB/N/1358674.1

Responses of Judicial Nominee F. Dennis Saylor to the Written Follow-up Questions of Senator Richard J. Durbin

You may be aware from press accounts that the Senate Sergeant at Arms is currently conducting an investigation of the Senate Committee on the Judiciary and the wide-scale incidents of theft of memorandums and other work products drafted by Democratic staff members of the Committee. It has been reported in the press and confirmed by the Sergeant-At-Arms that thousands of staff documents were stolen by Republican staff, and that the illegal activities took place over the past several months and perhaps years.

Additionally, at least one of the alleged perpetrators, a former Republican staff member on the Judiciary Committee, has publicly admitted that many of the documents he stole and/or read related to judicial nominations. The former staff member was one of many Republican staff members who worked on judicial nominations matters for Committee Chairman Hatch and subsequently for Majority Leader Frist.

Because of your current status before the Judiciary Committee, I would like to ask you a series of questions concerning these unfortunate criminal incidents.

Responses are set forth in bold.

1. In preparation for your confirmation hearing before the Senate Judiciary Committee, did you meet with any staff of the Senate Judiciary Committee? **No.** If so, during those meetings, did any staff of the Senate Judiciary Committee share, reference, or provide you with information that you were led to believe were obtained or derived from Democratic sources? **Not applicable.** Did any staff of the Senate Judiciary Committee provide you any documents or excerpts from documents that appeared to you to have been drafted or prepared by Democratic staff? **No.** If so, please explain the circumstances and what action, if any, you took in response to being presented with such information or documents. **Not applicable.**

2. In preparation for your confirmation hearing before the Senate Judiciary Committee, did you meet with any staff of the U.S. Department of Justice? **Yes.** If so, during those meetings, did any staff of the Justice Department share, reference, or provide you with information that you were led to believe were obtained or derived from Democratic sources? **No.** Did any staff of the Justice Department provide you any documents or excerpts from documents that appeared to you to have been drafted or prepared by Democratic staff? **No.** If so, please explain the circumstances and what action, if any, you took in response to being presented with such information or documents. **Not applicable.**

3. In preparation for your confirmation hearing before the Senate Judiciary Committee, did you meet with any staff of the White House? **Yes.** If so, during those meetings, did any staff of the White House share, reference, or provide you

with information that you were led to believe were obtained or derived from Democratic sources? **No.** Did any staff of the White House provide you any documents or excerpts from documents that appeared to you to have been drafted or prepared by Democratic staff? **No.** If so, please explain the circumstances and what action, if any, you took in response to being presented with such information or documents. **Not applicable.**

4. In preparation for your confirmation hearing before the Senate Judiciary Committee, did you meet with anyone associated with individuals, groups, or organizations outside of government that support, endorse, or advocate in any way on behalf of the confirmation of President Bush's judicial nominees? **No.** If so, during those meetings, did any of these individuals, groups, or organizations share, reference, or provide you with information that you were led to believe were obtained or derived from Democratic sources? **Not applicable.** Did any of these individuals, groups, or organizations provide you any documents or excerpts from documents that appeared to you to have been drafted or prepared by Democratic staff? **No.** If so, please explain the circumstances and what action, if any, you took in response to being presented with such information or documents. **Not applicable.**

:rrera, Long, Pound & Komer, P.A.
:neys at Law

Judith C. Herrera
Nancy R. Long
John B. Pound
Mark E. Komer

February 25, 2004

The Honorable Orrin G. Hatch
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Hatch:

Attached are my responses to the written follow up questions of Senator Durbin.

Sincerely,

JUDITH C. HERRERA

JCH:psz

cc: Senator Patrick J. Leahy

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Responses of Judith C. Herrera to the Written Follow-up Questions of Senator Richard J. Durbin

You may be aware from press accounts that the Senate Sergeant at Arms is currently conducting an investigation of the Senate Committee on the Judiciary and the wide-scale incidents of theft of memorandums and other work products drafted by Democratic staff members of the Committee. It has been reported in the press and confirmed by the Sergeant-At-Arms that thousands of staff documents were stolen by Republican staff, and that the illegal activities took place over the past several months and perhaps years.

Additionally, at least one of the alleged perpetrators, a former Republican staff member on the Judiciary Committee, has publicly admitted that many of the documents he stole and/or read related to judicial nominations. The former staff member was one of many Republican staff members who worked on judicial nominations matters for Committee Chairman Hatch and subsequently for Majority Leader Frist.

Because of your current status before the Judiciary Committee, I would like to ask you a series of questions concerning these unfortunate criminal incidents.

1. In preparation for your confirmation hearing before the Senate Judiciary Committee, did you meet with any staff of the Senate Judiciary Committee? If so, during those meetings, did any staff of the Senate Judiciary Committee share, reference, or provide you with information that you were led to believe were obtained or derived from Democratic sources? Did any staff of the Senate Judiciary Committee provide you any documents or excerpts from documents that appeared to you to have been drafted or prepared by Democratic staff? If so, please explain the circumstances and what action, if any, you took in response to being presented with such information or documents.

   Response: No, I did not meet with any staff of the Senate Judiciary Committee. I did not receive any documents or excerpts from documents that appeared to have been drafted or prepared by Democratic staff of the Senate Judiciary Committee.

2. In preparation for your confirmation hearing before the Senate Judiciary Committee, did you meet with any staff of the U.S. Department of Justice? If so, during those meetings, did any staff of the Justice Department share, reference, or provide you with information that you were led to believe were obtained or derived from Democratic sources? Did any staff of the Justice Department provide you any documents or excerpts from documents that appeared to you to have been drafted or prepared by Democratic staff? If so, please explain the circumstances and what action, if any, you took in response to being presented with such information or documents.

Response: Yes, I met with staff of the U.S. Department of Justice. I was not provided with any information whatsoever that I believed, or was led to believe, came from Democratic sources.

3. In preparation for your confirmation hearing before the Senate Judiciary Committee, did you meet with any staff of the White House? If so, during those meetings, did any staff of the White House share, reference, or provide you with information that you were led to believe were obtained or derived from Democratic sources? Did any staff of the White House provide you any documents or excerpts from documents that appeared to you to have been drafted or prepared by Democratic staff? If so, please explain the circumstances and what action, if any, you took in response to being presented with such information or documents.

Response: Yes, I met with staff of the White House. I was not provided with any information whatsoever that I believed, or was led to believe, came from Democratic sources.

4. In preparation for your confirmation hearing before the Senate Judiciary Committee, did you meet with anyone associated with individuals, groups, or organizations outside of government that support, endorse, or advocate in any way on behalf of the confirmation of President Bush's judicial nominees? If so, during those meetings, did any of these individuals, groups, or organizations share, reference, or provide you with information that you were led to believe were obtained or derived from Democratic sources? Did any of these individuals, groups, or organizations provide you any documents or excerpts from documents that appeared to you to have been drafted or prepared by Democratic staff? If so, please explain the circumstances and what action, if any, you took in response to being presented with such information or documents.

Response: No, I did not meet with any such individuals, groups or organizations. I did not receive from any such individuals, groups or organizations any information whatsoever that I believed, or was led to believe, came from Democratic sources.

Responses to Senator Biden's Questions for Domingo Herraiz

Question 1:
Mr. Herraiz, I am sorry my schedule did not permit me to attend your confirmation hearing, but I have been able to review the hearing record. In response to a question from Senator DeWine, you noted that "the Federal Government has played a wonderful role in community policing, and has stimulated it back into the State system as well as to the localities". You went on to note that "[t]hat will certainly have positive ramifications in the future for us, whether it's every-day public safety issues or homeland security issues that we may face in the future."

I agree with you. And while I realize BJA does not administer the Department's community policing program, I have several questions for you about that initiative. (a) As Deputy Director at BJA, what role, if any, did you play in the formulation of the Administration 's FY2004 budget request to Congress? (b) During the formulation of that request, did you share your views on the role the Federal Government has played in community policing with your colleagues in the Department? (c) Given your stated enthusiasm for the Federal Government's "wonderful role in community policing", what is your view of the Administration's proposal to end the hiring component of the community policing program? (d) Please identify for me the initiatives you have undertaken during your fifteen month tenure as Deputy Director of BJA to foster the Federal Government's "wonderful role in community policing". (e) If confirmed, please explain to me what steps you will take to ensure that the Administration's FY2005 budget request to Congress contains funding for the Federal Government to continue its "wonderful role in community policing"?

Response:
I have served as Deputy Director for Programs at the Bureau of Justice Assistance (BJA) since August 4, 2003, with primary responsibility for administering the grants that go to the state and local agencies for law enforcement assistance. Therefore, I was not involved in the formulation of the Administration's FY 2004 budget request. In addition, since my arrival coincided with the end of Fiscal 2003, I have not had the opportunity to develop any new initiatives on community policing or any other important issues. If I am privileged to be confirmed as Director of BJA, I do anticipate being involved in finalizing the Administration's FY 2005 budget request for BJA, and advocating for best programs and practices within that purview while recognizing budget priorities and realities.

As you indicated, I do share your belief in community policing, especially in these times as law enforcement seeks to fulfill the dual responsibilities of public safety and homeland security. In my view, for the field to realize fully the value of community policing and to utilize properly those officers hired under the COPS Program, the community policing philosophy must be endorsed and institutionalized with every officer and every agency at the local level. This is most successfully accomplished through training, technical assistance, and policy development. This approach, coupled with continued citizen involvement with the policing process, will ensure the sustained success of community policing.

This is also precisely BJA's primary role in promoting and supporting community policing. BJA has consistently provided training and technical assistance to local law enforcement that helps them understand their appropriate role within the community, share best practices in strategic community policing approaches, and work on a variety of initiatives that complement community policing. Subject to the availability of discretionary funds, I expect BJA to continue this role in FY 2005 and beyond.

Question 2:

As you know, the Administration has repeatedly proposed to merge the Byrne and Local Law Enforcement Grant programs into a new, Justice Assistance Grant Program. (a) Please describe to me your experiences, as Director of the Ohio Office of Criminal Justice Services, with these two grant programs. In your former job, what did you find to be their strengths and weaknesses? (b) As Deputy Director of BJA, what role did you play in the development of the Justice Assistance Grant proposal? (c) In your view, from the perspective of both your current and former jobs, how would a Justice Assistance Grant benefit state and local law enforcement agencies? (d) Would you agree with me that a Justice Assistance Grant program, or a similar initiative merging Byrne and the LLEBG, should not be initiated unless and until the relevant congressional authorizing committees have considered legislation to authorize such a program? (e) If you are confirmed, will you commit to working with me and other members of this Committee to craft legislation to authorize any changes to BJA's grant-making structure?

Response:

As the Director of the Ohio Office of Criminal Justice Services, I was responsible for the annual administration of approximately $18 million in Byrne funding and $900,000 in Local Law Enforcement Block Grant funding. Both of these programs have been widely effective in providing necessary resources to local communities. However, the challenge to those at the local and state levels who administer these grant programs is that the programs have different funding requirements and documentation, some of which can be confusing or duplicative, and which may not allow the jurisdiction to make the best use of available funds.

Since I have only been at BJA since August of this year, I have had no role in formulating the Justice Assistance Grant (JAG) proposal. From my extensive experience at the state level, and limited experience at the federal level, I believe that the JAG program will allow states and localities greater flexibility, create streamlined program rules, reduce reporting requirements, and provide for greater coordination across program areas. By design, JAG truly maximizes the degree of flexibility that will allow states and local jurisdictions to take advantage of these funding opportunities and leverage available resources.

The role of the authorizing committees is vital in providing direction to the Department as together we shape the programs that are the bedrock of state and local law enforcement assistance provided by the Office of Justice Programs. While the Administration has proposed the Justice Assistance Grant program in recent budget submissions, the Congress has chosen to keep the current grant structure in place. Until

such time as Congress authorizes this change, if confirmed, I will continue to implement the Byrne Formula program and the Local Law Enforcement Block Grant program and maintain their effective and efficient operations. I would be happy to work with you and other members of the Judiciary Committee as you consider the JAG program, or any other appropriate legislative proposal.

Question 3:
On November 10, 2003, the Office of Management and Budget issued a Statement of Administration Policy on S. 1585. That SAP notes that the President's senior advisors would recommend that he veto the bill if section 108 is included. I understand that on November 7, 2003, Assistant Attorney General Daniels sent an email to OJP employees stating, "[t]here really is nothing new of substance to report on the [public-private competitions] process itself at this point; we are just about where we were at this time last month". (a) Please provide me with an update on the status of OJP's public-private competitions process, particularly as it pertains to BJA. (b) Please describe for me the role you have played, as Deputy Director for BJA, in OJP's public-private competitions process. (c) As Deputy Director for BJA, what role did you play in the formulation of OMB's SAP on S. 1585 as it pertains to OJP and its components? (d) If asked, would you recommend that the President veto S. 1585 if its final version includes section 108?

Response:
In my brief tenure at BJA, I have not been involved in the competitive sourcing initiative or in the development of the Statement of Administration Policy on S. 1585.

Question 4:
I want to ensure that BJA is working as efficiently as possible to distribute grants to state and local governments. (a) During your tenure as BJA's Deputy Director, has there been a decrease in the number of BJA program managers and / or monitors? (b) If so, to what do you attribute this decline? (c) If confirmed, will you work to restore BJA to its previous levels of staffing by hiring program staff to replace grant managers and / or monitors who have left BJA in the past year?

Response:
Since I arrived at BJA in August 2003, I am aware that there are vacancies across the agency, including program manager positions. These vacancies have occurred due to normal federal employment attrition, some previously planned retirements among long-time staff, and the overall shift in federal employment as some employees – especially those involved in law enforcement and security issues – have chosen to join the Department of Homeland Security.

Recruitment to fill these vacancies is currently underway, and it is our hope that we can fill these positions quickly, allowing us to maintain efficient operations. If I am confirmed, I will seek to make staffing decisions that are strategic and efficient, and bring about the most effective administration of the agency.

Responses to Questions for Domingo S. Herraiz, Nominee to be Director of the Bureau of Justice Assistance at the United States Department of Justice from Senator Leahy

Question 1: The other bureaus at OJP have very specific missions: NIJ on research, BJS on statistics, OJJDP on juvenile issues, and OVC, of course, on victims. By contrast, some critics have called BJA little more than a check writing operation. What do you see as BJA's distinctive mission, if any, and how does that differ from the mission of OJP as a whole?

Response:

The Bureau of Justice Assistance (BJA) plays a complementary, but essential, role in supporting the Office of Justice Programs' (OJP) overall mission of providing federal leadership in developing the nation's capacity to prevent and control crime, improving the criminal and juvenile justice systems, increasing knowledge about crime and related issues, and assisting crime victims. Since its inception, BJA has maintained a close relationship with practitioners across the criminal justice system, has forged unique partnerships with state, local, and tribal agencies, (in particular the State Administering Agencies), and has been looked to by the field for expertise, guidance, and support that extend well beyond its funding capabilities.

In general terms, BJA is a criminal justice planning agency for state and local agencies; accomplishing this mission through policy development and grants administration. The stated mission of BJA is to provide leadership and assistance in support of local criminal justice strategies to achieve safe communities. BJA's overall goals are to (1) reduce and prevent crime, violence, and drug abuse and (2) improve the functioning of the criminal justice system. It is my belief that from a practical standpoint, this translates into several areas that set us apart from other components in OJP.

BJA provides a neutral planning arena for the entire criminal justice system – from law enforcement to citizen courts.

BJA is a single criminal justice funding portal that minimizes red tape throughout the grant process in order to deliver immediate services to state and local governments, tribes and territories. Through the "check writing" process and the companion technical assistance that we provide to grantees, we are able to keep law enforcement and citizens safer, substance abusers in courts, mental health offenders in treatment, and ex-offenders from returning to prison.

BJA designs initiatives and best practices for practicality and usefulness, based on its own review of grant programs and using supporting statistics, research, and information from the other bureaus and program offices to provide an integrated approach. This collaboration within OJP helps prevent duplication of effort.

BJA pilots projects that shape criminal justice nationwide. With the amount of

qualitative and quantitative information BJA receives on new and continuing projects, it invests in tomorrow's justice initiatives by building capacity for the future through policy development and implementation. Areas of policy development include community justice planning, crime prevention, counterterrorism, law enforcement, electronic information sharing, adjudication, and community and institutional corrections.

BJA streamlines grants, develops resources, and shares information with others to evaluate the effectiveness of justice initiatives.

Question 2: Because BJA is the generalist bureau within OJP, how do you contemplate program planning in a way that your efforts will not duplicate work already underway or on the drawing board in other OJP offices and bureaus?

Response:

By merging the programs and staffs of the Corrections Program Office and the Drug Courts Program Office into BJA, the OJP reorganization effort has already effectively consolidated overlapping functions, reduced management redundancy, and improved coordination and communications within the agency and with the field. With the addition of these functions, BJA now encompasses the broad spectrum of criminal justice operations.

In addition, the agency as a whole has developed a comprehensive management plan that identifies major change initiatives within OJP, and emphasizes efficient management of our resources, as well as top-to-bottom accountability. This process will continue to enhance planning across OJP and within OJP's bureaus and offices. If confirmed, I look forward to being an active participant in this dynamic process.

Just as family practice physicians are central to the long-term health of patients, BJA as a "generalist" has the unique opportunity to understand state and local criminal justice needs, as well as the mission and direction of other OJP bureaus and offices. Through collaboration and coordination of efforts, BJA can prevent duplicative work. By consistently partnering with other offices and bureaus, BJA provides a wealth of information to the field and within OJP on:

Funding resources across the agency;
Project-specific information on how funds are spent;
Performance data from projects that can enhance BJS and NIJ information and data collection; and
Crime and justice problems from a field perspective, which helps the entire agency become more responsive to state and local needs and shape future solicitations to address those needs.

Among BJA's current collaborative efforts are Criminal Justice Information Sharing with NIJ, Offender Re-entry with OJJDP, and Project Safe Neighborhoods with

the Executive Office for Weed and Seed. (Project Safe Neighborhoods also involves collaboration with non-OJP components of DOJ, including the Office of the Deputy Attorney General and the Executive Office of United States Attorneys.)

Question 3: As Director of the Bureau of Justice Assistance you will be called upon to supervise administration of the Bulletproof Vest Partnership Grant Acts of 1998 and 2000, under which only DOJ National Institute of Justice-approved vests are eligible to be purchased with Bulletproof Vest Partnership Program funds. Senator Campbell, Senator Hatch and I, as principal authors of the grant legislation to protect our first responders, want to ensure that police officers are wearing bulletproof vests that actually stop bullets and save lives. We pay attention to the management of that Program.

Second Chance Body Armor, Inc., a company located in Central Lake, Michigan, is the leading producer of NIJ-approved vests purchased with Bulletproof Vest Partnership Program grants. On June 23, a Forest Hills, Pennsylvania police officer was shot and wounded while wearing a bulletproof vest manufactured by Second Chance. In September, Second Chance announced that it was discontinuing certain body armor containing Zylon® fibers, marketed as lightweight and durable ballistics-resistant, from its product lines because in-house testing indicated decreases in the strength and durability of the vests. Models of these vests, tested when brand new and never-worn by officers in the field to test for durability and deterioration, met with NIJ's minimum standard of protection and resistance, and have been purchased under the Bulletproof Vest Partnership Grant Act Program.

Two weeks ago, Senator Campbell and I raised questions about the compliance standards and certification processes used by NIJ and BJA and have asked the Attorney General for an immediate investigation. I am anxious to hear your position on the matter.

(1) Will you cooperate with the investigative arm of the Department of Justice to ensure a swift and thorough investigation?

Response:

Senator Leahy, I share your deep concern for the safety of the men and women who serve and protect all of us each day across America, and, like all of us at the Department of Justice – from the Attorney General on down – I am fully committed to doing whatever we can to help ensure their safety. In this regard, the Attorney General, in the response to you and Senator Campbell, and in an announcement made on November 18, set forward a Department of Justice initiative to address the reliability of body armor used by law enforcement personnel, and to examine the future of ballistic-resistant technology and testing. I will follow the direction of the Attorney General in this matter, and cooperate with the extensive examination which he has ordered.

The aspects of that initiative that directly involve the Bureau of Justice Assistance, and, in which, if confirmed, I would actively participate, include the following:

Information: The Office of Justice Programs (OJP) will make up-to-date information about bulletproof vests available to the law enforcement community through the Bulletproof Vest Partnership Grant Program Web site (http://vests.ojp.gov). This information will include information from the National Institute of Justice's (NIJ) examination, research and testing, manufacturers' statements, and other relevant materials. We will also conduct extensive outreach to state, local and tribal law enforcement agencies that have received vests under our program, and to law enforcement associations nationwide to keep them apprised of all aspects of this issue.

Summit: OJP will convene a summit within 120 days with representatives of federal, state, local, and tribal law enforcement; law enforcement associations; manufacturers of bullet-resistant fabric and equipment; and standards and testing organizations. At the summit, participants will review the information from NIJ's immediate examination of Zylon-based bulletproof vests (both new and used), including those manufactured by Second Chance, Inc., the suitability of Zylon-based vests for law enforcement use, and the effectiveness of NIJ's certification process. In addition, the summit is intended to provide direction on the future of bullet-resistant technology and testing technology.

Replacement: OJP will work with state, local, and tribal agencies that have purchased Zylon-based vests to ensure that they are fully aware of all information about the product and, if necessary, will assist these agencies in their efforts to replace any defective equipment.

(2) Will you support an in-depth investigation into the current standards used for the Bulletproof Vest Partnership Grant Program and, if necessary, ensure prompt and detailed revisions?

Response:

The Attorney General has instructed NIJ to expand its current inspection and testing regimen related to Zylon vests, as well as to review, in cooperation with representatives of the field, its standards for soft body armor. I will cooperate fully with that work, and take whatever steps I can to maximize the effectiveness of the Bulletproof Vest Partnership Program in assisting law enforcement officials to make wise purchasing decisions.

(3) NIJ's voluntary testing protocols and minimum standards for body armor may not adequately consider jacket deterioration of vests over time because NIJ testing protocols only rate body armor in the newest possible condition and never actually worn by officers in the field. Will you see to it that vests approved for purchase with Bulletproof Vest Partnership funds have been field-tested for deterioration and durability?

Response:

The Attorney General has instructed NIJ to reexamine its testing protocols to include examining durability over time and under field conditions. I fully support this

approach, and will, as outlined above, provide recipients of vest funding, and the field as a whole, with all the information at the Department's disposal relative to durable, field-tested vests.

(4) Will you keep the Senate Judiciary Committee regularly informed of any developments regarding the investigation and any recommendations for improvements to the NIJ body armor standards and certification process?

Response:

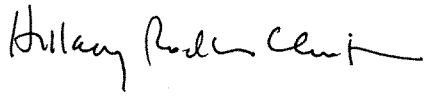
If I am so fortunate to be confirmed, I will also be pleased to work with you, Senator Campbell, Senator Hatch, and other Senate Judiciary Committee Members, and keep you apprised of departmental activity and progress on this issue, particularly as it relates to the operation of the Bulletproof Vest Partnership Grant Program. It is imperative to ensure that the equipment intended to help protect the law enforcement community can have confidence that the equipment meets and maintains the highest standards. You can be assured that I will work with the Attorney General, the Assistant Attorney General for OJP, and the Director of NIJ to address the issues surrounding bullet-resistant vests.

(5) Will you encourage any individuals who have knowledge on this issue – whether from Second Chance or any other body armor manufacturer – to come forward with pertinent information, and, as a result, help to ensure they are not retaliated against for that information?

Response:

OJP will be working closely with representatives of Zylon body armor manufacturers, as well as others knowledgeable in this area, to help inform our examination of this issue. We welcome the participation of anyone who may have pertinent information, and would expect that such information can be brought to light without fear of reprisal toward those individuals. I look forward to participating in this process, and would encourage any knowledgeable person to share information they might have that could help us better protect our law enforcement personnel.

SUBMISSIONS FOR THE RECORD



Statement of Senator Hillary Rodham Clinton
In Support of the Nomination of
Justice Sandra Lynn Townes to the
U.S. District Court for the Eastern District of New York
November 12, 2003

- Thank you Chairman Hatch and Ranking Member Leahy. I am pleased to be here today to join my colleague Senator Schumer in introducing Justice Sandra Lynn Townes, who has been nominated to the United States District Court for the Eastern District of new York.

- Justice Townes currently serves as an Associate Justice of the New York State Supreme Court, Appellate Division, Second Department. I strongly support Justice Townes' nomination to the Eastern District of New York because I believe that she has the intellect and experience to be a fine federal court judge and to serve the Eastern District of New York, one of the nation's busiest courts, with distinction.

- I'm sure the members of the Judiciary Committee are fully aware of Justice Townes' professional experience but I believe that it given its depth and breadth, it bears emphasizing.

- I was impressed to learn that even before going to law school, Justice Townes was a teacher for many years. For two years, she town English to Junior High and High School students in her home town of Spartanburg, South Carolina. She also taught for some time here in the District of Columbia, while taking courses at the Teachers College of the University of District Columbia.

- And while in law school at Syracuse Univeristy, she taught English at Corcoran High School in Syracuse and also had jobs as a special education teacher.

- After graduating from Syracuse Law School, she gained a significant amount of prosecutorial experience in the Onondaga County District Attorney's Office, first holding the position of Investigator, then Assistant District Attorney, Senior Assistant District Attorney, and finally Chief Assistant District Attorney.

- In 1987, Justice Townes became the first African-American woman elected to the Syracuse City Court.

- She then became a Justice of the State Supreme Court, New York's trial court.

- And since March 2001, she has served as an Associate Justice of the Appellate Division, New York's intermediate appellate court.

- While serving on the bench, she even made time to teach at Onondaga Community College and to teach at Syracuse Law School.

- Because of Justice Townes' qualities, experience and capability, she received a well-qualified rating from the American Bar Association.

- For all of these reasons, I [redacted] strongly support Justice Townes' nomination to the United States District Court for the Eastern District of New York and I hope she will quickly approved by the Judiciary Committee and confirmed by the Senate.

- Thank you.

For the record

Statement of Senator Patrick Leahy
Senate Judiciary Committee
Judicial Nominations Hearing
November 12, 2003

Today the Committee will hear from three more judicial nominees and another Executive Branch nominee. For the record, this hearing is the 22nd judicial nominations hearing held so far this year. This pace stands in sharp contrast to the way President Clinton's nominees were treated then by the Republican majority.

Republicans never held 22 judicial nominations hearings in any comparable time period during their six years in the Senate majority from 1995 through 2000 during the Clinton Administration. In fact, they never held as many as 14 hearings in any comparable time. In most of those years, there were far fewer hearings and far fewer nominees. For example, I recall that during the *entire* year of 1996, when the vacancy rate was far higher and rising, the Committee held a mere six hearings all year.

During that 1996 session, not a single judge was confirmed to the Circuit Courts -- not one, in contrast to 12 circuit court confirmations this year.

In fact, Republicans have now held more hearings for President Bush's judicial nominees in just nine months than they held in all 24 months of 1999 and 2000 -- combined -- for President Clinton's judicial nominees. During the entire year of 2000, only eight judicial nominations hearings were held.

In 1999, the Committee did not have a hearing to consider a single judicial nominee until June 16th, and during the rest of 1999, it held only seven hearings to consider judicial nominees. That was the third year of President Clinton's second term. Like 1999, this year, 2003, is the third year of this President's term, and Republicans have held more than twice as many hearings for President Bush's judicial nominees as for President Clinton's that year. The Republican double standard is prominently on display.

The number of nominees who have been considered so far this year is at a record high for this Republican leadership, as well. With the three judicial nominees on the hearing today, we will now have held hearings for 81 Article III judicial nominees this year. That is two dozen more than the high of 57 nominees considered during any one year of the Clinton Administration — 24 more.

With a Republican in the White House, the Senate Republican majority has gone from first gear -- the restrained pace it had said was required for Clinton nominees -- to overdrive for President Bush's judicial nominees.

This morning the Senate Judiciary Committee will hear from three judicial nominees supported by their home-state Senators, who happen to include Democratic Senators. Each one of these nominees seems to be an example of what can and should be accomplished with every nomination.

Each one is a talented attorney, well-known and respected in his or her legal community for legal skills and integrity. Unlike the most controversial of the President's nominees, none of these candidates is known for their partisanship or their ideological agenda. Each of them is a lawyer's lawyer, and is likely to be confirmed with a strong bipartisan majority.

When I see nominees like these, chosen by consensus for their skills and reputations, I am even more disappointed that this White House refuses to use this selection process for more of its nominees.

A handful of the Administration's most divisive and extreme nominees have been denied approval by the Senate. While 168 judges have been confirmed in less than three years, a handful of those chosen for ideological and political reasons have not.

In a few hours, the Senate will become hostage to a transparent political ploy by the majority. We will see Republican Senators take to the floor to criticize the Senate for confirming 98 percent of the President's judicial nominees instead of 100 percent. We will hear Republican Senators excoriate others for executing their constitutional duty of advice and consent, and we may even here the incendiary accusations of obstructionism or bigotry. Democrats have helped confirm 13 Latinos nominated by President Bush to the federal bench and blocked one.

We have helped confirm 13 African Americans to the federal bench. We have helped confirm 33 women nominees and blocked one. We can hope that they will not resort that that sort of name calling, but given the smears and the false accusations about nominees being opposed because of their religion, it seems that some will say anything however untrue and harmful to the process.

Today we will hear from three judicial nominees.

First, Judith Herrera of New Mexico, has had a distinguished legal career of 24 years, which has included both public service and private practice and criminal and civil cases. Next, Dennis Saylor of Massachusetts, has also had an illustrious career. He has spent more than 16 years in private practice at the well-known firm of Goodwin Procter, and six years in service at the federal level as an Assistant United States Attorney as well as a Special Counsel and Chief of Staff to the head of the Criminal Division, who was then Robert Mueller, the current FBI Director, at Main Justice here in Washington.

His career has included both criminal and civil experience, and his record shows he knows his way around a courtroom. Finally, we will hear from Justice Sandra Townes, currently serving as an Associate Justice of the New York State Supreme Court. Before the beginning of her state judicial career, Justice Townes spent 10 years as a prosecutor, handling a wide range of cases. Since then she has gained invaluable experience and outstanding reviews on the state bench.

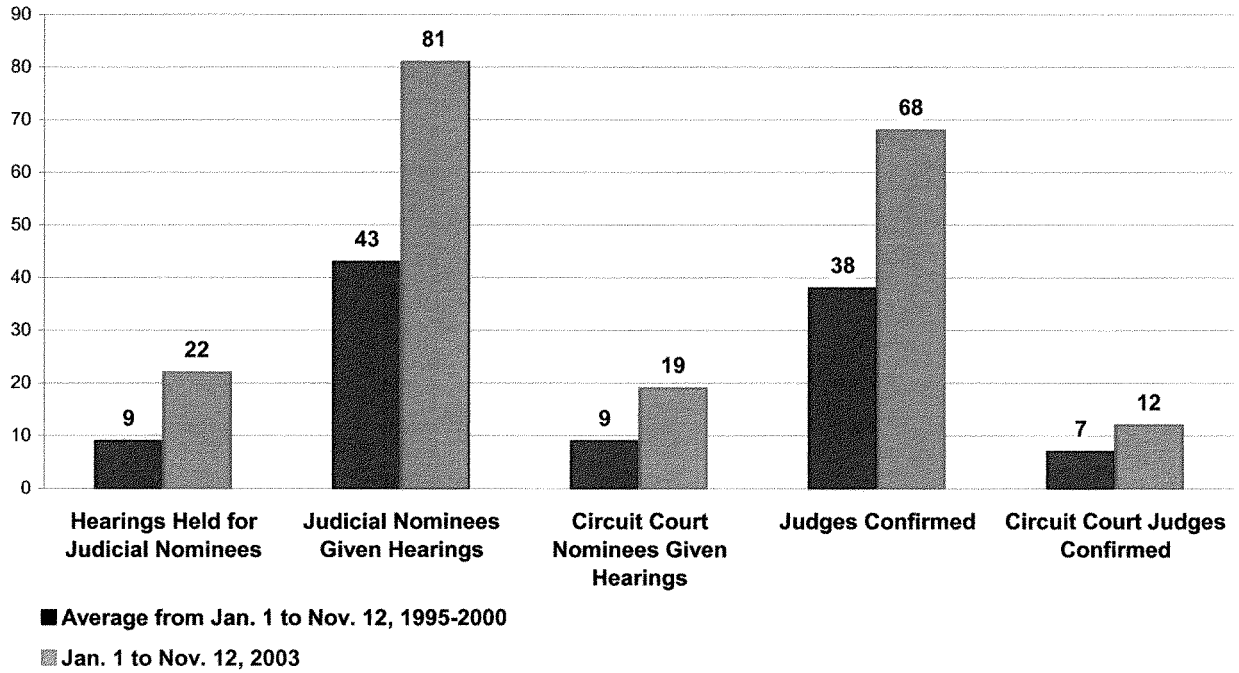
Ms. Herrera is a Latina American and Justice Townes is an African American. Both are women. In fact, this is the first nominations hearing I can recall during this Administration where there are more women on the panel than men. I mention this because these nominees are walking proof that the President can find judges of diverse backgrounds and distinguished legal reputations if he tries. Democrats have long supported diversity on the federal bench.

In addition to the judicial nominees, we will also consider the nomination of Domingo S. Herraiz to the Director of the Bureau of Justice Assistance, which is a component of the Office of Justice Programs at the Department of Justice. The Bureau's mission is to provide leadership and assistance in support of local criminal justice strategies to achieve safe communities. I look forward to learning more about Mr. Herraiz's experiences working in criminal justice and crime prevention policy, and about his plans for the Bureau.

# # # # #

REPUBLICAN DOUBLE STANDARD

Republicans Race to Pack the Bench for Bush, But Clinton Nominees Languished



NOMINATIONS OF WILLIAM JAMES HAYNES II, OF VIRGINIA, NOMINEE TO BE CIRCUIT JUDGE FOR THE FOURTH CIRCUIT; LOUIS GUIROLA, JR., OF MISSISSIPPI, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF MISSISSIPPI; VIRGINIA E. HOPKINS, OF ALABAMA, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ALABAMA; AND KENNETH M. KARAS, OF NEW YORK, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK

WEDNESDAY, NOVEMBER 19, 2003

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 2:41 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Jeff Sessions presiding.

Present: Senators Sessions, Chambliss, Kennedy, Feingold, and Schumer.

Senator SESSIONS. Good afternoon. We are delighted to have you with us, and we are glad to see these Senators here with some opinions to share with us. We appreciate them and know their schedule is very short.

Senator Schumer, did you have something you wanted to say? I know you have a tight schedule also.

PRESENTATION OF KENNETH M. KARAS, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK, BY HON. CHARLES E. SCHUMER, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator SCHUMER. Thank you, Mr. Chairman. I would ask that my entire statement be read into the record. I have a nominee here as well.

Senator SESSIONS. Without objection, it will be made part of the record.

Senator SCHUMER. Thank you.

First, I thank you for holding this hearing. We have in this room Senator Sessions of Alabama, Senator Shelby of Alabama, Senator

Allen of Virginia, Senator Lott of Mississippi, Senator Cochran of Mississippi, and Senator Schumer of New York. Which one doesn't belong?

[Laughter.]

Senator SCHUMER. Anyway—

Senator SESSIONS. It is a big country.

Senator SCHUMER. God bless America, and I mean that with every atom of my body.

In any case, Mr. Chairman, I want to thank you for scheduling the nomination of Ken Karas to the Federal Court for the Southern District of New York and for allowing me to introduce the nominee as well.

Senator Clinton would have been here, too, but she asked me to convey her apologies to the judge and to convey to the Committee her strong support of the nomination.

Mr. Karas' wife, Frances, couldn't be here today either, for a very good reason. She just gave birth to their second child last week. So Jackson John joins Nate as the second son in the Karas brood. Everyone is healthy, and I want to congratulate Ken, wherever you are, on the very good news.

Coming here today to introduce Mr. Karas is a particular pleasure for me because his nomination is an example of what happens when the process works right. In New York, we are filling every single vacancy, agreement between the White House, Chuck Schumer, Senator Clinton, Governor Pataki. It is bipartisan. The nominees, every one of them, I believe, will make us proud, and it is an example how, when we talk to one another and work with one another, we can make this process work.

The Committee is familiar with Ken's resume, so I will touch just on a couple of highlights. He came to New York for law school at Columbia after graduating magna cum laude as an undergraduate. After law school, he clerked for Judge Reena Raggi, who was then on the Eastern District bench, and who we recently elevated to the Second Circuit. If all goes well here, she will be affirming her former clerk's opinions for many years to come.

After his clerkship, Ken joined the U.S. Attorney's Office for the Southern District of New York, and he has been there ever since. And to all of my colleagues, we all care about terrorism. Ken Karas has worked on some of the most difficult and sensitive terrorism investigations, and he has distinguished himself as one of the finest attorneys in perhaps the finest prosecutor's office in the Nation.

I have three criteria, as you know, Mr. Chairman, in selecting judicial nominees: legal excellence, moderation—not too far right, not too far left—and diversity. The nominees we have put forward for New York meet these criteria. I am proud to support Ken's nomination, and I look forward to his swift confirmation by the full Senate.

And I would just ask unanimous consent that my entire statement be read in the record. I wanted to hurry in deference to my colleagues.

Senator SESSIONS. Thank you very much, Senator Schumer, and we appreciate that.

I see the Senators from Mississippi, and I know Senator Shelby and I were happy with our two nominees that came out of Mis-

sissippi, Judge Pickering and Bill Pryor, as were our Democratic Governors and local office holders, but apparently that was not enough to get those through. But let's just start, and traditionally we do the circuit court remarks first, Senator Allen, so if you would like to make remarks on your nominee that you are here to support, we would be glad to hear that, and we will go in the order here.

PRESENTATION OF WILLIAM JAMES HAYNES II, NOMINEE TO BE CIRCUIT JUDGE FOR THE FOURTH CIRCUIT, BY HON. GEORGE ALLEN, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator ALLEN. Thank you, Mr. Chairman. I very much appreciate that and that of the Committee. I am pleased to support and introduce to you all the nomination of William James Haynes II, otherwise known as Jim Haynes, to serve on the United States Fourth Circuit Court of Appeals. I am pleased that Mr. Haynes has recently moved to Virginia, a place where he has been working for many years, whether at General Dynamics or at the Pentagon. We are very proud as Virginians to have him potentially, as quickly as this Committee and the Senate can work, serving on the Fourth Circuit Court of Appeals.

I have interviewed Mr. Haynes, along with my colleague, Senator Warner, and I have found him to be a man of quality character. He has unique experience in the law as well as a proper judicial philosophy. He probably got some of that when he was actually working for now our Vice President—he was then Secretary of the Army—working in the Pentagon where the proper role of a judge is to apply the law, not to invent it.

Mr. Haynes' nomination is to the Fourth Circuit, which has been declared a judicial emergency situation by the National Judicial Conference, so I would hope that proper expedition could be involved in this determination.

I think, Mr. Chairman, when the Committee reviews Mr. Haynes' nomination, they will find him very well qualified with the requisite demeanor, the integrity, and proper respect of the role of the judiciary. He is currently the chief legal officer for the Department of Defense, a position to which President Bush nominated him, and the Senate unanimously confirmed him in 2001. I would suggest that some of his experience and his expertise understanding national security matters and concerns in these post–9/11 days will provide the Fourth Circuit with his valuable insight on cases that may involve security or the military. And the Fourth Circuit, of course, includes Norfolk, which is the largest naval base, as well as Charleston, Wilmington, and other important military facilities.

You will see all of his experience working as general counsel through the years with General Dynamics, a Virginia-based company that is a leader not just in defense but also technology business sectors.

He did serve and was confirmed in the Senate in 1990 as general counsel for the Department of the Army. He did serve in our armed forces from 1984 to 1989 as a captain in the United States Army and was awarded the Meritorious Service Medal in 1987 and 1989.

In 1992, Mr. Haynes received the Meritorious Civilian Service Medal from the Department of the Army, and in 2003 received the Distinguished Public Service Award from the Department of the Navy.

He attended Davidson College on an Army ROTC scholarship and received his law degree from Harvard Law School. He probably could not get into the University of Virginia, so he had to go there.

[Laughter.]

Senator ALLEN. Unlike one of the other nominees here.

Following his graduation, he did work for a U.S. district court judge, James McMillan, in the Western District of North Carolina. He has an impressive record, volunteering as a consultant for the Mercy Corps International, which is a humanitarian relief organization. He also was a high school State wrestling champion and obtained the rank of Eagle Scout as well. So it is a long history of outstanding service.

I would like to take a moment also to see the wonderful family he has with him: his bride, Meg Campbell Haynes; his son, Will, who is 16 years old; daughter, Sarah, who is 14 years old; and son, Taylor, 12 years old. And they are just a wonderful family. And also in support here of Mr. Haynes is Jack Marsh, the former Member of Congress from Winchester, Virginia, and the longest-serving United States Secretary of the Army; and Jim Whittinghill that many of us know, who once worked for Leader Dole, currently with the American Trucking Association, also in support of Mr. Haynes.

So, Mr. Chairman and members of the Committee, thank you for giving me the opportunity to present to you this outstanding nominee. I am sure upon your examination you will want to move as quickly as possible to get him working on the Fourth Circuit Court of Appeals.

I thank you for your courtesies, and I know my colleague, Senator Warner, will be here directly and shares my sentiments as well.

Senator SESSIONS. Thank you, Senator Allen. We appreciate those comments, and your affirmation and that of Senator Warner's are important to us. And we also appreciate your commitment to the rule of law, as your Virginia heritage would call on you to do. You have been a champion of fair and appropriate interpretation of laws and the Constitution.

Senator Cochran, I would be glad to call on you.

PRESENTATION OF LOUIS GUIROLA, JR., NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, BY HON. THAD COCHRAN, A U.S. SENATOR FROM THE STATE OF MISSISSIPPI

Senator COCHRAN. Thank you very much, Mr. Chairman. I want to thank you first of all for the prompt consideration of the nomination of Judge Louis Guirola, Jr. I am very pleased the President nominated Judge Guirola to serve as United States district judge. I am also pleased that his wife, Stephanie, is able to be here with him today. Their three children are back in Mississippi because of the requirements of school.

I believe Judge Guirola is very well qualified for this important new responsibility. He has been serving as a United States magistrate judge since 1993. He has served both in the Western District of Texas and in the Southern District of Mississippi. He has been a superb judge. The lawyers respect him enormously because he is fair, he is competent, he is diligent. You can count on him to try to do the right thing in every case. You could not ask for a more dependably intelligent and insightful judge if you had to try a case in Federal court.

Judge Guirola has served, right after he got out of college, as a narcotics agent with the Mississippi Bureau of Narcotics. He then went to law school. He became an Assistant District Attorney in Jackson County, Mississippi. He has experience in private law practice as well. He served as an attorney for the Jackson County Board of Supervisors. He also served as the attorney for the State Port Authority on the Gulf Coast. He has served as an Assistant U.S. Attorney in Texas.

There is no doubt in my mind that Judge Guirola will be an outstanding district court judge. He has had a broad range of experience in real life as a lawyer. I hope the Committee will favorably report his nomination to the Senate.

Senator SESSIONS. Thank you, Senator Cochran. We value your comments very highly.

Senator Lott?

PRESENTATION OF LOUIS GUIROLA, JR., NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, BY HON. TRENT LOTT, A U.S. SENATOR FROM THE STATE OF MISSISSIPPI

Senator LOTT. Thank you, Mr. Chairman, and I, too, want to thank the Committee for expediting this hearing of Judge Louis Guirola, Jr. It is a pleasure to be here in support of his nomination to be confirmed for the Southern Federal District Court in Mississippi.

I do not want to repeat everything that my senior colleague from Mississippi has just said, so let me ask that my prepared statement be made a part of the record at this time.

Senator SESSIONS. It will be made a part of the record.

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

Senator LOTT. I do want to note that Judge Guirola is being nominated to fill the seat on the bench currently held by Judge Walter J. Gex when he takes senior status in March 2004. It is encouraging to see firsthand the implementation of this new process which aims to fill Federal court seats before they are vacated in order to guarantee the smooth operation of our Federal justice system. So I am pleased that we were able to work with the President to make this selection and that the Committee is acting on his nomination expeditiously and that he will be ready to take that position when Judge Gex takes senior status.

I am really pleased with this selection. This nominee has lived the American dream. His parents immigrated to the United States from Cuba. He was born in this country and was educated in our public school system in Mississippi, graduated from undergraduate

school at William Carey College in Hattiesburg, and then received his degree from the University of Mississippi Law School. He has got broad and varied experience. Senator Cochran mentioned some of the things that he has done since he finished college and law school.

But I first came to know him I guess over 20 years ago where he was in my hometown of Pascagoula, Mississippi, and served as assistant district attorney. Then he was an attorney in private practice and attorney for my home county Board of Supervisors and an attorney for the Mississippi Highway Department.

I remember back in those days that I was impressed with him, and I remember a conversation—I am not even sure he will remember—oh, 10 or 15 years ago when he indicated that he would just be so honored to ever be able to be considered for the Federal judiciary. And we talked about that because—a lot of people don't think about it 10, 20 years down the road, and I urged him to do everything he could to get the proper credentials and get all the experience he could. I don't know if that influenced him, but I do know that he went on to Texas where he served as the Assistant U.S. Attorney for the Eastern District of Texas in 1990. He became U.S. magistrate judge for the Western District of Texas in 1993. He returned to Mississippi in 1996 to become a U.S. magistrate judge for the Southern District of Mississippi, the position he currently holds.

Last Friday, at 2 o'clock, just barely, I was able to get to Gulfport, Mississippi, where we had the ribbon cutting of the new Judge Dan Russell, Jr., Federal Courthouse, a beautiful temple of justice, as it was called. So I had occasion to see the chief judge, an outstanding judge from Texas of the Fifth Circuit. Judge King, a lady that has tremendous experience, gave an eloquent speech on the occasion. All the Federal district judges were there. The U.S. Attorneys and marshals and clerks, they were all there, and they were all so excited about this nominee.

So it is no surprise that he was selected with his qualifications. He has been rated well qualified by the ABA. And I am thrilled to see a man of this caliber, of this character, of this experience, and with this background to be selected to be a Federal judge in Mississippi. And I, too, join in welcoming his wife, Stephanie, here. This is really a happy day for the State of Mississippi.

Thank you for this time.

Senator SESSIONS. Thank you very much, Senator Lott, and give my best to Judge Gex. I remember we came along about the same time, and I flunked and he passed.

[Laughter.]

Senator SESSIONS. I get the consolation prize to now review judges.

Senator Shelby, it is a delight to have you here, and thank you for your commitment to law. As a practicing lawyer yourself, I know your high standards for the judiciary, and I know you will be real pleased and honored at this time to introduce the next nominee.

PRESENTATION OF VIRGINIA E. HOPKINS, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ALABAMA, BY HON. RICHARD SHELBY, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SHELBY. Senator Sessions, I appreciate your chairing this Committee, but I have to say something. You did not get the consolation prize. We won in the Senate when you became a U.S. Senator instead of a district judge. And we have talked about that many times. But the fact you are chairing this hearing today is very important not only to us but to the population of Alabama.

Mr. Chairman, I appreciate the opportunity today to appear here on behalf of Virginia Hopkins, who is here, who is President Bush's nominee, as you well know—you have talked with her, interviewed her—for the Northern District slot in Alabama. I believe Virginia is eminently qualified. She is a graduate of the University of Alabama with honors, Phi Beta Kappa, Virginia Law School, as Senator Allen said. He is a classmate, I believe, or was in law school with both of them, and he said, "Say something about the University of Virginia." He was going to stick around.

She is active in her community, but she has had a good record as a skilled attorney. She has a great family. Her mother is with her, Mrs. Emerson, here today; her husband, Chris; and her two sons, Richard and Thomas; as well as her brother-in-law.

But, more importantly, Mr. Chairman, Virginia Hopkins is a woman of the law. She understands and respects the constitutional role of the judiciary, and specifically the role of the Federal courts in our legal system. I am confident, Mr. Chairman, that she will serve honorably and apply the law with impartiality and fairness and, thus, support her confirmation here without any reservation.

Mr. Chairman, I would like, if I could, for my full statement to be made part of the record on her behalf here, and I hope that you and the other members of the Judiciary Committee will report her nomination favorably to the full Senate as expeditiously as possible.

Senator SESSIONS. Thank you, Senator Shelby. We appreciate those remarks. Your full remarks will be made a part of the record, and we thank you for your time in sharing those with us.

Senator SHELBY. And I would have, Mr. Chairman, said something about Senator Kennedy, but he just got in. So I will be respectful and say we are glad to be before your Committee, a Committee that you chaired for many, many years.

Senator SESSIONS. We have had a little competition between Harvard and the University of Virginia, but, otherwise, we are getting along pretty well here.

Senator SHELBY. George Allen left, Senator Kennedy, and you are here. So you might win in his absence.

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

Senator SESSIONS. Is there anything else? If not, then we will bring the nominees forward.

Senator Kennedy, I know we have brought circuit judges up first, and then we could bring them all up as a panel. I thought we might bring them up as a group, but if you would prefer to have the circuit judge first, Judge Haynes, we could do that.

Senator KENNEDY. Mr. Chairman, whatever way you would like to proceed. I have some questions.

Senator SESSIONS. All right. Maybe we could ask all the nominees to step forward, please, and we will proceed as a group. If you would raise your right hand, please, and take this oath. Do you swear that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. HAYNES. I do.

Judge GUIROLA. I do.

Ms. HOPKINS. I do.

Mr. KARAS. I do.

Senator SESSIONS. Thank you. If you will take a seat.

PRESENTATION OF VIRGINIA E. HOPKINS, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ALABAMA, BY HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SESSIONS. I would like to share a few comments about Virginia Hopkins. I am very, very proud of her nomination. Senator Shelby has vouched for her excellent legal abilities and temperament and integrity, and that is something I certainly share. She graduated from the University of Alabama in 1974 and from the University of Virginia Law School in 1977. She was an associate with one of Alabama's great firms, Lange Simpson, for a time, where she specialized in civil practice, appellate matters, tax and estate planning, and so forth. She then joined the firm of Taft, Stettinius and Hollister here in Washington, D.C., and she established the firm's intellectual property practice and handled some complicated and important trademark matters there.

In 1991, she and her husband made a great decision. They decided to return home to Alabama, to Anniston, and work at the firm of Campbell and Hopkins, where she is a partner. And over the past 12 years there, she has developed a broad civil practice, including litigation, tax, estate planning, business dispute resolution and planning, and intellectual property cases. She has a number of career academic and professional achievements, and her experience will be an asset to the Northern District bench.

I would just note that Virginia Hopkins has demonstrated her commitment to her community by volunteering time at her church and her library and at the United Way for East Central Alabama. I think she has the integrity, the commitment to justice, and the kind of disposition and intelligence that will make a great Federal judge.

All right. Let's see. Let me call on each of you, and I will begin with you, Mr. Haynes, if you would have any opening statement or would like to introduce any family members you have here with you today.

STATEMENT OF WILLIAM JAMES HAYNES II, NOMINEE TO BE CIRCUIT JUDGE FOR THE FOURTH CIRCUIT

Mr. HAYNES. Thank you, Senator Sessions. Senator Allen was kind enough to introduce my family, but I would like to do it again because I am really happy they are here: my wife, Meg Campbell

Haynes; my oldest son, Will; my daughter, Sarah; and my younger son, Taylor. We are happy to be here.

Senator SESSIONS. Well, that is great. We are delighted to have you here and share in this special day.

[The biographical information of Mr. Haynes follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

William James Haynes II
Jim Haynes, Jamie Haynes (until approx. 1967)

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

Residence: Washington, D.C. (through November 2003)
Arlington, Virginia (beginning Nov/December 2003)

Office: General Counsel of the Department of Defense
1600 Defense Pentagon, Room 3E980
Washington, D.C. 20301-1600

3. Date and place of birth.

March 30, 1958
Waco, Texas (McClennan County)

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

Married to Margaret Campbell Haynes
(formerly Margaret Frances Campbell)
Director, State and Local Government
Tier Technologies, Inc.
2001 North Main Street, Suite 500
Walnut Creek, California 94596

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

Harvard Law School, J.D. 1983 (1980-1983)
Cambridge, Massachusetts

Davidson College, B.A. 1980 (1976-1980)
Davidson, North Carolina

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were

connected as an officer, director, partner, proprietor, or employee since graduation from college.

May 2001 to present:
General Counsel of the Department of Defense
1600 Defense Pentagon, Room 3E980
Washington, D.C. 20301-1600

May 1999-May 2001:
Partner, Jenner & Block
601 Thirteenth Street, N.W., Suite 1200 South
Washington, D.C. 20005-3823

February 1999-May 1999:
Volunteer Consultant
Mercy Corps International (relief organization)
3030 Southwest 1st Avenue
Portland, Oregon 97201
Phone: (503) 242-1032
Job Location:
458 Seyfullin Street, Third Floor
Almaty, Kazakhstan 480012

July 1996-January 1999:
Staff Vice President and Associate General Counsel
General Dynamics Corporation
3190 Fairview Park Drive
Falls Church, Virginia 22042
Phone: (703) 876-3000

1997-1998:
General Counsel, General Dynamics Marine Group
General Dynamics Corporation
3190 Fairview Park Drive
Falls Church, Virginia 22042
Phone: (703) 876-3000

1997-1998:
Director of various wholly-owned subsidiaries of General Dynamics Corporation: Electric Boat Corporation, Bath Iron Works Corporation, American Overseas Marine Corporation, Advanced Technology Systems, Inc.

April 1993-July 1996:
Partner, Jenner & Block
601 Thirteenth Street, N.W., Suite 1200 South
Washington, D.C. 20005-3823
Phone: (202) 639-6000

March 1990-January 1993:
General Counsel of the Department of the Army
104 Army Pentagon, Room 2E722
Washington, D.C. 20310-0104
Phone: (703) 697-9235

November 1989-March 1990:
Special Assistant to the General Counsel
Department of Defense
Washington, D.C. 20301-1600

April 1989-November 1989:
Associate
Sutherland, Asbill & Brennan
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2415

January 1989-April 1989:
Counsel to the Transition
Department of Defense
Washington, D.C. 20301

October 1984-January 1989:
Officer (eventually Captain)
United States Army

September 1983-September 1984:
Law Clerk
Judge James B. McMillan
United States District Judge (W.D.N.C.)
Charlotte, North Carolina

Summer 1983
Summer Associate
Moore & Van Allen
Charlotte, North Carolina

Summer 1982
Summer Associate
Alston, Miller & Gaines (now Alston & Bird)
Atlanta, Georgia

Summer 1982
Summer Associate
Petree, Stockton
Winston-Salem, North Carolina

Summer 1981
Summer Associate

Moore & Van Allen
Charlotte, North Carolina

Summer 1980
Intern
Office of Congressman James G. Martin
Washington, D.C.

Summer 1980
Counselor
Davidson College Tennis Camp
Davidson, North Carolina

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

October 1984-January 1989:
United States Army
Officer (eventually Captain)
Honorable Discharge

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

Distinguished Public Service, Dept. of the Navy, 2003
Honorary Doctor of Laws, Stetson University, 1999
Maryville College National Advisory Committee, 1998-present
Meritorious Civilian Service Medal, Dept. of the Army, 1992
Army Meritorious Service Medal (Oak Leaf Cluster) 1986, 1988
Army ROTC Scholarship, 1976-1980
Lunsford-Richardson Honor Scholarship, 1976-1980
Phi Beta Kappa, 1980
Omicron Delta Kappa, 1980
Eagle Scout, 1971

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

Member, American Bar Association
Member, North Carolina State Bar
Member, District of Columbia Bar
Member, State Bar of Georgia (inactive)
Member, Advisory Council, Standing Committee on Law and National Security, American Bar Association (1996-1999)

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

Lobbying: Other than bar associations, none.
Other organizations to which I belong:
Army Historical Foundation
Maryville College National Advisory Committee

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

United States District Court (Central District of Illinois), September 8, 1999
United States Court of Federal Claims, July 2, 1999
Supreme Court of the United States, January 9, 1995
United States District Court (District of Columbia), December 4, 1995
United States Court of Appeals for the Armed Forces, December 19, 1990
United States District of Columbia Superior Court, January 24, 1990
United States District of Columbia Court of Appeals, January 24, 1990
Superior Court of Georgia, December 21, 1989
United States District Court (Northern District of Georgia), December 21, 1989
Supreme Court of North Carolina, August 21, 1983
United States District Court (Western District of North Carolina), August 21, 1983

I am unaware of any "lapses" in memberships. My membership in the State Bar of Georgia has been inactive for many years. I recall a period during which I did not receive invoices from the State Bar of Georgia, and consequently did not pay dues required of inactive members. I remedied that, and I am a member in good standing. Similarly, I was an inactive member of the North Carolina State Bar for a number of years, but became active again in October 2002. At all times since 1983 I have been a member in good standing.

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

Article:
"The Value of Wetlands as Wetlands: The Case for Mitigation Banking," 23 *Environmental Law Reporter* 10261, Vol. XXIII, No. 5, May 1993. (Co-authored with Royal C. Gardner.)

Public speeches for which I have the text or a reference (note: text may not be precisely as delivered):
Conference on Trying Terrorists - televised by CSPAN, August 8, 2003, available at: http://www.aei.org/events/filter.,eventID.556/event detail.as
Annual American Society of International Law (ASIL) Meeting, April 3, 2003
The Federalist Society DC Chapter Lunch, October 17, 2002
American Bar Association Annual Meeting, August 12, 2002
San Francisco World Affairs Council, May 30, 2002
Fordham Law School, April 18, 2002

Letter to the Editor:
Pittsburgh Gazette regarding Captain John Pippy, March 14, 2003
Letter to American Bar Association President, September 23, 200 (published by ABA)

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

Excellent. August 2003.

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

None.

5. **Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations**

for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Not Applicable.

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

May 2001 to Present:
General Counsel of the Department of Defense
(Appointed by and with advice and consent of the Senate)

March 1990 to January 1993:
General Counsel of the Department of the Army
(Appointed by and with advice and consent of the Senate)

17. **Legal Career:**

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

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

From August 1983 through August 1984, I clerked for the Hon. James B. McMillan, United States District Judge for the Western District of North Carolina in Charlotte, North Carolina.

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

I have not practiced law alone.

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

1983-1984. Law Clerk to U.S. District Judge James B. McMillan

U.S. District Courthouse for the Western District of North Carolina, 401 West Trade Street, Charlotte, North Carolina

1984 - 1988. Officer (eventually Captain), United States Army.
Office of the General Counsel of the Department of the Army
104 Army Pentagon
Washington, D.C. 20310-0104

January 1989-April 1989. Counsel to the Transition
Office of the Secretary of Defense
1000 Defense Pentagon
Washington, D.C. 20310-1000

April 1989-November 1989. Associate
Sutherland, Asbill & Brennan
1275 Pennsylvania Ave., N.W.
Washington, D.C. 20004-2415

November 1989-March 1990, Special Assistant to General Counsel
Office of the General Counsel of the Department of Defense
1600 Defense Pentagon, Room 3E980
Washington, D.C. 20301-1600

Mar 1990-Jan. 1993, General Counsel of the Department of the Army
104 Army Pentagon, Room 2E722
Washington, D.C. 20310-0104

April 1993-June 1996, Partner
Jenner & Block
601 Thirteenth Street, N.W., Suite 1200 South
Washington, D.C. 20005-3823

July 1996-January 1999, Staff Vice President and
Associate General Counsel
General Dynamics Corporation
3190 Fairview Park Drive
Falls Church, Virginia 22042

1997-1998
General Counsel, General Dynamics Marine Group
3190 Fairview Park Drive
Falls Church, Virginia 22042

February 1999-May 1999, Volunteer Consultant
Mercy Corps International (relief organization)
3030 Southwest 1st Avenue
Portland, OR 97201

Job Location:

8 Seyfullin Street, Third Floor
maty, Kazakhstan 480012

y 1999-May 2001, Partner
nner & Block
1 Thirteenth Street, N.W., Suite 1200 South
shington, D.C. 20005-3823

y 2001-present, General Counsel of the Department of Defense
00 Defense Pentagon, Room 3E980
shington, D.C. 20301-1600

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

her than my time as a law clerk, my practice is best described that of a general counsel, which, of course, encompasses a de variety of activity.

is has principally consisted of advising senior executives of blic or private organizations, overseeing litigation, issuing gal opinions, and managing the associated employed or retained gal workforce serving such organizations. On occasion, I have rticipated also in practice areas such as litigation (criminal d civil, including arbitration and other dispute resolution), ansactions, and regulatory matters.

83-1984: Law Clerk to U. S. District Judge James B. McMillan.
Character of practice: litigation (entirely civil)

84-1986: Captain, U. S. Army
Character of practice: administrative law, government ntracts, environmental law

86-1988: Captain, U. S. Army
Character of practice: administrative law, government ntracts, international law

89: Associate, Sutherland, Asbill & Brennan.
Character of practice: antitrust regulation

90 - 1993: General Counsel of the Department of the Army
Character of practice: national security law, administrative w, business law, personnel/employment law, government ntracts, litigation (as client), environmental law

93-1996: Partner, Jenner & Block

Character of practice: administrative/regulatory law, business law, civil litigation (arbitration), telecommunications law, internal investigations, criminal litigation, government contracts

1996-1999: Staff Vice President and Associate General Counsel, General Dynamics Corporation.
Character of practice: corporate law, administrative law, transactional law, antitrust, business law, government contracts, labor law, litigation (arbitration, oversight of outside counsel), environmental law

1999: Volunteer Consultant, Mercy Corps International
Character of practice: advice to non-governmental relief organization in central Asia on proper means of engaging in micro-finance and supporting private micro-credit enterprises

1999 - 2001: Partner, Jenner & Block
Character of practice: business law, environmental law, small business counseling, government contracts litigation

2001 - present: General Counsel of the Department of Defense
Character of practice: administrative/regulatory law, law of war, national security law, international law, personnel/employment law, civil litigation (oversight as client), criminal law, environmental law, antitrust, government contracts

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

My clients have ranged from enormous governmental organizations (e.g., the Department of Defense); to large corporations (e.g., General Dynamics Corporation); to startup corporations (e.g., EdenSpace Systems Corporation.) Over time, I have developed some expertise in areas such as government contracts, certain aspects of environmental law, national security law, and others.

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

I have appeared as an advocate in court only rarely. Most of my participation in litigation has been as a very active, inquisitive and demanding client, as "in-house" counsel both in the public and private sectors. I have also represented clients in various matters potentially leading to litigation but which

were resolved short of contested proceedings. I have appeared *pro bono* on behalf of indigent defendants in the District of Columbia criminal courts. I have appeared in a contested Nevada state administrative proceeding. I have also appeared in administrative proceedings that were resolved on the briefs.

2. What percentage of these appearances was in:

(a)	**federal courts;**	0
(b)	**state courts of record;**	50
(c)	**other courts.**	50

As implied above, these are approximate figures. State court experience is in the District of Columbia Superior Court.

3. What percentage of your litigation was:

(a)	**civil;**	70
(b)	**criminal.**	30

As implied above, these are approximate figures.

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

One, chief counsel.

5. What percentage of these trials was:

(a)	**jury;**	0
(b)	**non-jury.**	100

18. <u>Litigation</u>: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

The vast majority of my participation in litigated matters

has been as corporate or agency counsel. In such matters, my role has been as (or was) representing the interests of my client through monitoring or supervising the conduct of litigation by outside counsel or by the Department of Justice, as the case may be.

The past two and one-half years, and particularly since September 11, 2001, have seen extraordinary litigation involving the national security, often affecting the Department of Defense directly. Accordingly, as general counsel of that department, I have played a significant role in developing litigation strategy and reviewing pleadings and briefs filed on behalf of the United States. That role has required me to work very closely with the senior lawyers of the Executive Branch, particularly with the Counsel and Deputy Counsel to the President, the Deputy Attorney General, the Counsel to the Vice President, the deputy Solicitor General, the Assistant Attorney General for the Criminal Division, and others.

Representative cases for my current position include:

1. Doe v. Bush, 257 F. Supp. 2d 436 (D. Mass. 2003). Judge Tauro); Doe v. Bush, 322 F.3d 109 (1st Cir. 2003). (Circuit Judge Lynch and Senior Circuit Judges Cyr and Stahl). Active-duty members of the military, parents of military personnel, and members of the House of Representatives sought a preliminary injunction to prevent the President and the Secretary of Defense from initiating war against Iraq. The district court granted the defendants' motion to dismiss on justiciability grounds, and the court of appeals upheld the dismissal. As General Counsel of the Department of Defense, I was responsible for ensuring that the Justice Department represented the views and interests of the Department of Defense properly. In this instance, I reviewed and commented on briefs as they were drafted, through one of my deputies, Whit Cobb (703-697-2714.)

Co-counsel:

Honorable Robert D. McCallum, Jr.
Associate Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W., Room 4633
Washington, D.C. 20530
Bus: (202) 514-9500

Opposing counsel:

John C. Bonifaz, Esq.
Cristobal Bonifaz, Esq.
Law Office of Cristobal Bonifaz
9 Revere Street
Jamaica Plain, Massachusetts 02130
Bus: (617) 524-2771
and
48 North Pleasant Street
P.O. Box 2488
Amherst, Massachusetts 01004

2. Center for Biological Diversity v. Pirie, 201 F. Supp. 2d 113 (D.D.C. 2002) (Judge Sullivan); Center for Biological Diversity v. England, 2003 US. App. LEXIS 1110 (D.C. Cir. January 23, 2003) (Circuit Judges Sentelle, Rogers, and Garland). Plaintiff challenged the Navy's use of an island, Farallon de Medinilla, in the Northern Marianas for live fire training. The island is uninhabited, but various species of migratory birds inhabit the island. Plaintiff claimed that the Navy exercises resulted in the death of birds and that the Navy was violating the Migratory Bird Treaty Act's (MBTA) prohibition against killing migratory birds. Plaintiff brought this action under the Administrative Procedures Act and sought an injunction against the exercises until the Navy obtained an MBTA permit. The District Court held for the plaintiff, enjoined the Navy's training activities for a short period, and denied an initial oral motion for a stay of the injunction pending appeal. Circuit Judges Edwards, Randolph, and Garland of the United States Court of Appeals for the District of Columbia Circuit granted the motion for a stay of injunction, pending appeal. Center for Biological Diversity v. England, 2002 U.S. App. LEXIS 11493 (D.C. Cir. June 5, 2002). On January 23, 2003, the United States Court of Appeals for the District of Columbia Circuit (Judges Sentelle, Rogers, and Garland) remanded the case with instructions to dismiss in light of the December 2, 2002 amendment to the Migratory Bird Treaty Act, 16 U.S.C. § 703. Center for Biological Diversity v. England, 2003 US. App. LEXIS 1110 (D.C. Cir. January 23, 2003). As General Counsel for the parent agency of the Department of the Navy, and because of the threatened obstruction of naval exercises during a time of war, I was ultimately responsible for ensuring that the Justice Department represented the views

and interests of the Department of Defense properly. In this instance, I participated principally by developing and approving litigation strategy, and ensuring that strategy was consistent with the Administration's legislative strategy, all through one of my deputies, Benedict Cohen (contact information below.)

Co-counsel:

Benedict S. Cohen, Esq.
Deputy General Counsel
Environmental and Installations
Office of the General Counsel
Department of Defense
1600 Defense Pentagon, Room 3C962
Washington, D.C. 20301-1600
Bus: (703) 693-4855

Honorable Thomas L. "Tom" Sansonetti
Assistant Attorney General
Environment & Natural Resources Division
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Bus: (202) 514-2701

Opposing counsel:

Paul Achitoff, Esq.
Earthjustice Legal Defense Fund
223 South King St, Suite 400
Honolulu, Hawaii 96813
Bus: (808) 599-2436

Howard I. Fox, Esq.
Earthjustice Legal Defense Fund
1625 Massachusetts Ave, N.W., Suite 702
Washington, D.C. 20036
Bus: (202) 667-4500

3. Coalition of Clergy, v. Bush, 189 F. Supp. 2d 1036 (C.D. Cal. 2002) (Judge Matz); Coalition of Clergy, v. Bush, 310 F.3d 1153 (9th Cir. 2002) (Circuit Judges Noonan, Wardlaw, and Berzon). This case involved a challenge by a group of clergy, law professors, and lawyers to the detention of enemy combatants at

Guantanamo Bay. The action was dismissed for lack of standing and affirmed on appeal. As General Counsel for the agency with principal responsibility for detaining enemy combatants, I was responsible for ensuring that the Justice Department represented the views and interests of the Department of Defense properly. In this instance, I helped develop the litigation strategy, and I reviewed and edited briefs. Most of my participation was through one of my deputies, Whit Cobb (703-697-2714).

Co-counsel:
Paul D. Clement, Esq.
Deputy Solicitor General of the United States
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001
Bus: (202) 514-2206

Opposing counsel:

Stephen Yagman, Esq.
Yagman & Reichmann
723 Ocean Front Walk
Venice Beach, California 90291-3270
Bus: (310) 452-3200

4. Acree v. Snow, 2003 WL 21754983 (D.D.C. July 30, 2003) (Judge Roberts). Related case: Acree v. Republic of Iraq, 2003 WL 21872372 (D.D.C. July 7, 2003) (Judge Roberts). American prisoners of war during the 1991 Gulf War and their immediate family members sued Iraq, its president, and its intelligence service, and the court awarded a default judgment of over $653 million in compensatory damages and $306 million in punitive damages. The plaintiffs then tried to collect the compensatory damages from former Iraqi assets designated by the President for use to assist the Iraqi people and for the reconstruction of Iraq. On the government's motion for summary judgment, the court ruled that the assets were not available to satisfy the judgment and are to be used as intended by the President. Plaintiffs appealed to United States Court of Appeals for the District of Columbia Circuit. As the appeal was being briefed, Judges Sentelle, Henderson, and Garland of the United States Court of Appeals for the District of Columbia Circuit denied

plaintiffs' motion for injunction pending an appeal, in a per curiam opinion. Acree v. Snow, 2003 U.S. App. LEXIS 15654 (D.C. Cir. Aug. 4, 2003). On October 7, 2003, the panel affirmed the district court's judgment in an unpublished order. Acree v. Snow, No. 03-5195 (D.C. Cir. Oct. 7, 2003). As General Counsel for the agency with principal responsibility for administering the governance of Iraq following major combat operations, I was responsible for ensuring that the Justice Department represented the views and interests of the Department of Defense properly. In this instance, I reviewed and commented on the briefs as they were being drafted, working through one of my staff attorneys, Robert Easton (703-614-7983).

Co-counsel:
Honorable Peter D. Keisler
Assistant Attorney General for the Civil Division
United States Department of Justice
950 Pennsylvania Avenue, N.W., Room 3601
Washington, D.C. 20530
Bus: (202) 514-3301

Honorable Roscoe C. Howard, Jr.
United States Attorney for the District of Columbia
Judiciary Center Building
555 Fourth Street, N.W.
Washington, D.C. 20530
Bus: (202) 514-6600

Opposing counsel:

Stephen A. Fennell, Esq.
David D. Smyth
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
Bus: (202) 429-3000

5. Stillman v. Department of Defense et al., 209 F. Supp. 2d 185 (D.D.C. 2002) (Judge Sullivan), rev'd, 319 F.3d 546 (D.C. Cir. 2003) (Chief Judge Ginsburg and Circuit Judges Edwards and Garland).

A former employee of Los Alamos National Laboratory who wrote a book about China's nuclear weapons program. As a

condition of his employment, he signed nondisclosure agreements requiring him to present the manuscript for prepublication review to determine whether it contained classified information. After the government informed the employee that it would not approve the manuscript for publication, the employee sued. His counsel moved to compel the government to give counsel access to the classified portions of the manuscript and to the government's classified pleadings so that he could challenge the classification decision as incorrect. Judge Sullivan of the United States District Court for the District of Columbia held that denying the attorney access to the manuscript violated the employee's rights under the First Amendment, because that denial was not narrowly drawn to serve the government's concededly compelling interest in preserving national security. On appeal to the United States Court of Appeals for the District of Columbia Circuit, the Court of Appeals held that the trial court abused its discretion by unnecessarily deciding the First Amendment constitutional question; the District Court would never have had to reach the constitutional question if it could determine without the aid of the employee's counsel whether the disputed portions of the manuscript were properly classified. The Court of Appeals remanded the case to the District Court for further proceedings on February 25, 2003. I was responsible for ensuring that the views and interests of the Department of Defense were properly represented, working principally through one of my deputies, Whit Cobb, 703-697-2714.

Co-counsel:

Stewart Aly, Esq.
Associate General Counsel (Legal Counsel)
Office of the General Counsel of the Department of Defense
1600 Defense Pentagon, Room 3C975
Washington, DC 20301-1600
(703) 695-6804

Gregory G. Katsas, Esq.
Deputy Assistant Attorney General
Civil Division
United States Department of Justice
Post Office Box 978
Ben Franklin Station
Washington, DC 20044
(202) 514-4015

Karen Richardson, Esq.
Civil Division

United States Department of Justice
Post Office Box 883
Ben Franklin Station
Washington, DC 20044
(202) 514-3374

Opposing counsel:

Mark S. Zaid, Esq.
Krieger & Zaid, PLLC
1747 Pennsylvania Avenue, N.W.,Suite 300
Washington, DC 20006
(202) 454-2899

****

I have also participated in litigation more directly. Some examples, in reverse order of occurrence, are:

6. In the matter of SPX Corporation - Appeal No. CA 20001-276-LW (Summer 2000), before the Hearings Division of the Nevada Department of Administration, Reno, NV. This was a contested appeal of a contract award for sophisticated automobile emissions measuring equipment for the State of Nevada. I was the lead counsel representing the protester, SPX Corporation. The contract award was upheld.

Appeals Officer: Lorna L. Ward, Esq.

Co-counsel:

Kevin M. Kordziel, Esq. (then at Jenner & Block)
Senior Counsel
Northrop Grumman Mission Systems
12011 Sunset Hills Road
VAR1/12C24
Reston, Virginia 20190-3285
Bus: (703) 345-7030

Opposing counsel:

Bryan A. Stockton, Esq.
Deputy Attorney General
Department of Motor Vehicles and Public Safety
555 Wright Way
Carson City, Nevada 89711-0900
Bus: (775) 684-4368

Brian Harris, Esq.
Lionel, Sawyer & Collins
1100 Bank of America Plaza
50 West Liberty Street
Reno, Nevada 89501
Bus: (775) 788-8666

7. In re: Kipper Tool - General Accounting Office, 2001, case number B-286989; B-286989.2 (2001). This was a protest before the U.S. General Accounting Office of a contract award for advanced automotive tool kits purchased by an element of the Department of the Army. The GAO upheld the original contract award. I was the partner responsible for the client, Kipper Tool, Inc. My colleague, Kathy Weinberg, was lead counsel for the litigation.

Co-counsel:
Kathy Coleman Weinberg, Esq.
Jenner & Block
1717 Main Street, Suite 3150
Dallas, Texas 75201
Bus: (214) 746-5700

The presiding official:

Linda Lebowitz, Esq.
Office of the General Counsel
US General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548
Bus: (202) 512-8183

Opposing counsel:

For the Department of the Army
Josh Kranzberg, Esq.
HQ, U.S. Army Materiel Command
Office of the Command Counsel
5001 Eisenhower Avenue
Alexandria, Virginia 22333-0001
Bus: (703) 617-8808

For Dannaher Tool Group and Easco Hand Tools, Inc.
James McCullough, Esq.
Fried, Frank, Harris, Shriver & Jacobson
1001 Pennsylvania Ave, N.W.

Washington, D.C. 20004
Bus: (202) 639-7130

8. U. S. v Material Service Corporation, Civil Action No. 95-C-3550, U. S. District Court for the Northern District of Illinois (Judge Ann Williams - now on 7th Cir. Court of Appeals) (1998-1999). This was a claim for civil damages and injunctive relief for an alleged unpermitted deposit of dredge or fill material into the waters of the United States. The parties agreed to arbitration before retired U.S. District Judge Nicholas Bua (now deceased). At the arbitration proceeding, I represented Material Service Corporation, the owner and operator of the site (a limestone quarry) on which the alleged unpermitted deposit occurred. The parties settled, and the court thereafter entered a consent decree.

Co-counsel:

Robert A. Carson, Esq.
Karen T. O'Connell, Esq.
Gould & Ratner
222 North La Salle Street, 8th Floor
Chicago, Illinois 60601
Bus: (312) 236-3003

Opposing counsel:

Jonathan Haile, Esq.
Assistant U. S. Attorney
219 South Dearborn St., 5th Floor
Chicago, Illinois 60604
Bus: (312) 353-5300

Sanford Solomon, Esq.
U.S. Army Corps of Engineers Chicago District
Office of Counsel
111 North Canal Street
Chicago, Illinois 60606-7205
Bus: (312) 846-5350 or (312) 353-6400 ext. 1500

9. U. S. v. Tammi Nickerson and Timothy McBride, District of Columbia Superior Court case no. M-2726-96 and case no. -2664-95 (Judge Davis) (1996). The defendants were charged with assault and battery. Partway through the suppression hearing, the prosecution moved for dismissal of the charges, which was granted. I represented Ms. Nickerson.

Counsel for co-defendant:
Brian D. Boyle, Esq. (then at O'Melveny & Myers)
United States Department of Justice
950 Pennsylvania Avenue, N.W., Room 4633
Washington, D.C. 20530-0001
Bus: (202) 305-1434

Opposing counsel:
Scott Eltringham, Esq.
Office of the U.S. Attorney for District of Columbia, Judiciary Center Building
555 4th Street, N.W.,
Washington, D.C. 20530
Bus: (202) 514-7566

10. Allied Investment Corporation, et al. v. Griffin, Civil Action No. 93-1889 (U. S. District Court for the District of Columbia) (1993-94). Presiding judge (at conclusion of case): Hon. Gladys Kessler. I represented Allied. This was an action for securities fraud under Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and SEC Rule 10b-5, 17 C.F.R. § 240.10b-5, and a state law claim for fraudulent inducement of contract. The case was settled and resolved pursuant to stipulation of dismissal.

Co-counsel:

David W. DeBruin, Esq.
Jenner & Block
601 Thirteenth Street, N.W.
Washington, D.C. 20005
Bus: 202-639-6015

G. William Long III, Esq. (co-counsel)
Parker, Johnson, Cook & Dunlevie
1275 Peachtree Street N.E., Suite 700
Atlanta, Georgia 30309

Thomas S. Chambless, Esq. (co-counsel)
Watson, Spence, Lowe & Chambless
P.O. Box 2008
Albany, Georgia 31703

Opposing counsel:

H. Quigg Fletcher, Esq.

Kilpatrick & Cody
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309

Walter E. Spiegel, Esq.
Kilpatrick & Cody
700 13th Street, N.W., Suite 800
Washington, D.C. 20005
Bus: (202) 508-5800

C. Richard Langley, Esq.
Langley & Lee
P.O. Box 1826
Albany, Georgia 31702

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

Significant Legal Activities while General Counsel of the Department of Defense (2001-present):

The General Counsel of the Department of Defense is the chief legal officer of an organization with a budget of hundreds of billions of dollars and with more than two million military and civilian personnel, including thousands of lawyers. Those lawyers (for whose legal activities I am responsible, and whose advice is ultimately subject to my review and approval) advise on all activities of the Department. My role within the Department is to provide legal advice on issues ranging from the conduct of warfare, to the establishment of government in occupied territories, to procurement of office supplies and aircraft carriers, to the operation of industrial facilities, to the cleanup of contaminated real estate, among other things.

Accordingly, my time as chief legal officer of the Department of Defense has constituted the most significant legal activity of my career. In this role I have been privileged to work closely with highly accomplished lawyers both inside and outside of government.

At the end of the answer to this question is a representative list of lawyers who can speak from personal

experience to my performance as a lawyer in my current and former roles.

My general responsibilities as General Counsel of the Department of Defense include:

1. Advising the Secretary of Defense and other senior civilian and military officials as they discharge their own responsibilities; overseeing litigation conducted by and against the Department;

2. Issuing legal opinions binding on the Department and determining the proper application of the law within the Department; and

3. Managing directly and indirectly the legal resources of the Department.

Representative legal matters include:

4. Resolving legal issues relating to the Global War on Terrorism (e.g., determining the constitutional roles of the various branches of government in the conduct of war, interpreting and applying statutes in the course of prosecuting the war, developing and applying regulations within the Department of Defense);

5. Developing and promulgating rules for the conduct of Military Commissions for the potential trial of enemy combatants in the Global War on Terrorism;

6. Representing the United States in international negotiations (e.g., continuing discussions on various topics directly with the Attorneys General of the United Kingdom and of Australia);

7. Reviewing proposed corporate transactions of the Defense Department's major suppliers (e.g., Northrop Grumman Corporation's acquisition of TRW, Inc. in 2002);

8. Advising on the acquisition of supplies and services for the Department of Defense (e.g., government contracting for major weapons systems);

9. Developing legislative proposals for the Department of Defense; and

10. Advising on the application of employment laws and regulations associated with managing a workforce of more than one million people.

Significant Legal Activities while General Counsel of the Department of the Army (1990-1993):

As chief legal officer of the Department of the Army, I was ultimately responsible for, among other things, managing legal aspects of that Department's role in:

11. Rebuilding Kuwait after Desert Storm (e.g., advising the Secretary of Defense's senior representative in Kuwait on private sector participation in rebuilding Kuwaiti infrastructure);

12. Management of the Panama Canal Commission (advising the Chairman of the Board of the Panama Canal Commission - the governing body of the Canal);

13. Military assistance to civil authorities in the aftermath of major hurricane damage in Florida, Louisiana, and Hawaii (1992);

14. Military assistance to civil authorities in the aftermath of the Los Angeles riots (1992);

15. Managing the initial stages of the significant contraction in the defense industry following the end of the Cold War; and

16. The Army Corps of Engineers' role in regulating the Nation's wetlands and waterways.

Significant Legal Activities while in the private sector (1993-2001):

The following matters are representative of my legal activities during the time I was employed in the private sector:

17. *Alternative dispute resolution* - resolved substantial government contract and environmental disputes through arbitration and other alternative resolution means;

18. *Small business law* - provided varied counsel and representational legal services to small businesses or their investors such as EdenSpace Systems Corporation (accomplished in phytoextraction of heavy metals in ongoing manufacturing operations and environmental cleanup) and Protiveris, Inc. (biotechnology company devoted to proteomic research and commercialization);

19. *Government contracts* - advised and represented large and small government contractors in all aspects of government contracts law;

20. *Internal corporate investigations* - conducted investigations of alleged misdeeds within various public companies; and

21. *Strategic corporate transactions* - participated in evaluating, negotiating, and executing corporate acquisitions and teaming agreements.

Following is a representative list of lawyers who can speak from personal experience about my performance as a lawyer in many of the areas detailed above:

The Honorable Griffin B. Bell
King & Spalding
191 Peachtree Street
Atlanta, GA 30303
(404) 572-4879 (W)

Professor Gerhard Casper
E115 Encina Hall, Institute for International Studies
Stanford University
Stanford, CA 94305-6055
(650) 723-2482 (W)

The Honorable Michael Chertoff
U.S. Court of Appeals for the Third Circuit
Clarkson S. Fisher Federal Building
402 East State Street
Trenton, NJ 08608
(609) 656-2572 (W)

The Honorable William T. Coleman, Jr.
O'Melveny & Myers
555 13th Street, NW
Washington, DC 20004-1109
(202) 383-5325 (W)

The Honorable Lloyd N. Cutler
Wilmer Cutler & Pickering
2445 M Street, NW
Washington, DC 20037
(202) 663-6100 (W)

The Honorable Tim Flanigan
Tyco International
9 West 57 Street
New York, NY 10019
(609) 720-4343 (W)

The Honorable Jack L. Goldsmith III
Assistant Attorney General
Office of Legal Counsel
U.S. Department of Justice
(202) 514-2051 (W)

The Honorable John O. Marsh Jr.
560 N. Loudoun Street
Winchester, Virginia 22601
(540) 678-1220 (W)

Mr. Charles R. Morgan
Senior Vice President and General Counsel
Bell South Corporation
1155 Peachtree Street, N.E., Suite 2002
Atlanta, GA 30309-3610
(404) 249-2050 (W)

The Honorable Newton N. Minow
Sidley Austin Brown & Wood
Bank One Plaza,
10 South Dearborn Street
Chicago, IL 60603
(312) 853-7555 (W)

The Honorable Terrence O'Donnell
Senior Vice President and General Counsel
Textron Inc.
40 Westminster Street
Providence, RI 02903-2596

(401) 457-2555 (W)

The Honorable Larry Thompson
Brookings Institute
1775 Massachusetts Ave., N.W.
Washington, DC 20036
(202) 797-6081 (W)

The Honorable William H. Webster
Milbank Tweed Hadley & McCloy
1825 I Street, N.W., Suite 1100
Washington, DC 20006
(202) 835-7550 (W)

Mr. John C. Yoo
Visiting Professor of Law
University of Chicago
(773) 834-3255 (W)

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

   I am entitled to receive (beginning in calendar year 2023) a small monthly payment in accordance with the General Dynamics Corporation Defined Benefit Plan.

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

   I will adhere to all appropriate statutes, court decisions, and policies regarding conflicts of interest, including 28 U.S.C. § 455.

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

   No.

4. **List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)**

See attached financial disclosure report.

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

See attached net worth statement.

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

During the campaign of George W. Bush for President of the United States in the year 2000, I volunteered to make phone calls on behalf of now President Bush.

ASSETS (Approximate, October 1, 2003)

Type	Amount
Cash on Hand	**266600.00**
USAA FSB Joint Checking	25000.00
USAA FSB Checking (WJH)	500.00
USAA FSB Joint Savings	6600.00
USAA Brokerage Account (WJH)	40000.00
USAA Brokerage Account (MCH)	186000.00
PFCU Joint Checking	5000.00
Citibank Checking (WJH)	3500.00
US Government Securities	
US Savings Bonds (WJH, and children)	**3000.00**
Listed Securities	**404300.00**
Tier common (MCH)	190000.00
Tier common (options) (MCH)	10000.00
America Movil S A common	4800.00
Owens Corning common	3500.00
Owens Ill. Common	11000.00
RF Micro Devices Common	2000.00
Tel. de Mexico common	6000.00
Wind River Systems common	1000.00
Bank of Coweta common	3000.00
Third Avenue Small Cap Value Fund	11000.00
Third Avenue Value Fund	2500.00
USAA S&P Index Fund	9500.00
Clipper Fund	150000.00
Unlisted Securities – None	0
Accounts and notes receivable	
Due from relatives and friends, or others	0
Doubtful	0
Real estate owned	**930500.00**
Home (under contract)	930000.00
Undev. Land - NC	500.00

Real estate mortgages receivable	Newnan, GA	**25000.00**
Autos and other property		**43000.00**
Acura		20000.00
Honda		20000.00
Chrysler		3000.00
Cash value - life ins.		**6000.00**
Mass Mutual	Policy	3000.00
	Policy	3000.00
Other assets:		**892600.00**
TRowe Price 529 plan FBO minor child		105000.00
TRowe Price 529 plan FBO minor child		105000.00
TRowe Price 529 plan FBO minor child		105000.00
401K (Jenner & Block) (WJH)		42000.00
General Dynamics Defined benefit (payable to WJH CY 2023)		0
General Dynamics Defined contribution plan (WJH)		1500.00
Fed. Employee Retirement System - TSP (WJH)		25000.00
USAA Mutual Fund (IRA) (WJH)		52000.00
USAA S&P Index Fund (IRA) (WJH)		3600.00
Torray Fund (IRA) (WJH)		210000.00
First Union Mutual (IRA) (MCH)		1500.00
401K (Tier) (MCH)		42000.00
401K (ABA) (MCH)		200000.00
Total assets:		**2571000.00**

****

CONTINGENT LIABILITIES

Type	Amount
As endorser, comaker or guarantor	0
On leases or contracts	0
Legal claims	0
Provision for Federal Income Tax	100000.00
(potential cap. gains tax on sale of securities)	
Other special debt	0

LIABILITIES

Type	Amount
Notes payable to banks - secured	0
Notes payable to banks - unsecured	0
Notes payable to relatives	0
Notes payable to others	0
Accounts and bills due	2500.00
Unpaid income tax	0
Other unpaid income and interest	0
Real estate mortgages payable	
NationsBank Mortgage (residence)	250000.00
CitiBank Home Equity Line (residence)	107000.00
Chattel mortgages and other liens payable	
Other debts:	
Dependent's School	10000.00
Dependent's School	15000.00
Real Estate Agent Fee (payable upon closing Nov. 2003) and closing costs	60000.00
Total liabilities	**444500.00**
Net Worth	**2026500.00**
Total liabilities and net worth	**2571000.00**

GENERAL INFORMATION

Are any assets pledged?
NO
Are you a defendant in any suits or legal actions?
NO
Have you ever taken bankruptcy? NO

AO-10
Rev. 1/2002

FINANCIAL DISCLOSURE REPORT

Calendar Year 2002

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (Last name, First name, Middle initial) Haynes II, William J	2. Court or Organization U.S. Court of Appeals 4th Circ	3. Date of Report 10/2/2003
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) Circuit Judge Nominee	5. ReportType (check appropriate type) (●) Nomination, Date 9/29/2003 ( ) Initial ( ) Annual ( ) Final	6. Reporting Period 1/1/2002 to 10/2/2003
7. Chambers or Office Address Department of Defense 1600 Defense Pentagon Washington, D.C. 20301-1600	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer_____ Date_____	

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

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions)

☐ NONE - (No reportable positions.)

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Member	Maryville College National Advisory Council

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions)

☐ NONE - (No reportable agreements.)

	DATE	PARTIES AND TERMS
1.	1999	General Dynamics Corporation Defined Benefit Plan (approximately $464 per month beginning March 2023)

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

☐ NONE - (No reportable non-investment income.)

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1.	2001	Jenner & Block (Law Partnership Income)	$288,000.00
2.	2002-03	Tier Technology (Employment)	

	Haynes II, William J	

'. **REIMBURSEMENTS** – transportation, lodging, food, entertainment.

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

] **NONE** - (No such reportable reimbursements.)

SOURCE	DESCRIPTION
Exempt	

, **GIFTS.** (Includes those to spouse and dependent children. See pp. 28-31 of instructions.)

| **NONE** - (No such reportable gifts.)

SOURCE	DESCRIPTION	VALUE
Exempt		

I. **LIABILITIES.** (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)

] **NONE** - (No reportable liabilities.)

CREDITOR	DESCRIPTION	VALUE CODE
Dependent's School	Tuition	K
Dependent's School	Tuition	K

INANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Haynes II, William J	10/2/2003

II. INVESTMENTS and TRUSTS – income, value, transcations (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
						If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g. div. rent. or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	(2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions)									
USAA Account	A	Interest	K	T	E X E M P T				
USAA Brokerage Account	A	Interest	M	T					
PFCU Account	A	Interest	J	T					
Citibank Account	A	Interest	J	T					
U.S. Government Securities Savings Bonds	A	Interest	J	T					
Tier Technologies Common (MCH)		None	N	T					
Tier Technologies Common (Options) (MCH)		None	J	T					
America Movil, SA Common		None	J	T					
Bank of Coweta (stock) Newnan, Georgia Common		None	J	T					
Owens Corning Common		None	J	T					
Owens-Illinois, Inc. Common		None	J	T					
RF Micro Devices Common		None	J	T					
Telefonos de Mexico Common		None	J	T					
Wind River Systems, Inc. Common		None	J	T					
Clipper Fund	A	Dividend	M	T					
Fidelity Advisor Diversified International Fund (MCH)	A	Dividend	J	T					
Fidelity Advisor Equity Growth Fund (MCH)	A	Dividend	J	T					
Fidelity Advisor Growth and Income Fund (MCH)	A	Dividend	J	T					

Income/Gain Codes: (See Columns B1 and D4)	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000
	F = $50,001-$100,000	G = $100,001-$1,000,000	H1 = $1,000,001-$5,000,000	H2 = More than $5,000,000	
Value Codes: (See Columns C1 and D3)	J = $15,000 or less	K = $15,001-$50,000	L = $50,001-$100,000	M = $100,001-$250,000	
	N = $250,000-$500,000	O = $500,001-$1,000,000	P1 = $1,000,001-$5,000,000	P2 = $5,000,001-$25,000,000	
	P3 = $25,000,001-$50,000,000		P4 = $More than $50,000,000		
Value Method Codes (See Column C2)	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market	
	U = Book Value	V = Other	W = Estimated		

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Haynes II, William J	10/2/2003

VII. INVESTMENTS and TRUSTS – income, value, transcations (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
						If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A -H)	(2) Type (e.g. div. rent. or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	(2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
). Fidelity Advisor Growth Opportunity Fund (MCH)	A	Dividend	J	T					
). Fidelity Advisor Small Cap Fund (MCH)	A	Dividend	J	T	E X E M P T				
. Fidelity Blue Chip Growth Fund	A	Dividend	K	T					
:. Fidelity U.S. Bond Index Fund	A	Dividend	J	T					
:. SSgA Secure Income Fund (MCH)	A	Interest	K	T					
. SSgA S&P 500 Index Fund (MCH)	A	Dividend	M	T					
. Third Avenue Value Fund	A	Dividend	J	T					
. Third Avenue Small Cap Value Fund	A	Dividend	J	T					
. Torray Fund	A	Dividend	M	T					
. USAA S&P 500 Index Fund	A	Dividend	J	T					
Real Estate Undeveloped Land near Pamlico, North Carolina		None	J	R					
Mass. Mutual Whole Life Insurance Policy		None	J	T					
Mass. Mutual Variable Life Insurance Policy		None	J	T					
Oppenheimer Capital Appreciation (Mass. Mutual)		None	J	T					
T. Rowe Price College Savings Plan #1		None	M	T					
T. Rowe Price College Savings Plan #2		None	M	T					
T. Rowe Price College Savings Plan #3		None	M	T					
General Dynamics Defined Benefit Plan		None	J	T					will pay $464/ mo. beg. 2023

Income Gain Codes: (See Columns B1 and D4)	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000
	F = $50,001-$100,000	G = $100,001-$1,000,000	H1 = $1,000,001-$5,000,000	H2 = More than $5,000,000	
Value Codes (See Columns C1 and D3)	J = $15,000 or less	K = $15,001-$50,000	L = $50,001-$100,000	M = $100,001-$250,000	
	N = $250,001-$500,000	O = $500,001-$1,000,000	P1 = $1,000,001-$5,000,000	P2 = $5,000,001-$25,000,000	
	P3 = $25,000,001-$50,000,000		P4 = More than $50,000,000		
Value Method Codes (See Column C2)	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market	
	U = Book Value	V = Other	W = Estimated		

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Haynes II, William J	10/2/2003

VII. INVESTMENTS and TRUSTS – income, value, transcations (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
						If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g. div. rent. or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	(2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
7. GenDyn Unqualified Defined Cont. Plan (S&P Index Fund)	A	Dividend	J	T					
8. USAA S&P IRA	B	Dividend	J	T	E X E M P T				
9. USAA Money Market Fund	A	Interest	L	T					

Income/Gain Codes: (See Columns B1 and D4)	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000
	F = $50,001-$100,000	G = $100,001-$1,000,000	H1 = $1,000,001-$5,000,000	H2 = More than $5,000,000	
Value Codes: (See Columns C1 and D3)	J = $15,000 or less	K = $15,001-$50,000	L = $50,001-$100,000	M = $100,001-$250,000	
	N = $250,000-$500,000	O = $500,001-$1,000,000	P1 = $1,000,001-$5,000,000	P2 = $5,000,001-$25,000,000	
	P3 = $25,000,001-$50,000,000		P4 = More than $50,000,000		
Value Method Codes (See Column C2)	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market	
	U = Book Value	V = Other	W = Estimated		

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Haynes II, William J	10/2/2003

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Haynes II, William J	10/2/2003

IX. CERTIFICATION.

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

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

Signature _____ Date October 2, 2003

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

III. GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

- During my second year of law school, I was a member of the Harvard Legal Aid Bureau. I provided pro bono legal services for indigent clients needing help with landlord-tenant and child custody matters.

- During my time at Jenner & Block (esp. 1996), I served as pro bono counsel to indigent clients accused of crimes in the DC Superior Court.

- In 1999, I served three months as a volunteer legal consultant with Mercy Corps International, in central Asia. Mercy Corps' principal activities in that region were then centered in Kazakhstan, where I lived. Most activities focused on the delivery of micro-credit in Mercy Corps Almaty, Kazakhstan, more remote regions of Kazakhstan, as well as parts of Uzbekistan, Krygyzstan, and Tajikistan.

- I have spent substantial portions of my career in public service as a military officer (1984-1989) and as a civilian lawyer (1983-1984, 1990-1993, 2001-present).

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

I have not belonged and do not belong to any organization that employs invidious discrimination on

the basis of race, sex, or religion.

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

There is no such selection commission for this position. I interviewed with the Senators from the Commonwealth of Virginia, members of the office of the Counsel to the President, and members of the Department of Justice. I submitted information for the purpose of a background investigation by the Federal Bureau of Investigation, and interviewed with an FBI investigator. On September 29, 2003, I was advised that the President had submitted my nomination to the Senate.

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

No.

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

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

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

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

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

broad classes of individuals;

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

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

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

Our Constitution assigns the legislative powers and responsibilities to the Congress; the executive, diplomatic and commander in chief powers and responsibilities to the President; and the judicial powers and responsibilities to the Supreme Court and such inferior courts as the Congress may ordain and establish.

Federal judicial power extends to Cases or Controversies as defined by Article III of the United States Constitution. A judge can only decide such cases or controversies which are properly before the court. A judge must apply the Constitution, the laws of the United States made pursuant to the Constitution, applicable treaties, and applicable State law in cases where state law provides the applicable rule of decision, to the facts in the record before that judge. In fully applying such laws to the cases before them, judges must fully enforce such law, while remaining mindful of the Constitution's separation and division of powers, according great deference to the political branches that most closely represent the will of the people of the United States.

Senator SESSIONS. Judge Guirola?

STATEMENT OF LOUIS GUIROLA, JR., NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

Judge GUIROLA. Thank you, Mr. Chairman.

I have with me today as my support my wife of 21 years, Stephanie. Unfortunately, our three daughters could not be with us today. They could not get out of school to come be with us today. But I also have two of my staff attorneys with me that really wanted to see the process and were kind enough to come on their own dime to be with me: Terri Brown and Amanda Hartman. They work in my office as well.

Thank you.

Senator SESSIONS. We are glad to have them here.

[The biographical information of Judge Guirola follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)
Louis Guirola, Jr.

2. Address: List current place of residence and office address(es).
Residence: Long Beach, Mississippi
Office Address: 2909 13th Street, Suite 214
Gulfport, Mississippi 39501

3. Date and place of birth.
DOB: September 5, 1951
POB: Baltimore, Maryland

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).
Married
Maiden name of spouse: Stephanie Marie Slaughter
Spouse's occupation: R.N., B.S.N.
Employer's name and address: Southern Rehabilitation Associates, 9 Heron Cove, Hattiesburg, Mississippi

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.
University of Mississippi Law School
Attended: June 1977 thru August 1979
Degree: J.D./ August 13, 1979

William Carey College
Attended: September 1969 thru May 1973
Degree: B.A./ May 1973

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.
1973-1977 Mississippi Bureau of Narcotics (Agent)
1977 Harrison County Sheriff's Department (Criminal Investigator)
1979-1980 Boyce Holleman & Associates, P.A. (Associate Attorney)

1980-1984 State of Mississippi/ District Attorney's Office, 19th Judicial District (Assistant District Attorney)
1982-1983 Mississippi Prosecutor's Association (Board Member)
1984-1986 Jackson County, Mississippi (County Board Attorney)
1984-1986 Jackson County Port Authority (Port Authority Attorney)
1984-1986 Jackson County Planning Commission (Planning Commission Attorney)
1986-1990 Guirola & Jackson, P.A. (Private Attorney/ Partner)
1988-1990 Singing River Yacht Club (Board member & Vice-Commodore)
1988-1990 Mississippi Oil & Gas Board (Vice-Chairman)
1990-1993 U.S. Department of Justice/ U.S. Attorney's Office, Eastern District of Texas (Assistant U.S. Attorney)
1993-1996 U.S. Courts/ U.S. District Court, Western District of Texas (U.S. Magistrate Judge)
1996-present U.S. Courts/ U.S. District Court, Southern District of Mississippi (U.S. Magistrate Judge)
1996-present University of Southern Mississippi
2001-present Russell-Walker Blass Chapter of the American Inns of Court (President & Board of trustees)

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

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.
Phi Delta Phi legal fraternity (Clerk 1978-79)
University of Mississippi Law School Moot Court Board (Trial division chairman/ 1979)

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.
American Bar Association
Bar Association of the Fifth Federal Circuit
Mississippi Bar Association
Texas Bar Association

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.
A) Federal Magistrate Judges Association

B) Bayou Bluff Tennis Club
Gulfport Yacht Club
Krew of Cavaliers
University of Mississippi Alumni Association
American Inns of Court

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

Supreme Court of the United States	September 10, 1984
U.S. 5th Circuit Court of Appeals	September 10, 1984
U.S. 11th Circuit Court of Appeals	September 10, 1984
U.S. District Court/N.D.Miss.	August 13, 1979
U.S. District Court/S.D.Miss.	September 11, 1979
U.S. District Court/E.D.Texas	March 22, 1990
Mississippi Supreme Court	August 13, 1979
Texas Supreme Court	September 28, 1990
All Mississippi lower courts	August 13, 1979
All Texas lower courts	September 28, 1990

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

Publications:

OFFENSE LEVEL REDUCTION FOR ACCEPTANCE OF RESPONSIBILITY UNDER THE FEDERAL SENTENCING GUIDELINES: IT MAY BE TOUGHER THAN IT SOUNDS, Texas Bar Journal, Volume 54, Number 8, Page 884, September 1991.

FEDERAL BAIL AND DETENTION POST CONVICTION: THE 1990 AMENDMENTS TO THE BAIL REFORM ACT OF 1984, Texas Bar Journal, Volume 55, Number 7, Page 700, July 1992. (Also reprinted in the United States Attorney's Manual for the Eastern District of Texas.)

THE FEDERAL SPEEDY TRIAL ACT: THE RULE AND ITS EXCEPTIONS, Texas Bar Journal, Volume 56, Number 4, Page 343, April 1993.

MONEY LAUNDERING OFFENSES: TITLE 18 U.S.C. §1956 AND 1957; TITLE 31 U.S.C. §5311 THRU 5326, United States Attorney's Manual for the Eastern District of Texas.

CO-CONSPIRATOR ACTS AND DECLARATIONS: "ALL FOR ONE AND ONE FOR ALL LIABILITY", Texas Bar Journal, Volume 56, Number 11, Page 1106, December 1993.

PUNISHMENT BY THE BOOK: HOW MUCH DISCRETION DO FEDERAL JUDGES HAVE IN SENTENCING?, Texas Bar Journal, Volume 56, Number 3, Page 258, March 1993.

Speeches (copies attached)

Naturalization Speech (naturalization ceremonies 1996 to present)

"Professionalism" (Learning From Leadership speech at William Carey College/ 1997)

**Note: On occasions I am a speaker at meetings of local civic organizations such as "Rotary" of "Chamber of Commerce." Topics are generally limited to general discussions of the federal court system. Written copies of comments or speeches are not available.*

13. Health: What is the present state of your health? List the date of your last physical examination.
Excellent
Date of last physical: January 2002

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.
1993-1996, United States Magistrate Judge/ U.S. District Court, W.D.Texas
1996- present United States Magistrate Judge/ U.S. District Court, S.D. Mississippi
1988-1990 Vice-Chairman, Mississippi Oil & Gas Board.

**The Mississippi Oil and Gas Board was a quasi-judicial board charged with regulation of production, protection and conservation of the state's of oil and gas resources.*

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

(1) Significant Opinions:

National Solid Waste Management Assoc. v. Pine Belt Solid Waste Management Authority, et al., 261 F.Supp.2d 644 (S.D. Miss. 2003)

Lady v. Outboard Marine Corp., 66 F.Supp.2d 818 (S.D. Miss. 1999)
Ritchie v. Grand Casinos of Mississippi, Inc., 49 F.Supp.2d 878 (S.D. Miss. 1999)
Turner v. Union Planters Bank of Souther Mississippi, 974 F.Supp. 890 (S.D. Miss. 1997)
Taylor v. Union Planter Bank of Southern Mississippi, 964 F.Supp. 1120 (S.D. Miss. 1997)
Bituminous Casualty Corp. v. Kenworthy Oil Co., 912 F.Supp. 238 (W.D. Texas 1996)
Harris v. Marathon Oil Co., 948 F.Supp. 27 (W.D. Texas 1996)
Blaylock v. Painter, 901 F.Supp. 233 (W.D. Texas 1995)
Sanford v. Brookshire, 879 F.Supp. 691 (W.D. Texas 1994)
Mary Young v. Lea Taylor, Tax Assessor of Ector County, Texas, No. MO-94-CA-225 (1995)(*copy provided)*.

(2) Reversed Opinions:

a) *Cooper v. Brookshire*, 880 F.Supp. 481 (W.D. Texas 1994) *rev'd.* 70 F.3d 377 (5th Cir. 1995). *Cooper* was a prisoner complaint which had been filed after the statute of limitations had run. However, by applying the "mail box rule" the complaint would have been timely. The mailbox rule had never been applied to prisoner civil complaints in the Fifth Circuit. I ruled that the complaint was time barred and held that if the mailbox rule was to be adopted in our circuit it should be applied by the appellate court. On appeal the Fifth Circuit adopted the mailbox rule and remanded the case for adjudication upon the merits.

b) *Lancaster v. H.E.B. Grocery Co., Inc.*, No. 96-50009, (5th Cir. July 31, 1996). On motion for summary judgment the court dismissed plaintiff's sexual harassment and constructive discharge complaint. On appeal the Fifth Circuit affirmed the dismissal of the constructive discharge claim and held that the sexual harassment summary judgment evidence was sufficient to create a fact question for jury determination. The matter was affirmed in part, reversed and remanded in part.

c) *Krystek v. University of Southern Mississippi*, 164 F.2d 251 (5th Cir. 1999). The plaintiff in *Krystek* claimed gender based discrimination. According to professor Krystek, the defendant had improperly considered gender in making a decision to refuse plaintiff request for tenure. I ruled that there was sufficient evidence to warrant a jury determination. The jury returned a verdict in favor of plaintiff. On appeal, the Fifth Circuit held that the evidence adduced at trial was insufficient as a matter of law to sustain a claim of gender based employment discrimination and the matter was rendered.

d) *Lollar v. Baker*, 196 F.3d 603 (5th Cir. 1999). *Lollar* involved a claim under the Rehabilitation Act. One of the individual defendants made a claim of qualified immunity. During the early stages of the case I ruled that the plaintiff had stated a claim of a violation of a clearly established statutory right and entered an order to permit discovery on issues relating to the defense of qualified immunity. The defendant appealed the discovery order. The Fifth Circuit, in a case of first impression went directly to the merits of plaintiff's claim under the Rehabilitation Act and held that 42

U.S.C. § 1983 did not provide plaintiff a remedy for alleged violations of the Act. The case was remanded with instructions to enter a judgment of dismissal.

e) *Glorioso v. Mississippi Department of Corrections*, No. 99-60147 (5th Cir. August 20, 1999). Plaintiff's claim was in the nature of a charge of retaliation in violation of Title VII. The Fifth Circuit reversed and remanded summary judgment finding that disputed facts existed which if believed by the jury could result in a finding of unlawful discrimination. The matter was remanded. A trial resulted in a jury verdict in favor of the plaintiff.

f) *Johnson v. Forrest County*, No. 98-60556 (5th Cir. February 15, 2000). This case involved a detention facility policy which prevented inmates from accumulating large amounts written material as a "fire hazard." I recommended that the complaint be dismissed since the policy was based upon an articulated "legitimate penological interest." The district judge adopted the recommendation. On appeal the Fifth Circuit remanded the matter for a determination of whether less restrictive means could have been used to effectuate the detention facilities penological interest.

g) *Phillips v. Donnelly*, 216 F.3d 508 (5th Cir. 2000). The defendant entered a plea of guilty to vehicular homicide in 1995. His petition for habeas corpus relief was denied in state court. In 1997 he filed an application for habeas corpus relief under 28 U.S.C. § 2254 in the federal court. Although the petition was facially time barred the defendant argued that he had not received a copy of the state court judgment in time to pursue his federal claim. I recommended that the petition was barred under the one year statute of limitations. The district judge adopted the recommendation. On appeal the Fifth Circuit held that although equitable tolling of the statute of limitations is only available in "exceptional circumstances" the defendant's assertion that he had not received notice of the state court ruling could amount to equitable tolling. The matter was remanded for further consideration. In view of the Fifth Circuit ruling, I held that under the circumstances of defendant's case that equitable tolling should apply and the case proceed on the merits.

h) *Edmond v. Eaves el al.*, No. 02-60595 (5th Cir. July 3, 2003). The Fifth Circuit reversed the judgment of dismissal under 28 U.S.C. § 1915 (e)(2)(B)(ii) finding that there were allegations which if true would sustain a claim of failure to protect under 42 U.S.C. § 1983.

**Note: the following cases were matters in which proposed findings of fact and recommendations for disposition pursuant to 28 U.S.C. § 636(b)(1)(B) were made to the district judge assigned to the case. In these cases the recommendations were either rejected or modified. The case dispositions were ultimately reversed by the court of appeals.*

a) *Miller v. Moore*, No. 97-60517 (5th Cir. December 8, 1997). *Miller* involved a request for habeas corpus relief. Miller was convicted in the state court of vehicular homicide. He was denied bail pending appeal to the Mississippi Supreme Court. The question of bail was reviewed by the supreme court and affirmed. He then filed a petition for habeas corpus relief in the federal court. The matter was referred for a recommendation. I held that the question of bail pending appeal had been resolved in the Mississippi Supreme Court and that relief should be denied. The district judge did

not accept my recommendation and granted relief. On appeal the Fifth Circuit reversed and held that habeas corpus relief should have been denied.

b) *Gochicoa v. Johnson,* 118 F.3d 440 (5th Cir. 1999). This case involved a petition for habeas corpus relief from a state criminal judgment under 28 U.S.C. § 2254. I held that certain testimony offered at trial did not constitute hearsay and that petitioner's conviction was not obtained in violation of the Confrontation Clause. A recommendation was made to the district judge to deny relief. The district judge disagreed with my's conclusions and granted habeas corpus relief. The Fifth Circuit reversed. In candor, the appellate court did not agreed with my's legal conclusion regarding the hearsay evidence but concluded that the statements did not result in a violation of the Confrontation Clause.

**Note: Although the following case was reversed by a panel of the Fifth Circuit. Upon rehearing in banc, the court affirmed the lower court decision.*

a) *McClendon v. City of Columbia,* 305 F.3d 314 (5th Cir. 2002). The case involved a claim under 42 U.S.C. § 1983. Plaintiff sought to bring a cause of action under the theory of "state created danger." On motion for summary judgment I held that the "state created danger" doctrine had never been adopted in our circuit. Moreover, since the law regarding § 1983 claims under a "state created danger" theory was not clearly established under Fifth Circuit precedent, defendant was entitled to qualified immunity. Summary judgment was granted. On appeal, a three judge panel reversed holding that the theory of state created danger had been accepted in other circuits and was therefore sufficiently established to state a claim under § 1983. *See McClendon v. City of Columbia,* 258 F.3d 432 (5th Cir. 2001). An en banc hearing was granted. The Fifth Circuit vacated the panel opinion and affirmed my summary judgment ruling essentially for the reasons stated in the memorandum opinion granting summary judgment.

(3) Significant Opinions on Federal Constitution Issues:

National Solid Waste Management Assoc., v. Pine Belt Solid Waste Management Authority, et al., 261 F.Supp.2d 644 (S.D. Miss. 2003).

Bridges v. Bond, el al., 2:01CV81PG (*copy attached)*

Shivers v. Covington County School District, et al., 2:01CV139PG (*copy attached).*

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.
1979-1980, Jackson County, Mississippi Democratic Executive Committee (elected)

17. Legal Career:

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

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

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

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

a) (1/79 to 6/79) Assistant Public Defender, Jackson County, Mississippi. Jackson County Courthouse, Convent Street, Pascagoula, Mississippi. I served an internship with the Public Defender after law school.

b) (8/79 to 6/80) Boyce Holleman & Associates, P.A.,1913 15th Street, Gulfport, Mississippi. I was employed as an associate attorney with the firm.

c) (6/80 to 7/84) State of Mississippi/ District Attorney's Office for the 19th Judicial District of Mississippi, Jackson County Courthouse, Convent Street, Pascagoula, Mississippi. I served as an assistant district attorney.

d) (7/84 to 9/86) Jackson County, Mississippi, Jackson County Courthouse, Convent Street, Pascagoula, Mississippi. I served as the County Board Attorney and attorney to the Jackson County Port Authority and Planning Commission.

e) (9/86 to 2/90) Guirola & Jackson, P.A., 408 Convent Street, Pascagoula, Mississippi. I was a partner engaged in the general practice of law with Kathy King Jackson. Kathy Jackson is presently the Senior Circuit Judge for the 19th Judicial District of Mississippi.

f) (5/88 to 2/90) Mississippi Oil & Gas Board, 500 Greymont Avenue, Jackson, Mississippi. I was appointed by the Mississippi Attorney General and confirmed by the Mississippi Senate to serve as a member of the Oil & Gas Board. I was elected vice-chairman of the board in 1988.

g) (2/90 to 1/93) U.S. Department of Justice/ U.S. Attorney's Office for the Eastern District of Texas, 350 Magnolia Avenue, Suit 150, Beaumont, Texas. I served as the Deputy Chief of the Criminal Division and the Lead Attorney for the Organized Crime and Drug Enforcement Task Force.

h) (1/93 to 4/96) U.S. Courts/ U.S. District Court for the Western District of Texas, 200 East Wall Street, Midland, Texas. I was appointed and served as U.S. Magistrate Judge.

i) (4/96 to present) U.S. Courts/ U.S. District Court for the Southern District of Mississippi, 2909 13th Street, Suite 214, Gulfport, Mississippi. I was appointed and serve as U.S. Magistrate Judge.

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

I am currently a U.S. Magistrate Judge for the U.S. District Court, Southern District of Mississippi assigned to the Southern and Hattiesburg Divisions. I was appointed on April 9, 1996. Prior to appointment in Mississippi I served as a U.S. Magistrate Judge for the U.S. District Court, Western District of Texas, assigned to the Midland/Odessa, Pecos and El Paso Divisions from January 1, 1993 to April 8, 1996.

In addition to my judicial duties, I serve as an adjunct professor of criminal justice at the University of Southern Mississippi. I have also served as a lecturer and visiting judge at the Attorney General Advocacy Institute. I have also attended the basic and advanced courses of study at the Attorney Mediator's Institute and have served as a mediator as an adjunct to the court.

1990 to 1993

In February of 1990 the I accepted a position with the U.S. Department of Justice and held the position of Deputy Chief of the Criminal Division and Lead Attorney for the Organized Crime and Drug Enforcement Task Force for the United States Attorney's Office, Eastern District of Texas. As such, my responsibility included the district wide supervision and coordination of all major narcotics investigations and prosecution. In the absence of the Criminal Chief, I was responsible for the supervision and coordination of all Criminal Division matters. As Lead Task Force Attorney I served as chairman of the Organized Crime and Drug Enforcement Task Force Coordination Group for the Eastern District of Texas. In this regard, I had the following responsibilities:

a.) Review and submission of all investigation proposals by the District Coordination Group to the Regional Task Force Coordination Group for the Gulf Coast Region in Houston, Texas;

b.) Maintaining a record of the status of all Task Force investigations and prosecutions in the district;

c.) Ensuring that all required reports on Task Force investigations and prosecutions in the district are prepared and submitted to the Core City Task Force Office;

d.) Serving as liaison with the Core City Task Force office in Houston, Texas; and

e.) Designating and supervising the Assistant United States Attorneys and staff for each approved Task Force investigation and providing advice to case agents for the OCDETF investigations.

In addition I was responsible for the prosecution and trial of multiple defendant narcotics and dangerous drug conspiracy cases.

During this period, I was also designated District Office Security Manager and International and National Security Coordinator of the district.

1986 to 1990.

In September of 1986 I and former Assistant District Attorney Kathy K. Jackson established the law firm of Guirola and Jackson, P.A. The firm was engaged in the general practice of law, with an emphasis on personal injury, in the state and federal courts. The firm also represented the Mississippi Highway Department in condemnation and right-of-way acquisition. I also practiced workers compensation law before the Mississippi Workers Compensation Commission and the U.S. Department of Labor. The firm also handled insurance defense cases for Allstate Insurance Company. Types of cases which actually resulted in trials from 1986 to 1990 include: personal injury (both plaintiff and defense);products liability; eminent domain; reverse condemnation; stock churning and improper investments; medical malpractice; criminal defense; "Jones Act" and maritime litigation, and breach of contract.

In 1988, I was appointed to the office of Vice-Chairman of the Mississippi Oil and Gas Board. I was appointed to a four year term by the Mississippi Attorney General and was confirmed by the State Senate in 1988. Generally, board members preside as administrative law judges to hear evidence and resolve issues involving conservation of natural resources and the state wide regulation of the oil and gas industry. The Board has authority over all state law relating to the conservation of oil and gas resources. The Board's jurisdiction is comparable to that of the Texas Railroad Commission on matters relating to oil and gas. The Board members hear evidence and makes rulings on such matters as oil and gas well locations and spacing; allowable production from oil pools and fields; and insuring that each land and royalty interest owner is granted an equitable share of production. As vice-chairman, I had occasion to act as the presiding board member over contested and uncontested hearings.

1984 to 1986.

In June of 1984, I accepted an appointment as the first full time County Board Attorney in Mississippi. I was in charge of the legal department and responsible for all civil and administrative legal matters concerning Jackson County Mississippi and its related agencies. This included the full time representation of the Board of Supervisors (elected county governing board), Sheriff's Department and County Adult Detention Center, County Planning Commission, Port Authority (Port of Pascagoula), Jackson County Economic Development District. Examples of matters which I handled during my tenure as county board attorney include: defense of all civil claims; defense of detention related prisoner claims and civil rights complaints; labor and personnel hearings; condemnation proceedings; bankruptcy claims; general obligation and revenue bond validations; tax appeals; admiralty claims, and contract negotiations and preparation.

1979 to 1984.

In January of 1979, as part of the law school curriculum, I served an internship as an Assistant Public Defender in Jackson County, Mississippi. The position involved the representation of indigent defendants in all phases of felony criminal proceedings. In some instances I was also appointed to represent indigent persons in Juvenile Court and in mental competency and commitment proceedings.

After a brief period as an associate in the law firm of Boyce Holleman and Associates, I accepted a position as Assistant District Attorney for the 19th Judicial District of Mississippi in June of 1980. The district covers Jackson, George and Greene Counties in Mississippi. As assistant district attorney I handled all phases of criminal prosecution in the state court, including Grand Jury, pre-trial, and trial practice. During this period I conducted criminal trials of all description; from murder and armed robbery to fraud and public corruption. During this period I was appointed as special prosecutor by the Governor of Mississippi to prosecute selected cases.

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

(See above)

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

Frequently

2. What percentage of these appearances was in:
(a) federal courts;
(b) state courts of record;
(c) other courts.

Prior to 1990
(a)30%
(b)60%
(c)10%

After 1990 all appearances have been in federal court

3. What percentage of your litigation was:
(a) civil;
(b) criminal.

Prior to 1990
(a)60%
(b)40%

Between 1990 and 1993 all litigation was federal criminal.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel. Approximately 100 (note that many of these trials were criminal cases tried while an assistant district attorney).

5. What percentage of these trials was:
(a) jury;
(b) non-jury.

(a) 90%
(b) 10%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *U.S. v. David Lee Smith,* 978 F.2d 171 (5th Cir. 1992). I represented the prosecution in this drug conspiracy trial and on appeal. The primary issue on appeal was the admissibility of intercepted wireless communications. The matter was affirmed. I was the lead trial counsel in this case and sole counsel during appeal to the Fifth Circuit.
Presiding judge: U.S. District Judge Howell Cobb, U.S. District Court, E.D. Texas.
Co-Counsel: Kerry Klintworth, U.S. Attorney Office, 350 Magnolia Avenue, Suite 150, Beaumont, Texas 77701, (409) 839-2538.
Opposing Counsel: Bruce Smith, 2914 Eastex Highway, Beaumont, Texas 77706,(409) 899-1046.

2. *U.S. v. Jimmy Beaumont, et al.*, 972 F.2d 91 (5th Cir. 1992). I served as lead prosecutor in this drug conspiracy trial involving the manufacture of methamphetamine. The defendants were convicted and the matter affirmed on appeal.
Presiding Judge: U.S. District Judge Howell Cobb, U.S. District Court, E.D.Texas.
Co-Counsel: James Jenkins, U.S. Attorney's Office, 350 Magnolia Street, Beaumont, Texas 77701, (409) 839-2538

Opposing counsel: Carl Parker, One Plaza Square, Port Authur, Texas, (409) 985-8814.

3. *U.S. v. Ricky Ramirez et al.*,963 F.2d 693 (5th Cir. 1992). I was lead counsel in this marijuana conspiracy trial involving fourteen defendants. The trial ended in convictions and was affirmed on appeal.
Presiding Judge: U.S. District Judge Howell Cobb, U.S. District Court, E.D. Texas.
Co-Counsel: Paul Naman, U.S. Attorney's Office, 350 Magnolia Avenue, Suite 150, Beaumont, Texas 77701, (409) 839-2538
Opposing counsel: Thomas Roebuck, 1240 Orleans, Beaumont, Texas 77701, (409) 835-3521

4. *U.S. v. Payan-Paz,* 981 F.2d 199 (5th Cir. 1992). This defendant entered a plea of guilty. The question on appeal was whether the defendant was prejudiced during the plea process in that she was not being provided a "certified" court interpreter. In a case of first impression the appellate court affirmed the conviction.
Presiding Judge: U.S. District Judge Howell Cobb, U.S. District Court, E.D. Texas.
Co-Counsel: Assistant U.S. Attorney Kerry Klintworth (see above)
Opposing counsel: Barbara W. Palmer,4102 Woodcraft, Houston, Texas 77023, (713)877-1737

5. *U.S. v. Meadows*, Fifth Circuit No. 91-4637. This case involved criminal prosecution for the importation of cocaine from Panama. The defendants conviction was affirmed on appeal.
Presiding Judge: U.S. District Judge Richard Schell, U.S. District Court, E.D.Texas.
Co-Counsel: "None"
Opposing counsel: Dennis Powell, 1601 Main Street, Orange, Texas,(409) 883-6687.

6. *Rudd v. Montgomery Elevator Co.*, 618 So.2d 68 (Miss. 1993). I represented the plaintiff in this products liability case. Plaintiff was injured when an elevator maintained by the defendant fell approximately 20 feet during operation. The jury awarded a judgment which was set aside by the trial judge. The matter was affirmed on appeal to the Mississippi Supreme Court.
Presiding Judge: Circuit Judge Jerry Terry, Circuit Court, 2nd Judicial District of Mississippi.
Co-counsel: Kathy King Jackson, Jackson County Courthouse, Pascagoula, Mississippi 39567 (228) 769-3244
Opposing counsel: Carey Bufkin (deceased) and Bill Rainey, 2605 14th Street, Gulfport, Mississippi 39501, (228) 868-7070

7. *Jesse Darrell Williams v. State,* 544 So.2d 782 (Miss. 1987). I was involved in the trial of the defendant for capital murder. The defendant was convicted and sentenced to death. His conviction and sentence were affirmed in the state and federal courts and the sentence was executed in 2002.

Presiding Judge: Circuit Judge Clinton E. Lockard (deceased), Circuit Court, 19th Judicial District of Mississippi.
Co-counsel: Attorney General Mike C. Moore, P.O. Box 220, Carrol Garttin Building, Jackson, Mississippi 39202, (601) 359-3680
Opposing Counsel: Thomas Fortner, Office of the Public Defender, 429 Tombigbee Street, Jackson, Mississippi (601) 948-2683

8. *Smith v. State,* 499 So.2d 750 (Miss. 1986)
I was lead trial counsel in this capital murder prosecution. The defendant ultimately entered a plea of guilty and was sentenced to life imprisonment.
Presiding Judge: Robert Mills (deceased) Circuit Court, 19th Judicial District of Mississippi
Co-Counsel: Kathy King Jackson, Jackson County Courthouse, Pascagoula, Mississippi 39567 (228) 769-3244.
Opposing Counsel: Darryl Hurt, 325 Ratliff Street, Lucedale, Mississippi, 601-947-4261

9. *John Keith Henry v. State,* 484 So.2d 1012 (Miss. 1986). I was second chair in this public corruption/ fraud case. Mr. Henry was convicted and the case reversed by the Mississippi Supreme Court. After retrial he was convicted and sentence.
Presiding Judge: Robert Pritchard (Mr. Pritchard was appointed by the Governor and is not a sitting Judge. He practices law in Pascagoula, Ms) Circuit Court, 19th Judicial District of Mississippi.
Co-Counsel: Attorney General Mike C. Moore, P.O. Box 220, Carrol Garttin Building, Jackson, Mississippi 39202, (601) 359-3680
Opposing Counsel: Merrida Coxwell, P.O. Box 1337, Jackson, Mississippi, 601-948-1600.

10. *Hatley v. Lewis,* 706 F.Supp. 487 (S.D. Miss. 1989) I represented Mr. Hatley in 42 U.S.C. § 1983 civil action. Mr. Hatley was wrongfully arrested by a lieutenant of the Jackson County Sheriffs Dept. The matter went before the District Court on defendant's motion for summary judgment. We prevailed on defendants motion for summary judgment and settled the case at the pre-trial conference.
Presiding Judge: Dan M. Russell, Jr., U.S. District Court. S.D. Mississippi
Co-Counsel: Kathy King Jackson, Jackson County Courthouse, Pascagoula, Mississippi 39567 (228) 769-3244.
Opposing Counsel: Thomas L. Stennis (deceased).

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

I am presently involved in a project in conjunction with the University of Southern Mississippi, Criminal Justice Department, Dr. Thomas Payne. It is the goal of this project to establish the "University of Mississippi Civil Rights Advocacy Center for Justice." The concept grew out of a recognition that pro se litigants in state correctional institutions are often without adequate resources to prosecute civil rights complaints. The project would establish a group of attorneys willing to undertake the representation of indigent pro se prisoner plaintiffs in cases having arguable merit. The project is still in the planning phases but it is hoped that we could see a pilot program in 2004 or early 2005.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.
None

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.
No conflicts are anticipated. However, I will continue to comply with all requirements of the Code of Judicial Conduct, 28 U.S.C. § 455.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.
Yes
I occasionally serve as an adjunct professor of criminal justice at the University of Southern Mississippi. I would like to continue this service as long as my teaching assignments are in compliance with the Code of Judicial Conduct and the regulations of Judicial Conference Of The United States under Title VI off The Ethics Reform Act Of 1989, § 5 (Guide to Judiciary Policies and Procedures, Vol. 2, Ch. 6, page 33-45).

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)
See attached financial disclosure report (form AO-10)

5. Please complete the attached financial net worth statement in detail (See attached net worth statement and schedules)
See Attached net worth statement

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

Yes, in 1982 I assisted in the re-election of Mike C. Moore to the office of District Attorney for the 19th Judicial District of Mississippi. At that time I was an assistant district attorney under Mr. Moore.

FINANCIAL STATEMENT

NET WORTH

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

ASSETS		LIABILITIES	
Cash on hand and in banks	5,000	Notes payable to banks-secured	
U.S. Government securities-add schedule		Notes payable to banks-unsecured	
Listed securities-add schedule		Notes payable to relatives	
Unlisted securities--add schedule		Notes payable to others	
Accounts and notes receivable:		Accounts and bills due	
Due from relatives and friends		Unpaid income tax	
Due from others		Other unpaid income and interest	
Doubtful		Real estate mortgages payable-add schedule	659,000
Real estate owned-add schedule	689,000	Chattel mortgages and other liens payable	
Real estate mortgages receivable		Other debts-itemize:	
Autos and other personal property	50,000	Credit cards	17,000
Cash value-life insurance	2,000		
Other assets itemize:			
Boat	75,000		
401(K)	240,000		
IRA	2,400	Total liabilities	676,000
		Net Worth	387,400
Total Assets	1,063,400	Total liabilities and net worth	1,063,400
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor	None	Are any assets pledged? (Add schedule)	No
On leases or contracts	None	Are you defendant in any suits or legal actions?	No
Legal Claims	None	Have you ever taken bankruptcy?	No
Provision for Federal Income Tax	None		
Other special debt	None		

FINANCIAL STATEMENT
SCHEDULES

ASSETS

Primary residence and real property (Long Beach, Mississippi)	$439, 000.00
Residence #2 and real property (Long Beach, Mississippi)	$250,000.00
*Total	$689,000.00

**Amounts are based upon most recent appraisals*

LIABILITIES

Principal Mortgage Company (Primary Residence)	$300,000.00
SouthTrust Bank(HELOC/ Primary residence)	$154,000.00
Grand Bank for Savings (Residence #2)	$205,000.00
Total	$659,000.00

AO-10
Rev. 1/2002

FINANCIAL DISCLOSURE REPORT

NOMINATION REPORT

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (Last name, First name, Middle initial) GUIROLA, LOUIS, JR.	2. Court or Organization U.S. District Court, S.D. Miss	3. Date of Report 9/25/03
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge- Nominee	5. ReportType (check appropriate type) (•) Nomination, Date 9/23/03 ( ) Initial ( ) Annual ( ) Final	6. Reporting Period 1/1/02 to 9/23/03
7. Chambers or Office Address BancorpSouth Building 2909 13th Street, Suite 214 Gulfport, Mississippi 39501	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer_____ Date_____	

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

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions)

☐ NONE - (No reportable positions.)

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Trustee (2003)	Russell-Walker-Blass Chapter--American Inns of Court
2.	President (2001-02)	Russell-Walker-Blass Chapter--American Inns of Court

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions)

☑ NONE - (No reportable agreements.)

	DATE	PARTIES AND TERMS
1.		

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

☐ NONE - (No reportable non-investment income.)

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1.	1/6/03	University of Southern Mississippi (teaching)	$1500.00
2.	8/11/03	Southern Rehabilitation Associates	
3.	1/1/02	McGowin Center For Neuroscience	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	GUIROLA, LOUIS, JR.	9/25/03

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

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

☐ NONE - (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1.	Exempt	

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

☐ NONE - (No such reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1.	Exempt		

VI. LIABILITIES. (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)

☐ NONE - (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE
1.	Grand Bank For Savings	Home Mortgage--Pelican Cove--Long Beach, Mississippi	M

FINANCIAL DISCLOSURE REPORT
Page 1 of 1

Name of Person Reporting	Date of Report
GUIROLA, LOUIS, JR.	9/25/03

VII. INVESTMENTS and TRUSTS

– income, value, transactions (includes those of the spouse and dependent children. See pp. 34-37 of filing instructions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
						If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A -H)	(2) Type (e.g. div. rent. or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	(2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions)									
1. Merrill Lynch IRA	A	Interest			redeem	5/20	J		
2. ----ML Retirement Reserves	A	Interest			redeem	5/20	J		
3. ----ML Global Value Fund	A	Interest			redeem	5/20	J		
4. ----ML Global Growth Fund	A	Interest			redeem	5/20	J		
5. IRA--Western-Southern Life Assurance Co.		None	J	T	Buy	5/23	J		
6. Residential Property--Pelican Cove, Long Beach, Mississippi	E	Rent	M	T					

1. Income/Gain Codes:	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000
(See Columns B1 and D4)	F = $50,001-$100,000	G = $100,001-$1,000,000	H1 = $1,000,001-$5,000,000	H2 = More than $5,000,000	
2. Value Codes:	J = $15,000 or less	K = $15,001-$50,000	L = $50,001-$100,000	M = $100,001-$250,000	
(See Columns C1 and D3)	N = $250,000-$500,000	O = $500,001-$1,000,000	P1 = $1,000,001-$5,000,000	P2 = $5,000,001-$25,000,000	
	P3 = $25,000,001-$50,000,000		P4 = $More than $50,000,000		
3. Value Method Codes	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market	
(See Column C2)	U = Book Value	V = Other	W = Estimated		

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	GUIROLA, LOUIS, JR.	9/25/03

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

Part III--Line 1 & 2
McGowin Center for Neuroscience and Southern Rehabilitation Associates constitutes employment by spouse.

Part VII--Lines 1-5
Redemption of Merrill Lynch IRA constitutes a rollover to an IRA with Western-Southern Assurance Co.

Part VII--Line 6
The residential property identified as Pelican Cove--Long Beach, Mississippi was my primary residence. There is presently a contingent contract for the sale of this property. Closing is expected shortly. However, since I no longer actually live there, I am listing it as an asset (and listing the mortgage as a liability) in an abundance of caution.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	GUIROLA, LOUIS, JR.	9/25/03

IX. CERTIFICATION.

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

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

Signature _____ Date 9/25/03

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.
I have continually served in public office since February of 1990 and have been precluded from outside legal representation. However, while in private practice between 1986 and 1990, I participated in the Mississippi Bar pro bono project to provide legal representation to the indigent. In addition I personally provided legal representation to indigent clients. On one such occasion I and my law partner represented an elderly couple in a child custody matter which resulted in the return of their infant granddaughter. Finally, I have advised the University of Southern Mississippi/ Criminal Justice Division, in the creation of a project pilot program to provide legal representation and assistance to indigent pro se litigants in State custody. This proposed project called "The University of Southern Mississippi Institute For Correctional Law and Justice" is coordinated through Dr. Tom Payne and is presently in the research and planning stages.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?
No

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).
No
Five individuals were recommended for consideration to the White House by U.S. Senators Thad Cochran and Trent Lott. Prior to consideration nominee was asked to provided a curriculum vitae and asked to appear for a personal interview conducted by members of the White House Counsel and Department of Justice. After consideration of the candidates' qualifications, I was selected. Thereafter, a full field background investigation was completed by the FBI. The nomination was sent to the Senate on September 23, 2003.

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

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

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

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

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

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

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

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

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

The courts have no authority save that which is conferred by Congress and the Constitution. It is the duty of the courts to follow the law. Judges are charged to exercise judicial self-control while applying the plain meaning of statutes and diligently adhering to the doctrine of *stare decisis*.

Senator SESSIONS. Virginia?

STATEMENT OF VIRGINIA E. HOPKINS, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ALABAMA

Ms. HOPKINS. Thank you, Senator Sessions, and I appreciate your kind remarks and the remarks of Senator Shelby in introducing me to this Committee.

I would like to introduce my family, and I have several friends here as well from my Washington days: my mother, Eleanor Emerson; my husband, Chris Hopkins; my son, Thomas Hopkins; my son, Richard Hopkins; my brother-in-law, Robert Hopkins; my husband's aunt and uncle, Suzanne and Albert Ahern; my first cousin and her husband, Ambassador and Mrs. james A. Williams; my former partner and mentor, along with Robert Taft, at the firm Taft, Stettinius and Hollister, Randolph J. Stayin; Ruth Oyen, who was our office manager at that firm; also, a family friend, Sharon Greenfield.

I believe that is everyone.

Senator SESSIONS. Good.

[The biographical information Ms. Hopkins follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Virginia Emerson Hopkins (neé Virginia Ann Emerson) ("Ginger")

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

Residence:
Anniston, AL

Office:
Campbell & Hopkins
1302 Noble Street, Suite 3H
Anniston, AL 36201

3. Date and place of birth.

05/06/52
Anniston, Alabama

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

Married to Christopher Manning Hopkins, attorney, employed at:

Campbell & Hopkins
1302 Noble Street, Suite 3H
Anniston, AL 36201

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

University of Virginia School of Law
09/74 to 05/77
Juris Doctor, 05/77

University of Alabama
08/71 to 05/74
Bachelor of Arts, 05/74

Agnes Scott College
09/70 to 05/71

University of Madrid
07/73 to 08/73

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

1991 to present:	Campbell & Hopkins Anniston, AL
1978 to 1991:	Taft, Stettinius & Hollister Washington, DC (branch office)
1977 to 1978:	Lange, Simpson, Robinson & Somerville Birmingham, AL
Summer 1976:	Greenbaum, Doll, Matthews & Boone Louisville, KY
Summer 1975:	Vulcan Materials Company Birmingham, AL
Summer 1974:	Office of the Attorney General, State of Alabama Montgomery, AL
1992 to Present:	Board of Directors Friends of the Public Library of Anniston/Calhoun County, Inc. (President, 1st Vice President, Secretary) Anniston, AL

2001 to Present:	First United Methodist Church of Anniston Board of Directors, Camp Lee (Vice President) Anniston, AL
1996 to 2002:	Board of Directors Spirit of Anniston/Main Street (Secretary) Anniston, AL
1998 to 1999:	Board of Directors Alabama Legal Services Corporation Montgomery, AL

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

   No.

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

   National Merit Scholar
   Phi Beta Kappa
   Omicron Delta Kappa
   Mortar Board

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

   Alabama State Bar Association
   Calhoun County Bar Association
   District of Columbia Bar Association (inactive)
   Alabama Law Institute

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

None that are active in lobbying.

Others:

Friends of the Public Library of Anniston/Calhoun County, Inc. Board of Directors (President)

First United Methodist Church (Trust Committee; Camp Lee Board of Directors (Vice President))

Calhoun County Community Foundation (Development Committee)

United Way of East Central Alabama (Chairman, Leadership Giving)

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

Alabama Supreme Court	September 29, 1977
U.S. District Court for the Northern District of Alabama	November 11, 1977
U.S. Court of Appeals (District of Columbia Circuit)	November 17, 1978
District of Columbia Court of Appeals	November 14, 1979
U.S. District Court for the District of Columbia	July 7, 1980
U.S. Court of Appeals for the Federal Circuit	June 8, 1990

U.S. Court of Appeals for the Eleventh Circuit	November 9, 1995
U.S. District Court for the Southern District of Alabama	December 29, 1997
U.S. Tax Court	November 23, 2001

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

"In the Public Interest?" Manufacturing Activities in Foreign Trade Zones and Sub-Zones, Federal Bar News & Journal, February 1988/Volume 35, No. 2, published by the Federal Bar Association. A copy is attached.

Estate Planning - Who Needs It?, Calhoun County Community Foundation Newsletter, Fall 1999, p.4, A copy is attached.

Basic Estate Tax Planning For the Married Couple , Calhoun County Community Foundation Newsletter, Summer 2000, p.4, A copy is attached.

Speech regarding perfecting security interests in intellectual property given to Intellectual Property Law Section of Virginia Bar Association dated June 16, 1989. A copy is attached.

Speech regarding estate planning given August 20, 1991 to the Coosa Valley Institute of Management Accountants. A copy of the speech outline is attached.

Speech regarding general concepts of estate planning given December 14, 2000 to Anniston Kiwanis Club (no copy available).

Speech regarding general concepts of estate planning given May 9, 2001 to Calhoun County Community Foundation. A copy of the speech outline is attached.

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

Excellent. Date of last physical was August 29, 2003.

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

None.

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

Not applicable.

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

None.

17. Legal Career:

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

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

Not applicable.

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

Not applicable.

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

Lange, Simpson, Robinson & Somerville: 1977 to 1978
(Now Adams Reese/Lange Simpson, LLP)
(Associate)
2100 Third Avenue North, Suite 1100
Birmingham, AL 35203

Taft, Stettinius & Hollister: 1978 to 1991
(Associate, 1978 to 1986; Partner, 1986 to 1991)
(D. C. Office - now closed)
425 Walnut Street
Cincinnati, OH 45202

Campbell & Hopkins: 1991 to present, Partner
1302 Noble Street, Suite 3H
Anniston, AL 36201

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

From 1977 to 1978 I had a broad civil practice, including litigation including appellate matters, tax and estate planning, business dispute resolution and planning, and some labor matters.

From 1978 to 1991 I had a practice that primarily emphasized representing businesses that were regulated by the Federal government and which included activities as a registered lobbyist. The industries I primarily represented had interests that were affected by laws governing telecommunications, including telephone, broadcasting, and cable, customs duties, and the Food and Drug laws. I established the firm's intellectual property practice (trademarks and copyrights), and handled trademark registrations and oppositions. I also handled business dispute litigation, and continued to handle some estate planning.

From 1991 to present I have had a broad civil practice, including litigation, tax and estate planning and administration, business dispute resolution and planning, trademark and copyright registrations and disputes, trade secret disputes, confidentiality agreement disputes, and trade name disputes.

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

My typical former clients, and my current clients, are businesses, business owners, and individuals. My typical former clients were publicly traded companies; my current clients typically are not, with some exceptions. The areas in which I have specialized include intellectual property, telecommunications law, tax and estate planning, corporate planning including the purchase and sale of businesses, commercial banking, trust and estate administration, and business litigation.

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

I appeared in court occasionally.

2. What percentage of these appearances was in:
   (a) federal courts;
   (b) state courts of record;
   (c) other courts.

(a) 30%
(b) 40%
(c) 25% (probate courts and administrative law courts)

3. What percentage of your litigation was:
(a) civil;
(b) criminal.

(a) 99%
(b) 1%

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

Approximately ten, of which eight were associate counsel and two were sole or chief counsel.

5. What percentage of these trials was:
(a) jury;
(b) non-jury.

(a) 55%
(b) 45%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

1. Christian & Associates, Inc., Architects vs. Gary Kimbrell, Morris Building Co., Inc., and Jim Robinson. Federal copyright infringement litigation on behalf of architectural firm, tried to judgment (for my client) before a jury. I was lead counsel. I researched and wrote all pre-trial briefs, argued all motions (including the Motion for Judgment as a Matter of Law, which was granted as to liability). The case then went to the jury for an award of damages.

(a) the date of representation: 1991 - 1992

(b) the name of the court and the name of the judge or judges before whom the case was litigated: U.S. District Court for the Northern District of Alabama; Docket No. CV-1:91CV-02-103, Judge William M. Acker, Jr.

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

Christopher M. Hopkins Campbell & Hopkins 1302 Noble Street, Suite 3H Anniston, AL 36201 256-238-8543	co-counsel
Earl P. Underwood, Jr. 21 South Section Street Fairhope, AL 36532 251-990-5558	adverse (Gary Kimbrell)
Danny Morris 1411 Leighton Ave. Anniston, AL 36207 256-237-9436	adverse (Morris Building Co., Inc. and Jim Robinson)

2. Automobile Club de L'Ouest del la France vs. The I.B. Goodman Diamond Company. This was a Federal trademark opposition tried before the Trademark Trial and Appeal Board of the United States Patent Office involving the trademark "LeMans" for diamond jewelry. Decision denying registration was appealed to the Court of Appeals for the Federal Circuit, where it settled. I was sole counsel.

(a) the date of representation: 1989

(b) the name of the court and the name of the judge or judges before whom the case was litigated: the Trademark Trial and Appeal Board of the United States Patent Office; (Docket No.) Opposition No.75,758.

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

Michael Striker adverse
Striker, Striker & Stenby
(formerly New York, N.Y.)
103 East Neck Rd.
Huntington, NY 11743
Telephone 631-549-4700

3. ADS Environmental Services, Inc. Vs. Mark Lethbridge, Darin Thomas and Byrd-Forbes Associates, Inc. This case was an action for injunctive relief and monetary damages against two individuals for alleged breach of the non-compete provisions of an employee agreement, alleged breach of confidentiality obligations, and alleged breach of duty of loyalty and good faith. The action against the corporate defendant was for tortious interference with the former employment relationship between the plaintiff and each individual defendant and, under respondeat superior and/or ratification, for each of the alleged torts of the two individual defendants. I represented all defendants as lead counsel. I researched, briefed and argued the defendants' motion to dismiss for lack of in personam jurisdiction, which was granted as to all defendants. Appeal was taken by the plaintiff to the U.S. Court of Appeals for the Eleventh Circuit. I researched and wrote the defendants/appellees' appellate brief. The case settled on appeal.

(a) the date of representation: 1996

(b) the name of the court and the name of the judge or judges before whom the case was litigated: U.S. District Court for the Northern District of Alabama, Docket No. CV95-1-914-E; Judges Seymour H. Lynne and Sam C. Pointer, Jr.; 11th Circuit Court of Appeals Docket No. 95-6655

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

Christopher M. Hopkins co-counsel
Campbell & Hopkins

1302 Noble Street, Suite 3H
Anniston, AL 36201
256-238-8543

John P. Fry — co-counsel
Kristen K. Darnell
Alston & Bird
1201 West Peachtree Street
Atlanta, GA 30309
404-881-7000

Gene A. Wilkinson — of counsel
James A. Peden, Jr. — to all defendants
Stennett, Wilkinson & Peden
100 Congress Street South
Jackson, Mississippi
601-948-3000

H. Harold Stephens — adverse
Jeffrey T. Kelly
Jamie M. Brabston
Lanier, Ford, Shaver & Payne, P.C.
200 West Court Square, Suite 500
Huntsville, AL 35801
256-535-1100

4. Virginia Bennett vs. Lakeview Community Hospital, et al. This was a medical malpractice action by our client arising out of her face being set on fire during routine surgery to remove a sarcoma on her face. The case was filed in 1995 and was tried to a jury. I was co-counsel, handling voir dire, opening statement and the examination of the client. At the close of the plaintiff's (three day) case, a confidential settlement was reached with all defendants.

(a) the date of representation: 1996

(b) the name of the court and the name of the judge or judges before whom the case was litigated: Circuit Court for Barbour County, Eufaula Division, Docket No. CV95-31, Judge W. Thomas Gaither (now in private practice, 334-687-6645)

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

Christopher M. Hopkins Campbell & Hopkins 1302 Noble Street, Suite 3H Anniston, AL 36201 256-238-8543	co-counsel
Joe Espy Melton, Espy and Williams P.O. Drawer 5130 Montgomery, AL 36103-5130 334-263-7252	adverse (Elizabeth Robinson, M.D.)
James Robert McKoon Melissa Thomas McKoon, Thomas & Gray P.O. Box 3220 Phenix City, AL 36868-3220 334-297-2777	adverse (Lakeview Community Hospital)
Alan Livingston Lee & McInish P.O. Box 1665 Dothan, AL 36302-1665 334-792-4156	adverse (Clyde Hadley, CRNA)

5. TapeCraft vs. Narricott Industries, Inc., et al. We represented the plaintiff company against the defendants, a former employee and his employer, for misappropriation and use of trade secrets belonging to our client. I was lead counsel, researching, briefing and arguing all motions. After our Motion for Summary Judgment was argued, the case was settled.

(a) the date of representation: 1989 - 1990

(b) the name of the court and the name of the judge or judges before whom the case was litigated: Circuit Court for Calhoun County, Docket No. EQ89-500140 Judge Malcolm Street, Jr.

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

Christopher M. Hopkins co-counsel
Campbell & Hopkins
1302 Noble Street, Suite 3H
Anniston, AL 36201
256-238-8543

Daniel J. Burnick adverse
Sirote & Permutt
PO Box 55727
Birmingham, AL 35255-5727
Telephone 205-930-5101

6. Industry Services Company, Inc. vs The Travelers Indemnity Company and Travelers Indemnity Company of Illinois. This was a bad faith action against two insurance companies. I was associated on this case by the defendants to research and prepare their Motion for Summary Judgment, and thereafter to assist with settlement negotiations and trial. After cross motions for summary judgment were filed, the case settled.

(a) the date of representation: 1997 - 1998

(b) the name of the court and the name of the judge or judges before whom the case was litigated: U.S. District Court for Southern District of Alabama, Docket No. CV97-0274-BH-M; Judge Brevard Hand.

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

Carol Ann Smith co-counsel
Brenen G. Ely
Smith & Ely, LLP
2000A Southbridge Pkwy, Ste 405
Birmingham, AL 35209-1301
205-802-2214

Charles J. Fleming co-counsel
P.O. Box 1204
Mobile, AL 36633-1204
251-432-4070

C. Gary Hicks adverse
Michael Cumpton
Ryan, Maddox, Hicks, Cumpton & Cumpton, LLP
1110 Montlimar Dr., Ste 290
Mobile, AL 36609-1723

7. Mitchell Brothers, Inc. vs The Aetna Casualty & Surety Company. 814 So. 2d 191 (2001). This was a bad faith action against an insurance company. I was associated on this case by the defendant to research and prepare their Trial Brief, their Mandamus Brief, develop facts for trial, and assist with this (non jury) trial.

(a) the date of representation: 1997

(b) the name of the court and the name of the judge or judges before whom the case was litigated: Circuit Court of Mobile County, Docket No. CV96-1871-BLK, Judge Braxton Kittrell.

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

Carol Ann Smith co-counsel
Brenen G. Ely
Smith & Ely, LLP
2000A Southbridge Pkwy, Ste 405
Birmingham, AL 35209-1301
205-802-2214

Charles J. Fleming co-counsel
P.O. Box 1204
Mobile, AL 36633-1204
251-432-4070

Mack B. Binion adverse
Briskman & Binion, P.C.

P.O. Box 43
Mobile, AL 36601-0043
251-433-4485

Andrew C. Clausen — represented co-defendant
Alford, Clausen & McDonald,LLC
One St Louis Centre, Suite 5000
Mobile, AL 36602
251-432-1600

8. Pennsylvania National Mutual Casualty Insurance Co., Inc. vs. The Tape Craft Corporation, Aetna Casualty and Surety Company, Liberty Mutual Insurance Company. Pennsylvania National filed a declaratory judgment action that no coverage was owed to TapeCraft under Penn National's Commercial General Liability policy connection regarding an earlier personal injury lawsuit filed against TapeCraft. TapeCraft counterclaimed for bad faith failure to defend and indemnify the personal injury lawsuit. I was trial co-counsel, handling opening statement, closing statement, and the presentation of all documentary evidence. After a jury trial, judgment was entered in favor of TapeCraft on its counterclaim. The case settled immediately thereafter.

(a) the date of representation: 1994 - 1995

(b) the name of the court and the name of the judge or judges before whom the case was litigated: Circuit Court for Calhoun County, August 4, 2003; Docket No. CV-90-434-S, Judge Malcolm B. Street, Jr.

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

Christopher M. Hopkins — co-counsel
Campbell & Hopkins
1302 Noble Street, Suite 3H
Anniston, AL 36201
256-238-8543

Bibb Allen — adverse

Richard Smith
Christian & Small, LLP
(formerly Rives Peterson)
505 20th St N, Ste 1800
Birmingham, AL 35203-2696
205-328-7234

9. Estate of Eustace David Riley, et al vs Commissioner of Internal Revenue. This case was a Petition for Redetermination of Estate Tax Deficiency involving issues such as gifts to trusts for minors, enforceability of interfamily loans, and valuation of a family limited partnership. I was lead counsel. I researched and wrote the Petition for Redetermination and other court filings, prepared the case for trial, and negotiated a settlement. The case was settled just before trial.

(a) The date of representation: 2002 - 2003

(b) The name of the court and the name of the judge or judges before whom the case was litigated: United States Tax Court, Docket No. 1189-02, Judge Thomas B. Wells.

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

Christopher M. Hopkins — co-counsel
Campbell & Hopkins
1302 Noble Street, Suite 3H
Anniston, AL 36201
256-238-8543

Marshall R. Jones — adverse
Shuford A. Tucker, Jr.
Internal Revenue Service
801 Tom Martin Dr., Rm 257
Birmingham, AL 35211
205-912-5461

10. Karl Shaw & Perfect Pools, Inc., v. Marie Payne & TPPS, Inc. This case was a trade name dispute over the rights to the name "Perfect Pools" arising out of the dissolution of a business

arrangement where both parties had used the name, one primarily for swimming pool construction and repair, one primarily for swimming pool parts and supplies. We represented the defendants. The case settled before trial. I was co-counsel on the case, writing all the trade name related pleadings, arguing the various related motions and the primary drafter of the settlement documents and Order.

(a) The date of representation: 1996

(b) The name of the court and the name of the judge or judges before whom the case was litigated: Calhoun County Circuit Court, Docket No. CV96-1096; Judge Malcolm B. Street, Jr.

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

Christopher M. Hopkins co-counsel
Campbell & Hopkins
1302 Noble Street, Suite 3H
Anniston, AL 36201
256-238-8543

Thomas W. Harmon adverse
Brooks, Harmon & Monk, LLC
P.O. Box 67
Anniston, AL 36202-0067
256-238-8356

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

I represent [name withheld] Bank regularly on their complex (attorney-closed) loans, including asset based loans. I am the only attorney in Calhoun County to handle these loans for this

bank. The loans each exceed $1 Million and involve complex commercial terms and security interests.

I have handled multimillion dollar (and smaller) sales of businesses, representing the seller(s), or the buyer, with complex stock or asset purchase agreements and all schedules. In most of those instances, I prepare, or review and revise, nearly every document and schedule.

I represent borrowers in complex bank and private loans, including events of default and demands for payment.

I advise businessmen as to business tax planning strategies and personal tax planning, including estate tax planning.

I advise individuals as to estate planning, wealth transfer issues, and estate tax issues.

I regularly provide guidance and counsel in contested legal matters, particularly litigation, where I am not "counsel of record" and have not entered an appearance, but where my advice and counsel is sought on matters including but not limited to strategy and tactics, substantive law, and the merits of a particular set of facts in the eyes of the trial judge and/or a prospective jury.

Significant recent representative non-litigation matters which I have handled as sole counsel include:

1. [Name withheld] Bank [dollar amount withheld] loan to [name withheld] Company. I was sole counsel for the Bank. The counsel for the borrower was

   Louis J. Moraytis
   Eckert Seamans Cherin & Mellott, LLC
   U.S. Steel Tower
   600 Grant Street, 44th Floor
   Pittsburgh, PA 15219
   412-566-6141

2. Representing (as sole counsel) [name withheld] Company to negotiate, structure and draft all documents necessary to satisfy competing claims and obligations among the

Company, the estate of a deceased shareholder, the prime lender (bank) and a subordinated lender.

Shannon Barnhill Walston, Wells, Anderson & Bains, LLP Financial Center 505 20th Street North, Suite 500 Birmingham, AL 35203 205-251-7000	counsel for Bank
Richard P. Carmody Adams Reese/Lange Simpson, LLP 2100 Third Avenue North, Suite 1100 Birmingham, AL 35203 205-250-5000	counsel for subordinated lender
Richard H. Cater 1000 Quintard Ave. Anniston, AL 36201 256-240-9901	counsel for estate

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I anticipate that I will receive my pro rata share of all of my billings through the date that my legal practice concludes. I anticipate that I will receive dividend or other distributions of investments I hold, all of which are in publicly traded stocks except one general partnership interest which is an investment vehicle in a closely held corporation called Torch Concepts, Inc., located in Huntsville, Alabama. I cannot control or determine the timing of any such distributions now nor will I be able to in the future. The name of the general partnership is Newport Harbor Capital, whose principal office is at 14181 Yorba Street, Tustin, CA 92780.

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

If confirmed, I will keep a list of any entity in which I or any member of my immediate family have an investment. I will follow the recusal rules of the local district court where I am sitting. I will recuse myself, according to the Guidelines of the Code of Judicial Conduct, 28 USC §455, from any cases involving any financial interest in any person within the prohibited degree.

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

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

The financial disclosure report is attached.

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

The net worth statement is attached.

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

In 2000, my husband ran for the position of (State of Alabama, 7th Judicial Circuit Place 1) Circuit Judge, and I acted as the Chairman of his campaign. My responsibilities included all financial reports required during and after the campaign, as well as coordination of fund-raising activities, campaigning on behalf of my husband, and interaction with service and product providers.

FINANCIAL STATEMENT

NET WORTH

July 31, 2003

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

ASSETS		LIABILITIES	
Cash on hand and in banks	36,201	Notes payable to banks-secured	
U.S. Government securities-add schedule	10,358	Notes payable to banks-unsecured	0
Listed securities-add schedule	749,245	Notes payable to relatives	0
Unlisted securities--add schedule	20,000	Notes payable to others	0
Accounts and notes receivable:	0	Accounts and bills due	9,696
Due from relatives and friends	0	Unpaid income tax	0
Due from others	0	Other unpaid income and interest	0
Doubtful	0	Real estate mortgages payable-add schedule	36,305
Real estate owned-add schedule	216,667	Chattel mortgages and other liens payable	0
Real estate mortgages receivable	0	Other debts-itemize:	
Autos and other personal property	108,000	UBS (margin loan)	25,194
Cash value-life insurance	0		
Other assets itemize:			
UBS cash (spouse IRA)	110,388		
UBS cash (IRA)	18,380		
UBS cash	22,315	Total liabilities	71,195
		Net Worth	1,220,389
Total Assets	1,291,554	Total liabilities and net worth	1,291,554
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor	0	Are any assets pledged? (Add schedule) all scheduled	Yes
On leases or contracts	0	Are you defendant in any suits or legal actions?	No
Legal Claims	0	Have you ever taken bankruptcy?	No
Provision for Federal Income Tax			
Other special debt	0		

Hopkins Family Holdings -July 31, 2003

Christopher M. Hopkins SEP/IRA

Name of Security	Value
Amgen Inc.	6,553.10
Burlington Resources, Inc.	6,068.40
Bunge Limited	6,252.20
Chicos Fas Inc.	7,764.40
Colgate Palmolive Co.	4,614.65
Walt Disney Co. (Holding Co) Disney Com	7,312.50
Fox Entertainment Group Inc CL A	6,615.40
IShares Trust S&P Midcap 400 Barra Value Index Fund	6,367.90
Intel Corp	4,976.00
Johnson & Johnson Com	5,297.25
Lowes Companies Inc	6,595.40
Microsoft Corp	2,629.00
Marsh & Mclennan Cos Inc.	6,101.25
McCormick & Co NV	4,956.90
Medtronic Inc	7,009.20
First Data Corp	6,204.00
Bed Bath & Beyond Inc.	6,531.40
Proctor & Gamble Co	5,236.20
Schlumberger Ltd Netherlands Antilles	4,998.40
Stericycle Inc.	6,527.90
Scotts Co Cl A	6,690.00
Stryker Corp	6,896.70
Teva Pharmaceuticals Inc Ltd Israel ADR	6,688.80
Whole Foods Market Inc.	6,468.80
Wells Fargo & Co New	5,480.20
Wash Mutual Inc.	4,633.20
Starbucks Corp	6,607.65
Zimmer Holdings Inc.	6,916.50
Total	172,776.35

Virginia E. Hopkins SEP/IRA

Name of Security	Value
Freddie Mac	48,250.00
Templeton Global Income Fund Inc.	8,503.00
John Hancock Regional Bank Fund Class B	25,214.47
MFS Mass Investors Growth Stock Fund Class C	82,160.13
Munder Net Net Fund Class C	4,184.91
Enterprise Multi-Cap Growth C	12,046.99
Pioneer High Yield Fund Class C	7,692.96
Alliance Bernstein Premier Growth Fund Class C	83,384.59
Total	271,437.06

Virginia E. Hopkins and Christopher M. Hopkins JTWROS[1]

Name of Security	Value
Amgen Inc.	1,338.60
Burlington Resources, Inc.	1,154.25
Bunge Limited	1,198.00
Cohen & Steers Quality Income Realty Fund Inc.	1,246.40
Chicos Fas Inc.	1,357.50
Walt Disney Co. (Holding Co) Disney Com	1,315.20
Fox Entertainment Group Inc CL A	1,210.80
Health Care REIT Inc. SBI	1,259.60
IShares Trust S&P Midcap 400 Barra Value Index Fund	916.00
Lowes Companies Inc.	1,189.00
Microsoft Corp	1,320.50
Marsh & Mclennan Cos Inc.	1,240.50
Medtronic Inc	1,287.50
First Data Corp	1,132.80
Bed Bath & Beyond Inc.	1,164.90
Proctor & Gamble Co	878.70
Scotts Co CL A	1,325.00
Stryker Corp	1,147.80
Teva Pharmaceuticals Inc Ltd Israel ADR	1,145.80
3M Co	1,402.00
Whole Foods Market Inc.	1,274.40
Wash Mutual Inc.	987.00
Starbucks Corp	1,229.85
Pfizer Inc.	193,166.00
SBC Communications Inc.	15,661.16
Fidelity Advisor Equity Growth Fund Class T	21,897.14
Total	258,497.31

Name of Unlisted Security	Value
Newport Harbor Capital	20,000.00

Name of Security(Dependant)	Value
Pepsico	26,535.00

Name of Security(VEH)	Value
Pepsico	17,400.00

U.S. Government Securities	Value
US TSY Infl Prot Note 3.500% due 01/15/11 Factor 1.054380000000	10,358.37

[1]All these stocks are with UBS. The margin loan with UBS is secured by these stocks.

Virginia Emerson Hopkins Real Estate Schedule

Property owned as tenants in common among Virginia Emerson Hopkins, Christopher M. Hopkins, and Eleanor C. Emerson (1/3 each): a residence, Anniston, Al.
Value = $325,000

Value of two-thirds = $216,667

Virginia E. Hopkins and Christopher M. Hopkins

Real Estate Mortgages Payable	Value
Home Equity Line with SouthTrust Bank	36,305.00

Virginia Emerson Hopkins Assets Pledged Schedule

Home equity loan secured by real property at residence, Anniston, Al.

Balance on loan = $36,305.

AO-10
Rev. 1/2002

FINANCIAL DISCLOSURE REPORT
FOR CALENDAR YEAR 2002

Report Required by the Ethics in Government Act of 1978, (5 U.S.C. App., §§101-111)

1. Person Reporting *(Last name, first, middle initial)*	2. Court or Organization	3. Date of Report
Hopkins, Virginia E.	U.S. District Court; AL, N	10/17/03
4. Title *(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)*	5. ReportType (check appropriate type)	6. Reporting Period
District Judge Nominee	_x_ Nomination, Date 10/14/03 ___ Initial ___ Annual ___ Final	01/01/02 09/30/03
7. Chambers or Office Address	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.	
1302 Noble Street, Suite 3H Anniston, AL. 36201	Reviewing Officer _____ Date_____	

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

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

	POSITION	NAME OF ORGANIZATION/ENTITY
☐	**NONE** (No reportable positions.)	
1	President	Friends of the Public Library of Anniston/Calhoun County, Inc.
2	Director	Spirit of Anniston/Main Street, Inc.
3		

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

	DATE	PARTIES AND TERMS
☐	**NONE** (No reportable agreements.)	
1	09/30/03	Campbell & Hopkins and Virginia E. Hopkins have agreed that any fees received by Campbell & Hopkins for work performed by Virginia E. Hopkins while she was a member of the firm will, after a 1/3 reduction for office overhead, be remitted to her.
2		
3		

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

	DATE	SOURCE AND TYPE	GROSS INCOME
☐	**NONE** (No reportable non-investment income.)		
1	2003	self-employed (lawyer)	$ 84,188
2	2003, 2002, 2001	self-employed (lawyer)	$
3	2002	self-employed (lawyer)	$ 89,811
4	2001	self-employed (lawyer)	$ 96,733
5			$

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Hopkins, Virginia E.	10/17/03

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

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

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

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

	SOURCE	DESCRIPTION	VALUE
☐	NONE (No such reportable gifts.)		
1	exempt		$
2			$
3			$
4			$

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

	CREDITOR	DESCRIPTION	VALUE CODE*
☐	NONE (No reportable liabilities.)		
1	UBS	margin loan	K
2			
3			
4			
5			
6			

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

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Hopkins, Virginia E.	10/17/03

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

	A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
		(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
	Place "(X)" after each asset exempt from prior disclosure.	Amt. Code1 (A-H)	Type (e.g., div., rent or int.)	Value Code2 (J-P)	Value Method Code3 (Q-W)	Type (e.g., buy, sell, merger, redemption)	(2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
	NONE (No reportable income, assets,									
1	Pepsico Common	B	div	K	T	exempt				
2	Amgen, Inc.	none		J	T	exempt				
3	Burlington Resources Common	none		J	T	exempt				
4	Bunge Limited Common	none		J	T	exempt				
5	Cohen&Steers Quality Income Realty Fund	A	div	J	T	exempt				
6	Chico Fas Inc Common	none		J	T	exempt				
7	Colgate Palmolive Common	none				exempt				
8	Walt Disney Co. Common	none		J	T	exempt				
9	Fox Entertainment Common	none		J	T	exempt				
10	iShares Trust (S&P Midcap 400/Barra)	none		J	T	exempt				
11	Health Care REIT Inc. SBI	none		J	T	exempt				
12	Lowes Companies Inc. Common	none		J	T	exempt				
13	Intel Corp. Common	none		J	T	exempt				
14	Johnson & Johnson Common	none				exempt				
15	Microsoft Corp. Common	A	div	J	T	exempt				
16	Marsh & Mclennan Cos. Inc. Common	none		J	T	exempt				

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

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Hopkins, Virginia E.	10/17/03

VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

	A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
		(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
	Place "(X)" after each asset exempt from prior disclosure.	Amt. Code1 (A-H)	Type (e.g., div., rent or int.)	Value Code2 (J-P)	Value Method Code (Q-W)	Type (e.g., buy, sell, merger, redemption)	(2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
	☐ **NONE** (No reportable income, assets, or transactions)									
17	McCormick & Co NV Common	A	div			exempt				
18	Medtronic Inc. Common	A	div	J	T	exempt				
19	First Data Corp Common	none		J	T	exempt				
20	Bed Bath & Beyond Inc. Common	none		J	T	exempt				
21	Proctor & Gamble Co. Common	none		J	T	exempt				
22	Scotts Co Class A Common	none		J	T	exempt				
23	Schlumberger Ltd NA Common	none				exempt				
24	Stericycle Inc. Common	none		J	T	exempt				
25	Stryker Corp. Common	none		J	T	exempt				
26	Teva Pharmaceuticals Inc. Ltd Israel ADR	none		J	T	exempt				
27	Whole Foods Market Inc. Common	none		J	T	exempt				
28	Wash Mutual Inc. Common	none		J	T	exempt				
29	Wells Fargo & Co New Common	A	div			exempt				
30	Starbucks Corp Common	none		J	T	exempt				
31	Zimmer Holdings Inc. Common	none		J	T	exempt				
32	Pfizer Inc-Common	D	div	M	T	exempt				
33	SBC Communications Common	B	div	J	T	exempt				
34	Fidelity Advisor Equity Growth Fund Cl. T	none		K	T	exempt				

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

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VII. Page 3 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

	A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
		(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
	Place "(X)" after each asset exempt from prior disclosure.	Amt. Code1 (A-H)	Type (e.g., div., rent or int.)	Value Code2 (J-P)	Value Method Code (Q-W)	Type (e.g., buy, sell, merger, redemption)	(2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
	☐ **NONE** (No reportable income, assets, or transactions)									
35	Freddie Mac Common	B	div	L	T	exempt				
36	Templeton Global Income Fund Inc.	A	div	J	T	exempt				
37	John Hancock Regional Bank Fund Class B	B	div	K	T	exempt				
38	MFS Mass Investors Growth Stock Fund Cl A	none		L	T	exempt				
39	Munder Net Net Fund Cl C	none		J	T	exempt				
40	Enterprise Multi-Corp Growth C	none		J	T	exempt				
41	Pioneer High Yield Fund Class C	C	div	J	T	exempt				
42	Alliance Bernstein Premier Growth Fund	none		L	T	exempt				
43	Global Santa Fe Corp Common	none				exempt				
44	Weatherford Int Inc	none				exempt				
45	AOL Time Warner Common	none				exempt				
46	Adobe Systems Common	A	div			exempt				
47	Agilent Tech. Inc. Common	none				exempt				
48	Alcoa Inc. Common	A	div			exempt				
49	Alkermes Inc. Common	none				exempt				
50	Allstate Corp. Common	A	div			exempt				
51	Ambac Finl Group Inc. Common	A	div			exempt				
52	American Express Co. Common	A	div			exempt				

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

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VII. Page 4 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

	A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
		(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
	Place "(X)" after each asset exempt from prior disclosure.	Amt. Code1 (A-H)	Type (e.g., div., rent or int.)	Value Code2 (J-P)	Value Method Code (Q-W)	Type (e.g., buy, sell, merger, redemption)	(2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
	☐ **NONE** (No reportable income, assets, or transactions)									
53	American Intl. Group Inc. Common	A	div			exempt				
54	Anadarko Petroleum Corp Common	A	div			exempt				
55	Bank New York Common	A	div			exempt				
56	Bank One Corp Common	A	div			exempt				
57	Berkshire Hathaway Inc. Class B Common	none				exempt				
58	Bristol Myers Squibb Co. Common	A	div			exempt				
59	CNF Inc. Common	A	div			exempt				
60	Cablevision Systems Corp. Common	none				exempt				
61	Cabot Microelectronics Corp. Common	none				exempt				
62	Carnival Corp. Common	A	div			exempt				
63	Chiron Corp. Common	none				exempt				
64	Chubb Corp Common	A	div			exempt				
65	Cisco Sys Inc. Common	none		J	T	exempt				
66	Clayton Homes Inc. Common	A	div			exempt				
67	Coca-Cola Co. Common	A	div			exempt				
68	Comcast Corp. Cl A SPL	none				exempt				
69	Conoco Phillips Common	A	div			exempt				
70	Countrywide Financial Corp. Common	A	div			exempt				

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

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VII. Page 5 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-37 of Instructions.)*

	A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
		(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
	Place "(X)" after each asset exempt from prior disclosure.	Amt. Code1 (A-H)	Type (e.g., div., rent or int.)	Value Code2 (J-P)	Value Method Code (Q-W)	Type (e.g., buy, sell, merger, redemption)	(2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
	☐ **NONE** (No reportable income, assets, or transactions)									
71	Dell Computer Corp Common	none				exempt				
72	Eastman Kodak Co Common	A	div			exempt				
73	Electronics for Imaging Common	none				exempt				
74	Emerson Electric Co-Common	A	div			exempt				
75	Engelhard Corp Common	A	div			exempt				
76	Exxon Mobil Corp Common	A	div			exempt				
77	Forest Laboratories Inc. Common	none				exempt				
78	Genentech Inc. Common	none				exempt				
79	General Electric Co. Common	A	div			exempt				
80	Genzyme Corp. General Division Common	none				exempt				
81	Gillette Co. Common	A	div			exempt				
82	Grant Prideco Inc. Common	none				exempt				
83	Hasbro Inc. Common	A	div			exempt				
84	Hewlett Packard Co. Common	A	div			exempt				
85	Home Depot Inc. Common	A	div			exempt				
86	Honeywell Int'l Common	A	div			exempt				
87	IDEC Pharmaceuticals Common	none				exempt				
88	IKON Office Solutions Common	A	div			exempt				

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

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VII. Page 6 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure.	Amt. Code1 (A-H)	Type (e.g., div., rent or int.)	Value Code2 (J-P)	Value Method Code (Q-W)	Type (e.g., buy, sell, merger, redemption)	(2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ **NONE** (No reportable income, assets, or transactions)									
89 Intel Corp. Common	A	div	J	T	exempt				
90 IBM Common	A	div			exempt				
91 L3 Communications HLDGS Inc. Common	none				exempt				
92 Lattice Semiconductor Corp. Common	none				exempt				
93 Lehman Bros. Holdings Inc. Common	A	div			exempt				
94 Liberty Media Corp A Common	none				exempt				
95 MBIA Inc Common	A	div			exempt				
96 MGIC INVT CORP WIS Common	A	div			exempt				
97 Mattel Inc. DE Common	A	div			exempt				
98 Maxtor Corp (NEW) Common	none				exempt				
99 McDonalds Corp. Common	A	div			exempt				
100 Merck & Co. Inc. Common	A	div			exempt				
101 Merrill Lynch & Co Inc. Common	A	div			exempt				
102 Micromuse Inc. Common	none				exempt				
103 Micron Technology Inc. Common	none				exempt				
104 Monsanto Co New Common	A	div			exempt				
105 Motorola Inc. DE Common	A	div			exempt				
106 Murphy Oil Corp Common	A	div			exempt				

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

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VII. Page 7 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure.	Amt. Code1 (A-H)	Type (e.g., div., rent or int.)	Value Code2 (J-P)	Value Method Code (Q-W)	Type (e.g., buy, sell, merger, redemption)	(2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ **NONE** (No reportable income, assets, or transactions)									
107 Neuberger Berman Inc. Common	A	div			exempt				
108 News Ltd-ADR-New Common	A	div			exempt				
109 Nippon T&T Spon ADR Common	A	div			exempt				
110 Nokia Corp Sponsored ADR Common	A	div			exempt				
111 Paccar Inc-Del Common	A	div			exempt				
112 Pier 1 Imports Inc. Del Common	A	div			exempt				
113 Quantum Corp DLT & Storage	none				exempt				
114 RSA Security Inc. Common	none				exempt				
115 Raytheon Company New Common	A	div			exempt				
116 Realnetworks Inc. Common	none				exempt				
117 Safeway Inc. New Common	none				exempt				
118 St. Paul Companies Inc. Common	A	div			exempt				
119 Sandisk Corp Common	none				exempt				
120 Schering Plough Corp Common	A	div			exempt				
121 Solectron Corp Common	none				exempt				
122 State Street Corp Common	A	div			exempt				
123 Texas Instruments Inc. Common	A	div			exempt				
124 3 Com Corp Common	none				exempt				

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

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VII. Page 8 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure.	Amt. Code1 (A-H)	Type (e.g., div., rent or int.)	Value Code2 (J-P)	Value Method Code (Q-W)	Type (e.g., buy, sell, merger, redemption)	(2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ **NONE** (No reportable income, assets, or transactions)									
125 Tyco Intl Ltd New Common	A	div			exempt				
126 USA Interactive Common	none				exempt				
127 Unisys Corp Common	none				exempt				
128 United Health Group Inc. Common	A	div			exempt				
129 Verizon Communications Common	A	div			exempt				
130 Vodafone Group PLC SP ADR Common	A	div			exempt				
131 Vulcan Materials Co Common	A	div			exempt				
132 Wal-Mart Stores Inc. Common	A	div			exempt				
133 Weatherford Int'l Ltd New Common	none				exempt				
134 Core Laboratories NV-USD Common	none				exempt				
135 Grant Pride Co Inc Common	none				exempt				
136 Newport Harbor Capital	none		E	U	exempt				
137 US TSY Infl Prot Note	A	int	J	T	exempt				
138 Alltel Corp Del. Common	A	div			exempt				
139 Chevron Texaco Common	A	div			exempt				
140 CNF Inc Common	A	div			exempt				
141 Electronic Data Sys Common	A	div			exempt				
142 Georgia Pacific Common	A	div			exempt				

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

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VII. Page 9 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure.	Amt. Code1 (A-H)	Type (e.g., div., rent or int.)	Value Code2 (J-P)	Value Method Code (Q-W)	Type (e.g., buy, sell, merger, redemption)	(2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ **NONE** (No reportable income, assets, or transactions)									
143 ICN Pharmaceuticals Common	A	div			exempt				
144 Mattel Inc. Common	A	div			exempt				
145 Merrill Lynch Common	A	div			exempt				
146 Pharmacia Corp Common	A	div			exempt				
147 Scientific Atlanta	A	div			exempt				
148 Weyerhauser Common	A	div			exempt				
149 Wyeth Common	A	div			exempt				
150 UBS Money Market	A	int	K	T	exempt				
151 Citibank Money Market	B	int			exempt				
152 Dreyfus Liquid Assets	A	int			exempt				
153 Agere Systems Inc. Cl A Common	none				exempt				
154 Applied Materials Inc. Common	none				exempt				
155 B J Services Co Common	none				exempt				
156 ChevronTexaco Corp Common	A	div			exempt				
157 Corning Inc Common	none				exempt				
158 Golden State Bancorp Inc Common	A	div			exempt				
159 Household International Inc Common	A	div			exempt				
160 LSI Logic Corp Common	none				exempt				

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

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VII. Page 10 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

	A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
		(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
	Place "(X)" after each asset exempt from prior disclosure.	Amt. Code1 (A-H)	Type (e.g., div., rent or int.)	Value Code2 (J-P)	Value Method Code (Q-W)	Type (e.g., buy, sell, merger, redemption)	(2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
	☐ **NONE** (No reportable income, assets, or transactions)									
161	Marathon Oil Corp Common	A	div			exempt				
162	Symantec Corp Common	none				exempt				
163	Varco Intl Inc Del Common	none				exempt				
164	Varian Semiconductor Equipment Assocs Inc Common	none				exempt				
165	Salomon Bros Emerging II	none		J	T	exempt				
166	Worldcom Inc. Worldcom Group Com Common	none				exempt				
167	Elan Corp PLC ADR Common	none				exempt				
168	Qwest Communications Intl Common	none				exempt				
169	Amer International Group Inc Common	A	div			exempt				
170	Sprint Corp Common	none				exempt				
171	Flextronics Intl Ltd USD	none				exempt				
172	iShares Trust (Cohen & Steers Realty Majors Index Fund)	none		J	T	exempt				
173	Sabre Group Hldgs Inc. Class A Common	none				exempt				
174	iShares Trust (Dow Jones US Real Estate Index Fund)	none		J	T	exempt				
175	iShares Trust (Dow Jones US Utilities Sector Index Fund)	none		J	T	exempt				
176	3M Co	none		J	T	exempt				
177	SouthTrust Bank accounts	A	int	K	T	exempt				
178	AmSouth Bank Accounts	A	int	J	T	exempt				

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

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Hopkins, Virginia E.	10/17/03

VII. Page 11 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure.	Amt. Code1 (A-H)	Type (e.g., div., rent or int.)	Value Code2 (J-P)	Value Method Code (Q-W)	Type (e.g., buy, sell, merger, redemption)	(2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ **NONE** (No reportable income, assets, or transactions)									
179 Washington Mutual	A	div	J	T					

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

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Hopkins, Virginia E.	10/17/03

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

IX. CERTIFICATION.

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

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

Signature Virginia E. Hopkins Date October 16, 2003

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. App., § 104.)

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

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

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I have provided pro bono services to qualified 501(c)(3) organizations. For example, I prepared the incorporation papers, application for recognition of tax exempt status, and the Forms 990 for the Friends of the Public Library of Anniston/Calhoun County, Inc. I also prepared the incorporation papers and application for recognition of tax exempt status for the Opportunity Center Foundation.

I have provided pro bono services to individuals for whom payment would have been a hardship. For example, I have advised seniors with limited means regarding their estate planning or administering their (deceased) spouse's estates for no charge, I also have prepared contracts and wills at no or nominal charge for individuals for whom payment would have been a hardship.

I have served out the balance of an incomplete term on the Board of the Legal Services Corporation of Alabama, representing my geographic region.

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

No.

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

There is no selection commission. I submitted a résumé to Senator Richard Shelby and to Senator Jeff Sessions. I was interviewed by Senator Richard Shelby. I was interviewed by and Senator Jeff Sessions. I was interviewed by the White House Office of Legal Counsel. I was interviewed by the FBI. I was interviewed by the Department of Justice.

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

No.

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

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

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

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

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

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

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

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

RESPONSE:

The federal courts have no authority beyond that conferred by the Constitution and entrusted to them by a jurisdictional grant by Congress. Thus, the federal courts are courts of limited jurisdiction. I would look to the Constitution (particularly § 2 of Article III) and to acts of Congress, including the Judiciary Act of 1789 and the Judicial Code, and other acts specifically vesting judicial power in the federal district courts, as the foundation for my powers and limitations as a federal district judge. The presumption is that a federal district court lacks jurisdiction over a particular case until it has been demonstrated that jurisdiction exists.

Thus, I view the role of the federal judiciary as limited to grievance resolution (the specific facts of a specific case which has been demonstrated to be within the federal court's jurisdiction) rather than problem solution.

These views also apply to the limitation of the decision in a particular case to the parties before the court, although of course parties similarly situated would, under the rule of *stare decisis*, anticipate the same result in their cases as the particular case litigated.

These views in no way conflict with the federal courts' pendent, ancillary or supplementary jurisdiction, but do limit the federal courts to actual rather than prospective cases in which an affirmative showing of jurisdiction is alleged and either not challenged (by the other party or by the court itself) or is

established after challenge, brought by parties who have standing to bring them, and which are "ripe."

While the federal district courts have full authority to enforce decisions of cases properly before them, the scope of the remedy should never reach the level of setting policy for society as a whole, rather than the parties to the case, as that is the prerogative of the legislative branch. Moreover, federal district judges are to follow the applicable precedents of the higher courts with jurisdiction.

Senator SESSIONS. All right. Let's see. I have a few questions—oh, I have forgotten Mr. Karas. Excuse me. Do you have remarks or family you would like to introduce?

STATEMENT OF KENNETH M. KARAS, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK

Mr. KARAS. Thank you, Mr. Chairman. I would like to introduce some family and also I have some friends here this afternoon.

As Senator Schumer mentioned, my wife is unable to be here. She is home caring for our 5-day-old son and our 20-month-old son. They are here, of course, in spirit, and I very much appreciate that.

Joining me here this afternoon is my cousin, Barbara Campbell Potter, and her husband, Patrick Potter.

Flying in all the way from Chicago is a lifelong friend of mine, Lenny Gail, and his wife, Robin Steans Gail, and their beautiful daughters, Jessica and Lea and Sydney.

Some friends from college, Ted Gistaro and his wife, Teni; Lloyd Horwich; Paul Bock; also Erik Jaffe, another lifelong friend.

Some colleagues of mine: Rob Spencer, Dave Novak, and Aaron Zebley and Jim Fitzgerald I think are here.

Thank you, Mr. Chairman.

[The biographical information Mr. Karas follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Kenneth Michael Karas

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

Residence: **New York, NY**

Office: **United States Attorney's Office - SDNY**
One St. Andrew's Plaza
New York, NY 10007

3. Date and place of birth:

DOB: **April 18, 1964**
POB: **Colorado Springs, CO**

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

Wife: **Frances Elizabeth Bivens**

Occupation: **Attorney**
Davis Polk & Wardwell
450 Lexington Ave.
New York, NY 10017

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

Georgetown University, 1982-1986, BA Economics, May 25, 1986

Columbia University School of Law, 1988-1991, JD, May 15, 1991

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

1986-1988 - Kidder, Peabody & Co., Inc., NY, NY (Associate Intern)
1989 - Legal Aid Society, NY, NY (Summer Intern)
1990 - Mayer, Brown & Platt, Chicago, IL, Washington, DC (Summer Associate)
1991 - Mayer, Brown & Platt, NY, NY, Washington, DC(Student Intern, Summer Associate)
1991-1992 - Hon. Reena Raggi, US District Judge, EDNY (Law Clerk)
1992 - Present - US Attorney's Office, SDNY (AUSA)

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

I have never served in the military.

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

Georgetown University
Magna Cum Laude
Phi Beta Kappa
George F. Baker Scholar

Columbia University
Harlan Fiske Stone Scholar (All Three Years)
James L. Kent Prize in Criminal Law
Tony Patino Fellowship
Harlan Fiske Stone Moot Court Competition Finalist

Department of Justice
Attorney General's Award for Distinguished Service (2002)
Federal Law Enforcement Ass'n Prosecutor of the Year (2001)
Attorney's General's John Marshal Award for Outstanding Legal Achievement (1995)

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

Federal Bar Council (2001 - Present)
American Bar Association (1993 - 2000)

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

I belong to no other organizations than those listed in #9.

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

New York State, 1st Department, June 1992
US District Court, SDNY, October 1992
US District Court, EDNY, October 1992
US Court of Appeals, 2nd Circuit, August 1993
US Court of Appeals, 4th Circuit, May 2003

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

Use of Civil Forfeiture, 1 Civ. & Crim. Forfeiture L. Rep. 5 (1995) (author)

Recognizing a Right to Counsel for Indigent Tenants in Eviction Proceedings in New York, 24 Colum. J.L. & Soc. Probs. 527 (1991) (author)

A House of our Own or a House We've Outgrown? An Argument for Increasing the Size of the House of Representatives, 25 Colum. J.L. & Soc. Probs. 157 (1992) (editor)

I have been a panelist at a judicial conference and at DOJ conferences. However, I did not prepare any speeches, but only used notes which I no longer have. I am unaware of any press reports regarding these conferences. Also, I have written several letters to the editor and an article for one of the school newspapers while in college.

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

I am in good health. I had a physical examination in September 2003.

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

I have never held judicial office.

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

Not applicable.

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

I have never held, nor have I been a candidate for, public office.

17. Legal Career:

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

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

I served as a law clerk to the Honorable Reena Raggi, United States District Judge for the Eastern District of New York from August 1991 to September 1992.

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

I have never practiced law alone.

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

Judge Raggi
225 Cadman Plaza East
Brooklyn, NY 11231
Law Clerk (1991 - 1992)

US Attorney's Office, SDNY
1 St. Andrew's Plaza
New York, NY 10007
Assistant US Attorney, Supervisory Assistant US Attorney (1992 to Present)

US Attorney's Office, EDVA
2100 Jamieson Avenue
Alexandria, VA 22314
Special Assistant US Attorney (12/01 to Present)

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

While in the US Attorney's Office, I have focused exclusively on criminal and forfeiture law. I have worked on a wide variety of matters, including narcotics, fraud, bank robbery, racketeering, criminal and civil forfeiture, money laundering, and international terrorism cases.

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

I have represented the United States and its agencies since my clerkship for Judge Raggi.

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

I have appeared in court frequently. During my first several years as a federal prosecutor, I appeared in court virtually on a daily basis. Since that time, my court appearances have been less frequent as I have been involved in larger and more complex investigations and prosecutions.

2. What percentage of these appearances was in:
   (a) federal courts;
   (b) state courts of record;
   (c) other courts.

I have appeared only in federal court.

3. What percentage of your litigation was:
   (a) civil - **5%**;
   (b) criminal - **95%**.

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

I have tried seven cases to verdict (another one pled on the eve of closing arguments). Of those, I was sole counsel in five and associate counsel in two.

5. What percentage of these trials was:
   (a) jury;
   (b) non-jury.

All my trials were before a jury.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

   (a) the date of representation;
   (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
   (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *United States v. Moussaoui* (No. 01-455)
Eastern District of Virginia
Hon. Leonie M. Brinkema
U.S. Court of Appeals for the Fourth Circuit

Date of Representation: 9/01 to Present
Represented: Government
Co-Counsel: Hon. Michael Chertoff
United States Court of Appeals for the Third Circuit
Clarkson S. Fisher Judicial Complex
402 East State Street, Room 255
Trenton, NJ 08608
(609) 656-2572

Judge Chertoff was the Assistant Attorney General in charge of the Criminal Division at the time and was co-counsel during an oral argument in the District Court.

Robert A. Spencer/David J. Novak
Ass't US Attorneys - EDVA
2100 Jamieson Ave.
Alexandria, Va. 22314
703-299-3750/299-3783

Opposing Counsel:

Frank W. Dunham, Jr., Esq.
Office of the Public Defender
1650 King Street
Alexandria, VA 22314
(703) 600-0808

Summary:

Defendant is charged in several conspiracy counts that involve terrorist attacks of September 11. I have prepared several briefs and portions of briefs in opposition to various defense pre-trial motions. I also have participated in oral argument before Judge Brinkema. To date, Judge Brinkema has ordered the defense be given access to enemy combatants held abroad. *See United States v. Moussaoui*, 2003 WL 21263699 (E.D. Va. 2003). That ruling was appealed, which appeal was dismissed for lack of jurisdiction, *see, United States v. Moussaoui*, 333 F.3d 509 (4th Cir. 2003), but the issue may be appealed again. The matter is still pending.

Also, I prepared a brief arguing that the defendant could proceed *pro se* even in a case involving national security. Judge Brinkema ruled orally that the defendant could represent himself, finding

that he properly waived his right to counsel.

2. *United States v. Bin Laden, et al.*
Southern District of New York
Hon. Leonard B. Sand
Case No. 98 Cr. 1023 (LBS)

Date of Representation: 11/95 to Present
Represented: Government
Co-Counsel: Mary Jo White (former US Attorney)
Debevoise & Plimpton
919 Third Avenue
New York, NY 10022
(212) 909-6260

Patrick J. Fitzgerald
United States Attorney, ND IL
219 South Dearborn St. - 5th Floor
Chicago, IL 60604
(312)353-6742

Opposing Counsel: Joshua L. Dratel, Esq.
14 Wall Street, 28th Floor
New York, NY 10005
(212)732-0707

Anthony L. Ricco, Esq.
20 Vesey Street, Suite 400
New York, NY 10016
(212) 791-3919

David A. Ruhnke, Esq.
Ruhnke & Barrett
47 Park Street
Monclair, NJ 07042
(973) 744-1000

Fred Cohn, Esq.
500 Fifth Avenue - 33rd Floor
New York, NY 10110
(212) 768-1110

Sam Schmidt, Esq.
111 Broadway, 13th Floor
New York, NY 10006
(212) 346-4666

Summary: This multi-defendant case involved several conspiracy charges and several hundred substantive charges regarding *al Qaeda's* efforts to attack U.S. citizens and property, and, in particular, the bombings of the U.S. embassies in East Africa in August 1998. I along with co-counsel began the investigation into Bin Laden in November 1995, culminating in his indictment in June 1998. I also participated in the investigation of the embassy bombings beginning in August 1998, resulting in the indictment of numerous other Bin Laden followers.

I prepared the vast majority of the Government's legal memoranda in opposition to the defendants' motions and represented the Government at oral argument. I also was co-counsel during the five-month trial and delivered the Government's closing argument. The defendants were convicted of all 302 counts. The various decisions reported in this case include: *United States v. El-Hage*, 213 F.3d 74 (2d Cir. 2000) (upholding lengthy pre-trial detention for defendant and implementation of restrictive prison conditions); *United States v. Bin Laden*, 58 F. Supp.2d 113 (S.D.N.Y. 1999) (requiring defense counsel to receive security clearance before gaining access to classified discovery); *United States v. Bin Laden*, 92 F. Supp.2d 189 (S.D.N.Y. 2000) (terrorism statutes properly reached conduct wholly outside the United States by foreign nationals); *United States v. Bin Laden*, 126 F. Supp.2d 264 (S.D.N.Y. 2000) (denying defense motion to

suppress fruits of foreign intelligence collection operations); *United States v. Bin Laden*, 2001 WL 66393 (S.D.N.Y. 2001) (upholding constitutionality of Classified Information Procedures Act); *United States v. Bin Laden*, 132 F. Supp.2d 168 (S.D.N.Y. 2001) (largely denying defense motions to suppress confessions given abroad while in foreign government custody); *United States v. Bin Laden*, 132 F. Supp.2d 198 (S.D.N.Y. 2001) (same); *United States v. Bin Laden*, 146 F. Supp.2d 373 (S.D.N.Y. 2001) (outlining proper venue for false statement and extra-territorial conduct charges); *United States v. Bin Laden*, 156 F. Supp.2d 359 (S.D.N.Y. 2001) (denying motion to dismiss notice of death penalty resulting from rendition of the defendant determined to be in violation of foreign law on capital punishment, but granting defendant's motion to use this as a mitigating factor); *United States v. Bin Laden*, 160 F. Supp.2d 670 (S.D.N.Y. 2001) (denying motion to suppress statements made during extradition proceedings). These decisions are likely to be the subject of an appeal by the defense.

3. *United States v. Doe*
Southern District of New York
Honorable Denise L. Cote
U.S. Court of Appeals for the Second Circuit

Date of Representation: 2/97 to 8/98
Represented: Government
Co-Counsel: Robert Buehler
Assistant U.S. Attorney - S.D.N.Y.
1 St. Andrew's Plaza
New York, NY 10007
(212) 637-1041

Opposing
Counsel: Michael Kennedy, Esq.
425 Park Avenue
New York, NY 10022
(212) 935-4500

Summary: A witness who was immunized refused to answer questions before a grand jury conducting an investigation into a terrorist organization. At the request of the Government, Judge Cote held the witness in contempt and confined him to prison. Judge Cote also ordered the forced feeding of the witness. The witness appealed his detention and the forced feeding order. I prepared the briefs submitted to Judge Cote and conducted the hearings in the District Court. I also prepared the Government's brief on appeal and conducted the oral argument. The Second Circuit affirmed both orders. The decision is reported at: *In re: Grand Jury Subpoena, John Doe*, 150 F.3d 170 (2d Cir. 1998).

4. *United States v. Kenmore Hotel*
Southern District of New York
Hon. Milton Pollack
U.S. Court of Appeals for the Second Circuit

Date of Representation: 6/94 to 3/96
Co-Counsel: Ellen Silverman Zimiles
KPMG
1345 Avenue of the Americas
New York, NY 10105
(212) 758-9700
Opposing
Counsel: Barry M. Fallick, Esq.
666 Third Ave.
New York, NY 10017
212-697-4090

Summary: Co-counsel and I filed a civil complaint seeking forfeiture of a welfare hotel that the landlord permitted to be used as a marketplace for narcotics. After several depositions (many of which I took), the defense moved for summary judgment, arguing that the forfeiture of the building violated the Eighth Amendment's Excessive Fines clause. The Government cross-moved for summary judgment, arguing that the undisputed facts supported forfeiture and that forfeiture of the building was within the bounds of the Excessive Fines Clause. I prepared the brief in the District Court. Judge Pollack granted summary judgment in favor of the Government. *See United States v. All Right, Title and Interest in Property Known as 143-147 East 23rd Street*, 888 F. Supp. 580 (S.D.N.Y. 1995). The landlord appealed. I assisted in the preparation of the brief on appeal. The Second Circuit affirmed Judge Pollack's decision. *See United States v. All Right, Title and Interest in Property Known as 143-147 East 23rd Street*, 77 F.3d 648 (2d Cir. 1996).

5. *United States v. Polanco*
Southern District of New York
Hon. Whitman Knapp
U.S. Court of Appeals for the Second Circuit

Date of Representation: 7/93 to 2/95
Represented: Government
Co-Counsel: Maria A. Barton (1st Appeal)
Assistant U.S. Attorney - S.D.N.Y.
300 Quarrapas Street
White Plains, NY 10601
(914) 993-1909

Paul G. Gardephe (2nd Appeal)
Patterson, Belknap Webb & Tyler
1133 Avenue of the Americas
New York, NY 10036
(212) 336-2310

Opposing Counsel:

Heriberto Cabrera, Esq.(1st Appeal)
5615 5th Avenue
Brooklyn, NY
718-439-3600

Martin Flumenbaum, Esq.(2nd Appeal)
Paul Weiss Rifkind Wharton & Garrison
1285 Avenue of the Americas
New York, NY 10019
(212) 373-3191

Summary:

Defendant pled guilty to illegally reentering the United States subsequent to deportation. At sentencing, Judge Knapp decided not to apply the "aggravated felony" enhancement for defendant's prior narcotics convictions. The Government appealed. I wrote the Government's brief on appeal and represented the Government at oral argument. The Second Circuit reversed and remanded the case for re-sentencing. *See United States v. Polanco*, 29 F.3d 35 (2d Cir. 1994). On remand, Judge Knapp again refused to apply the enhancement. The Government again appealed. I prepared the brief on appeal and again represented the Government at oral argument. The Second Circuit again reversed with instructions to sentence the defendant within a guidelines range that incorporated the enhancement.

See United States v. Polanco, 47 F.3d 516 (2d Cir. 1995).

6. *United States v. Genao*
Southern District of New York
Hon. John S. Martin, Jr.
U.S. Court of Appeals for the Second Circuit

Date of Representation: 1/94 to 8/95
Represented: Government
Co-Counsel: None

Opposing Counsel: Joyce London, Esq. (Trial)
20 Vesey Street
New York, NY 10016
(212) 964-3700

James Kousouros (Sentence/Appeal)
80-02 Kew Gardens Road - Suite 1030
Kew Gardens, NY 11415
(718) 575-5450

Summary: I tried defendant to conviction for narcotics conspiracy before Judge Martin. On appeal, the defendant argued that the narcotics conspiracy statute violated the Constitution. I prepared the Government's brief on appeal and represented the Government at oral argument. The U.S. Court of Appeals for the Second Circuit held the statute constitutional and affirmed the defendant's conviction. The decision is reported at: *United States v. Genao*, 79 F.3d 1333 (2d Cir. 1996).

7. *United States v. Duran* (94 Cr. 300 (SS))
Southern District of New York
Hon. Sonia Sotomayor

Date of Representation: 2/96
Represented: Government

Co-Counsel: Lewis J. Liman
Cleary Gottlieb
One Liberty Plaza
New York, NY 10006
(212) 225-2550

Opposing Counsel: Stewart L. Orden, Esq.
299 Broadway, Suite 1300
New York, NY 10007
(212) 406-4100

Summary: I and co-counsel tried defendant to conviction for violation of narcotics offenses before Judge Sotomayor. The conviction was affirmed on appeal.

8. *United States v. Pang-Yan Lui* (97 Cr. 519 (SS))
Southern District of New York
Hon. Shirah A. Scheindlin

Date of Representation: 9/97
Represented: Government
Co-Counsel: None

Opposing Counsel: Margaret A. Alverson, Esq.
41 Madison Avenue, 34th Floor
New York, NY 10010
(Last Known Address)

Summary: I tried defendant to conviction for violation of narcotics offenses before Judge Scheindlin. The conviction was not appealed.

9. *United States v. Leichus* (93 Cr. 1067 (SS))
Southern District of New York
Hon. Sonia Sotomayor

Date of Representation: 1/94 thru 12/94
Represented: Government
Co-Counsel: None

Opposing Counsel: Gerald Shargel, Esq.
570 Lexington Avenue
New York, NY
(212) 446-2323

Summary: Defendant was charged with illegal gambling operations in part of a large RICO enterprise. I prepared the Government's briefs in opposition to the defendant's motion to remove a court-appointed monitor of the defendant's business. Judge Sotomayor rejected the defendant's motion in an oral ruling. Later, the defendant pled guilty.

10. *United States v. Caceres* (94 Cr. 1043 (JFK))
Southern District of New York
Hon. John F. Keenan

Date of Representation: 5/95 to 6/95
Represented: Government
Co-Counsel: None

Opposing Counsel: Ivan S. Fisher, Esq.
575 Madison Ave.
New York, NY 10022
(212) 517-5000

Summary: I tried defendant to acquittal before Judge Keenan. The defendant was charged in several narcotics counts.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters

that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

I have conducted several hearings/trials other than the ones listed in Question 18. Some examples include the following:

1. *United States v. Gonzalez* (93 Cr. 960)
   Southern District of New York
   Honorable Dominick L. DiCarlo (deceased)

   Date of Representation: 11/93 to 3/95
   Represented: Government
   Co-Counsel: None

   Opposing Counsel: Paul J. Madden, Esq.
   26 Court Street, Suite 810
   Brooklyn, NY 11242
   (718) 624-0964

   Summary: I conducted the trial of a defendant charged in several counts of credit card fraud. The defendant pled guilty on the eve of closing arguments.

2. *United States v. Assally*
   Southern District of New York
   Honorable Leonard B. Sand

   Date of Representation: 4/98 to 8/98
   Represented: Government
   Co-Counsel: None

   Opposing Counsel: Tracey Eadie Gaffey, Esq.
   Federal Public Defender's Office
   460 Federal Plaza
   Central Islip, NY 11722
   (631) 712-6500

Summary: Defendant was charged with passport fraud and moved to dismiss the indictment under the United Nations Convention Relating to the Status of Refugees. I drafted the Government's response. However, the defendant pled guilty before the motion was resolved.

3. *United States v. Wo* (93 Cr. 367 (JSM))
Southern District of New York
Honorable John S. Martin, Jr.

Date of Representation: 4/93 to 9/94
Represented: Government
Co-Counsel: None

Opposing Counsel: Ronald J. Margolis, Esq.
110 East 59th Street
New York, NY
(212) 809-3710

Summary: Defendant was charged in several counts with credit card fraud and firearms violations. I drafted the Government's response to the defense motions to suppress items seized during a search, which motion was denied orally by Judge Martin. The defendant pled guilty before trial.

4. *United States v. Vasquez* (93 Cr. 802 (LBS))
Southern District of New York
Honorable Leonard B. Sand

Date of Representation: 8/94 to 10/94
Represented: Government
Co-Counsel: None

Opposing Counsel: James A. Cohen, Esq.
Fordham Law School
33 West 60th Street, 3rd Floor

New York, NY 10023
(212) 636-6822

Summary: Defendant was charged with conspiracy to distribute narcotics. I prepared the Government's memorandum of law in response to the defendant's motion to suppress post-arrest statements and conducted the suppression hearing. Judge Sand denied the defendant's motion. After the defendant pled guilty, I also prepared the Government's submissions regarding sentencing.

5. *United States v. Mullins* (91 Cr. 890 (KMW))
Southern District of New York
Honorable Kimba Wood

Date of Representation: 2/95 to 5/95
Represented: Government
Co-Counsel: Maria A. Barton
Assistant U.S. Attorney - S.D.N.Y.
300 Quarrapas Street
White Plains, NY 10601
(914) 993-1909

Opposing Counsel: Dana Hanna, Esq.
189 Montague Street
Brooklyn, NY
(Last Known Address)

Summary: Defendant was charged with conspiracy to distribute methamphetamine and P2P. I prepared the Government's memorandum of law in response to the defendant's motion to suppress a Canadian wiretap and to dismiss the indictment on speedy trial grounds. Judge Wood orally denied the defendant's motions and the defendant subsequently pled guilty.

6. *United States v. Cofer* (87 Cr. 555(RJW))
Southern District of New York
Honorable Robert J. Ward (deceased)

Date of Representation: 4/93
Represented: Government
Co-Counsel: Andrew C. McCarthy
300 Quarropas Street - 3rd Floor
White Plains, NY 10601
(914) 993-1946

Opposing
Counsel: Bobbi C. Sternheim, Esq.
Rochman Platzer Fallick & Sternheim
666 Third Avenue, 17th Floor
New York, NY 10017
(212) 697-4090

Summary: I conducted a post-trial hearing in connection with the defendant's motion for reduction of sentence. (I did not conduct the underlying trial). Judge Ward granted the defendant's motion to reduce his sentence.

7. *United States v. Afzal* (No Docket Number)
Southern District of New York
Honorable Loretta A. Preska

Date of Representation: 8/93 - 10/93
Represented: Government
Co-Counsel: None

Opposing
Counsel: Howard R. Leader, Esq.
11 East Broadway
New York, NY 10038
(212) 732-7575

Summary: Defendant was charged with immigration fraud in another district, and sought to dismiss the

> warrant during the removal proceedings. I drafted the Government's response. Judge Preska denied the motion orally.

I also have conducted several investigations involving court-approved electronic surveillance. Most of these investigations all resulted in indictments and guilty pleas. Finally, I also have been involved in a number of investigations of suspected international terrorists. These investigations often involved extensive grand jury practice, most of which is still under seal. In most instances, I served as the lead prosecutor handling the investigation.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

   I expect no such sources of income.

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

   The only potential conflicts I foresee involve criminal cases that I have supervised or with which I have otherwise been involved as a prosecutor, or cases involving my wife's law firm. In both instances, I intend to follow the applicable canons of judicial ethics and I expect I will recuse myself from such cases.

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

   No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

   Please see attached financial disclosure report.

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

Please see attached net worth statement.

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

In 1976, I did clerical work each for the campaigns of President Ford, gubernatorial candidate (and later Governor) James Thompson, and Congressman Abner Mikva.

FINANCIAL STATEMENT

NET WORTH **(as of 8/27/03)**

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

ASSETS		LIABILITIES	
Cash on hand and in banks	$206,981	Notes payable to banks-secured	$0
U.S. Government securities-add schedule	$3,500	Notes payable to banks-unsecured	$0
Listed securities-add schedule	$5,356	Notes payable to relatives	$0
Unlisted securities--add schedule	$0	Notes payable to others	$0
Accounts and notes receivable:	$0	Accounts and bills due	$0
Due from relatives and friends	$0	Unpaid income tax	$0
Due from others	$0	Other unpaid income and interest	$0
Doubtful	$0	Real estate mortgages payable-add schedule	$0
Real estate owned-add schedule	$0	Chattel mortgages and other liens payable	$0
Real estate mortgages receivable	$0	Other debts-itemize:	$0
Autos and other personal property	$40,000		
Cash value-life insurance	$0		
Other assets itemize:			
Wife's 401(k)	$83,889		
Wife's HR-10	$44,822		
Thrift Savings Plan	$116,803	Total liabilities	$0
Janus Mutual Funds	$11,545	Net Worth	$512,896
Total Assets	$512,896	Total liabilities and net worth	$512,896
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor	$0	Are any assets pledged? (Add schedule)	No
On leases or contracts	$0	Are you defendant in any suits or legal actions?	No
Legal Claims	$0	Have you ever taken bankruptcy?	No
Provision for Federal Income Tax	$0		
Other special debt	$0		

Schedule

(As of 8/27/03)

Listed Securities

Name of Stock	# of Shares	Price/Share	Total Value
Freemarkets, Inc.	75	8.89	$667
Garmin, Inc.	50	40.08	$2004
Palm	5	16.99	$85
Seitel	50	0.33	$16.50
XM Satellite Radio	100	13.33	$1,333
Cash in Brokerage Account			$1,251
US Government Savings Bonds			
Savings Bonds			$3,500

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

   My wife and I participate in the Student Sponsor Partnership, which is a program that matches high school students from disadvantaged backgrounds with mentors for their four years in high school. Since 1997, my wife and I have worked with four high school students from the same family in Brooklyn (two of whom we officially sponsored and two of whom we otherwise mentored). In addition to financing a portion of the students' tuition at a Catholic high school, we have spent substantial time with these students doing everything from college visits and applications to attending basketball and baseball games. We are planning on sponsoring the youngest sibling in this same family beginning this fall.

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

   No.

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

I applied to Governor George Pataki's selection committee in January 2003. Thereafter, I was interviewed by members of that committee, who subsequently forwarded my name to the White House Counsel's office. I was interviewed by representatives of the White House Counsel's office and a representative from the Office of Legal Policy from the Department of Justice in April 2003. Also, I completed various forms and the FBI conducted a background investigation.

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

No.

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

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

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

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

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

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

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

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

The Constitution provides that the proper role for the judiciary is to decide "cases" and "controversies." This mandate should be considered in light of two principles that are at the foundation to our system of government. One, we are a people committed to the ideals of individual liberty and equal justice under the law. Two, we are a democracy where our elected representatives are accountable to the citizenry.

There is, at times, a tension between these two ideals when applied to the courts. On the one hand, the courts play a critical role in safeguarding liberty and justice. Indeed, it is often easier for an individual to turn to the judiciary, rather than the legislative or executive branches, to confront particular instances of injustice. On the other hand, because judges are not subject to the electoral process, they often do not reflect, because it is not their constitutional charge to reflect, the social, economic, and political needs of the people.

AO-10
Rev. 1/2002

FINANCIAL DISCLOSURE REPORT
FOR CALENDAR YEAR 2002

Report Required by the Ethics in Government Act of 1978, (5 U.S.C. App., §§101-111)

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
KARAS, KENNETH, M.	UNITED STATES DISTRICT COURT – SOUTHERN DISTRICT OF NEW YORK	9/23/03
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	5. ReportType (check appropriate type)	6. Reporting Period
U.S. DISTRICT COURT – NOMINEE –	_X_ Nomination, Date 9/18/03 ___ Initial ___ Annual ___ Final	1/1/2002 – 9/1/2003
7. Chambers or Office Address	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.	
U.S. ATTORNEY'S OFFICE – SDNY 1 ST. ANDREW'S PLAZA NEW YORK, NY 10007	Reviewing Officer _____ Date _____	

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

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

	POSITION	NAME OF ORGANIZATION/ENTITY
[ ]	**NONE** (No reportable positions.)	
1	TRUSTEE	TRUST #1
2		
3		

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

	DATE	PARTIES AND TERMS
[X]	**NONE** (No reportable agreements.)	
1		
2		
3		

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

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
[ ]	**NONE** (No reportable non-investment income.)		
1	9/1/01 – 9/1/03	DAVIS POLK & WARDWELL	$
2			$
3			$
4			$
5			$

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
KENNETH M. KARAS	9/23/03

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.
(Includes those to spouse and dependent children. See pp. 25-27 of Instructions.)

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

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

	SOURCE	DESCRIPTION	VALUE
☐	**NONE** (No such reportable gifts.)		
1	EXEMPT		$
2			$
3			$
4			$

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

	CREDITOR	DESCRIPTION	VALUE CODE*
☐	**NONE** (No reportable liabilities.)		
1	CITIBANK	CREDIT CARD	J
2			
3			
4			
5			
6			

*Value Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000 N=$250,001-$500,000 O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
KENNETH M. KARAS	9/23/03

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

	A. Description of Assets (including trust assets)	B. Income during reporting period (1)	(2)	C. Gross value at end of reporting period (1)	(2)	D. Transactions during reporting period (1)	If not exempt from disclosure (2)	(3)	(4)	(5)
	Place "(X)" after each asset exempt from prior disclosure	Amt. Code1 (A-H)	Type (e.g., div., rent or int.)	Value Code2 (J-P)	Value Method Code3 (Q-W)	Type (e.g., buy, sell, merger, redemption)	Date: Month-Day	Value Code2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
	NONE (No reportable income,									
1	Janus Worldwide Fund	A	Dividend	J	T	Exempt				
2	Janus Fund		None	J	T	Exempt				
3	Janus Global Life Sciences Fund		None	J	T	Exempt				
4	E*Trade CD	A	Interest	J	T	Exempt				
5	E*Trade Money Market	A	Dividend	K	T	Exempt				
6	JFCU CD	C	Interest	L	T	Exempt				
7	Cibibank Savings A/C	A	Interest	L	T	Exempt				
8	Citibank Checking A/C		None	K	T	Exempt				
9	Independence Community	A	Interest	J	T	Exempt				
10	HR-10 Plan		None	K	T	Exempt				
11	Montague & Capital Growth Index		None	J	T	Exempt				
12	Spartan US Equity Fund		None	K	T	Exempt				
13	Royce Total Return		None	K	T	Exempt				
14	Fidelity Diversified Int'l Fund		None	K	T	Exempt				
15	Vanguard Small Capital Growth		None	J	T	Exempt				
16	Oakmark Equity & Income Fund		None	J	T	Exempt				
17	US Government Savings Bonds		None	J	T	Exempt				

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

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
KENNETH M. KARAS	9/23/03

VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure	Amt. Code1 (A-H)	Type (e.g., div., rent or int.)	Value Code2 (J-P)	Value Method Code (Q-W)	Type (e.g., buy, sell, merger, redemption)	(2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ **NONE** (No reportable income, assets, or transactions)									
18 Garmin Common Stock		None	J	T	Exempt				
19 XM Satellite Radio Common Stock		None	J	T	Exempt				
20 E*Trade Brokerage A/C	A	Interest	J	T	Exempt				
21									
22									
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26									
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31									
32									
33									
34									
35									

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

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
KENNETH M. KARAS	9/23/03

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

The Trust discussed in Part I is a non-funded insurance trust for my wife. My wife is a trustee of a similar trust in my name. However, neither trust confers any current benefits or income and only is triggered upon mine or my wife's demise.

IX. CERTIFICATION.

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

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

Signature _____ Date 9/23/03

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. App., § 104.)

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

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

Senator SESSIONS. Well, thank you very much.

Mr. Haynes, I would direct some questions to you and some discussion with you. Of course, the court of appeals is the intermediate appellate court, one step below the Supreme Court. We have 11 of those circuits today, and they are very, very important to the smooth functioning of the legal system in America. As the courts grow larger, it is sometimes difficult to maintain harmony and speak with a clear voice. As the circuits get larger, we find there are problems with that.

But how do you feel your experience as a general counsel for large Government and corporate entities and your background will help you be effective on this court?

Mr. HAYNES. Senator, thank you. I agree that is a very important question. The proper functioning of the judiciary is integral to the proper operation of our Government at large, and the ability of judges on any particular court to work together is very important. It is also, I think, very important to have a broad range of experience, and I hope, if confirmed, to be able to contribute some of my experience to the deliberations of the Fourth Circuit Court of Appeals.

I have served in very many different legal jobs, beginning as a law clerk at the trial level of this circuit for one of my heroes, Jim McMillan, who died a few years ago. I have served in the military as a lawyer. I have served, as you point out, as a general counsel for large Government organizations, most recently as general counsel of the Department of Defense, where I am responsible in one way or another for the delivery of the legal services of almost 7,000 lawyers all around the world on every conceivable topic.

I have also been privileged to serve in a private law firm and in the corporate world. In the private firm, of course, I have represented clients ranging from corporations to individuals in matters ranging from environmental law to Government contracts, in both civil and criminal fields, and perhaps most important, in another context, in the pro bono world. As I hope my experience reflects, public service is very important to me, and service in that area also very important.

One of the most rewarding things I have ever done was in between my time as the associate general counsel at General Dynamics Corporation, before returning back to my law firm, Jenner and Block here in Washington, I went to Kazakhstan in Central Asia for 3 months, working for an outfit called Mercy Corps International in a part of the world I had never visited, working to help them in what is called micro credit or micro finance. It is a concept developed in Bangladesh originally, and the idea is that one helps people understand the market system and how to make their own way in the world by loaning them money, teaching them how to use it, and make a profit come back.

So because of my experience, I hope, if confirmed, to be able to provide a unique perspective on the court to which I have been nominated.

Senator SESSIONS. Well, I think you do have a great background. I think that Government service, the private practice, representing the Defense Department, your military and other experience is very, very helpful.

I believe, for example, that we in Congress ought to review periodically the Sentencing Guidelines that we passed. I think in some areas we need some reform. I think in crack cocaine we can see some reduction in those penalties. I think there are some white-collar crimes that probably deserve some increases in penalties.

But I will just ask you this: The Congress has set guidelines. It has set minimum mandatories. Would you be prepared to follow those even if in a given case you felt that did not result in the sentence you personally would have given?

Mr. HAYNES. Well, Senator, as a nominee, I must remind myself anytime I am asked about how I might rule in a particular case that I have to be careful about not making any predictions and so forth. But I would say that I would approach any case, including the case that you describe, looking first and foremost at the applicable laws, at the facts as they come before me, and the Constitution as it applies.

I believe that the Sentencing Guidelines have been tested and while I have not ever been in a position to apply them, I would certainly look at that as another very important and in many cases obligatory thing to follow.

Senator SESSIONS. I think it is, and I would just say that we would be glad to hear if you have opinions concerning improvements in the system. I think that is healthy that we should listen before Congress has passed those rules, and so it is obviously Congress's responsibility to modify them from time to time when they need to be modified. But the integrity of the system does depend on appellate courts, I believe, ensuring that the District Courts remain faithful, and if we break that integrity relationship in faithful adherence to the Sentencing Guidelines, I think in the long run we will erode the confidence in the system that we have created.

Judge Guirola, I am pleased to see you were an Assistant United States Attorney; is that correct?

Judge GUIROLA. That is correct, Senator.

Senator SESSIONS. It is all downhill from there.

[Laughter.]

Senator SESSIONS. The greatest job in the world. You have had a tremendous background and experience. What do you think—what are your goals for being a Federal judge? What would you like for people to say about you 5 years from now?

Judge GUIROLA. Senator, I would like for those people that had appeared before me to be able to, with confidence, say that they were treated fairly, they were treated impartially, that their cases were heard expeditiously, and I would like to think that the bar and those users of the Federal Court system would amongst themselves say that this was a Judge that was able to control his courtroom without oppressing the users. He was a judge that was always courteous and always civil, both to the litigant, lawyer and witness.

Senator SESSIONS. Well said. Remember, you were appointed, not anointed, as they say.

[Laughter.]

Senator SESSIONS. Ms. Hopkins, tell me about your goals for the Federal Bench. What are some of the things that you would like to accomplish if you are confirmed?

Ms. HOPKINS. Well, as you mentioned, it's very hard to top what Judge Guirola said, but my personal goals would be to act always with professionalism, integrity and fairness. I would like every litigant, rich or poor, no matter their status, who comes before me, to feel like they've been treated fairly whether or not they were happy with the result of the case, and that would be my goal, is for the court to be known as always being professional, and that would encourage professionalism among the bar, which in the Northern District of Alabama we're very lucky to have. And that I would always act with integrity, and that would be the integrity of the system and not just my personal integrity, and that everyone would be treated fairly.

Senator SESSIONS. I think that is well said, and I would ask if you would work on—you have a great court there that you will be joining, and work to have as much uniformity of rules. I think for all of you I would urge you to see, as far as possible, that the particular rules that you establish in your court are not unnecessarily contrary to the judge down the hall or one floor up, and it makes it even more complicated for lawyers and practitioners. Have you thought about that, in trying to make the court more friendly to lawyers and litigants who appear there?

Ms. HOPKINS. I think that the bench is actually open to that idea. I've talked to all of the sitting judges and that very concept has been raised, and I believe all the jurists are open to the concept of having, insofar as possible, rules that don't make it difficult for litigants to come before us. For example, every different judge has a different font size they want, and things can just make things harder for litigants than they need to be. Obviously, there are more substantive rules too that could be made uniform, but I think you'll find that that bench is open to those ideas under the leadership of Chief Judge Clemon.

Senator SESSIONS. I think so too. I was not singling that bench out. As a practitioner myself and going into courts, it is better if the rule are simpler rather than more complex.

Mr. Karas, one more comment and then we will hear from Senator Warner. Would you share for us your goals 5 years from now, what you would like people to say about your tenure on the bench?

Mr. KARAS. Thank you, Mr. Chairman. I would hope that lawyers who appear before me, and their clients, would say that they have been before a judge who was always fair, so that if they ever had to appear again and they were on the opposite side of the issue, they feel that they would get the same consideration as they did the first time, a judge who was always courteous and respected the obligation of being a judge, and respecting my oath and applying the law fairly and decisively and as expeditiously as can be done.

Senator SESSIONS. Thank you, and I think expeditiously is important. A lot of litigants wait and wait for weeks and months on that judge to rule, and the bad news is probably better sooner than later. Maybe it is good news.

Senator Warner, it is a delight to have you here. We know that you are a lawyer, been an Assistant United States Attorney and

my Chairman on the Armed Services Committee, and we are delighted to hear from any remarks you would like to give us at this time.

PRESENTATION OF WILLIAM JAMES HAYNES II, NOMINEE TO BE CIRCUIT JUDGE FOR THE FOURTH CIRCUIT, BY HON. JOHN WARNER, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator WARNER. I apologize to my distinguished constituent, but better than that, my friend, for my tardiness. We were over in S–407, as you gentlemen know, trying to conclude a conference on the Intelligence Committee, on which I serve, and I just have to go right on back.

So I am going to ask to submit my record. I asked my junior colleague to come and brief in full, which he did unsparingly, I am told, so you have all the facts before you.

I just commend the President for selecting this fine man, and we are going to miss him at the Department of Defense, assuming he is confirmed, and I hope he is.

Good luck to you. You are on your own.

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

Senator SESSIONS. Thank you. Senator Warner, we appreciate your comments and support.

Senator Kennedy?

Senator KENNEDY. Thank you very much, Mr. Chairman. I join in welcoming all of the nominees, and congratulate you.

Mr. Haynes, when you were introduced, did I understand that your youngest son is called Teddy, and he is the youngest member of your family?

[Laughter.]

Senator KENNEDY. Could I get one more look at him, as the youngest member of the family that was called Teddy too, I am always glad to—

Mr. HAYNES. Senator, his name is Taylor.

Senator KENNEDY. Taylor, excuse me.

Mr. HAYNES. But maybe we can change it.

[Laughter.]

Senator KENNEDY. I always remember the story that my brother used to say about me, that I wanted to be judged on my own and not my last name, so that I was thinking of changing my name from Teddy Kennedy to Teddy Roosevelt.

[Laughter.]

Senator KENNEDY. Congratulations to all of you.

Mr. Haynes, I have some questions for you and I appreciate your response. You have been nominated to one of the most important and influential appellate courts in the country. You have no appellate litigation experience, almost no courtroom experience. As general counsel for the Department of Defense, you share responsibility for three of the most controversial policies in the administration, the indefinite detention of U.S. citizens without counsel or judicial review, the refusal to treat any of the hundreds of persons detained at Guantanamo as prisoners of war under the Geneva Conventions, and the Defense Department's military tribunal plan,

which has drawn the condemnation of human rights organizations and our closest allies. So this is a record on which we have to judge your nomination to the Fourth Circuit, and I might add the Circuit seems to be the administration's forum of choice for its more controversial cases on the detention of foreign nationals, so I look forward to your answers on some of these basis questions.

In October 2003 the International Committee on the Red Cross took the extraordinary steps to publicly criticize the United States for acting above the law in detaining 660 foreign nationals at Guantanamo. The United States is a party to the Geneva Conventions of 1949, and these treaties provide legal protections to soldiers of all nations. One of the most important principles, that every person in enemy hands must be classified, either as a prisoner of war or as a civilian. Civilians may be prosecuted as criminals for their acts of violence, but POWs may be tried only for violation of the laws of war. The administration is blatantly inventing a third category, unlawful combatants, which is not contained in the Geneva Conventions or anywhere else in national law.

The administration has categorically denied that any of the 660 detainees at Guantanamo qualify as POWs, even if they were serving in the army of the former Afghan Government. That can't possibly be true. Every other country in the world, including our closest allies in the war on terrorism raises this issue and question, that they do not believe that it is true. The administration refuses even to convene a tribunal to determine whether any of the detainees are entitled to POW status. We routinely did that in past wars. Why not now? Are we not clearly violating the Geneva Accords?

Mr. HAYNES. Well, Senator, you've raised quite a few very important points, and I appreciate your concern about how the United States supplies the laws of war and the Geneva Conventions, and the best traditions of this country.

I can assure that those in the administration with whom I've worked share that very deep concern. This is a very important issue, particularly to our own fighting forces. It's an important issue also, however, Senator, as we face a foe that we have not faced before, and by that I mean those arrayed against us in the global war on terrorism. This war, unlike virtually any in the past, is one that straddles the line between law enforcement and international conflict, and so the application of a set of norms that is designed for one or the other system is not easy to fit to the current circumstance, so all of us have worked very hard to try to divine the basic principles associated with each of those as we employ our forces in this very important war to protect the American people and to protect our way of life.

One of the most important objectives in doing that is to make sure we do that lawfully and consistent with our best traditions.

Senator you made a number of important statements, and I may not have addressed all of them.

Senator KENNEDY. Let me ask you. I agree we are facing a new situation. It seems to me it is more important because we may very well have Americans that are captured that are going to be held in some place, and that is even more the reason, I would think, since we are facing this, that we would want to comply, and at least try, as we are working with the international community, to

make sure that we are working within the world community. We may very well have American servicemen detained. I can see some being detained and held under these circumstances, indefinitely someplace. What is going to be the reaction here? I do not think we are going to like it very much. And if we re going to continue along in what I think has been considered to be the violation of the Geneva Conventions, I am not sure that this—we look at this, at least I do, as a protection for Americans, for Americans, as well as obviously the general humanitarian concern, and I am concerned about what this may very well do when we are finding our own people are captured.

As I understand, none of the 660 detainees at Guantanamo were regular members of the army or fought under responsible command, carried their arms openly, wore an identifying insignia or obeyed the laws of war. How can we possibly know that unless we have a hearing?

Mr. HAYNES. Senator, you are referring to the four-part test in the Third Geneva Convention of 1949, that is applied when there is doubt about the status of any particular individual covered by that treaty. Those people to which you refer in Guantanamo Bay, some 600 plus individuals, arrived there only after a very careful screening process from the point of their capture principally in Afghanistan in a war.

Each of those individuals is repeatedly reviewed, and indeed the United States has released or transferred well over 60 of those people who have come into Guantanamo, and it is my expectation that some additional ones will be released or transferred in the future. So to say that they have not been reviewed or evaluated in some objective and responsible way, I would disagree, but nevertheless agree very deeply that it is very important, that how we do this is critical to how we are seen in the world and how we prosecute this war on terror.

On that score, Senator, if I may, there is no doubt that a belligerent, in this case the United States, is entitled under very longstanding and undisputed legal authority, to hold people who tried to capture or kill or otherwise harm the interests of the United States. There's no doubt that we are at war with al Qaida and other terrorists of global reach. And those people that are detained in this conflict are properly detained. They have not, to be sure, received what is called an Article V tribunal process, which is really a very simple process. In application it's very cursory, it's done quickly on the battlefield.

As the United States does it, it's done by three officers in the field. In this case, for all the detainees in Guantanamo, there has been multiplied many-fold of the process provided normally in an Article V tribunal process. So we believe that we are properly holding them and consistent with the best U.S. traditions.

Senator KENNEDY. Is it your position that there are no regular members of the army of the former Afghan Government at Guantanamo?

Mr. HAYNES. Senator, I hesitate to answer for just a second because I want to make sure I'm responsive to your specific question. Those people at Guantanamo, as I said, were captured on the battlefield. Some of them were individual actors. Some of them worked

with tribal adversaries, but there was no regular uniformed army commanded by responsible superiors in the conflict in Afghanistan.

Senator KENNEDY. That is something—you are getting that from our military? Our military told you that? Where did you get that answer from? Is that the American military that fought in that battle that told you that? That is a surprise to me. I have attended all of these briefings. That is a very big surprise the way you described the nature of the opposition and the organization of the fighters, certainly different from what I have heard.

Now, last April you said that POW rights are not for everyone, they have to be earned. There is no such principle of earned rights in the Geneva Convention. The Convention provides that whenever there is a doubt about a prisoner's status, must be treated as a POW until a competent tribunal determines otherwise. No such tribunal has been set up at Guantanamo. Where is this earned rights? I can imagine an American being held by al Qaida, someone telling him he has to earn his rights. What do you mean by that?

Mr. HAYNES. Senator, I think what that refers to is the fact that the Geneva Conventions reflect some highly refined principles derived over time, that when enemies fight each other, certain principles must be honored, and those principles include that combatants must be distinguished from noncombatants, that they must be—they must employ force against military targets, that they must respect the laws of war, and that they not operate as a roving mob that pillages and destroys things indiscriminately.

That is the four-part test that you described earlier, Senator, in the Geneva Convention, that must be met when an individual is reviewed for possible consideration as a prisoner of war. That person must belong to an armed force, a regular armed force commanded by responsible officials, wear a distinguishing uniform or other marks visible at a distance, comply with the laws of war. That is how one earns prisoner of war status, and that's what the Geneva Conventions specifically require in order to earn it, as you put it.

If such combatants do not qualify under that test, then they are not lawful combatants, a phrase which the Supreme Court used in 1942 to describe people who did not follow those rules.

Senator KENNEDY. I want to move on. It is difficult for me to believe that those that were opposing both the Americans, the coalition, the others, do not fall within the categories of the Geneva Convention. Certainly the Red Cross believes that they do, and we are unable to say of those 600, other than what you have mentioned here, that they have been reviewed over in Afghanistan and in other circumstances, but unable to indicate that there has been a formal kind of a process, a tribunal, where their status would have been reviewed. That is troublesome. Let me ask you this—

Senator SESSIONS. Mr. Kennedy, your time is pretty well over. Could we go to Senator Feingold and come back, and I will give you time to do that?

Senator FEINGOLD. Senator Kennedy, do you have a lot more or just—

Senator KENNEDY. Just one thing. This was the last part on this, and then I will wait and come back.

Senator FEINGOLD. Mr. Chairman, if you do not mind, I do not.

Senator SESSIONS. All right.

Senator KENNEDY. And that is on the Guantanamo, the three children, ages 13 to 15 among the detainees. It is a violation of international humanitarian law to recruit or allow children under the age of 15 to participate in hostilities. In a treaty ratified by the United States last year, saying 18 is the minimum age for participation. It requires governments to demobilize, rehabilitate former children soldiers. Why have we not followed those agreements and those treaties? Why are we holding children down there?

Mr. HAYNES. Senator, I believe there are some young fighters down there and—

Senator KENNEDY. These are 13 to 15, at least my information is, and I do not know how long they have been down there, 2 years or?

Mr. HAYNES. No, sir. I think there are some people that are a little bit older than that, but you're right, they are held down there, and simply put, they're held because they were captured trying to kill Americans and other allies.

I can say that they are being extraordinarily well treated, and it is our desire, quite fervently held desire, to return those young individuals to society as soon as we possibly can. In fact, they're getting almost one-to-one tutoring. For example, the former minister of education for Afghanistan is their tutor. They're getting extraordinary medical care just as everyone else in Guantanamo is, and they are coming along quite nicely.

But the fact of the matter is, they are dangerous. They were quite dangerous when they were captured. It's my hope, and I'm sure it's the hope of the people who are responsible for them in Guantanamo, that they will be returned to society as soon as possible.

May I say one other thing, Senator, please. I don't want to mislead you at all. The Geneva Conventions are extraordinarily important, and it is very important for our fighting forces that we follow them strictly, even in the case where we've had this discussion today, where we have made some determinations that some individuals do not qualify for certain aspects of the Geneva Convention, such as, for example, the payment of 7 Swiss francs every month, the use of musical instruments, a canteen in the compound and so forth. We are providing the fundamental guarantees of the Geneva Convention to all the people in Guantanamo, including in particular humane treatment, medical care, practicing of religion, a healthy diet, exercise. They're being very well treated under the circumstances.

Senator KENNEDY. My time is up. I would also look at the incidents of suicide down there that have been reported and other kinds of circumstances as well. It is a difficult situation.

Senator SESSIONS. Thank you, Senator Kennedy. These are important issues. In fact, we have had several hearings in the Judiciary Committee on it, and the Defense Department and Department of Justice have responded with the legal justifications for the actions that the Department of Defense haws taken, and to date I do not think a court has found them to be fundamentally flawed in any way. But it is an important matter for us to discuss.

Senator Feingold.

Senator FEINGOLD. Thank you, Mr. Chairman. I thank Senator Kennedy for his line of questioning.

My congratulations to all of you, and wish you well.

Let me ask my questions of Mr. Haynes though, and I want to talk about another aspect of some of the post–9/11 activities. I have concerns about the President's decision to detain three men, including two U.S. citizens as enemy combatants, and then hold them at a military facility indefinitely without charges, access to counsel or right to trial. Two of these cases are currently making their way through the Federal Appeals Court, and the Second Circuit heard oral arguments earlier this week in one of those cases.

Could you describe, Mr. Haynes, your involvement in the drafting of the President's Executive Order that allows for these sc-called enemy combatants to be held indefinitely without access to counsel?

Mr. HAYNES. Senator, those are important questions, and as a lawyer, the treatment of people detained by a government is something that is perhaps the most important thing to be considered by anybody who swears to uphold the law and to practice in the profession. It is—the rules associated with that are things that give me fits sometimes in how they're applied. And so we spend a lot of time on it.

I should not talk about specific cases in litigation, or at least about the facts of them, but I'm happy to talk about the principles that you have—

Senator FEINGOLD. Can you answer the question, what was your involvement in the drafting of the President's Executive Order that allows for this?

Mr. HAYNES. Yes, sir, I can do that. You may be referring to the President's November 2001 order in which he instructed the Secretary of Defense to prepare rules for the conduct of trials of terrorists that he determines should be subject to that order.

Senator FEINGOLD. I suspect that is not what I am referring to. I remember that, and it led to a lot of discussion in the Committee. What I am looking at here is the Executive Order that allows for enemy combatants to be held indefinitely. Are you suggesting that that was the same?

Mr. HAYNES. Sir, I am aware of just one Executive Order on the—

Senator FEINGOLD. I have it in front of me, a June 9, 2002 Executive Order. Is it your testimony then that you were not involved of the drafting of this June 9th, 2002 Executive Order? Would you like to review it?

Mr. HAYNES. May I please?

Senator FEINGOLD. And this one relates in particular to Mr. Padilla, as I understand.

Mr. HAYNES. Yes, sir, I'm sorry. When you said Executive Order I was thinking about a formal Executive Order. The paper that you showed me is an order from the President to the Secretary of Defense to do something, and it's redacted, and it is addressed to a particular individual.

To the extent that your question asks what legal advice I gave, I of course should decline to talk about that. But I can tell you that as the General Counsel of the Department of Defense, one of my

principal clients is the Secretary of Defense, and as the recipient of an order from the President to detain somebody such as the person described in that order, I did participate in advising the Secretary of Defense.

Senator FEINGOLD. Thank you. Two of the individuals detained here on U.S. soil in military facilities were actually in our Federal criminal justice system. In fact, one of them, Ali Almari, a Qatari national, went to college here and lived with his wife and children in West Peoria, Illinois, was investigated, arrested and indicted in our Federal criminal justice system. I understand that he was very close to a scheduled trial date when the administration suddenly decide to transfer him from criminal justice system to military custody indefinitely and without access to counsel.

What was your involvement in the President's decision to transfer Jose Padilla and Ali Saleh Almari from the civilian custody of the Justice Department to military custody?

Mr. HAYNES. Well, Senator, I think I just answered that as to one of the individuals, and again, in my role as General Counsel of the Department of Defense advising the Secretary of Defense, I was aware and did advise my clients.

Senator FEINGOLD. You have commented on the unique relationship between the Justice Department and the Defense Department with respect to the fight against terrorism. In a speech at Fordham Law School in April 2002, you said that the DOD and DOJ are working hand in hand. Did you or your members of your staff have discussions with Justice Department officials and prosecutors about Padilla and Almari, and whether they should be removed from the criminal justice system?

Mr. HAYNES. In the course of the decisions reflected in the paper that you just showed me, I certainly had some discussions with the Department of Justice, yes, sir.

Senator FEINGOLD. Did you agree with the President's decision?

Mr. HAYNES. I certainly believed that the President's decision was lawful, and I support what the President has done.

Senator FEINGOLD. Then why do you believe that our Federal criminal justice system, which has successfully investigated, prosecuted, and punished many terrorist suspects for heinous terrorist acts, including the embassy bombings in Africa in 1998 and the first World Trade Center bombing, is ill-equipped to handle these two terrorist suspects?

Mr. HAYNES. Senator, I have the highest regard for the Federal judiciary and the criminal justice system, and I do not believe I've ever made any statements or taken any actions that should be interpreted to reflect any lack of confidence on either of those institutions.

I think that an important thing to remember, Senator, in these very important issues that I know concern you deeply and concern me deeply is to remember that the criminal justice system and the rules associated with the prosecution of war against enemies of the United States are different systems. Sometimes they can apply to the same individuals, but different rules apply in each context. And to say that somebody who is detained as an enemy combatant in the global war on terror is detained in that context because there

is some concern about the criminal justice system I think is a misinterpretation.

Senator FEINGOLD. I think, you know, obviously the point is that I just described two instances in which the criminal justice system operated very effectively specifically against perpetrators of the international war on terrorism against the United States of America. And I think the burden is on the administration when it uses these extraordinary procedures to give us some sense of why it would work in one case but not in the other. But I realize you may have some constraints in terms of being able to discuss the details.

But somehow, in order to justify these very unusual procedures, I think that case has to be made because the record suggests that we have been able through the criminal justice system to do fairly well once we have caught some of these folks in terms of putting them away and convicting them.

Mr. HAYNES. Sir, if I may, you are absolutely right. The criminal justice system has proven to be quite capable to deal with a number of things. But one thing it doesn't do well, it is not designed to do well, is to prosecute a war. And in a war where we have an active enemy and we happen to detain those associated with our enemy in this armed conflict, we are quite justified in holding those people, and, indeed, perhaps obliged, you know, in order to conduct the war to try to get the information that those people might have in order to protect against future terrorist attacks.

Now, again, that is a separate legal regime that is time-tested and appropriate, and—

Senator FEINGOLD. Your argument would be that keeping these people in the criminal justice system as they were would constrain the Government from getting that information which they could otherwise get more easily as an enemy combatants?

Mr. HAYNES. Well, in some cases, sir, that's accurate. That doesn't mean that they're mutually exclusive in the long run. But in the context of fighting a war, if we happen to capture somebody on the battlefield and they have information, we first ought to detain them, and we ought to try to get the information that may affect the future conduct of the war. That's not a punishment. That is a preventive measure. It's not the application of the criminal laws, which necessarily and appropriately bring in all sorts of procedural protections, and—

Senator FEINGOLD. That suggests to me that there would be a limited time frame during which they should be in this status and then turned over to a criminal justice situation.

Mr. HAYNES. If prosecuted, yes, sir. Certainly the limited time frame is during the conduct of the hostilities. I mean, the time-tested laws of war—

Senator FEINGOLD. Or during the time in which it was a sufficient time to determine the information. Once the information has been determined, I am not hearing an additional justification for not putting that person in the criminal justice system. Or is there one?

Mr. HAYNES. Well, you may be right, but I can tell you that it is our policy that for those people, American citizens, who might be detained in the United States, once we have completed the interro-

gation process, there would be no particular reason to not allow them to see a lawyer. Yes, sir.

Senator FEINGOLD. Let me just ask one more question. The Fourth Circuit has already had some consideration of the case of Yasser Hamdi, another U.S. citizen detained indefinitely as an enemy combatant. If you are confirmed to the Fourth Circuit, it is quite possible that the enemy combatants issue could come before you, and you, of course, have been intimately involved in the President's development of this policy, as you have indicated today in your testimony.

Would you recuse yourself from a case challenges the President's designation of an individual as an enemy combatant? And if not, can you explain your reasons for not doing so?

Mr. HAYNES. Senator, thank you for the question. The integrity of the judiciary, including the appearance of impartiality and integrity of the judiciary, is very important. In the first instance, in any case in which I was, if confirmed, to be designated to sit to hear a particular case, I would look very closely at all the applicable rules, including the Federal statute that governs that. In any matter in which I had any particular involvement, of course, I would not participate further.

For some broader issue where I might have had some role in developing processes that apply, I would think that probably also I would not participate, depending on what the facts are. But I would have an obligation in that circumstance, if confirmed, to make sure that I discharged my responsibility and the oath taken as a judge.

One of the factors, of course, I would have to consider would be the appearance associated with that, and that would be something that I would be very attentive to, if confirmed and appointed.

Senator FEINGOLD. So both the substance of the fact that you have been involved with developing the policy and the appearance issue would both be factors that you would consider in whether to recuse yourself?

Mr. HAYNES. Yes, sir.

Senator FEINGOLD. I thank you for your answer.

Thank you, Mr. Chairman.

Senator SESSIONS. Thank you, Senator Feingold. That was an excellent exchange about an important issue, and it is something a lot of us, even lawyers, have never had to deal with until this war on terrorism started.

Senator Chambliss?

STATEMENT OF HON. SAXBY CHAMBLISS, A U.S. SENATOR FROM THE STATE OF GEORGIA

Senator CHAMBLISS. Thank you, Mr. Chairman. I have a statement that I wish to enter in the record, basically in support of the nomination of Mr. Haynes to the Fourth Circuit.

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

Senator CHAMBLISS. That statement basically says that my recommendation is based upon a recommendation to me, Mr. Haynes, by my good friend, Judge Griffin Bell, former judge of the Fifth Cir-

cuit Court of Appeals for whom I have such great respect. And Mr. Haynes comes highly recommended.

I note Mr. Feingold is gone, but I did want to say that we are operating in a different world today from what we have been operating in the past with respect to detainees who are not being declared prisoners of war but are being declared as terrorists and are being held in a way that I don't know that we have ever detained individuals before. But I think it has been absolutely necessary.

One of the individuals that Senator Feingold mentioned, this Almari, I know Mr. Haynes is probably hesitant to say too much about it, but there are some public facts that I have been handed by staff here that I think ought to be in the record.

The administration announced in June that it had designated Ali Saleh Kala Almari as an enemy combatant, and in my view, the facts fully support the President's decision to designate Almari as an enemy combatant. Almari is an individual the FBI identified early in the course of the September 11 investigations as someone with ties to an Al Qaeda operative involved in the 9/11 attacks. When he was interviewed by the FBI in October 2001, he lied to the FBI about having visited the United States previously. In December 2001, when he was interviewed by the FBI again, he refused to take a polygraph test and stated his intention to leave the country.

Later in December of 2001, after he was arrested on a material witness warrant, a search warrant was executed on his apartment, and during the search agents found, among other things, an almanac with major U.S. dams, reservoirs, waterways, and railroads marked, a sheet with 36 credit card numbers, and over 1,000 fraudulent credit card numbers on the hard drive of Almari's laptop computer. In February 2002, Almari was indicted for credit card fraud.

Recently, an Al Qaeda detainee identified Almari as an Al Qaeda sleeper operative who was tasked to help new Al Qaeda operatives get settled in the United States for follow-on attacks after 9/11. Additionally, two separate Al Qaeda detainees have confirmed that Almari traveled to Al Qaeda's Al Faruq camp in Afghanistan, where he met with Osama bin Laden and other senior Al Qaeda members and pledged his service to bin Laden and even offered to martyr himself if necessary.

The Government has also uncovered evidence that Almari made calls to a phone number in the United Arab Emirates that was connected to the 9/11 hijackers.

So I think the designation of Almari as an enemy combatant was certainly warranted, and Mr. Haynes I think has given his client good advice that this man should be—it is a determination that is a correct determination, and there is certainly just cause for him to be detained.

Again, I have no questions, Mr. Chairman, but I am in strong support of the nomination of Mr. Haynes to go to the Fourth Circuit.

Senator SESSIONS. Thank you, Senator Chambliss. Those are good points.

I remember that we made a mistake, in my view, in treating the terrorist attacks on the United States as criminal acts. Bin Laden had publicly declared war on the United States for over a decade

before 9/11, and we did not handle that as aggressively as we should. President Bush determined that we needed to get our thinking clear and clarified, and he made clear that those who are enemy combatants under the classical definition of that term from the Geneva Conventions and the Articles of War would be treated as enemy combatants. And as I recall, that other Roosevelt, Franklin Delano Roosevelt, when German saboteurs came into the United States during World War II, not in uniform, not in a disciplined way, when they were apprehended, they were tried in the FBI building and executed on authority of President Franklin Roosevelt. Is that correct, Mr. Haynes?

Mr. HAYNES. That's correct, although the Supreme Court did hear a habeas petition from them before the execution. Yes, sir.

Senator SESSIONS. And they did let it go forward. And one of those, am I correct, was a citizen of the United States?

Mr. HAYNES. That's correct.

Senator SESSIONS. So an enemy combatant can even be not just a resident but a citizen of the United States and still meet the international standard for an enemy combatant.

Mr. HAYNES. That's correct, sir.

Senator SESSIONS. In fact, Article 15 of the Articles of War and the United States Constitution and Congress' actions have recognized that the President has the authority, and the Supreme Court has, to establish military tribunals to try a violation of the laws of war. Is that correct?

Mr. HAYNES. Yes, sir. The statute that existed that was recognized by the Supreme Court in 1942 in the Quirin case specifically references military commissions as an option, and that statute remains on the books under a different section number.

Senator SESSIONS. Is that Title 10, Section 836? It would be good if you could remember that.

Mr. HAYNES. I believe it 821, but—

Senator SESSIONS. Well, there are provisions within the statutes and code of the United States and in the Supreme Court decisions of the United States that recognize that soldiers in an army of an enemy of the United States are treated as prisoners of war. But people who are not in uniform, who are acting on their own, contrary to the laws of war, those are to be treated not as prisoners of war but as enemy combatants. Is that a fair summary?

Mr. HAYNES. Yes, sir, I think that's a fair summary. I might describe them as unlawful combatants.

Senator SESSIONS. Unlawful combatants.

Mr. HAYNES. Yes, sir.

Senator SESSIONS. I think that is the preferable phrase.

And, you know, trials are interesting things. We saw the O.J. Simpson trial go on, and people felt that was an unjust verdict. Then they had a civil trial, and he lost that and was found guilty civilly but not responsible civilly and not guilty criminally. But I say that to say that when you are dealing with terrorists who are capable of killing thousands of American citizens, we have got a different level of problem. And, second, it is difficult to try these in a normal court of law.

I was wondering, with regard to the—if you had to try the individuals being held in Guantanamo, we would virtually have to

bring back all the soldiers that we have in Afghanistan to be witnesses in those cases, would we not? I mean, you would have to—if you had a classical trial, then they would get the subpoena everybody, including their family, to be witnesses, and it would really turn into an impossible circumstance as a practical matter, it seems to me.

Are those factors that have been involved in the historic understanding that unlawful combatants should be treated differently than normal criminals?

Mr. HAYNES. Well, sir, you are raising some important points that make it clear why trials of those involved in warfare must be conducted, to be sure, as fair trials and consistent with our traditions, but also with some different rules on occasion.

Witnesses may be one area where a traditional Article III criminal case would be difficult. Similarly, evidentiary questions and chain of custody and things of that nature might make it more difficult. A whole range of things make it imperative, and history shows that these work, that there be a different way to administer justice appropriately and consistent with our traditions, yet differently than some of the more traditional criminal prosecutions would provide.

Senator SESSIONS. And to a large extent, the procedures for trying these unlawful combatants is not a lot different than the procedures for trying soldiers who are charged within the military. The legal system of the military is a good one. F. Lee Bailey says it is superior to the normal legal system of America. But, regardless of that, I do think that you are correct there would be a fair trial. And I have no doubt that these defendants, a large number of them, would probably try to subpoena General Tommy Franks to come and testify at their trial. And it would just cause a lot of problems, and I think the President made the right decision.

Senator Kennedy?

Senator KENNEDY. Well, we have routinely convened competent tribunals to determine POW status for captured individuals in every one of our past wars, including the last Gulf War, except now. Isn't that so?

Mr. HAYNES. Senator, I hope I haven't confused things. May I take a minute and describe—

Senator KENNEDY. Sure.

Senator SESSIONS. I perhaps confused things.

Mr. HAYNES. Well, I think we're talking about two different things. Senator Kennedy, you and I have been discussing the Geneva Conventions, and one of the provisions of the Geneva Conventions, Article 5 of the Third Geneva Convention of 1949, says that when there is doubt about an individual's classification as a prisoner of war, then that individual is in entitled to review by "a competent tribunal" to resolve that doubt. And you're right, ever since the Geneva Conventions were created, including in the current war in Iraq, the United States military has conducted Article 5 tribunals to resolve doubt about specific individuals.

In the most recent conflict, the one is Iraq that's going on right now, there have only been a handful, and we've literally captured thousands and thousands and thousands of people, some of them in uniform and some of them without. That conflict clearly is gov-

erned by all of the Geneva Conventions. Even in that conflict, governed completely by all of those Geneva Conventions. There have only been a very few, because there has only been doubt in a very few cases. Now, that is one thing.

The conflict in Afghanistan and the conflict in the global war on terror, just looking at the treaty itself, the Geneva Convention itself, which is a treaty among states, Al Qaeda is not a party. There's no way that the treaty can apply. So as a matter of law, the treaty doesn't apply.

Now, even so, the United States has chosen to apply the principles of the Geneva Convention, and that's what I tried to describe a few minutes ago, perhaps with less clarity than I should have. The United States does apply the principles of Geneva. We treat people humanely, we allow them to practice their religion, and on and on, like I said before.

Now, that's one thing. Senator Sessions and I have been talking about a different type of tribunal, and that is, if and when the President decides he would like to try individuals for crimes violating the laws of war, then there will be a criminal trial. Any such trial in that context would be replete with the tested and time-honored principles that American justice requires, including a presumption of innocence, the provision of counsel without charge, no requirement that the person testify against himself, evidentiary rules, an appellate procedure. Those are the rules that Senator Sessions and I have been discussing that are far more flexible than your typical criminal justice process.

Senator KENNEDY. That is a very good distinction. The only point that I would come back to—and I am glad we separated out the questions of Geneva and the consideration of these people that are being detained and also the enemy combatant. The point that I would make, though, is that the Taliban were the soldiers of the Afghan Government. They were the ones who were charged. I mean, the mix between Al Qaeda and the Taliban, you know, we can go back into history, probably 1995, they were separated up until then. And then they became absolutely intertwined. They became one in Afghanistan, 1995, 1996. That is what the testimony is in the Armed Service Committee. They are absolutely one. The Taliban represented the Afghan Government. The Taliban had an army. And the Taliban was involved in these various battles, and it is difficult—and that is why many of us would wonder why—I know that they have been looked at, examined, whatever it has been. But we haven't had the classification of whether the 600-odd soldiers would qualify. And, you know, we have been over that ground, and I know that 60 have left, and they are reviewing some of the others. But it does seem to me with the kinds of criticism—and it isn't just individuals. It is the Red Cross and many of our allies. And it is obviously—these matters are of great concern because we are going to be facing the possibility of American servicemen being held captured. And we are interested in their protection as well as dealing with those that are a threat to our own security. That is basically one of the powerful reasons for the support for this.

Let me just come back to one other issue on the enemy combatant. The fact is you are recognizing in terms of establishing that

the enemy combatant, that they are also subject to some kind of a review; otherwise, we would just be giving the President of the United States authority to declare anybody an enemy combatant and there is no—

Mr. HAYNES. Well—

Senator KENNEDY. If I could just finish. And there wouldn't be any review.

Now, as I understand, the administration initially argued in its briefs that no court could review at all its designation of an American citizen as an enemy combatant because the administration's determination on this score are the first and final word. Those are the words in their brief. But even the Fourth Circuit found this position too extreme to accept, and the court said it would be embracing a sweeping proposition, namely, that with no judicial review, any American citizen alleged to be an American combatant could be detained indefinitely without charges or counsel on the Government's say-so.

So the administration now concedes that courts may review the enemy combatant determinations, but only to see if some evidence supports it. Do you believe that the Federal courts have authority when U.S. citizens are being indefinitely detained by their own Government to review?

Mr. HAYNES. Senator, I am here in an individual capacity as a nominee. I am also general counsel to the Department of Defense. So I want to be clear about my words here. But I will tell you my personal views.

Senator SESSIONS. Let me interrupt. The Senator is referring to enemy combatants, and I used the phrase wrong earlier. Is it "unlawful combatant" he is talking about, or is "enemy combatant" the right term?

Mr. HAYNES. The "enemy combatant" term is more inclusive. It includes both lawful and unlawful combatants, Senator. But, sir, you asked do the courts have the ability to review determinations that somebody held in the—an American citizen held in the United States as an enemy combatant, that determination? Yes, sir. They're in court right now, and the discussion or one of the issues before those courts—and I don't want to get into that too far—is just what is the deference owed to the President and his subordinates in making those determinations.

Senator KENNEDY. And what about the right to counsel?

Mr. HAYNES. Again, right to counsel is something that is fundamental to the criminal process and the imposition of punishments by the Government. Detaining enemy combatants is not that. Detaining enemy combatants is the application of the law of armed conflict to protect the country. And counsel, right to counsel does not come—

Senator KENNEDY. Okay, but if it is an American citizen.

Mr. HAYNES. Our policy is that once somebody has—once we have derived the intelligence that we can from interrogating such individuals, that for American citizens held in the United States as enemy combatants, we would not prohibit them from seeing other people, including perhaps lawyers.

Senator KENNEDY. Thank you very much.

Senator SESSIONS. It has been an excellent discussion.

Senator KENNEDY. And I want to thank the other nominees. I apologize for not—

[Laughter.]

Senator KENNEDY. I thank you for your patience here for all this. I join with my colleagues in congratulating all of you. And, Mr. Chairman, if I could have a statement by Senator Leahy included in the appropriate place in the record?

Senator SESSIONS. It will be made part of the record.

Thank you very much, Mr. Haynes. That was a very interesting discussion. It is a complex area of the law, and there has been a lot of debate about it. I think to date the positions the President has taken with this have been upheld, and I think it is justified under the circumstances.

Well, nominees, we are delighted that you are here. The challenge of a Federal judgeship is a great one. I spent about 15 years of my life practicing full-time before Federal judges. I have the greatest respect for them. I felt confident that every day, whether that judge was a Republican or a Democrat or a liberal or a conservative, if I had the law and the facts, the judge would rule with me, and if I didn't, I was probably going to lose. And that is what we want to see in the bench. That is the classical understanding in America of the rule of law, that it is not personality, it is not bias. It is objectivity.

Our Founders gave you a lifetime appointment. After this vote in the Senate—and I think you will all move forward, hopefully expeditiously, toward confirmation. After this vote in the Senate, you will be on your own subject to appellate higher courts and your own conscience, your own sense of your role in the system, your personal restraint, and your best judgment and integrity. I know you will do a good job. The backgrounds that we have seen on you are excellent. The ABA has given you good ratings, and so have your colleagues and Senators from your States who know you and respect you. So I think we will be moving along well.

Unless there is anything else, we will adjourn our meeting. I will not that we will leave the record open for 7 days for any further comments or questions that any members may want to provide.

If nothing else, we will stand adjourned.

[Whereupon, at 4:10 p.m., the Committee was adjourned.]

[Questions and answers and submission for the record follow.]

QUESTIONS AND ANSWERS

1600 DEFENSE PENTAGON, ROOM 3E980
WASHINGTON, D.C. 20301-1600

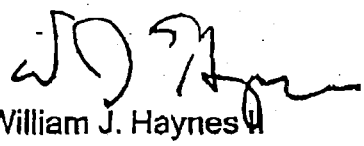
December 18, 2003

The Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
104 Hart Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

Attached are my responses to the written questions I received from Senators Leahy, Kennedy, Feingold, Schumer and Durbin, in connection with my pending nomination.

Sincerely,



William J. Haynes II

Attachments: As stated

cc: The Honorable Patrick J. Leahy
Ranking Member

December 18, 2003

Responses of William J. Haynes II to the Written Questions Submitted by Senator Patrick Leahy

1. On June 25, 2003, you responded to a letter I sent to Dr. Condoleezza Rice concerning the treatment of detainees held in the war on terrorism. You stated that the "United States policy is to obtain specific assurances from the receiving country that it will not torture the individual being transferred to that country. We can assure you that the United States would take steps to investigate credible allegations of torture and take appropriate action if there were reason to believe that those assurances were not being honored."

   Since this time, a new allegation has surfaced that the U.S. detained a Canadian and Syrian citizen, Maher Arar, and that he was interrogated, directed to sign a form without the opportunity to review it, stripped searched, injected with an unknown substance, and eventually deported to Syria – a country with a documented history of torture and inhumane treatment of detainees, where he reportedly was put in a prison and beaten for several hours until he confessed to attending a training camp in Afghanistan. He says that he was held in a cell that was three feet wide, six feet deep and seven feet high for 10 months until he was released by Syrian authorities in October.

   While the Bush administration officially denies relying upon extraordinary renditions of this sort, numerous unnamed intelligence officials have admitted to the press that renditions have occurred, purportedly under a "secret rendition policy." "Deported Terror Suspect Details Torture in Syria," *Washington Post*, November 5, 2003. This policy was described as "a secret presidential 'finding' authorizing the CIA to place suspects in foreign hands without due process." *Id.*

   I find Mr. Arar's claims and the underlying rendition policy deeply troubling and would like you to provide answers to the following questions in regard to this case:

   a. Under what specific authority was Mr. Arar detained, first at the airport and then at the federal detention center in Brooklyn?

      Response: I am not familiar with the facts concerning Mr. Arar's detention.

   b. Is it true that one or more FBI agents interrogated Mr. Arar after he was detained by immigration officers at JFK Airport?

      Response: Please see my response to question 1. a., above.

   c. If so, is it true that Mr. Arar was denied access to counsel?

December 18, 2003

Response: Please see my response to question 1. a., above.

d. An intelligence official is quoted in the *Washington Post* story as saying, "The Justice Department did not have enough evidence to detain him when he landed in the United States." If this is true and if, as has also been reported in the press, U.S. officials were in contact with Canadian authorities, why did the FBI and/or other officials choose not to turn Arar over to Canadian authorities?

Response: Please see my response to question 1. a., above.

e. Under U.S. law, non-citizens who express concerns about torture, if removed, are entitled to an evaluation of their claim before being removed. Under the specific regulations that were likely applied to Mr. Arar's removal, there is an explicit prohibition against returning someone to a country where there are substantial grounds for believing he would be subjected to torture. On November 15, the *New York Times* reported that Mr. Arar "pleaded with American officials not to send him to Syria for fear he would be tortured." On November 20, the *Washington Post* reported that the CIA received assurances from Syria that it would not torture Mr. Arar.

i. Do you agree that the use of Jordan as an intermediary nation did not change the U.S. obligation to protect against torture and that the U.S. had an obligation to seek assurances from both Jordan and Syria that Mr. Arar would not be tortured?

Response: I am not familiar with the facts concerning Mr. Arar's deportation.

ii. Please detail the nature of the assurances provided by Jordan and Syria. For example, were the assurances that Syria would not subject Mr. Arar to torture, or to cruel, or inhuman, or degrading treatment or punishment consistent with the Convention Against Torture? How was Mr. Arar's stated fear of torture at the hands of the Syrian government reconciled with the government's treaty obligations under the Torture Convention?

Response: Please see my response to question 1.e.i., above.

iii. Were the assurances provided in writing? If so, please provide a copy to the Committee. If such a document is classified, please arrange for cleared staff to view it. If no assurances were obtained, please explain why not.

December 18, 2003

Response: Please see my response to question 1.e.i., above.

iv. Notwithstanding Syria's assurances, what process was used, if any, to evaluate the likelihood that Mr. Arar would be subjected to torture before removing him to Syria?

Response: Please see my response to question 1.e.i., above.

v. What steps did the United States take after his rendition to assess compliance with such assurances in this case?

Response: Please see my response to question 1.e.i., above.

vi. How does the United States assess the quality and reliability of the assurances received?

Response: Please see my response to question 1.e.i., above.

f. What obligations does the United States have in response to the reports on Mr. Arar, and are you aware of any investigations the U.S. has undertaken with regard to the rendition and alleged torture of Mr. Arar?

Response: I am not familiar with the facts concerning Mr. Arar's deportation. I respectfully suggest that you contact the Department of Justice because it would handle any such investigations.

g. Are you aware of a "secret presidential 'finding' authorizing the CIA to place suspects in foreign hands without due process"? If so, please provide a copy to the Committee. If such a document is classified, please arrange for cleared staff to view it.

Response: Because I am answering questions in my personal capacity, I am limited in my ability to answer questions about any official information that has not been made public of which I may or may not be aware. As your question concerns the authorities of the CIA, I respectfully suggest that it be directed to that agency for an official response.

h. Please describe in detail any other cases where the U.S. has participated in the rendition of an individual to a foreign government. Please provide the following:
   i. the names of any such individuals;
   ii. the countries to which they were rendered;
   iii. the dates they were rendered;
   iv. any countries that served as transfer points or intermediaries in such renditions;

v. whether assurances were obtained from cooperating foreign governments that the individual would not be subject to torture, or to cruel, or inhuman, or degrading treatment or punishment, while in the custody of the foreign government;
vi. whether the United States took steps after any renditions to assess compliance with such assurances; and
vii. whether such assurances were provided in writing. If any such assurances were provided in writing, please provide copies to the Committee. If any of the above information is classified, please arrange a briefing for cleared staff. If relevant documents are classified, please arrange for cleared staff to view them. If no assurances were obtained, please explain why not.

Response: Because I am answering questions in my personal capacity, I am limited in my ability to answer questions about any official information that has not been made public of which I may or may not be aware.

i. In a November 12, 2003, *Washington Post* article, Mr. Arar states that he overheard statements from the "special removal team" that "Syria was refusing to take me directly and I would have to fly to Jordan." Why would it be necessary for the United States to send Mr. Arar to Syria via Jordan, rather than sending him directly to Syria?

Response: I am not familiar with the facts concerning Mr. Arar's deportation.

j. What impact do you anticipate that reports like these will have on the ability of the United States to persuade other countries to eliminate torture practices, including in instances where American soldiers are held as prisoners-of-war?

Response: Because I am not familiar with the facts concerning Mr. Arar's deportation, I can not assess the accuracy or the potential effects of the reports to which you refer.

k. The treatment of Mr. Arar, a Canadian citizen, has lead to "angry debate" in the House of Commons, whose foreign affairs committee has called for a public investigation into his rendition. What impact do you anticipate that incidents like these will have on our ability to continue to enlist the support of our allies in the war on terror?

Response: Because I am not familiar with the facts concerning Mr. Arar's deportation, I cannot predict accurately implications for U.S. efforts in the war on terror and therefore am reluctant to speculate on such potential implications.

December 18, 2003

2. In its efforts against terrorism, the Administration has focused on individuals who have connections to al Qaeda that need to be further explored, and has argued that it has the right to detain and interrogate prisoners in Guantanamo Bay, perhaps as unlawful combatants or enemy combatants, as long "as it is necessary to help win the war against the al Qaeda network and its allies." Washington Post, November 11, 2003, "High Court Will Hear appeals From Guantanamo Prisoners." For example, in defending its detention of Jose Padilla as an enemy combatant, the Government stated "[t]he executive made a finding that intelligence gathering with respect to al-Qaida was so important that they didn't want to take all these tools off the table."

On November 19, the Washington Post reported a U.S. official stating that when Mr. Arar was apprehended, he had "the names of 'a large number of known al Qaeda operatives, affiliates or associates' in his wallet or pockets."

An earlier Washington Post editorial stated, "[i]f credible intelligence linked [Mr. Arar] to al Qaeda, Mr. Arar could have been designated an enemy combatant and held at Guantanamo Bay. The trouble with this solution is that the legal process given alleged enemy combatants is so opaque and unfair. The military won't provide data on who is being held at Guantanamo or the standards used to keep people there. Were there some publicly understood process for handling these cases, so that sending a suspected enemy combatant to Guantanamo was not the same as dumping him into a legal black hole, authorities would have an option for people such as Mr. Arar other than torture in Syria and freedom in Canada."

Notwithstanding my concerns about the legal status of those detained at Guantanamo, and the Administration's treatment of enemy combatants in general, it would seem that Mr. Arar fit the classic Administration profile for someone who should be detained in Guantanamo. Presumably, Mr. Arar would have been safer in detention at Guantanamo Bay than in Syria.

a. Was the option to detain Arar as an enemy combatant in Guantanamo Bay considered and rejected in favor of rendition to Syria? If so, on what basis was the decision made to send him to Syria?

<u>Response</u>: Because I am answering questions in my personal capacity, I am limited in my ability to answer certain questions. To the extent your inquiry is about any deportation decisions that may have been made by the Department of Justice, I respectfully suggest that this question be directed to that Department or to the Department of Homeland Security (which is now the department responsible for certain immigration matters) for an official response.

b. Where there is more than one destination country to which detainees may be rendered, do you believe there should be a policy to render detainees to

the country where torture is least likely (e.g., a country that does not have a history of documented humanitarian abuses)?

Response: The publicly stated policy of the United States is that the United States does not "expel, return ('refouler') or extradite" individuals to other countries where the United States believes it is "more likely than not" that they will be tortured. To the extent your questions invite my views on matters about which I may or may not have been called to provide advice as the General Counsel of the Department of Defense, it would be inappropriate for me to respond in detail.

3. Under Article 16 of the CAT, "[e]ach State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman, or degrading treatment or punishment which do not amount to torture." The U.S. ratified the CAT with the proviso that Article 16 means "cruel, unusual and inhumane treatment or punishment prohibited by the 5th, 8th, and/or 14th Amendments to the Constitution of the United States." Are there aspects of Mr. Arar's treatment that would be cruel, unusual and inhumane treatment or punishment prohibited by the 5th, 8th, and/or 14th Amendments to the Constitution of the United States?

Response: I am not familiar with Mr. Arar's treatment, and therefore I am not in a position to respond to this question.

4. In 1994, the U.S. ratified the Convention against Torture and other Forms of Cruel, Inhuman or Degrading Treatment or Punishment ("CAT"). Under Article 3 of the CAT, the United States may not "expel, return ('refouler') or extradite individuals or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture."

   a. Do you believe that there are certain countries that the United States has substantial grounds to believe would subject a rendered detainee to torture (e.g., a history of documented abuse) such that it would be illegal under the CAT for the U.S. to render detainees to them, either directly or via an intermediary country? If so, please identify those countries.

   Response: It is the publicly stated policy of the United States not to "expel, return ('refouler') or extradite" individuals to other countries where the United States believes it is "more likely than not" that they will be tortured. Because this question invites my views on a matter about which I might be called to provide advice as a lawyer in the Executive Branch, it would be inappropriate for me to share the substance of that advice.

   b. Months ago I sent a letter to you asking several questions regarding implementation of the Convention Against Torture (CAT), including

specific questions about the rendition of alleged terrorist suspects to foreign governments. The night before your confirmation hearing, I received a cover letter with attachments from one of your assistants, all of which studiously avoid discussion of the CAT. This response also left unanswered my question about what guidelines, if any, are followed by the CIA when interrogating suspects. I find this recent correspondence to be totally non-responsive and terribly disturbing. So, again, I ask the following questions:

i. Please clarify how the administration's policy to comply with the CAT is communicated to those personnel directly involved in detention and interrogation. As you noted in your June 25 letter, the U.S. obligation under Article 16 of the CAT is to "undertake … to prevent" cruel, inhuman or degrading treatment of punishment.
ii. What is the administration doing to prevent violations?
iii. Have any recent directives, regulations or general orders been issued to implement the policy your June 25 letter describes? If so, please provide the Committee with a copy.

Response: Because I am answering questions in my personal capacity, I am limited in my ability to answer certain questions. For that reason, and in order that you be provided with an official response unaffected by my own perspective as a nominee under consideration by your Committee, the Principal Deputy General Counsel of the Department of Defense, Mr. Dell'Orto, responded to your earlier letter. To the extent that you seek additional information from the Department of Defense, I respectfully suggest that the questions be directed to the Department for an official response.

c. In my September letter I also asked a number of questions regarding the interrogation of terrorist suspects. These, too, went unanswered in last night's letter. So I will ask them again. I understand that interrogations conducted by the U.S. military are governed at least in part by Field Manual 34-52, which prohibits "the use of force, mental torture, threats, insults, or exposure to unpleasant and inhumane treatment of any kind." This field manual rightly stresses the "the use of force is a poor technique, as it yields unreliable results, may damage subsequent collection efforts, and can induce the source to say whatever he thinks the interrogator wants to hear."

i. Are there further field guidelines that in any way add to, define, or limit the prohibitions contained in this field manual?
ii. What mechanisms exist for ensuring compliance with these guidelines?

iii. Most importantly, do interrogators working for other agencies, including the CIA, operate from the same guidelines as the Department of Defense?

Response: Because I am answering questions in my personal capacity, I am limited in my ability to answer certain questions. To the extent that you seek additional information from the Department of Defense, I respectfully suggest that the questions be directed to the Department for an official response. Similarly, to the extent that the questions seek information about the practices of agencies other than the Department of Defense, I respectfully suggest that the questions be directed to those other agencies for an official response.

5. Mr. Haynes, as the General Counsel of the Department of Defense, you are arguably the architect of the Bush Administration's controversial regulations governing the use of military tribunals in which enemy combatants and terror suspects may be tried. Michael Ratner, President of the Center for Constitutional Rights, calls these tribunals "a one-way road to conviction."

In an April 2002 speech you gave at Fordham Law School entitled "What a Difference a Day Makes: Law in the Defense of the Nation After 9-11," you describe an "unprecedented" relationship in which the DOD is "working hand-in-hand" with the DOJ in matters of national security. Specifically, you mention that the DOJ is representing the DOD in various lawsuits brought against it, and that the DOJ and DOD are cooperating by sharing information related to captured enemy combatants and detainees.

As you are no doubt aware, many of the high-profile terrorism cases since the 9/11 attacks have landed, one way or another, within the jurisdiction of the Fourth Circuit Court of Appeals.

Some have suggested that you were hand-picked for the Fourth Circuit by the President's advisors because of your work for the Defense Department in order to hear appeals from important terrorism cases, such as the Moussaoui case currently before Judge Brinkema in the Eastern District of Virginia.

a. Mr. Haynes, if you are confirmed to the Fourth Circuit Court of Appeals, how will you determine whether to recuse yourself from cases involving terrorism suspects or cases involving the constitutionality of the Executive Branch's terrorism regulations?

Response: If confirmed, I would determine whether to recuse myself based on applicable law. I would adhere strictly to all applicable statutes, court decisions, policies, and ethical rules, including 28 U.S.C. § 455, and the Code of Conduct for United States Judges. For example, under 28 U.S.C. § 455, I

would be obligated to (and of course would) disqualify myself from any proceeding in which I had "a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding." Similarly, I would be obligated to (and of course would) disqualify myself from any proceeding in which I had "participated as counsel, adviser, or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy." Applying the applicable statutes, court decisions, policies, and ethical codes requires close attention to the particular facts of each particular case. I would take care to disqualify myself in any proceeding in which my impartiality might reasonably be questioned. I believe fervently not only that the judiciary must make decisions with integrity, but also that the public should have confidence in the integrity of the judiciary and its decisions.

In correspondence addressed to the Judiciary Committee, the Department of Justice has indicated that "the Department of Defense is responsible . . . for determining whether a particular individual is an enemy combatant over whom the armed forces should take control."

b. Given the statement above, do you believe that appeals to the Fourth Circuit involving military detainees and enemy combatants would represent a conflict of interest for you, on the basis of the executive branch policies you helped devise and the knowledge to which you are privy in your current position of General Counsel of the Department of Defense?

Response: If confirmed, I would look to the individual facts of each case in determining whether recusal would be required. Under 28 U.S.C. § 455, I would be obligated to (and of course would) disqualify myself from any proceeding in which I had "personal knowledge of disputed evidentiary facts concerning the proceeding." Similarly, I would be obligated to (and of course would) disqualify myself from any proceeding in which I had "participated as counsel, adviser, or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy."

c. What commitment will you make to recuse yourself from cases arising from policies you helped develop?

Response: If confirmed, I would adhere strictly to all applicable statutes, court decisions, policies, and ethical rules, including 28 U.S.C. § 455, and the Code of Conduct for United States Judges.

6. Earlier this year, President Bush announced that, of the more than 600 prisoners held at Guantánamo Bay, six would be tried before military tribunals conducted in accordance with the procedural guidelines set forth in the Military Commission Instructions (originally promulgated in November 2001). While I understand that

these so-called "enemy combatants" may not in all circumstances be afforded the same procedural rights as maritime civilian defendants, I am concerned that these Instructions so dramatically curtail traditional due process rights that the fundamental fairness and accuracy of tribunal judgments is threatened. The most far-reaching of the Instructions invade the traditional bounds of the lawyer-client privilege, deny the defendant access to potentially exculpatory evidence, and unilaterally restrict the defense—but not the prosecution—from speaking about a pending case. In light of these restrictions, and the additional fact that officials have so far declined to identify these six captives or the offenses with which they are charged, I would like to ask you a few questions about the rights that these detainees have been provided with:

a. Will you identify for the Committee the names of the six detainees that President Bush indicated would be tried before the military tribunal? If this information is classified, please arrange for cleared staff to view it.

Response: The Department of Defense recently stated that Mr. David Hicks is subject to the President's Military Order of November 13, 2001. (See DoD news release dated December 3, 2003; available on the Internet at http://www.defenselink.mil/releases/2003/nr20031203-0721.html). On December 18, 2003, the Department of Defense announced that Mr. Salim Ahmed Hamdan is subject to the same order. (See DoD news release dated December 18, 2003; available on the Internet at http://www.defenselink.mil/releases/2003/nr20031218-0792.html). Also, the government of the United Kingdom has stated that Mr. Feroz Abbasi and Mr. Moazzam Begg of the United Kingdom are subject to the President's Military Order. Because I am responding in my personal capacity, I am limited in my ability to answer certain questions. I respectfully suggest that requests for additional information be directed to the Department of Defense for an official response.

b. Have these six detainees been provided counsel? How much time has each spent with counsel? Has any elected to hire a civil defense attorney, rather than use an appointed military lawyer?

Response: The Department of Defense recently announced that military defense counsel has been assigned to represent Mr. David Hicks. (See DoD news release dated December 3, 2003; available on the Internet at http://www.defenselink.mil/releases/2003/nr20031203-0721.html). On December 18, 2003, the Department of Defense announced that military defense counsel had been assigned to represent Mr. Salim Ahmed Hamdan. (See DoD news release dated December 18, 2003; available on the Internet at http://www.defenselink.mil/releases/2003/nr20031218-0792.html). Because I am responding in my personal capacity, I am limited in my ability to answer certain questions. I respectfully suggest that requests for additional

information be directed to the Department of Defense for an official response.

c. Will you identify the charges with which these defendants will be charged? If not, can you tell the Committee whether or not these six defendants or their counsel, if any, have themselves been informed of the charges they will face?

Response: Potential charges against military commission defendants include those specified in Section 6 of Military Commission Instruction No. 2, dated April 30, 2003 (available on the Internet at www.defenselink.mil/news/May2003/d20030430milcominstno2.pdf). Because I am responding in my personal capacity, I am limited in my ability to answer certain questions. To the extent you seek further information, I respectfully suggest that the questions be directed to the Department of Defense for an official response.

d. When will the first of these trials be conducted?

Response: Because I am responding in my personal capacity, I am limited in my ability to answer certain questions. To the extent you seek additional information about potential military commission proceedings, I respectfully suggest that questions be directed to the Department of Defense for an official response.

e. I understand that the British Foreign Office has identified two of these six detainees as British citizens. Have any additional procedural guarantees, above and beyond the baseline guarantees provided by the Instructions, been requested by or granted to these British citizens? If so, will these guarantees be available to non-British enemy combatants subject to the military tribunals?

Response: The Department of Defense has publicly stated that, based on the particular circumstances of the cases involving United Kingdom citizens Mr. Feroz Abbasi and Mr. Moazzam Begg, the prosecution will not seek the death penalty against them nor will the Department of Defense monitor conversations between them and any defense counsel in any military commission proceedings. The Department has said that, because these assurances were based on the particular cases of Mr. Abbasi and Mr. Begg, such assurances would not necessarily apply to other detainees. Because I am responding in my personal capacity, I am limited in my ability to answer certain questions. To the extent you seek additional information about potential military commission proceedings, I respectfully suggest that questions be directed to the Department of Defense for an official response.

f. Have any negotiations occurred between the Department of Defense and the government of any other country with respect to securing additional procedural protections for the citizens of that country? If so, what have been the results of such negotiations?

Response: The government of Australia announced on November 25, 2003 its satisfaction that the military commission process will provide a full and fair trial for any Australian detainees who go before a military commission. Separately, the Department of Defense announced that it had provided assurances, based on the particular circumstances of the cases involving the Australian detainees, that the prosecution would not seek the death penalty against the Australian detainees. With respect to the particular circumstances of the case involving Mr. David Hicks, the Department of Defense provided assurances that (1) it would not monitor conversations between Mr. Hicks and his counsel; (2) if Mr. Hicks is charged, the prosecution does not intend to rely on evidence in its case-in-chief that would require closed proceedings excluding Mr. Hicks; and (3) the Department of Defense would continue to work to put arrangements in place to transfer Mr. Hicks, if convicted, to Australia to serve his sentence.

The Department of Defense detailed these and other assurances in a news release dated November 25, 2003. (Available on the Internet at www.defenselink.mil/releases/2003/nr20031125-0702.html.) As stated in the news release, the other assurances that the Department of Defense made to the government of Australia include:

> **"Subject to any necessary security restrictions, military commissions will be open, the media present and appropriately cleared representatives of the accused's government may observe the proceedings;**
>
> **If an accused is convicted, the accused's government may make submissions to the Review Panel;**
>
> **If eligible for trial, and subject to security requirements and restrictions, an accused may be permitted to talk to appropriately cleared family members via telephone, and two appropriately cleared family members would be able to attend their trial; and,**
>
> **An accused may choose to have an appropriately cleared foreign attorney as a consultant to the Defense Team. Foreign attorney consultant access to attorney-client information, case material or the accused will be subject to appropriate security clearances and restrictions and determined on a case-by-case basis."**

Because I am responding in my personal capacity, I am limited in my ability to answer certain questions. To the extent you seek additional information

about potential military commission proceedings, I respectfully suggest that your questions be directed to the Department of Defense for an official response.

7. Mr. Haynes, in your Senate Questionnaire, you indicate that you have tried precisely one (1) case to verdict or judgment and this case was before an administrative body. You state that you have "appeared as an advocate in court only rarely" and that your role in litigated matters has primarily consisted of "monitoring or supervising the conduct of litigation" through your subordinates. I noticed that you are not a member of the Virginia Bar and that you have never been admitted to practice before the Court of Appeals for the Fourth Circuit.

   a. In light of your dedication to military policy matters and your private practice background in government contracts law, were you surprised to learn that you were under consideration for a nomination to the Fourth Circuit Court of Appeals? Please describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.

      Response: **I am both deeply humbled and honored that the President nominated me for service as a judge on the United States Court of Appeals for the Fourth Circuit. I believe that for anyone, appointment as a judge to the federal judiciary is a high privilege and a heavy responsibility. Nevertheless, I believe that my experience as a lawyer who has practiced many legal disciplines for large institutions (both in government and the private sector)—and for individuals—has prepared me for this service, should I be confirmed. In advance of the nomination, I spoke with the Counsel to the President and various members of his staff. I was interviewed by the Department of Justice. Senator Warner and Senator Allen of the Commonwealth of Virginia also interviewed me. I submitted information for the purpose of a background investigation by the Federal Bureau of Investigation (FBI), and interviewed with an FBI investigator. On September 29, 2003, I learned that the President had submitted my nomination to the Senate.**

   b. In light of your lack of courtroom experience or appellate experience, please explain to the Committee what in your legal career qualifies you to serve on this important appellate court.

      Response: **Although I approach the possibility of service as a judge with deep humility, I believe that my experience as a lawyer in many different settings qualifies me to serve. I also was pleased when the ABA rated me "well-qualified" for a position on the United States Court of Appeals for the Fourth Circuit. A judge must swear to "administer justice without respect to persons, and do equal right to**

the poor and to the rich, and ... faithfully and impartially perform the duties ... as a judge under the Constitution and laws of the United States." 28 U.S.C. § 453. I consider my service as a government lawyer as one example of my demonstrated commitment to serve the poor and rich. I began my legal career and my career in public service as a law clerk for Judge James B. McMillan (a U.S. district judge for the Western District of North Carolina), continued as an officer in the United States Army, and later served as General Counsel of the Department of the Army and General Counsel of the Department of Defense. Similarly, in private practice, I represented clients ranging from indigent individuals to large corporations. After a period as an in-house attorney for General Dynamics Corporation, I devoted three months away from my family to work in central Asia for a non-governmental relief organization.

In the course of my legal career, I have worked in a variety of different legal disciplines including business law, environmental law, employment law, administrative law, corporate transactions, dispute resolution, and others already detailed in my response to the Committee's questionnaire. Should I be confirmed, I believe that the breadth of my experience will be of significant benefit in serving on the United States Court of Appeals for the Fourth Circuit.

Finally, I believe my experience as the chief legal officer of large organizations such as the Department of Defense should be very helpful preparation for service as an appellate judge. As the final legal authority for an organization of such extraordinary size and breadth, I am routinely required to consider and decide important, complicated legal issues of substantial importance.

c. When did you or when will you become a resident of the Commonwealth of Virginia?

Response: I became a resident of the Commonwealth of Virginia in November 2003.

8. The Bush Administration has argued that the detainees at Guantanamo are both beyond the jurisdiction of the federal courts and outside of the protections of the Geneva Convention. As a result, detainees, including U.S. citizens, who have been labeled "threats" on the basis of their ethnic ancestry are in a legal black hole, subject to indefinite detention without civil liberty protections, including the right to counsel.

a. What kind of scrutiny and accountability should apply to military detentions and to the potential threats to the civil liberties of the detainees?

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Response: The Department of Defense takes the detention of individuals at Guantanamo very seriously and has established procedures for determining which individuals should be detained. The Department of Defense has stated that: there are no U.S. citizens detained in Guantanamo; there are no persons detained at Guantanamo on the basis of their ethnic ancestry; those detained at Guantanamo are properly held as enemy combatants in the course of a continuing conflict with terrorists of global reach; the United States is treating the individuals detained at Guantanamo humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of the Third Geneva Convention of 1949; those detained at Guantanamo are not being held indefinitely, instead, they are properly being held, consistent with international and domestic law, while the hostilities continue; numerous individuals detained at Guantanamo have been transferred or released, and more are expected to be released or transferred. As you know, the Supreme Court will speak to the issue of whether U.S. courts have jurisdiction to hear claims brought on behalf of enemy combatants held at Guantanamo Bay in the cases of *Rasul v. Bush* and *Al Odah v. United States.*

b. What role have you personally played in the Bush Administration's legal strategy with regard to the treatment of detainees at Guantanamo?

Response: As the General Counsel of the Department of Defense, I am responsible directly or through other Department attorneys for advising the Department of Defense (including the Secretary of Defense) on the law, including legal requirements associated with detaining enemy combatants at Guantanamo. In discharging those duties, I have worked with other legal officers in the executive branch.

c. If confirmed, how would you seek to balance the war powers of the executive branch and the competing interests detailed in our Constitution?

Response: If confirmed, I would undertake to discharge and perform, faithfully and impartially, all the duties incumbent upon me as an appellate judge under the Constitution and laws of the United States. I would review each case on its own merits in light of all applicable law, including precedent from the Court of Appeals for the Fourth Circuit and the Supreme Court of the United States.

9. Jose Padilla, an American citizen, was arrested in May 2002 at O'Hare Airport in Chicago because he allegedly planned to detonate a radiological bomb in the U.S. He was initially held as a material witness and provided appointed counsel. Then, on June 9, 2002, the President designated Padilla as an "enemy combatant" and ordered his transfer to a military brig in South Carolina. Not long after that, U.S.

officials reportedly admitted that Padilla's research on radiological weapons "consisted largely of surfing the Internet," and that he "would not be charged with any crime." Dan Eggen, "Ashcroft's High Profile, Motives Raise White House Concerns," *Washington Post*, June 17, 2002.

In the Second Circuit's hearing this past Monday on the *Padilla* case, the Government argued that the tragic events at the World Trade Center on September 11 made the U.S. part of the terrorism battlefield, and further that the *Quirin* case not only gives it the authority to designate a U.S. citizen an enemy combatant and detain them indefinitely, but also permits it to try citizens via military tribunals. In response, Republican-appointed Circuit Court Judge Barrington Parker, stated "What troubles me is the transfer of principles in a military situation to a domestic one. I take the force of the point that Al Qaeda changes the landscape, but the power you are asking us to give the executive is breathtaking in its scope. We would be effecting a sea change in the Constitution the like of which is unprecedented in the life of this country."

At last week's Judiciary Committee hearing on civil liberties in the post-September 11 context, Viet Dinh, the former Assistant Attorney General in DOJ's Office of Legal Policy, testified that, "Many have decried the President's military authority to detain Padilla. But surely a military commander should have the power to incapacitate enemy combatants, and Supreme Court precedent confirms this common sense proposition. The more difficult question, one that past cases provide less guidance, is whether the executive branch can hold these unlawful combatants without any process, such as military tribunals or other quasi-judicial alternatives."

a. Do you agree that permitting the Executive Branch to designate U.S. citizens as enemy combatants and detain them indefinitely would be "breathtaking in its scope" and an "unprecedented" sea change in the Constitution?

Response: In the *Padilla* case, the government explained that the President's constitutional authority to capture and detain enemy combatants is well established, rather than being an unprecedented change. As the General Counsel of the Department of Defense, which is a party to the case, it would not be appropriate for me to comment on the issues raised in this pending matter.

b. If confirmed to the Fourth Circuit, how would you balance Constitutional protections against this broad assertion of executive power on this novel issue?

Response: Each case must be reviewed on its own merits in light of all applicable law and precedent. As a nominee to the U.S. Court of

Appeals for the Fourth Circuit, it would be inappropriate for me to comment on any particular pending case.

c. Given that the *Quirin* case dealt with suspected German saboteurs and not civilians, and is not on point in the *Padilla* case, how do you justify the indefinite detention and denial of access to counsel of Padilla, who officials acknowledge will not be charged with a crime?

Response: As the General Counsel of the Department of Defense, I believe it would be inappropriate for me to comment on a matter in litigation in which the United States is represented by the Department of Justice. Even so, the government's stated position in the *Padilla* case is that the *Quirin* case is on point in that the German saboteurs sought to conduct their sabotage while representing themselves as civilians.

Additionally, the publicly stated policy of the Department of Defense is that it will permit access to counsel by an enemy combatant who is a U. S. citizen and who is detained by DoD in the United States after DoD has determined that such access will not compromise the national security of the U. S.; and after DoD has completed intelligence collection from that enemy combatant or after DoD has determined that such access will not interfere with intelligence collection from that enemy combatant.

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Responses of William J. Haynes II to the Written Questions Submitted by Senator Russell D. Feingold

Experience

1. According to the Committee Questionnaire, you have had only limited litigation and courtroom experience. The bulk of your legal experience has involved military law and government contracts. You listed only three cases that you have personally handled and only one case that you tried through to a verdict. You stated that you have overseen the drafting of briefs, but it appears that you have never written a brief or argued in a courtroom.

(a) Have you ever written a brief yourself? If so, please describe the case(s), outcome(s), and the nature of your involvement.

Response: As I said in my responses to the Committee's questionnaire, I have very rarely appeared in court. My participation in litigation has been principally as an active, inquisitive and demanding client, as in-house counsel both in the public and private sectors. In that context, I have reviewed, commented on, or edited many briefs. My responses to the Committee's questionnaire give some examples of that activity.

I have also participated more directly in litigation. On those occasions, I have played a more substantial role in preparing briefs. For example, my November 18, 2003 letter to your Committee included as attachments briefs from two cases—*United States ex rel. Maichel v. General Dynamics*, and *Allied Investment Corporation v. Griffin*—filed in federal courts in which I am listed as counsel. *Maichel* was a *qui tam* action filed in the United States District Court for the Central District of California. It was filed under the False Claims Act, 31 U.S.C. § 3729. That case was settled and resolved pursuant to a stipulation of dismissal. *Allied* was a securities fraud action under Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and SEC Rule 10b-5, 17 C.F.R. § 240.10b-5, and a state law claim for fraudulent inducement of contract. That case was settled and resolved pursuant to a stipulation of dismissal. In both cases, my then-partner and I represented Allied, and a senior associate working with us wrote the first draft of the briefs. Together we revised the briefs before filing them. In *United States v. Burgess,* my co-counsel and I represented and wrote briefs in support of our client, who was charged with possession with intent to distribute cocaine. The defendant died before trial. And, in the case listed on page 18 of my responses to the Committee's questionnaire, *In the matter of SPX Corporation*, I filed briefs written with my co-counsel.

As you know, legal briefs often have many authors. To the extent your question is intended to ask whether I have been the *sole* author of any briefs, I cannot recall writing a brief without some participation by another lawyer. The cases referenced

above are good examples of that. To be sure, however, earlier in my career—even as a law student in the Harvard Legal Aid Bureau—I was the person responsible for writing the first draft of briefs. I remember also writing (while still a law student) a lengthy appellate brief in the Fourth Circuit on behalf of a person convicted of armed bank robbery. I do not remember the result of the appeal. While an officer in the Army, I was the principal author (but was not listed as counsel) of a brief filed in the Iran-US Claims Tribunal established as part of the agreement resulting in the return of the American hostages taken during the occupation of the U.S. embassy in Teheran. I have worked on briefs in government contracts disputes with various results. In *United States v. Material Service Corporation*, a case described on page 20 of my responses to the Committee's questionnaire, I was the principal author of the brief filed with the arbitrator, the late retired U. S. District Judge Nicholas Bua.

(b) Have you ever appeared and argued in a courtroom? If so, please describe the case(s), outcome(s), and the nature of your involvement.

Response: As I said in my responses to the Committee's questionnaire, I have very rarely appeared in court. My participation in litigation has been principally as an active, inquisitive and demanding client, as in-house counsel both in the public and private sectors.

Nevertheless, I have appeared in and argued some cases. Most recently, I was lead counsel in, appeared in, and argued the case described on page 18 of my responses to the Committee's questionnaire: *In the matter of SPX Corporation*. This case was a contested appeal of a contract award for sophisticated automobile emissions measuring equipment for the State of Nevada. I represented the bid protester. After an evidentiary hearing and argument, the court upheld the contract award. In *United States v. Material Service Corporation*, a case described on page 20 of my responses to the Committee's questionnaire, I appeared in and argued a court-sanctioned arbitration before the late retired U.S. District Judge Nicholas Bua. The case settled and was dismissed. I also appeared and argued on behalf of defendants in two pro bono criminal cases: *United States v. Burgess*, Cr. No. F-6325-95 (D.C. Super. Ct.), and *United States v. Nickerson*, Cr. No. M-2726-96 and M-2664-95 (D.C. Super. Ct.). Burgess, charged with possession with intent to distribute cocaine, died before trial. Nickerson and her co-defendant McBride were charged with assault and battery. Part way through the suppression hearing, the prosecution moved for dismissal of the charges, and the court dismissed the charges. Additionally, I also appeared in (but did not argue) the cases described above: *United States ex rel. Maichel v. General Dynamics*, and *Allied Investment Corporation v. Griffin*. And, while still in law school as a member of the Harvard Legal Aid Bureau, I appeared in and argued a handful of cases in the Massachusetts state courts.

2. Have you ever directly participated in a case in federal court? If so, please describe the case(s), outcome(s), and the nature of your involvement.

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Response: Yes. Please see answer immediately above.

3. What assurances can you give the Committee that, notwithstanding your lack of litigation and judicial experience, you are qualified for a position on the U.S. Court of Appeals?

Response: I am pleased that the American Bar Association's Standing Committee on the Federal Judiciary, found me to be "Well Qualified for appointment as Judge of the United States Court of Appeals for the Fourth Circuit." Although I am humbled and honored by this nomination, I believe that my broad experience in a wide array of legal positions, my practice in many different legal disciplines, and my clerkship for a federal district judge has prepared me well to serve, if confirmed, as a judge on the United States Court of Appeals for the Fourth Circuit.

Recusal

4. At the hearing, I asked you whether you would recuse yourself from a case challenging the President's designation of an individual as an enemy combatant. In responding, you stated: "In any matter in which I had any particular involvement, of course, I would not participate further. For some broader issue where I might have had some role in developing processes that apply, I would think that probably also I would not participate, depending on what the facts are."

(a) If you are confirmed and a case comes before you involving an individual challenging his designation as an enemy combatant and he was so designated by the President and held indefinitely and incommunicado after you left the Department of Defense (DOD), would you recuse yourself from hearing this case because you had a role in developing the process for designating individuals as enemy combatants? If not, please explain why.

Response: If confirmed, I would determine whether to recuse myself based on applicable law. If confirmed, I would adhere strictly to all applicable statutes, court decisions, policies, and ethical rules, including 28 U.S.C. § 455, and the Code of Conduct for United States Judges. Under 28 U.S.C. § 455, for example, I would be obligated to (and of course would) disqualify myself from any proceeding in which I had "personal knowledge of disputed evidentiary facts concerning the proceeding." Similarly, I would be obligated to (and of course would) disqualify myself from any proceeding in which I had "participated as counsel, adviser, or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy." Applying these statutes, court decisions, policies, and ethical codes requires close attention to the particular facts of each particular case. I would take care to disqualify myself in any proceeding in which my impartiality might reasonably be questioned. I believe fervently not only that the judiciary must make decisions with integrity, but also that the public must be able to have confidence in the integrity of the judiciary and its decisions.

(b) If you are confirmed and a case comes before you challenging the President's creation of military tribunals pursuant to his November 2001 Executive Order, or a case involving an individual tried in such a military tribunal, would you recuse yourself from hearing this case because you had a role in developing the military tribunal Executive Order and subsequent procedures and processes? If not, please explain why.

Response: The facts of each case must be weighed and considered individually. If confirmed, and such a case were before me, I would adhere strictly to all applicable statutes, court decisions, policies, and ethical rules, including 28 U.S.C. § 455, and the Code of Conduct for United States Judges. Under, for example, 28 U.S.C. § 455, I would be obligated to (and of course would) disqualify myself from any proceeding in which I had "personal knowledge of disputed evidentiary facts concerning the proceeding." Similarly, I would be obligated to (and of course would) disqualify myself from any proceeding in which I had "participated as counsel, adviser, or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy." I would take care to disqualify myself in any proceeding in which my impartiality might reasonably be questioned. I believe fervently not only that the judiciary must make decisions with integrity, but also that the public must be able to have confidence in the integrity of the judiciary and its decisions.

5. Please discuss how you would determine whether to recuse yourself in a case involving the U.S. military or the U.S. government.

Response: I note that 28 U.S.C. § 455(b)(3) addresses the obligation of a judge of the United States to disqualify himself "where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy." I note also the obligation of a judge to disqualify himself from any proceeding in which he had "personal knowledge of disputed evidentiary facts concerning the proceeding." If confirmed, I would adhere strictly to these obligations and all additional applicable statutes, court decisions, policies, and ethical rules. I would, of course, take care to disqualify myself in any proceeding in which my impartiality might reasonably be questioned. I believe fervently not only that the judiciary must make decisions with integrity, but also that the public must be able to have confidence in the integrity of the judiciary and its decisions.

Enemy Combatants

6. The DOD has argued that it has the power to detain suspected members of al-Qaeda as "enemy combatants" when they are captured on US soil, as in the cases of Jose Padilla and Ali Saleh al-Marri. The DOD's rationale is that a state of armed conflict exists, both overseas and on American soil, between the United States and al-Qaeda.

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(a) Does the DOD, in your view, also have the power to conduct other operations against al-Qaeda on U.S. soil, using military personnel and resources?

Response: As General Counsel of the Department of Defense, I am regularly called upon to provide legal advice in these areas. Therefore, it would not be appropriate for me to discuss any advice or opinion I may or may not have provided on this issue.

(b) If you answered "yes" to (a) above, please indicate the full range of operations you believe the military would be authorized to conduct on U.S. soil against suspected al-Qaeda associates and please explain your rationale for why these operations would be permissible.

Response: As General Counsel of the Department of Defense, I am regularly called upon to provide legal advice in these areas. Therefore, it would not be appropriate for me to discuss any advice or opinion I may or may not have provided on this issue.

(c) Are there any operations that you believe the military would not be authorized to conduct on U.S. soil against suspected al-Qaeda associates? If so, what are they and what is your rationale for why these operations would not be authorized?

Response: As General Counsel of the Department of Defense, I am regularly called upon to provide legal advice in these areas. Therefore, it would not be appropriate for me to discuss any advice or opinion I may or may not have provided on this issue.

7. On October 17, 2002, in a speech before the Federalist Society in Washington, DC, you said that you have "long admired the Federalist Society for its willingness to question conventional wisdom, and especially for its willingness to do so from an historical perspective that reaches back before the 1960's. My boss, Secretary Rumsfeld, has a similar perspective, and a similar determination not to let today's shibboleths stand in the way of important national security goals."

(a) Do you believe that 18 U.S.C. § 4001(a), which prohibits the imprisonment or detention of U.S. citizens except by an Act of Congress and was enacted in 1971, has stood in the way of national security goals? Please explain.

Response: I do not believe 18 U. S. C. § 4001(a) has stood in the way of national security goals. The administration's position is that it is acting consistently with section 4001(a).

(b) Which principles developed prior to the 1960's were you thinking of when you gave your speech and how should they be applied today?

Response: The speech from which you quote was principally a discussion about the longstanding, well-established legal bases for detaining and trying enemy combatants in wartime. The passage highlighted in this question was an introduction to that discussion. The principles developed prior to the 1960s I had in mind and referenced in the speech include those embodied in the United States Constitution assigning to the President responsibility for the conduct of war in defense of the United States. I also referenced the 1949 Geneva Conventions, a number of federal court decisions, the United Nations Charter, and the NATO Treaty. A major purpose of my speech was to note the continued vitality of these principles. As I said at the conclusion of my speech: "I look at what we are doing here not so much as an exercise of lawful executive power or governmental rights, but as an appropriate discharge of a difficult executive responsibility. The Constitution confers extraordinary power on the President, especially in time of war, to enable him to carry out his ultimate responsibility of ensuring that the American people are safe and secure. To fail to exercise this power would be to fail to discharge this most basic of all presidential responsibilities. We have tried hard in our office to craft detention policies that satisfy our obligations. As we proceed, no doubt we will refine our policies appropriately."

(c) What assurances can you give the Committee that, if confirmed, you would uphold and apply legal precedent from the 1960's to the present?

Response: If confirmed and appointed as a judge on the United States Court of Appeals for the Fourth Circuit, I would "solemnly swear to administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as judge under the Constitution and laws of the United States. So help me God." That, of course, includes all applicable legal precedent from the United States Court of Appeals for the Fourth Circuit and the Supreme Court.

Environmental Protection

8. In your Committee Questionnaire, you listed *Center for Biological Diversity v. Pirie*, 201 F. Supp. 2d 113 (D.D.C. 2002), as one of the most significant litigated matters that you have personally handled. You stated that you were ultimately responsible for ensuring that the Justice Department represented the views and interests of the Defense Department properly. In the case, the Center of Biological Diversity sought to halt the killing and maiming of several species of migratory birds on a Pacific island during live-fire training exercises conducted by the United States military in alleged violation of the Migratory Bird Treaty Act and the Administrative Procedure Act.

The Defense Department argued that the plaintiffs suffered insufficient injury because the more birds that the defendants killed, the more enjoyment birdwatchers would get from seeing the ones that remain, adopting the amicus brief of the Washington Legal Foundation. The judge responded by saying that there is "absolutely no support in the

law" for the Department's view. The court also urged the federal government to refrain from making or adopting such frivolous arguments in the future.

The Defense Department also took the position that the "use of the area as a live fire range has the beneficial effect of reducing the negative impacts of human intrusion." The judge found the argument "that the bombardment of this island with weapons of the number and magnitude described above is actually somehow beneficial to these birds because that bombardment prevents other forms of 'human intrusion'" to be "surprising."

(a) Do you believe the lower court opinion was wrongly decided? If so, why?

Response: As explained in the government's briefs in the Court of Appeals, the United States argued that the lower court decision was wrongly decided. The government argued that the district court, contrary to its determination, did in fact have discretion not to enjoin vital wartime military training for troops preparing to enter combat in Afghanistan. As the government argued in its appellate brief, the district court erred in enjoining military training on Farallon de Medinilla, because the APA clearly preserves the court's discretion to order various forms of relief or to deny relief, rather than to enjoin vital military training in wartime: "The district court should have considered the evidence that an injunction would severely harm the military....[and] found that it was bound to deny injunctive relief and allow the status quo of the past thirty years to continue, giving the Navy a reasonable period of time to come into any compliance that might otherwise be necessary while training continued."

(b) Do you disagree with the district judge's conclusion that there is no support in the law for the Department's view that bird-watching enthusiasts should be grateful to the Defense Department for killing so many migratory birds, because they can get more enjoyment out of seeing rare birds than they do from bird populations that flourish?

Response: As you note in your questions, the Department did not draft the brief that made the argument to which you refer. The Department adopted the standing arguments expressed in the amicus brief. As I stated in my questionnaire, with respect to *Pirie*, I participated principally by developing and approving litigation strategy, and ensuring that the litigation strategy was consistent with the Administration's legislative agenda. As a result, I had no role or involvement in the decision to adopt the standing arguments in the amicus brief. (The government adopted only the standing arguments, not the further separation of powers arguments.) In particular, the filing of the government's Supplemental Reply on December 13, 2001 took place at a time when my attention was heavily focused on the aftermath of the September 11, 2001 attacks and on the war in Afghanistan. Accordingly, I took no part in the decision to adopt the standing arguments of the amicus brief. Indeed, I was not briefed about the question of adopting those arguments—much less about the specific issue raised in Judge Sullivan's opinion. I

would not have countenanced—and do not countenance—adopting an argument "that bird-watching enthusiasts should be grateful to the Defense Department for killing so many migratory birds, because they can get more enjoyment out of seeing rare birds than they do from bird populations that flourish."

(c) The administration later had a provision inserted in the 2003 National Defense Authorization Act amending the Migratory Bird Treaty Act stating that it would not apply to the incidental taking of a migratory bird by a member of the U.S. Armed Forces during a military exercise. Therefore, on appeal, the U.S. Court of Appeals for the D.C. Circuit vacated the lower court's decision with instructions to dismiss the case as moot. Given your involvement with this case in challenging this important environmental protection, what assurances can you give the Committee that, if confirmed, you would uphold and apply the Migratory Bird Treaty Act?

Response: I believe that judges are obliged to apply fairly and impartially the laws that Congress has enacted, and the Constitution, and I will earnestly seek to follow that bedrock principle in construing our environmental laws, as I would with all other laws.

9. In the Committee Questionnaire, you stated that you have "developed some expertise in . . . certain aspects of environmental law." During your tenure as General Counsel for DOD, the DOD has taken positions challenging longstanding environmental protections and engaged in lobbying Congress to revise rules that protect marine mammals and migratory birds.

(a) Have you ever been involved in a case where you were not challenging, but instead were defending important environmental protections? If so, please describe the case(s), outcome(s), and the nature of your involvement.

Response: As noted in my response to the Committee's questionnaire, I have appeared in court as an advocate only rarely. Accordingly, my practice has not afforded me many opportunities to challenge or defend important environmental protections in an adversarial setting. I have, however, been involved in advising on matters of compliance with those important environmental laws and regulations. I have also been counsel to, and advocate for, a client heavily engaged in innovative methods of environmental protection and remediation. My former client, EdenSpace Systems Corporation, excels in phytoextraction of heavy metals in ongoing manufacturing operations and in cleanup of contaminated soils.

(b) What assurances can you give this Committee that, if confirmed, you would uphold and apply our nation's environmental protections?

Response: If confirmed and appointed as a judge on the United States Court of Appeals for the Fourth Circuit, I would "solemnly swear to administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon

me as judge under the Constitution and laws of the United States. So help me God." That of course, naturally includes the environmental laws. I assure the Committee that, if confirmed, I will faithfully discharge my duties in this area.

Guantanamo Bay Detentions

10. At your hearing, when asked why no tribunals pursuant to Article 5 of the Third Geneva Convention have been convened, you said that each detainee had received extensive screening between capture and transfer to Guantanamo.
If the screening is substantially equivalent or superior to the Article 5 procedures, as you suggested, why not simply hold an Article 5 tribunal?

Response: The government explained in its recently filed brief in opposition to *certoriari* in the *Hamdi* case, that: "Article 5 of the GPW . . . calls for a tribunal only in cases in which there is doubt as to an individual's prisoner-of-war status. In the case of Hamdi and other detainees, there is no such doubt. The President has conclusively determined that al Qaeda and Taliban detainees, such as Hamdi, are unlawful combatants, and as such, are not prisoners of war under the GPW." Br. in Opposition to Cert., No. 03-6696, at 29.

11. You have said that the detainees in Guantanamo do not qualify for Prisoner of War (POW) status, in part, because of their failure to wear uniforms and carry arms openly. Many have expressed concern about this reading of the Geneva Conventions, in part, because it would seem to deprive some American troops of their protections. If you believe that Taliban soldiers lost their right to POW status when they failed to wear uniforms, what about American Special Forces serving in Afghanistan, who often disguise themselves? If these Special Forces members are captured while not wearing uniforms, aren't you concerned that they could be denied POW status?

Response: The proper treatment of United States forces captured in combat is extraordinarily important and certainly is a matter of great concern. The Department of Defense has repeatedly stated publicly that its forces, including Special Forces, are governed by the law of war. In *United States v. Lindh*, the brief for the United States explained that there are:

> **four basic conditions that a group must meet to qualify as lawful combatants. Those conditions are:**
> **(1) To be commanded by a person responsible for his subordinates;**
> **(2) To have a fixed distinctive emblem recognizable at a distance;**
> **(3) To carry arms openly; and**
> **(4) To conduct their operations in accordance with the laws and customs of war.**
> **Those characteristics were understood as the defining characteristics of an army that entitled its members to privileges as combatants . . . .**

> **These conditions have long been established under customary law as the requirements for lawful combatancy and are the same in substance as the requirements that apply under the GPW for a group to be eligible for POW status.**

Gov't Opp. to Def. Motion to Dismiss Count One of the Indictment for Failure to State a Violation of the Charging Statute (Combat Immunity) (#2) available at http://news.findlaw.com/hdocs/docs/lindh/uslindh60502gop2im.pdf (internal citations omitted). Additionally, that brief expressly rejected an assertion by *amici* that "if the four conditions applied to regular armed forces, members of those forces would lose their status by wearing camouflage" explaining that "[m]embers of the armed forces of a party to a conflict lose their right to be treated as prisoners of war 'whenever they deliberately conceal . . . their status . . . for the purpose of waging war' by '[p]utting on civilian clothes or the uniform of the enemy.' Soldiers wearing camouflage are still in uniform, and in a uniform that plainly distinguishes them from the non-combatant, civilian population. The mere fact that the uniform makes them more difficult to discern against the backdrop of their physical surroundings has no bearing on their status as lawful combatants." Gov't Opp. to Def. Motion to Dismiss Count One of the Indictment for Failure to State a Violation of the Charging Statute (Combat Immunity) (#2) available at http://news.findlaw.com/hdocs/docs/lindh/uslindh60502gop2im.pdf (quoting U.S. Army Field Manual No. 27-10, The Law of Land Warfare, ch. 3 ¶ 74 (1956)).

12. As you know, the US is bound by the Geneva Conventions unless Congress specifically passes a law saying otherwise, and to my knowledge we have not done so. The official commentary on the Geneva Conventions states:

> "Every person in enemy hands must have some status under international law: he is either a prisoner of war and, as such, covered by the Third Convention, a civilian covered by the Fourth Convention, [or] a member of the medical personnel of the armed forces who is covered by the First Convention. There is no intermediate status; nobody in enemy hands can fall outside the law."

International Committee of the Red Cross, *Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva: 1958), p. 51 (emphasis in original). The International Criminal Tribunal for the Former Yugoslavia, has stated that "there is no gap between the Third and Fourth Geneva Conventions. If an individual is not entitled to the protection of the Third Convention as a prisoner of war ... he or she necessarily falls within the ambit of [the Fourth Convention], provided that its article 4 requirements [defining a protected person] are satisfied." *Celebici Judgment*, para. 271 (1998).

Leaving aside for the moment the debate on "unlawful combatant" status under US law, is there any *international* legal authority supporting the proposition that "unlawful combatant" status exists under the Geneva Conventions?

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Response: There is international legal authority supporting the notion of unlawful combatancy. The government, in urging the district court to reject Mr. Lindh's assertion of combatant immunity, cited a number of commentators and documented in military manuals. See Gov't Opp. to Def. Motion to Dismiss Count One of the Indictment for Failure to State a Violation of the Charging Statute (Combat Immunity) (#2) available at http://news.findlaw.com/hdocs/docs/lindh/uslindh60502gop2im.pdf. For example:

> **Allan Rosas, The Legal Status of Prisoners of War 419 (1976): "persons who are not entitled to prisoner-of-war status are as a rule regarded as unlawful combatants"**
>
> **Ingrid Detter, The Law of War 148 (2d ed. 2000): "The main effect of being a lawful combatant is entitlement to prisoner of war status. Unlawful combatants, on the other hand, though they are a legitimate target for any belligerent action, are not, if captured, entitled to any prisoner of war status."**
>
> **The Handbook of Humanitarian Law in Armed Conflicts § 302 (Dieter Fleck ed., 1995): "If . . . persons who do not have combatant status participate directly in hostilities then they are treated as unlawful combatants if they fall into the hands of the enemy. . . . Such irregular fighters . . . are prosecuted as criminals and sentenced for their direct participation in hostilities."**

The court in the *Lindh* case concluded that: "The GPW also reflects this distinction between lawful and unlawful combatants, with only the former eligible for immunity from prosecution." *United States v. Lindh*, 212 F. Supp. 2d 541, 554 (E.D.Va. 2002).

I would also note that the U.S. Department of the Air Force has explained in a pamphlet entitled, International Law—The Conduct of Armed Conflict and Air Operations, that:

> **An unlawful combatant is an individual who is not authorized to take a direct part in hostilities but does. The term is frequently used also to refer to otherwise privileged combatants who do not comply with requirements as to mode of dress, or noncombatants in the armed forces who improperly use their protected status as a shield to engage in hostilities.**

International Law—The Conduct of Armed Conflict and Air Operations, U.S. Department of the Air Force Pamphlet § 3-3 (1976).

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Responses of William J. Haynes II to the
Written Questions Submitted by Senator Edward Kennedy

1. At your hearing, I asked why the Administration is failing to abide by the Geneva Conventions by refusing even to convene a tribunal to determine whether any of the foreign nationals detained at the Guantanamo Bay Naval Base are entitled to prisoner of war status. You responded that none of the detainees at Guantanamo are POWs because "there was no regular uniformed army commanded by responsible superiors in the conflict in Afghanistan." This is an extraordinary statement. On what facts do you base it? Is it your position that the United States was never involved in a conflict against the armed forces of the former government of Afghanistan, or that no such army ever existed?

Response: On February 7, 2003, the President determined that neither the Taliban nor the al-Qaida detainees qualify as prisoners of war (POW) under the terms of the Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949 (GPW). The Office of the White House Press Secretary's February 7, 2002, Fact Sheet on the Status of Detainees at Guantanamo stated:

> **The President has determined that the Geneva Convention applies to the Taliban detainees, but not the al-Qaida detainees. Al-Qaida is not a state party to the Geneva Convention; it is a foreign terrorist group. As such, its members are not entitled to POW status. Although we never recognized the Taliban as the legitimate Afghan government, Afghanistan is a party to the Convention, and the President has determined that the Taliban are covered by the Convention. Under the terms of the Geneva Convention, however, the Taliban detainees do not qualify as POWs. Therefore, neither the Taliban nor al-Qaida detainees are entitled to POW status.**

Additionally, in *United States v. Lindh*, 212 F. Supp.2d 541, 558 (E.D. Va. 2002), the court reviewed available record information and agreed with the President's determination, concluding that "it follows that the President's decision denying Lindh lawful combatant immunity is correct." The *Lindh* court stated:

> **[I]t appears that the Taliban lacked the command structure necessary to fulfill the first criterion, as it is manifest that the Taliban had no internal system of military command or discipline. . . . Thus, Lindh has not carried his burden to show that the Taliban had the requisite hierarchical military structure. Similarly, it appears the Taliban typically wore no distinctive sign that could be recognized by opposing combatants; they wore no uniforms or insignia and were effectively indistinguishable from the rest of the population. The requirement of such a sign is critical to ensure that combatants may**

> **be distinguished from the non-combatant, civilian population. . . . Next, although it appears that Lindh and his cohorts carried arms openly in satisfaction of the third criterion for lawful combatant status, it is equally apparent that members of the Taliban failed to observe the laws and customs of war. Thus, because record evidence supports the conclusion that the Taliban regularly targeted civilian populations in clear contravention of the laws and customs of war, Lindh cannot meet his burden concerning the fourth criterion. . . . In sum, the President's determination that Lindh is an unlawful combatant and thus ineligible for immunity is controlling here . . . (iii) because even absent deference, the Taliban falls far short when measured against the four GPW criteria for determining entitlement to lawful combatant immunity.**

212 F. Supp. 2d at 558 (internal citations omitted).

2. There is growing acknowledgement among legal scholars and commentators that, despite your assertion to the contrary, members of the armed forces of the former government of Afghanistan were part of an organized army and should be treated as POWs under international law. In January 2002, the *Washington Post* wrote that "a loose consensus has emerged among many legal specialists, as well as a number of critics and defenders of the U.S. military's treatment of the [Guantanamo Bay] detainees, that many of the captured Taliban fighters should be declared POWs after hearings on their cases." For example, Michael Glennon, a fellow at the Woodrow Wilson International Center for Scholars, has concluded that each person's status must be considered individually, since group determinations will likely lead to erroneous findings of non-POW status. How can the Administration insist that not one of the Guantanamo detainees is a POW in the face of such strong and authoritative statements to the contrary?

   <u>Response</u>: As stated above, on February 7, 2003, the President determined that neither the Taliban nor the al-Qaida detainees qualify as prisoners of war (POW) under the terms of the Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949 (GPW). Nonetheless, U.S. policy with regard to treatment of detainees, as stated in the Office of the White House Press Secretary's February 7, 2002, Fact Sheet on Status of Detainees at Guantanamo, is as follows: "The United States is treating and will continue to treat all of the individuals detained at Guantanamo humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of the Third Geneva Convention of 1949." With regard to GPW Article 5, the Department addressed this matter in an April 19, 2002, insert for the record responding to a question posed by the Chairman of the Senate Armed Services Committee during the FY03 Budget Hearing on February 5, 2002. In pertinent part, the Department's insert for the record provided as follows:

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Article 4 of the 1949 Geneva Convention Relative to the Treatment of Prisoners of War specifies the categories of people who fall into the hands of the enemy who are entitled to be treated as prisoners of war (POWs). If a detainee falls within one of the Article 4 categories of persons entitled to POW status, then he is a POW. If a detainee clearly does not fall within one of the Article 4 categories, then the detainee does not receive POW status. When there is doubt, then a tribunal under Article 5 of the Convention is appropriate to determine the status of the detainee.

The President has determined that the conflict with the al-Qaeda is not covered by the Geneva Convention. The President has further determined that although the conflict with the Taliban is covered by the Geneva Convention, the Taliban detainees are not entitled to POW status under the terms of Article 4. Based on the President's determinations, there is no doubt regarding whether al-Qaeda or Taliban detainees are entitled to POW status.

3. At the hearing, you stated that the four-part test in the Third Geneva Convention must be met for a detainee to be considered a prisoner of war. The four-part test to which you refer appears in Article 4(A)(2) of the Third Geneva Convention, which by its terms applies only to members of other militias and members of other volunteer corps. The plain language of Article 4 does not apply the four-part test to members of the armed forces of a party to the conflict, who automatically qualify as POWs under 4(A)(1). Do you agree that members of the armed forces of a party to an armed conflict are entitled, without more, to POW status? If you do not accept the plain language of Article 4, please explain why. If you accept this legal principle, how do you justify the categorical denial of POW status to the detainees who served as soldiers in the armed forces of the former Afghan government?

   <u>Response</u>: **In *United States v. Lindh*, the United States argued that the absence of express mention of the four conditions in the provisions of GPW article 4 dealing with "regular armed forces" does not mean that "regular armed forces" need not meet the four conditions. The four conditions are specifically set out in the provisions dealing with "militias and other volunteer corps" as a baseline standard for such irregular forces, but they were understood by the drafters of the Geneva Convention to be "material characteristics" and "attributes" of regular armed forces. In its decision on the question, the district court stated: "Lindh asserts that the Taliban is a 'regular armed force,' under the GPW, and because he is a member, he need not meet the four conditions of the Hague Regulations because only Article 4(A)(2), which addresses irregular armed forces, explicitly mentions the four criteria. This argument is unpersuasive; it ignores long-established practice**

under the GPW and, if accepted, leads to an absurd result. First, the four criteria have long been understood under the customary international law to be the defining characteristics of any lawful armed force. Thus, all armed forces or militias, regular and irregular, must meet the four criteria if their members are to receive combatant immunity. . . . It would indeed be absurd for members of a so-called 'regular armed force' to enjoy lawful combatant immunity even though the force had no established command structure and its members wore no recognizable symbol or insignia, concealed their weapons, and did not abide by the customary laws of war." *United States v. Lindh*, 212 F. Supp. 2d 541, 557 n.35 (E.D. Va. 2002).

4. The International Committee of the Red Cross (ICRC) has criticized the Administration for its refusal to convene tribunals, which would give detainees a chance to prove their POW status and the U.S. a proper chance to prove otherwise. Legal commentator Stuart Taylor has written that "the problem with the Administration's position is that it seems to have flouted (or at best wriggled around) Article 5 of Geneva, which states that 'should any doubt arise' as to the status of the captured fighters, 'such persons shall enjoy the protection of the present convention until such time as their status has been determined by a competent tribunal.' Bush and Defense Secretary Donald Rumsfeld have claimed that there is no doubt that all Guantanamo detainees are unlawful combatants. But the government has not . . . bothered to put any evidence before any tribunal." In past wars, the United States has routinely convened tribunals to determine whether captured persons are entitled to POW status. Aren't we clearly violating the Geneva Conventions by failing to do this now?

   <u>Response</u>: As stated above, the President has determined that the detainees are not entitled to POW status. Nonetheless, U.S. policy with regard to treatment of detainees, as stated in the Office of the White House Press Secretary's February 7, 2002, Fact Sheet on Status of Detainees at Guantanamo, is as follows: "The United States is treating and will continue to treat all of the individuals detained at Guantanamo humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of the Third Geneva Convention of 1949." With regard to Article 5, in addition to the explanation provided above, I would note the government's explanation in its recently filed brief in opposition to certiorari in the *Hamdi* case: "Article 5 of the GPW . . . calls for a tribunal only in cases in which there is doubt as to an individual's prisoner-of-war status. In the case of Hamdi and other detainees, there is no such doubt. The President has conclusively determined that al Qaeda and Taliban detainees, such as Hamdi, are unlawful combatants, and, as such, are not prisoners of war under the GPW." Br. in Opposition to Cert., No. 03-6696, at 29.

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5. At the hearing, you appeared to suggest that the review and interrogation of detainees for security, military, and intelligence gathering purposes somehow satisfies the "competent tribunal" requirement under Article 5 of the Third Geneva Convention. The function of an Article 5 tribunal is to ascertain whether a captured combatant is entitled to continue to be treated as a POW or should be considered a protected person under the Fourth Geneva Convention. In contrast, the function of the interrogation of detainees to which you referred is to acquire information about future military plans and attacks. To date, no Administration official other than yourself has suggested that a purpose of these interrogations is to determine status under the Geneva Conventions. Do you agree that the process of interrogation and review to which you referred at your hearing does not meet the requirements of Article 5 of the Fourth Geneva Convention for determining POW status?

   Response: I did not intend to suggest that the reviews to which I referred constitute Article 5 proceedings. I did intend to observe that the scrutiny employed in those reviews far exceeds the scrutiny required by Article 5, when such Article 5 tribunals are appropriate. As noted in my answers above, the President has determined that the detainees are not entitled to POW status and thus, as explained above, tribunals under Article 5 of the GPW are not appropriate. As the Department has noted publicly, however, the United States has reviewed and evaluated the individuals under its control in the global war on terrorism and carefully screened them to determine whether their detention by the United States is appropriate. They have been evaluated in an objective and responsible way and, as you know, the Department has released or transferred a significant number of detainees from Guantanamo and will continue to do so, as appropriate. As it has stated many times, the Department does not desire to hold any detainee any longer than is necessary. The Department's review is focused on the relevant question—whether it is appropriate to continue to detain an individual—not to resolve doubt as to whether the individual belongs to a group that warrants POW status.

6. You have used the term "unlawful combatants," a term employed by the U.S. Supreme Court in a 1942 decision, to describe detainees who you claim are not entitled to POW status under the Geneva Conventions. Even if the Supreme Court correctly interpreted the laws of war as they existed in 1942, it is clear that the Court was not interpreting the current Geneva Conventions, which date from 1949. The laws of war have changed greatly since World War II, with the development of the four Geneva Conventions, their two Optional Protocols, and a vast body of international human rights law and standards. Why is the Administration selectively invoking pre-1949 law on "unlawful combatants" that is inconsistent with the current law of war? What is to prevent the Administration from relying on other outdated laws – such as the 18th-century notion that unlawful combatants, like spies and saboteurs, may be summarily executed?

Response: The notion of unlawful combatancy is certainly consistent with the current law of war, and the Geneva Conventions of 1949, as asserted by a number of commentators and documented in military manuals. There is international legal authority supporting the notion of unlawful combatancy. The government, in urging the district court to reject Mr. Lindh's assertion of combatant immunity, cited a number of commentators and documented in military manuals. Gov't Opp. to Def. Motion to Dismiss Count One of the Indictment for Failure to State a Violation of the Charging Statute (Combat Immunity) (#2) available at http://news.findlaw.com/hdocs/docs/lindh/uslindh60502gop2im.pdf. For example:

Allan Rosas, The Legal Status of Prisoners of War 419 (1976): "persons who are not entitled to prisoner-of-war status are as a rule regarded as unlawful combatants"

Ingrid Detter, The Law of War 148 (2d ed. 2000): "The main effect of being a lawful combatant is entitlement to prisoner of war status. Unlawful combatants, on the other hand, though they are a legitimate target for any belligerent action, are not, if captured, entitled to any prisoner of war status."

The Handbook of Humanitarian Law in Armed Conflicts § 302 (Dieter Fleck ed., 1995): "If . . . persons who do not have combatant status participate directly in hostilities then they are treated as unlawful combatants if they fall into the hands of the enemy. . . . Such irregular fighters . . . are prosecuted as criminals and sentenced for their direct participation in hostilities."

I would also note that the U.S. Department of the Air Force has explained in a pamphlet entitled, International Law—The Conduct of Armed Conflict and Air Operations, that:

> **An unlawful combatant is an individual who is not authorized to take a direct part in hostilities but does. The term is frequently used also to refer to otherwise privileged combatants who do not comply with requirements as to mode of dress, or noncombatants in the armed forces who improperly use their protected status as a shield to engage in hostilities.**

International Law—The Conduct of Armed Conflict and Air Operations, U.S. Department of the Air Force Pamphlet § 3-3 (1976).

Additionally, the court in the *Lindh* case, in considering whether the defense of combatant immunity was available to Lindh, noted the Supreme Court's conclusion in the *Quirin* case and stated: "The GPW also reflects this

distinction between lawful and unlawful combatants, with only the former eligible for immunity from prosecution." ***United States v. Lindh*****, 212 F. Supp. 2d 541, 554 (E.D.Va. 2002).**

The United States has repeatedly indicated its respect for the law of war, and its intention to apply it in an exemplary fashion. There has been no greater champion of compliance with the law of war than the United States.

7. At your hearing, you stated that you want to return the three children detained at Guantanamo – ages 13 to 15 – to society as soon as possible. It is my understanding that Major General Geoffrey Miller, the Commander of the Joint Task Force at Guantanamo, has told the Defense Department that these children pose a low risk and should be sent home. Is that correct? What is preventing you from returning these children home now?

   Response: Because I am answering questions in my personal capacity, I am limited in my ability to answer certain questions. I would note however, that the Department of Defense has indicated publicly that certain juvenile enemy combatants held at Guantanamo likely will be released when appropriate arrangements are in place, and that the Department is working expeditiously to put those arrangements in place.

8. Under the Protocol on Child Soldiers, to which the United States is a party, the Administration has specific obligations to rehabilitate and reintegrate child soldiers into their societies. Given these obligations, how do you justify the continued detention of these children for such an extended period of time? Why has the Administration refused to disclose the total number of children detained?

   Response: The Department of Defense has indicated that as with other detainees, these individuals were transferred to Guantanamo because they are enemy combatants who pose a threat to our forces. The Department of Defense has further indicated that it recognizes the special needs of younger detainees and the difficult, unfortunate circumstances surrounding their situation. Their needs are being addressed by medical professionals and others who are experienced in dealing with issues involving juveniles. The Department is also aware of the need to assist the juveniles with reintegration into their societies upon release. The Department of Defense has stated that for operational security reasons and for the protection of these juveniles, the Department has not released specific information on these detainees, including the exact number of juveniles detained.

9. The international standard for separating child from adult soldiers is 18 years of age, not 16. Why haven't the 16- and 17-year-old juveniles at Guantanamo been separated from the adults, as required by international standards?

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Response: Because I am answering questions in my personal capacity, I am limited in my ability to answer certain questions. To the extent your question requests information that is not publicly available, I respectfully suggest that you direct your inquiry to the Department of Defense.

10. In your discussion of the differences between the rules of war and the rules of law enforcement, you said that the Administration is justified in treating suspected terrorists as unlawful combatants under the rules of war so that they can be interrogated about possible future attacks. You also said that it is the policy of the Administration to provide detained U.S. citizens access to counsel once the interrogation process has been completed. How do you reconcile your testimony with the position the Administration has taken in the Hamdi and Padilla cases? In those cases, the Administration has argued against access to counsel for both citizens without acknowledging that access will be granted once interrogations are completed.

    Response: The publicly stated policy of the Department of Defense is that it will permit access to counsel by an enemy combatant who is a U.S. citizen and who is detained by DoD in the United States after DoD has determined that such access will not compromise the national security of the U.S.; and after DoD has completed intelligence collection from that enemy combatant or after DoD has determined that such access will not interfere with intelligence collection from that enemy combatant. Indeed, on December 2, 2003, the Department of Defense announced that Yaser Esam Hamdi, an enemy combatant detained at the Charleston Consolidated Naval Brig in Charleston, S.C., will be allowed access to a lawyer subject to appropriate security restrictions.

11. Do you believe that once the Administration completes its interrogation of Hamdi and Padilla, it can lawfully continue to detain these citizens without charge until the war against terrorism has ended? Please explain in detail the legal basis for this position.

    Response: The legal basis for detaining Mr. Hamdi and Mr. Padilla is set forth in the pleadings filed by the Department of Justice in those cases. In those pleadings, the government explains that it is well established that enemy combatants may be detained for the duration of the conflict. Those pleadings further explain that this detention serves the purpose of preventing those combatants from returning to conflict.

12. In your testimony, you said that the United States is at war with Al Qaeda and with other terrorists of global reach, and that the Geneva Conventions do not apply to that war as a matter of law because Al Qaeda is not a state. What law applies to the war against Al Qaeda? What is the source of that law? In confronting this new kind of challenge, is the Defense Department attempting to establish new legal principles, invoke old legal principles, or both?

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Response: The Department of Defense has indicated that the law of war applies to the conflict with al Qaeda, and has relied upon well-established principles drawn from a number of sources, both domestic and international, including the Constitution of the United States of America and relevant case law, the Geneva and Hague Conventions, and customary international law.

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Responses of William J. Haynes II to the Written Questions Submitted by Senator Richard J. Durbin

1. Last year, you delivered a speech to the Federalist Society entitled "The War on Terrorism and the Rule of Law." In your speech, you dismissed concerns about the administration's policy of detaining "enemy combatants":

> Many in the press and the legal academy have *vehemently*, and sometimes *shrilly*, criticized our detention of enemy combatants. These criticisms usually include the claim that we are *disparaging*, or *disregarding*, or *violating*, the "rule of law." Unfortunately, the critics frequently invoke "rule of law" values without regard to what the law actually says. All too often they use "rule of law" rhetoric as a metaphor for their preferred outcomes based on their perception, unconnected to legal authority, of what justice or fairness requires. All too often this rhetoric ignores constitutional provisions, federal statutes, treaties and the customs and practices of nations, judicial decisions, and long historical practices that the critics would rather forget. (Your emphasis).

A. Who in the press and legal academy has "vehemently" and/or "shrilly" criticized the detention of enemy combatants? Please give specific examples of their vehement and shrill criticisms.

Response: As you note in your question, I gave that speech more than a year ago. I do not recall the precise persons in the press and legal academy to whom I referred. I do recall that many critics failed to appreciate the distinction between law enforcement and warfare, between application of the criminal law and the law of war, and consequently these critics wrongly charged that the United States was disregarding the law. Accordingly, in my speech, I sought to demonstrate that the United States is carefully acting in accordance with the law.

B. Please give examples of "rule of law" rhetoric that is "a metaphor for [the critics'] preferred outcomes" and is "unconnected to legal authority". How does this rhetoric ignore constitutional provisions, federal statutes, treaties and the customs and practices of nations, judicial decisions, and long historical practices?

Response: In speaking, my principal concern was to show that the United States' treatment of enemy combatants is not only justified by recent precedents but is well grounded in our law and history stretching back into the eighteenth century, and particularly during the Second World War. Because the criticism to which I referred disputed that, I sought in my speech to detail the constitutional provisions, federal statutes, treaties and the customs and practices of nations, judicial decisions, and long historical practices that support the actions of the United States.

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2. The Bush administration has designated at least two American citizens as enemy combatants, detaining them indefinitely without criminal charge, access to counsel, or meaningful judicial review. Federal law prohibits federal detention except pursuant to an Act of Congress. You have argued that Congress' Joint Resolution of September 18, 2001, which authorized the use of force in Afghanistan, was an "Act of Congress" authorizing the detention of American citizen enemy combatants, including those apprehended in the United States, like Jose Padilla.

Reasonably construed, the Congressional authorization of force grants the Executive the authority to detain combatants in a zone of active combat operations. Nothing in the text or the legislative history of the authorization suggests that Congress granted the executive the power to apprehend in the United States and detain American citizens without charge, trial, or access to counsel.

> What is the basis for your belief that the September 18, 2001, Joint Resolution permits the apprehension in the United States and indefinite detention of American citizens without charge, trial or access to counsel?
>
> **Response: The statutory authorization for use of force bears upon matters currently in litigation. The Government's position, which has been most recently articulated in its brief filed in opposition to the petition for the writ of *certiorari* in *Hamdi v. Rumsfeld* is: "Congress promptly backed the President's use of 'all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed or aided the terrorist attacks that occurred on September 11, 2003, or harbored such organizations or persons.' Authorization for Use of Military Force, Pub. L. No. 107-40, § 2(a), 115 Stat. 224 []. In addition, Congress emphasized that the forces responsible for the September 11 attacks 'continue to pose an unusual and extraordinary threat to national security,' and that 'the President has authority under the Constitution to take action to deter and prevent acts of international terrorism against the United States.' Ibid." Br. in Opposition for the Respondents, *Hamdi v. Rumsfeld*, No. 03-6696.**

3. In your speech to the Federalist Society, you defended the administration's enemy combatant policy, arguing: "Congress specifically authorized the President not only to use *deadly* force, but also any *lesser force* needed to capture and detain enemy combatants to prevent them from engaging in continued hostilities against the United States" (Your emphasis).

You assert that Congress authorized the detention of American citizen enemy combatants who are apprehended in the U.S. You suggest that the Executive not only has the authority to detain such citizens, but also to use deadly force against them. John Yoo, your former colleague whom you have listed as a reference, recently made a similar argument: "I think it's important to understand the laws of war that when you detain a member of the enemy, which is seen as an act of mercy right, because you have the right to shoot them and kill a member of the enemy."

Do you believe that the Executive could use deadly force against an American citizen enemy combatant in the United States instead of apprehending him or her? If yes, please explain. If no, how do you explain your statement quoted above? Do you agree with Mr. Yoo's statement? Please explain.

Response: The Government's position concerning the statutory authorization of September 18, 2001 has been most recently articulated in its brief filed in opposition to the petition for the writ of certiorari in *Hamdi v. Rumsfeld*. There the government explained: "Congress promptly backed the President's use of 'all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed or aided the terrorist attacks that occurred on September 11, 2003, or harbored such organizations or persons.' Authorization for Use of Military Force, Pub. L. No. 107-40, § 2(a), 115 Stat. 224 []. In addition, Congress emphasized that the forces responsible for the September 11 attacks 'continue to pose an unusual and extraordinary threat to national security,' and that 'the President has authority under the Constitution to take action to deter and prevent acts of international terrorism against the United States.' Ibid." Br. in Opposition for the Respondents, *Hamdi v. Rumsfeld*, No. 03-6696. I do not recall hearing or previously seeing this particular statement attributed to Mr. Yoo or the context in which it was made. Therefore, it would be inappropriate for me to comment on it.

4. In your Federalist Society speech, you argued:

> During World War II, the federal courts, interpreting domestic statutory and constitutional law, established several precedents that support the President's domestic authority to detain enemy combatants – including U.S. citizens – during wartime.

You rely primarily on *Ex parte Quirin*, a Supreme Court case upholding the trial by military commissions of Nazi saboteurs during World War II, to support the apprehension and detention without charge of American citizens as enemy combatants. However, the Nazi saboteurs in *Quirin* were represented by counsel, able to seek meaningful judicial review of their detentions, and were quickly charged, tried and convicted by military commissions. The Supreme Court emphasized, "We are concerned only with the question whether it is within the constitutional power of the national government to place petitioners upon trial before a military commission for the offenses with which they are charged."

> *Quirin* did not uphold the detention of American citizens as enemy combatants without charge, trial, or access to counsel. Please explain how *Quirin* supports the administration's position on enemy combatants.

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Response: In briefs filed on behalf of the United States in *Padilla*, the government explained the application of *Ex parte Quirin*:

> **Quirin controls here. Milligan had remained in Indiana throughout the Civil War and had no connection to the enemy's forces. The saboteurs in Quirin, by contrast, affiliated with German forces during World War II and received explosives training in Germany, and then came to the United States with plans to destroy certain of the United States's war facilities. Padilla, like the belligerents in Quirin, but unlike Milligan, was in Afghanistan and Pakistan after the attacks of September 11, 2001, where he had extended discussions with senior al Qaida operatives about conducting terrorist operations in the United States and received training and researched explosive devices at an al Qaida safehouse, and he then came to the United States to advance the conduct of al Qaida attacks within the United States's borders."**

Response Br. of Respondent Cross-Appellee, *Padilla v. Rumsfeld*, No. 03-2235 (internal citations omitted).

5. Since September 11th, the government has apprehended in the United States and detained as an enemy combatant at least one American citizen. In other cases, the government has brought criminal charges against terrorism suspects apprehended in the United States. Some have suggested that the government has not brought criminal charges against those designated as enemy combatants because it does not have adequate evidence to try and convict them.

Why has the government chosen to bring criminal charges against some terrorism suspects, while designating others as enemy combatants?

Response: Because I am answering questions in my personal capacity, I am limited in my ability to answer certain questions. To the extent that the question calls for information relating to general operations of the Department of Justice, I respectfully suggest that it be directed to that Department for an official response.

6. The Geneva Conventions govern the status and treatment of detainees in an armed conflict. The U.S. government has long held that, as a party to the Geneva Conventions, it is legally bound by their terms. All captured combatants and civilians are protected by the Geneva Conventions. The Red Cross's official commentary on the Conventions explains:

> Every person in enemy hands must have some status under international law: he is either a prisoner of war and, as such, covered by the Third Convention, a civilian covered by the Fourth Convention, or a member of the medical personnel of the

> armed forces who is covered by the First Convention. There is no intermediate status; nobody in enemy hands can fall outside the law.

Captured combatants are presumed to be POWs, and must be treated as such, unless and until determined otherwise by a competent tribunal in an individualized proceeding (an "Article 5" tribunal). The U.S. government has long abided by this principle. The Judge Advocate General Handbook states, "When doubt exists as to whether captured enemy personnel warrant POW status, Art. 5 Tribunals must be convened."

At your hearing, you acknowledged that no Article 5 tribunals have been conducted for detainees at Guantanamo Bay. You offered two different explanations for this. You said that the Geneva Conventions do not apply to the war on terrorism:

> The conflict in Afghanistan and the conflict in the global war on terror, just looking at the treaty itself, the Geneva Convention itself, which is a treaty among states, Al Qaeda is not a party. There's no way that the treaty can apply. So as a matter of law, the treaty doesn't apply.

You also suggested that the detainees did not meet the Geneva Convention's four-part test for POWs. However, Article 4(A) makes clear that the four-part test applies only to a militia operating independently of a government's armed forces. Members of the armed forces of a party to a conflict and members of militia or volunteer corps that are part of such armed forces are POWs, as are members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.

> Why do you believe that the government is not required to conduct Article 5 tribunals for Guantanamo Bay detainees? Do you disagree with the Red Cross' view that, "Every person in enemy hands must have some status under international law"? The United States and Afghanistan are both High Contracting Parties to the Convention. Why do you believe that the Geneva Convention does not apply to the conflict in Afghanistan? Do you believe that detained members of the Taliban forces are POWs? Do you believe that detained Taliban soldiers are entitled to Article 5 tribunals? Do you believe that Guantanamo detainees are entitled to Article 5 tribunals to determine whether they are Taliban soldiers or members of Al Qaeda? Please explain.
>
> **Response: On February 7, 2003, the President determined that neither the Taliban nor the al-Qaida detainees qualify as prisoners of war (POW) under the terms of the Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949 (GPW). The Office of the White House Press Secretary's February 7, 2002, Fact Sheet on the Status of Detainees at Guantanamo stated:**
>
>> **The President has determined that the Geneva Convention applies to the Taliban detainees, but not the al-Qaida detainees. Al-Qaida is not a state party to the Geneva**

> **Convention; it is a foreign terrorist group. As such, its members are not entitled to POW status. Although we never recognized the Taliban as the legitimate Afghan government, Afghanistan is a party to the Convention, and the President has determined that the Taliban are covered by the Convention. Under the terms of the Geneva Convention, however, the Taliban detainees do not qualify as POWs. Therefore, neither the Taliban nor al-Qaida detainees are entitled to POW status.**

Additionally, in *United States v. Lindh*, 212 F. Supp.2d 541, 558 (E.D. Va. 2002), the court reviewed available record information and agreed with the President's determination, concluding that "it follows that the President's decision denying Lindh lawful combatant immunity is correct." The *Lindh* court stated:

> **[I]t appears that the Taliban lacked the command structure necessary to fulfill the first criterion, as it is manifest that the Taliban had no internal system of military command or discipline. . . . Thus, Lindh has not carried his burden to show that the Taliban had the requisite hierarchical military structure. Similarly, it appears the Taliban typically wore no distinctive sign that could be recognized by opposing combatants; they wore no uniforms or insignia and were effectively indistinguishable from the rest of the population. The requirement of such a sign is critical to ensure that combatants may be distinguished from the non-combatant, civilian population. . . . Next, although it appears that Lindh and his cohorts carried arms openly in satisfaction of the third criterion for lawful combatant status, it is equally apparent that members of the Taliban failed to observe the laws and customs of war. Thus, because record evidence supports the conclusion that the Taliban regularly targeted civilian populations in clear contravention of the laws and customs of war, Lindh cannot meet his burden concerning the fourth criterion. . . . In sum, the President's determination that Lindh is an unlawful combatant and thus ineligible for immunity is controlling here . . . (iii) because even absent deference, the Taliban falls far short when measured against the four GPW criteria for determining entitlement to lawful combatant immunity.**

212 F. Supp. 2d at 558 (internal citations omitted).

7. You stated that the Article 5 tribunal "is really a very simple process. In application it's very cursory, it's done very quickly on the battlefield. ... In this case, for all the

detainees in Guantanamo, there has been multiplied many-fold of the process normally in an Article V tribunal process."

U.S. military regulations provide detailed procedures for Article 5 tribunals. For example, persons whose status is to be determined shall be advised of their rights at the beginning of their hearings; allowed to attend open sessions and provided with an interpreter if necessary; allowed to call witnesses if reasonably available, and to question witnesses called by the tribunal; have a right to testify or otherwise address the tribunal, and not be compelled to testify. Following the hearing of testimony and the review of documents and other evidence, the tribunal shall determine the status of the subject of the proceeding in closed session by majority vote. Preponderance of evidence shall be the standard used in reaching this determination, and a written report of the tribunal decision is to be completed in each case.

> Have the detainees been provided with the process outlined in these regulations? If not, how do you justify your statement that "for all the detainees in Guantanamo, there has been multiplied many-fold of the process normally in an Article V tribunal process"?
>
> **Response: As I have elsewhere explained while speaking in my capacity as the General Counsel of the Department of Defense, the people held at Guantanamo Bay have been through a rigorous screening process. There have been thousands of individuals who have been released. And, because of this review process, just a small fraction of those persons captured have been sent to Guantanamo Bay. Of that small fraction of persons sent to Guantanamo Bay, which number only in the hundreds, the Department of Defense has now released over 80 persons. The Department of Defense has indicated that it expects that others will be released or transferred. The release of these individuals was a result of process that included an interrogation process, a threat assessment process, a psychological analysis, a check of background information, and a check with law enforcement authorities. This kind of review goes well beyond what article 5 requires, which merely provides for a one-time determination by "a competent tribunal" and requires no specific set of procedures to be used by that tribunal.**

8. The Defense Department has issued final rules for the military commissions before which suspected terrorists may be tried. Many have criticized the commission rules, arguing that they do not adequately protect the right to a fair trial or the right to counsel. For example, the military has broad discretion to close proceedings to the public and to conduct entire trials in secret, without the presence of the accused or his chosen civilian counsel. Defendants are required to be represented by Defense Department lawyers, and while they may also hire a private attorney, the rules require private lawyers to agree that their conversations with defendants may be monitored, and to pay for their own transportation and security clearance. The rules provide that private attorneys are barred

from speaking to anyone about the proceedings, except as approved by the Defense Department, and may be excluded from commission proceedings and denied access to "protected information." While it is true that the rules require disclosure to the military defense lawyer of any evidence used in the prosecution, it appears that the rules do not require the government to disclose exculpatory evidence that is not used in the trial and which the government qualifies as "protected information."

> Do you believe that the commission rules adequately protect the right to fair trial or the right to counsel? Why or why not?
>
> **Response: The rules promulgated by the Secretary of Defense for the conduct of military commissions are, to my knowledge, the most detailed and generous to the interests of accused persons that have ever been drafted for the conduct of military commissions. The commission rules were designed to ensure full and fair trials. The rules provide that each accused tried by a Military Commission will be provided with the following safeguards, among others: the presumption of innocence; proof of guilt beyond a reasonable doubt; the right to call and cross examine witnesses (subject to the rules regarding the production of witnesses and protection of information); nothing said by an accused to his attorney, or anything derived therefrom, may be used against him at trial; no adverse inference for remaining silent may be drawn; each accused has military defense counsel provided to him at no cost. (See Department of Defense Fact Sheet on Military Commission procedures available at http://www.defenselink.mil/news/commissions.html.)**

9. Your former colleague Jack Goldsmith, whom you have listed as a reference, has written that the differing public reactions to the military commission orders issued by President Franklin Delano Roosevelt and President Bush are a product of an increase in sensitivity to civil liberties from 1942 to 2001. He cautions that:

> There is a potential danger here. The danger is that in an age of anthrax, nuclear suitcases, and other easy-to-conceal weapons of mass destruction, the threat posed by al Qaeda and other terrorists might warrant tradeoffs between liberty and security that are inconsistent with ordinary respect for civil liberties.
>
> Do you agree with Mr. Goldsmith's view that increased sensitivity to civil liberties poses a "potential danger"? Do you agree that the terrorist threat "might warrant tradeoffs between liberty and security that are inconsistent with ordinary respect for civil liberties"? Why or why not? Do you believe that the threat posed by terrorism warrants such tradeoffs? Why or why not? If so, what tradeoffs do you suggest?
>
> **Response: The liberty of Americans is one of our most precious blessings, and government officials must be constantly mindful of the imperatives to provide for our national security while protecting those liberties. As I understand it, Mr. Goldsmith generally observed the broad-based approval**

received by President Roosevelt's military commission order and contrasted that approval with the criticisms of President Bush's military order, which is quite similar to President Roosevelt's order. As I understand the article, it used this contrast to look at the changes in public attitudes toward civil liberties protections in wartime and noted that this trend might pose potential tradeoffs.

10. Mr. Goldsmith has written about the "U.S. double standard" on international human rights: "No nation on earth more aggressively enforces international human rights law against other countries. And no nation on earth more aggressively resists the application of international human rights law to itself." He has defended this "double standard," arguing that it is not necessary for the United States to abide by international human rights standards despite the fact that we seek to enforce human rights norms against other nations.

Do you agree that the U.S. has a double standard on human rights? Please explain. Do you agree that "no nation on earth more aggressively resists the application of international human rights law to itself"? Please explain. Does this "double standard" undermine U.S. efforts to stem human rights violations by other nations? Why or why not?

Response: As I recall Mr. Goldsmith's article, he used the term "double standard" not to refer to a U.S. failure to comply with human rights standards, but instead to refer to the fact that some international human rights law is not in practice applied in our domestic courts. I do not believe that the phenomenon described by Mr. Goldsmith undermines U.S. efforts to stem human rights violations by other nations. Indeed, there is no country that does more to support human rights than the United States.

11. In your speech to the Federalist Society, you said:

I've long admired the Federalist Society for its willingness to question conventional wisdom, and especially for its willingness to do so from an historical perspective that reaches back before the 1960's. My boss, Secretary Rumsfeld, has a similar perspective, and a similar determination not to let today's shibboleths stand in the way of important national security goals."

A. Are you a member of the Federalist Society?

Response: No.

B. What are the shibboleths that stand in the way of important national security goals?

Response: I intended to address in my speech my perception that many critics failed to appreciate the distinction between law enforcement and

warfare, between application of the criminal law and the law of war, and consequently these critics wrongly charged that the United States was disregarding the law. Accordingly, in my speech, I sought to demonstrate that the United States is carefully acting in accordance with the law. In speaking, my principal concern was to show that the United States' treatment of enemy combatants is not only justified by recent precedents but is well grounded in our law and history stretching back into the eighteenth century, and particularly during the Second World War. Because the criticism to which I referred disputed that, I sought in my speech to detail the constitutional provisions, federal statutes, treaties and the customs and practices of nations, judicial decisions, and long historical practices that support the actions of the United States.

C. What type of conventional wisdom do you believe most needs to be questioned?

Response: In discussing the questioning of conventional wisdom in my speech, I was concerned with the current global war on terrorism. That conflict is unlike any other that the United States has faced. The coordinated and devastating attacks launched by al Qaeda on American soil necessarily changed the way some look at terrorism. Terrorism before September 11, 2001, had been viewed primarily as a criminal law enforcement matter. The demonstrated threat posed by terrorists of global reach has required that the United States draw on both criminal law and the law of war.

D. Do you agree with the Federalist Society mission statement, which states: "Law schools and the legal profession are currently strongly dominated by a form of orthodox liberal ideology which advocates a centralized and uniform society." Why or why not?

Response: Prior to reading your question, I had not seen this statement. It is a broad statement on which I do not have an opinion because it is not a matter to which I have given studied consideration. I do not adopt it as my own.

12. You said that you have "long admired" the Federalist Society. A Federalist Society official, David Rivkin, has charged that the Red Cross "has relentlessly promoted" international humanitarian law. He has criticized international humanitarian law as "a concept known as 'international humanitarian law' (IHL)," which is "long on noble goals but short on practical solutions" and "was developed during the Cold War, when its application was merely theoretical."

Do you agree that the Red Cross "has relentlessly promoted" IHL? Do you agree that international humanitarian law is "a concept … long on noble goals but short on practical solutions"? Please explain.

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Response: I am not familiar with Mr. Rivkin's statements. I believe that the Red Cross plays an important humanitarian role in protecting victims of war, which is a central goal of the law of war. I do not agree that international humanitarian law is "a concept . . . long on noble goals but short on practical solutions."

13. Mr. Rivkin has dismissed concerns about suicide attempts by Guantanamo Bay detainees:

> Of course, prolonged detention may well provoke, at least among some of the detainees, a sense of hopelessness, leading to suicide attempts. The laws of war, however, do not protect against such depression, which is the natural and predictable consequence of the detainees' own choices – in particular the choice to join Osama bin Laden's jihad.

Do you agree that the laws of war do not protect detainees against depression or suicide attempts? Do you believe that the United States has an obligation to take measures to address depression and prevent suicide attempts? Please explain. What measures has the U.S. taken to address depression and prevent suicide attempts by Guantanamo detainees?

Response: The Department has stated publicly that it is providing extensive medical care, including psychiatric medical care, to the detainees. Further, the Department has stated that it has in place extensive procedures and practices to prevent suicide attempts. To the extent that this question seeks additional information, I respectfully suggest that the question be directed to the Department of Defense for an official response. To the extent your questions invite my views on matters about which I may or may not have been called to provide advice as the General Counsel of the Department of Defense, it would be inappropriate for me to respond in detail.

14. Mr. Rivkin said of alleged Iraqi war criminals: "Try them for a week, give them a chance to say what they have to say and then execute the senior ones. Is there any doubt they're guilty?"

Do you agree with the view that the alleged Iraqi war criminals should be tried for a week, given a chance to say what they have to say and then the senior ones should be executed? Do you agree that there is no doubt about the guilt of alleged Iraqi war criminals? Please explain.

Response: I am not familiar with the statement attributed to Mr. Rivkin. I do not agree with the quoted statement.

15. Mr. Rivkin has written:

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[E]ven assuming that the detainees have been subjected to the interrogation methods Burkhalter claims, including painful bindings, contorted positions, sleep deprivation, piercing noises and even beatings … these do not, as a matter of law, constitute torture. Torture, as explained by the European Court of Human Rights in a 1978 case involving the 'five techniques' used by Britain to interrogate IRA suspects, requires 'suffering of particular intensity and cruelty.' The use of sleep or sensory deprivation, uncomfortable or painful postures, and even a level of physical abuse, does not meet the test.

Do you agree that sleep or sensory deprivation, uncomfortable or painful postures, and even a level of physical abuse never as a matter of law constitute torture? Do you believe that these practices constitute cruel, inhuman, and degrading treatment? Please explain.

Response: I am not familiar with Mr. Rivkin's statements. Because your question invites my views on a matter about which I may or may not have been called to provide advice as General Counsel of the Department of Defense, it would be inappropriate for me to respond to this question.

December 18, 2003

Responses of William J. Haynes II to the
Written Questions Submitted by Senator Charles E. Schumer

Your questionnaire lists a case called *Center for Biological Diversity v. Pirie* as the second most important case on which you have worked. You assert that your role in *Pirie* was "ensuring that the Justice Department represented the views and interests of the Department of Defense properly."

While you were in that role, the government adopted in its entirety a brief filed by the Washington Legal Foundation. That brief argued that environmentalists suffer no injury – and indeed might benefit – from the military's killing of migratory birds in apparent violation of the Migratory Bird Treaty Act. You endorsed the argument that by killing birds, the military would be making them more rare, and therefore more valuable.

In the Court words:

> "there is absolutely no support in the law for the view that environmentalists should get enjoyment out of the destruction of natural resources because that destruction makes the remaining resources more scarce and therefore valuable. The Court hopes that the federal government will refrain from making or adopting such frivolous arguments in the future." (*Center for Biological Diversity v. Pirie*, 191 F.Supp.2d 161, 173 (D.D.C. 2002)).

Do you believe that the arguments made by WLF and adopted by the United States in *Pirie* "properly" represented "the views and interests of the Department of Defense"?

Response: I do not agree with every argument made by WLF and adopted by reference by the United States in the *Pirie* case. (The government adopted only WLF's standing arguments, not its further separation of powers arguments.) In particular, I emphatically do not believe that "by killing birds, the military would be making them more rare, and therefore more valuable." Nor do I believe that such an argument properly represents the views and interests of the Department of Defense.

What was your role in deciding whether the government should adopt the WLF brief?

Response: As I stated in my questionnaire, with respect to *Pirie*, I participated principally by developing and approving litigation strategy, and ensuring that the litigation strategy was consistent with the Administration's legislative agenda. As a result, I had no role or involvement in the decision to adopt the standing arguments in WLF's brief. (As noted above, the government adopted only WLF's standing arguments, not its further separation of powers arguments.) In particular, the filing of the government's Supplemental Reply on December 13, 2001 took place at a time when my attention was heavily focused on the aftermath of the September 11,

2001 attacks and on the war in Afghanistan. Accordingly, I took no part in the decision to adopt the WLF's standing arguments. Indeed, I was not briefed about the question of adopting those arguments—much less about the specific issue raised in Judge Sullivan's opinion. As discussed above, I would not have countenanced—and do not countenance—adopting an argument that "by killing birds, the military would be making them more rare, and therefore more valuable".

1600 Defense Pentagon
Washington, D.C. 20301-1600

February 16, 2004

The Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, D. C. 20510-6275

Dear Senator Hatch:

Enclosed are my responses to Follow-up Written Questions from Senators Kennedy, Feingold, and Durbin.

I thank you and the other members of the Committee on the Judiciary for your consideration.

With best regards,

Sincerely,

William J. Haynes II

cc: The Honorable Patrick J. Leahy, Ranking Member, Committee on the Judiciary

Attachments: a/s

February 16, 2004

Responses of William J. Haynes II to the
Follow-up Written Questions Submitted by Senator Edward M. Kennedy

1. Please respond in more detail to my first, third, fourth, fifth, and tenth, eleventh, and twelfth written questions.

   a. [Original first written question]: At your hearing, I asked why the Administration is failing to abide by the Geneva Conventions by refusing even to convene a tribunal to determine whether any of the foreign nationals detained at the Guantanamo Bay Naval Base are entitled to prisoner of war status. You responded that none of the detainees at Guantanamo are POWs because "there was no regular uniformed army commanded by responsible superiors in the conflict in Afghanistan." This is an extraordinary statement. On what facts do you base it? Is it your position that the United States was never involved in a conflict against the armed forces of the former government of Afghanistan, or that no such army ever existed?

   Response: To my knowledge, no one questions that the United States is in a state of armed conflict with Al Qaeda and the Taliban. Moreover, Congress authorized the use of force against "those nations, organizations, or persons [the President] determines planned, authorized, committed or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons." Authorization for Use of Military Force, Pub. L. No. 107-40, §2(a), 115 Stat. 224[ ]. Although the President concluded that the Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949 (GPW) applied to the Taliban, he concluded that the members of the Taliban did not qualify as POWs under the requirements of the GPW because they did not meet all of the four factors set forth in the GPW. Those four factors are: being commanded by a person responsible for his subordinates; wearing a fixed distinctive sign recognizable at a distance; carrying arms openly; and conducting their operations in accordance with the laws and customs of war.

   These factors and the facts surrounding the conflict with Al Qaeda and the Taliban were considered by the court in the *John Walker Lindh* case. In addressing John Walker Lindh's claim that he was entitled to combatant immunity for any activities that were undertaken in support of the Taliban, the government maintained and the district court agreed that the Taliban, as a group, did not meet all of the four factors set forth in the GPW. The government outlined the facts regarding the foreign combatants in its brief: the Taliban "wore no uniforms or distinctive signs and were effectively indistinguishable from the rest of the population"; the Taliban "had no internal system of military command or discipline"; and there were "abundant examples of systematic violation" of the clear rule against

targeting civilian populations. *See* Govt's Opposition to Defendant's Motion to Dismiss Count One of the Indictment for Failure to State a Violation of the Charging Statute (Combat Immunity) (available on FINDLAW).

The *Lindh* court agreed and found: [I]t appears that the Taliban lacked the command structure necessary to fulfill the first criterion, as it is manifest that the Taliban had no internal system of military command or discipline. . . . Thus, Lindh has not carried his burden to show that the Taliban had the requisite hierarchical military structure. Similarly, it appears the Taliban typically wore no distinctive sign that could be recognized by opposing combatants; they wore no uniforms or insignia and were effectively indistinguishable from the rest of the population. The requirement of such a sign is critical to ensure that combatants may be distinguished from the non-combatant, civilian population. . . . Next, although it appears that Lindh and his cohorts carried arms openly in satisfaction of the third criterion for lawful combatant status, it is equally apparent that members of the Taliban failed to observe the laws and customs of war. Thus, because record evidence supports the conclusion that the Taliban regularly targeted civilian populations in clear contravention of the laws and customs of war, Lindh cannot meet his burden concerning the fourth criterion. . . . In sum, the President's determination that Lindh is an unlawful combatant and thus ineligible for immunity is controlling here . . . (iii) because even absent deference, the Taliban falls far short when measured against the four GPW criteria for determining entitlement to lawful combatant immunity."

***United States v. Lindh*, 212 F. Supp. 2d 541, 558 (E.D. Va. 2002) (internal citations omitted).**

b. [Original third written question]: **Please see response to Question 3 below.**

c. [Original fourth written question]: The International Committee of the Red Cross (ICRC) has criticized the Administration for its refusal to convene tribunals, which would give detainees a chance to prove their POW status and the U.S. a proper chance to prove otherwise. Legal commentator Stuart Taylor has written that "the problem with the Administration's position is that it seems to have flouted (or at best wriggled around) Article 5 of Geneva, which states that 'should any doubt arise' as to the status of the captured fighters, 'such persons shall enjoy the protection of the present convention until such time as their status has been determined by a competent tribunal.' Bush and Defense Secretary Donald Rumsfeld have claimed that there is no doubt that all Guantanamo detainees are unlawful combatants. But the government has not . . . bothered to put any evidence before any tribunal." In past wars, the United States has routinely convened tribunals to determine whether captured persons are entitled to POW status. Aren't we clearly violating the Geneva Conventions by failing to do this now?

Response: Article 5 states in pertinent part: "*Should any doubt arise to whether persons*, having committed a belligerent act and having fallen into the hands of the enemy, *belong to any of the categories enumerated in Article 4*, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal." GPW article 5 (emphasis added). In order to trigger Article 5, there must be some doubt that the individual at issue would be entitled to POW status by falling within one of the categories of belligerents set forth in Article 4 of the GPW. The President has determined that neither al Qaeda nor the Taliban as groups are entitled to privileges of POWs.

d. [Original fifth written question]: At the hearing, you appeared to suggest that the review and interrogation of detainees for security, military, and intelligence gathering purposes somehow satisfies the "competent tribunal" requirement under Article 5 of the Third Geneva Convention. The function of an Article 5 tribunal is to ascertain whether a captured combatant is entitled to continue to be treated as a POW or should be considered a protected person under the Fourth Geneva Convention. In contrast, the function of the interrogation of detainees to which you referred is to acquire information about future military plans and attacks. To date, no Administration official other than yourself has suggested that a purpose of these interrogations is to determine status under the Geneva Conventions. Do you agree that the process of interrogation and review to which you referred at your hearing does not meet the requirements of Article 5 of the Fourth Geneva Convention for determining POW status?

Response: The reviews to which I referred at my hearing are not intended to meet the requirement of Article 5 of the GPW. The President has determined that the detainees are not entitled to POW status and thus tribunals under Article 5 of the GPW are not required. I did not intend to suggest that such reviews constitute Article 5 proceedings. As officials of the Department have noted publicly, however, the United States has reviewed and evaluated the individuals under its control in the global war on terrorism and screened them to determine whether their detention by the United States is appropriate. As you know, the Department has released or transferred a significant number of detainees from Guantanamo and will continue to do so, as appropriate. Department officials have stated many times that there is no desire to hold any detainee any longer than is necessary. In addition to collecting intelligence and evaluating threat, the Department's review is focused on the relevant question—whether it is appropriate to continue to detain an individual—not to resolve doubt as to whether the individual belongs to a group that warrants POW status.

e. [Original tenth written question]: In your discussion of the differences between the rules of war and the rules of law enforcement, you said that the Administration is justified in treating suspected terrorists as unlawful combatants under the rules of war so that they can be interrogated about possible future

attacks. You also said that it is the policy of the Administration to provide detained U.S. citizens access to counsel once the interrogation process has been completed. How do you reconcile your testimony with the position the Administration has taken in the Hamdi and Padilla cases? In those cases, the Administration has argued against access to counsel for both citizens without acknowledging that access will be granted once interrogations are completed.

Response: The government has permitted access to counsel or announced its intention to permit access to counsel to both Hamdi and Padilla. On December 2, 2003, the Department of Defense announced that Yaser Esam Hamdi, an enemy combatant detained at the Charleston Consolidated Naval Brig in Charleston, S.C., would be allowed access to a lawyer subject to appropriate security restrictions. Counsel met with Mr. Hamdi on February 3, 2004. On February 11, 2004, the Department of Defense announced that, pursuant to its earlier stated policy about access to counsel, it would permit such access to Jose Padilla. The Deputy Solicitor General apprised the Second Circuit of the existence of this policy in the *Padilla* case, and the Supreme Court has been informed of its application in both the *Padilla* and *Hamdi* cases.

f. [Original eleventh written question]: Do you believe that once the Administration completes its interrogation of Hamdi and Padilla, it can lawfully continue to detain these citizens without charge until the war against terrorism has ended? Please explain in detail the legal basis for this position.

Response: Mr. Hamdi and Mr. Padilla are being detained as enemy combatants, as explained in the pleadings filed by the Department of Justice in those cases. In those pleadings, the government explains the well-established authority that enemy combatants may be detained for the duration of the conflict. Those pleadings further explain that this detention serves the purpose of preventing those combatants from returning to conflict. As the chief legal officer for the Department of Defense, I must be careful to refrain from commenting in great detail on matters that are currently in litigation. To the extent that your question seeks my personal views, it would be inappropriate for me to provide them on a matter in litigation that involves my client.

g. [Original twelfth written question]: In your testimony, you said that the United States is at war with Al Qaeda and with other terrorists of global reach, and that the Geneva Conventions do not apply to that war as a matter of law because Al Qaeda is not a state. What law applies to the war against Al Qaeda? What is the source of that law? In confronting this new kind of challenge, is the Defense Department attempting to establish new legal principles, invoke old legal principles, or both?

Response: The U.S. government is drawing on principles well established in the law of war. The U.S. government has indicated that the law of war applies to the conflict with al Qaeda, and has relied upon well-established principles drawn from a number of sources, both domestic and international, including the Constitution of the United States of America and relevant case law, the Geneva and Hague Conventions, and customary international law. The Geneva Conventions are simply one part of that larger body of law known as the law of war.

2. With respect to my seventh and ninth written questions—to which you responded that you could not fully answer because you are "answering questions in [your] personal capacity"—please arrange for an official response by the Department of Defense.

Response: I have forwarded your written questions to the Assistant Secretary of Defense for Legislative Affairs.

3. With respect to my third question, I asked for your opinion on whether members of the armed forces of a party to a conflict automatically qualify as POWs under Article 4(A) of the Third Geneva Convention. I asked (a) whether you agree that the plain language of Article 4(A) does not apply the four-part test of Article 4(A)(2) to members of the armed forces of a party to an armed conflict; (b) if you agree, how you can justify the categorical denial of POW status to detainees who served as soldiers in the armed forces of the former Afghan government; and (c) if you disagree with this reading of Article 4's plain language why you disagree. Instead of responding to these specific questions, you restated the government's litigation position in *United States v. Lindh* (a case that did not involve any of the detainees at Guantanamo) and quoted from the district court's decision. Again, I would like you to respond directly to these specific questions.

   a. Do you agree that members of the armed forces of a party to an armed conflict are entitled, without more, to POW status?
   b. If you do not accept the plain language of Article 4, please explain why.
   c. If you accept this legal principle, how do you justify the categorical denial of POW status to the detainees who served as soldiers in the armed forces of the former Afghan government?
   d. If you believe that the drafters of the Geneva Conventions intended parties to apply the four-factor test listed under Article 4(A)(2) in evaluating the status of members of regular armed forces under Article 4(A)(1), please (i) describe in full the authorities and historical sources on which you base this belief, and (ii) explaining to the best of your knowledge why the drafters chose to list these four condition only under Article 4(A)(2), not article 4(A)(1).

Response: Thank you for the opportunity to clarify further my answer regarding Article 4(A). As you correctly point out, the detainees held as enemy combatants at Guantanamo Bay were not litigants in *United States v. Lindh*. Instead, John Walker Lindh was a U.S. citizen being prosecuted in U.S. criminal courts. Mr. Lindh, however, contended that he was entitled to combatant

immunity, i.e., that he was a part of an armed force because he was part of the Taliban militia and thus authorized to engage in hostile acts. Mr. Lindh's arguments were based in part on his interpretation of the GPW and in particular his interpretation of article 4(A)(1). Thus, the court in *Lindh* addressed the status of the Taliban as a group in order to resolve Mr. Lindh's claims and accordingly that court's analysis is relevant to the questions you have asked regarding the interpretation of Article 4(A)(1).

In *Lindh*, the court specifically considered the question of whether the Taliban forces must meet the four factors listed in article 4(A)(2) to be considered a "regular armed force" under 4(A)(1). The court held that the four factor test applies to such a determination. The court stated: "Lindh asserts that the Taliban is a 'regular armed force,' under the GPW, and because he is a member, he need not meet the four conditions of the Hague Regulations because only Article 4(A)(2), which addresses irregular armed forces, explicitly mentions the four criteria. This argument is unpersuasive; it ignores long-established practice under the GPW and, if accepted, leads to an absurd result. ... [T]he four criteria have long been understood under the customary international law to be the defining characteristics of any lawful armed force. ... Thus, all armed forces or militias, regular and irregular, must meet the four criteria if their members are to receive combatant immunity. . . . It would indeed be absurd for members of a so-called 'regular armed force' to enjoy lawful combatant immunity even though the force had no established command structure and its members wore no recognizable symbol or insignia, concealed their weapons, and did not abide by the customary laws of war." *United States v. Lindh*, 212 F. Supp. 2d 541, 557 n.35 (E.D. Va. 2002).

e. As a general matter of legal interpretation, what importance do you give to the plain language of a text, as opposed to extrinsic sources indicating the drafters' intent in writing the text? As a judge, would you feel comfortable interpreting regulations, statutes, and constitutional provisions in the same manner in which you are interpreting Article 4(A) of the Third Geneva, i.e., importing a requirement set forth in one provision of a text into another provision, thereby overriding the plain language of the text in order to achieve a desired outcome on policy grounds?

<u>Response</u>: The starting place for the interpretation of any written text is the text itself. Extrinsic sources can be of value in understanding the intention of the drafters of the text. For example, where a text is unclear, consideration of a committee report may clarify the Congress's intent. The consideration of such documents depends upon the precise circumstances of each case. If confirmed, I would apply the law faithfully, giving it the effect intended by its drafters.

4. With respect to my fourth and fifth written questions, you asserted that "the scrutiny in those reviews" and interrogations being conducted by military officials for security, military and intelligence gathering purposes "far exceeds the scrutiny required by Article

5" of the Third Geneva Convention "when such Article 5 tribunals are appropriate." What does this mean? Are you saying that these reviews and interrogations cover the same issues meant to be covered by an Article 5 tribunal: i.e., to determine whether the detainee is entitled to POW status under the Geneva Conventions? You further state that the "relevant question" is whether continued detention of a person is appropriate, not whether there is any doubt about the person's status that needs to be resolved. Don't you agree that the Geneva Conventions require the Department to resolve both questions? Many authorities believe that the Department's refusal to grant individual status determinations under Article 5 damaged our reputation abroad, caused tension with our allies, and undermined a legal structure that has long protected American soldiers serving abroad. Given all these potential negative consequences what practical or legal advantages are gained by the Department's refusal to convene Article 5 tribunals?

Response: The President has determined that the detainees are not entitled to POW status and thus tribunals under Article 5 of the GPW are not required. As I noted above, I did not intend to suggest that the reviews to which I referred constitute Article 5 proceedings. I did intend to observe that the scrutiny employed in those reviews exceeds the scrutiny required by Article 5. The layers of review employed by the Department of Defense in the current conflict assess at several points in time whether it is appropriate to continue to detain an individual—something that neither Article 5 nor any other portion of the GPW require. The United States has been and remains the most prominent and most vigorous supporter of the law of war and the framework that it imposes on the conduct of war in order to limit the destructive effects of war.

5. Finally the Department of Defense has not yet responded fully to the Freedom of Information Act request submitted by the National Institute of Military Justice on October 3, 2003, for copies of all written or electronic communications that the Department has either sent to or received from anyone (other than an officer or employee of the United States acting in the course of his or her official duties) regarding the President's November 13, 2000 Military Order, the Secretary's Military Commission Orders, and the Military Commission Instructions. Because of the substantial public interest and concern over the Department's proposed military commissions, it is essential for the Department to comply with this request for public documents in a thorough and timely manner. Also, because these are matters that may throw light upon subjects discussed at your hearing and in follow-up questions to you, we will want to see the requested materials before we consider your nomination. I urge you to give the request your immediate attention.

Response: I have forwarded your comments on this Freedom of Information Act request to the Assistant Secretary of Defense for Legislative Affairs.

February 16, 2004

Responses of William J. Haynes II to the
Follow-up Written Questions Submitted By Senator Russell Feingold

A. Question 4

i. In response to Question 4, you wrote, "the facts of each case must be weighed and considered individually." The question however asked you to respond to three situations with specific facts. Please respond to these specific cases, applying the Code of Conduct for United States Judges.

[Original Question 4(a)]: If you are confirmed and a case comes before you involving an individual challenging his designation as an enemy combatant and he was so designated by the President and held indefinitely and incommunicado after you left the Department of Defense (DOD), would you recuse yourself from hearing this case because you had a role in developing the process for designating individuals as enemy combatants? If not, please explain why.

Response: If confirmed, I would determine whether to recuse myself based on applicable law and the Code of Conduct for United States Judges. As stated in my earlier answer, if confirmed, I would adhere strictly to all applicable statutes, court decisions, policies, and ethical rules, including 28 U.S.C. § 455, and the Code of Conduct for United States Judges. That Code of Conduct demands, among other things, that a judge should uphold the integrity of the Judiciary, that a judge should avoid the appearance of impropriety, and that a judge should perform the duties of the office impartially. As the Commentary to Canon 1 observes, deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. For the same reason, judges must avoid the appearance of impropriety, the objective test of which is "whether the conduct would create in reasonable minds, with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired."

In assessing the propriety of disqualification, a judge applying the Code should employ an analysis similar to that required by 28 U.S.C. § 455. For example, if confirmed, I would be obligated to (and of course would) disqualify myself from any proceeding in which I had "personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding." Similarly, I would be obligated to (and of course would) disqualify myself from any proceeding

in which I had "served as lawyer in the matter in controversy, or a lawyer with whom [I] served during such association as a lawyer concerning the matter," or "participated as counsel, adviser, or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy." Applying this guidance requires close attention to the particular facts of each case. I would take care to disqualify myself in any proceeding in which my impartiality might reasonably be questioned. I believe fervently not only that the judiciary must make decisions with integrity, but also that the public must be able to have confidence in the integrity of the judiciary and its decisions.

[Original Question 4(b)]: If you are confirmed and a case comes before you challenging the President's creation of military tribunals pursuant to his November 2001 Executive Order, or a case involving an individual tried in such a military tribunal, would you recuse yourself from hearing this case because you had a role in developing the military tribunal Executive Order and subsequent procedures and processes? If not, please explain why.

Response: If confirmed, I would follow the same procedures outlined in response to i. [original Question 4(a)] above.

ii. If a case comes before you involving an individual challenging his designation as an enemy combatant and he was so designated by the President after you left the Department of Defense, would this constitute a "proceeding in which [your] impartiality might reasonably be questioned"? Please explain.

Response: The Code of Conduct demands, among other things, that a judge should uphold the integrity of the Judiciary, that a judge should avoid the appearance of impropriety, and that a judge should perform the duties of the office impartially. As the Commentary to Canon 1 observes, deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. For the same reason, judges must avoid the appearance of impropriety, the objective test of which is "whether the conduct would create in reasonable minds, with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired."

Without knowledge of the facts and circumstances of a particular case, it is impossible to state with absolute certainty whether my impartiality might reasonably be questioned in such a case. Indeed, it would be imprudent for a nominee to say definitively how he or she would apply the recusal rules in a future case, because that would be pre-judging an issue that cannot be analyzed until the actual facts and legal issues are determined.

I have, however, committed to adhering to all applicable statutes, court decisions, policies, and ethical rules, including 28 U.S.C. § 455, which requires, among other things, recusal when a judge's "impartiality might reasonably be questioned." If confirmed, I would be most rigorous in ensuring that I disqualify myself in any proceeding in which my impartiality might reasonably be questioned. I believe fervently not only that the judiciary must make decisions with integrity, but also that the public must be able to have confidence in the integrity of the judiciary and its decisions.

iii. If a case comes before you challenging the President's creation of military tribunals, would this constitute a "proceeding in which [your] impartiality might reasonably be questioned"? Please explain.

Response: If confirmed, I would follow the same procedures outlined in response to ii. above.

iv. If a case comes before you involving an individual tried in such a tribunal, would this constitute a "proceeding in which [your] impartiality might reasonably be questioned"? Please explain.

Response: If confirmed, I would follow the same procedures outlined in response to ii. above.

B. Question 6.

You refused to answer Question 6, writing that "it would not be appropriate for me to discuss any advice or opinion I may or may not have provided on this issue." The question did not ask you to discuss any advice or opinion you had provided, but simply to describe, based on your knowledge of the law governing the use of military personnel and resources within the United States, your personal views about the extent of that authority. Please provide a more responsive answer to each of the three sub-parts of the question, focusing on your personal views.

Response: I certainly appreciate your concern in this area and recognize that this subject raises difficult legal issues regarding the proper role of the military in such circumstances. I hesitate to answer a question regarding my personal views on this and other legal issues for several reasons. First, if confirmed, I would approach any issue with an open mind and make decisions on the facts and the law in each specific circumstance. Second, I continue to serve as the General Counsel of the Department of Defense. It would be inappropriate for me to express publicly a view in this area, which applies directly to legal issues faced by the Department of Defense. Third, under the rules of professional conduct, I am bound to maintain the confidentiality of information relating to my representation of the Department of Defense.

C. Question 10

i. Your answer to Question 10 reproduced language from the government's brief opposing certiorari in the *Hamdi* case, asserting that "Article 5 of the GPW...calls for a tribunal only in cases in which there is doubt as to an individual's prisoner-of-war-status. In the case of Hamdi and other detainees, there is no such doubt." The question, however, dealt with your personal views about this issue. Please respond to Question 10 by providing your personal views on this issue.

> **Response: As I noted above, I am hesitant to answer a question regarding my personal views on this and other legal issues for several reasons. First, if confirmed, I would approach any issue with any open mind and make decisions on the facts and the law in each specific circumstance. Second, I continue to serve as the General Counsel of the Department of Defense. It would be inappropriate for me to express publicly a view in this area, which applies directly to legal issues faced by the Department of Defense. Third, under the rules of professional conduct, I am bound to maintain the confidentiality of information relating to my representation of the Department of Defense.**

ii. In March 2003, the United States released 18 detainees from Guantanamo. "After three days of questioning by Afghan authorities, and as many as 16 months of questioning in US custody, the men were deemed no threat to society. The men were flown home Saturday after US authorities said they had no evidence to continue holding them." (*Boston Globe*, "Freed Detainees Cite Rewards, Beatings; Ex-Prisoners Talk of Treatment at Guantanamo Bay," March 26, 2003.) The article continued, "In an interview last week at Bagram Air Base outside Kabul, a US military spokesman, Colonel Roger King, defended the screening process for suspects, but acknowledged that there is "potential for mistakes to be made...just like in the US, police sometimes arrest the wrong guy." If there is potential for "the wrong guy" to be swept up and detained for as many as 16 months, how is it possible to argue that the legal status of every detainee in Guantanamo is clear beyond any doubt?

> **Response: Article 5 states in pertinent part: "*Should any doubt arise to whether persons*, having committed a belligerent act and having fallen into the hands of the enemy, *belong to any of the categories enumerated in Article 4*, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal." GPW article 5 (emphasis added). In order to trigger article 5, there must be some doubt that the individual at issue would be entitled to POW status by falling within one of the categories of belligerents set forth in article 4 of the GPW. The President has determined that neither al Qaeda nor the Taliban as groups are entitled to privileges of POWs. As a result, individual determinations are unnecessary. Under no circumstances, therefore, would fighters on behalf of either of these groups be entitled to POW status.**
>
> **The government has reviewed and evaluated the individuals detained at Guantanamo to determine whether their continued detention is**

appropriate. As Department of Defense officials have noted publicly, many Guantanamo detainees have been transferred or released pursuant to such reviews, and more are expected to follow. On February 13, 2004, the Secretary of Defense announced his intention to create a new administrative review panel that will review the situation of each detainee at least annually. Also on February 13, 2004, Department of Defense officials described some aspects of the review already applied to Guantanamo detainees. *See* http://www.defenselink.mil/transcripts/2004/tr20040213-0443.html.

D. Question 11

In your answer to Question 11, you again quoted from a government brief rather than responding to my question. The question dealt with members of the United States armed forces who intentionally operate without any military uniform whatsoever. For example, Special Forces participating in operations against the Taliban and al-Qaida in Afghanistan have reportedly worn long hair, beards, and civilian clothing to blend in with the local Muslim population. If press reports of United States Special Forces operating in civilian clothing were accurate, would those Special Forces lose their right to POW status under this analysis? Please explain. (Please note that I am not asking for your opinion on the factual question of whether US Special Forces actually operate out of uniform, but for your personal legal opinion as to whether Special Forces operating without uniforms or other marks designating them as American combatants would lose their right to POW status.)

Response: I appreciate your concern regarding the status of U. S. forces serving in combat. Nonetheless, I hesitate to answer a question regarding my personal views on this and other legal issues for several reasons. First, if confirmed, I would approach any issue with any open mind and make decisions on the facts and the law in each specific circumstance. Second, I continue to serve as the General Counsel of the Department of Defense. It would be inappropriate for me to express publicly a view in this area, which applies directly to legal issues faced by the Department of Defense. Third, under the rules of professional conduct, I am bound to maintain the confidentiality of information relating to my representation of the Department of Defense.

E. Question 12

Question 12 asked whether you could provide any international legal authority for the "unlawful combatant" designation. I take it from your failure to do so that you believe none exists. The sources you provided were either US court cases or US government opinions, which of course are domestic law, or secondary sources. The Geneva Conventions' ability to protect US soldiers stems from their status as *international* law, binding on countries other than the United States, and so I was interested to see if you could support the Administration's position with binding international legal authority. If you are aware of any treaty, convention, international court or tribunal opinion, or other primary international law source which would justify the "unlawful combatant" designation, please provide a citation.

<u>Response:</u> To clarify, the <u>Handbook of Humanitarian Law in Armed Conflicts</u> is in fact the handbook of the German Army, which it uses to aid in ensuring that its personnel conform their actions to the laws and customs of war. Section 302 of that handbook states: "If . . . persons who do not have combatant status participate directly in hostilities then they are treated as unlawful combatants if they fall into the hands of the enemy. . . . Such irregular fighters . . . are prosecuted as criminals and sentenced for their direct participation in hostilities." Another opinion regarding the status of unlawful combatants or unprivileged belligerents is *Bin Haji Mohamed Ali and Another v. Public Prosecutor*, [1969] 1 A.C. 430 (Judicial Committee of the Privy Council (U.K.) 1968).

February 16, 2004

Responses of William J. Haynes II to the
Follow-up Written Questions Submitted by Senator Richard J. Durbin

2. The Bush administration has designated at least two American citizens as enemy combatants, detaining them indefinitely without criminal charge, access to counsel, or meaningful judicial review. Federal law prohibits federal detention except pursuant to an Act of Congress. You have argued that Congress' Joint Resolution of September 18, 2001, which authorized the use of force in Afghanistan, was an "Act of Congress" authorizing the detention of American citizen enemy combatants, including those apprehended in the United States, like Jose Padilla.

Reasonably construed, the Congressional authorization of force grants the Executive the authority to detain combatants in a zone of active combat operations. Nothing in the text or the legislative history of the authorization suggests that Congress granted the executive the power to apprehend in the United States and detain American citizens without charge, trial, or access to counsel.

> What is the basis for your belief that the September 18, 2001, Joint Resolution permits the apprehension in the United States and indefinite detention of American citizens without charge, trial or access to counsel?

Response: I understand the gravity of holding an American citizen at any time, and particularly as an enemy combatant on American soil. Such actions should not be, and are not, taken lightly, and certainly not without authority. The Government has argued that Congress' Authorization for Use of Military Force, Pub. L. No. 107-40, § 2(a), 115 Stat. 224 [ ], provided the authority for such detention. The U.S. Court of Appeals for the Fourth Circuit agreed, stating:

> **Congress has, in the wake of the September 11 terrorist attacks, authorized the President to 'use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks' or 'harbored such organizations or persons.' Authorization for Use of Military Force, Pub. L. No. 107-40, § 2(a), 115 Stat. 224 (Sept. 18, 2001). As noted above, capturing and detaining enemy combatants is an inherent part of warfare; the 'necessary and appropriate force' referenced in the congressional resolution necessarily includes the capture and detention of any and all hostile forces arrayed against our troops. Furthermore, Congress has specifically authorized the expenditure of funds for 'the maintenance, pay and allowances of prisoners of war [and] other persons in the custody of the [military] whose status is determined ... to be similar to prisoners of war.' 10 U.S.C. § 956(5) (2002).**

Hamdi v. Rumsfeld, 316 F.3d 450, 467 (4th Cir. 2003). As the chief legal officer of the Department of Defense, it would be inappropriate for me to comment further on

matters in litigation. To the extent that your question seeks my personal views, I am reticent to provide them on a matter in litigation that involves my client.

I would also note that, to my knowledge, there is no U.S. citizen being held without access to counsel, or the promise of access to counsel. On December 2, 2003, the Department of Defense announced that it would allow Yaser Esam Hamdi to have access to counsel under its policy permitting access to counsel by an enemy combatant who is a U.S. citizen and who is detained by DoD in the United States after DoD has determined that such access will not compromise the national security of the United States and after DoD has completed intelligence collection from that enemy combatant or after DoD has determined that such access will not interfere with intelligence collection from that enemy combatant. On February 3, 2004, Yaser Hamdi, an American citizen captured in Afghanistan and detained in Charleston, S.C., met with counsel. On February 11, 2004, the Department of Defense announced that, consistent with its policy, Jose Padilla will be allowed access to counsel.

3. In your speech to the Federalist Society, you defended the administration's enemy combatant policy, arguing: "Congress specifically authorized the President not only to use *deadly* force, but also any *lesser force* needed to capture and detain enemy combatants to prevent them from engaging in continued hostilities against the United States" (Your emphasis).

You assert that Congress authorized the detention of American citizen enemy combatants who are apprehended in the U.S. You suggest that the Executive not only has the authority to detain such citizens, but also to use deadly force against them. John Yoo, your former colleague whom you have listed as a reference, recently made a similar argument: "I think it's important to understand the laws of war that when you detain a member of the enemy, which is seen as an act of mercy right, because you have the right to shoot them and kill a member of the enemy."

Do you believe that the Executive could use deadly force against an American citizen enemy combatant in the United States instead of apprehending him or her? If yes, please explain. If no, how do you explain your statement quoted above? Do you agree with Mr. Yoo's statement? Please explain.

<u>Response:</u> The use of force, and especially deadly force, properly should be a last resort in virtually all circumstances. In the speech from which you quoted me above, I was trying to illustrate the point that *detention* of enemy combatants is permitted by the Congressional authorization of use of force. As to the effect of Public Law Number 107-40, I would refer to the position in the Government's brief in *Hamdi v. Rumsfeld*: "Congress promptly backed the President's use of 'all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed or aided the terrorist attacks that occurred on September 11, 2003, or harbored such organizations or persons.' Authorization for Use of Military Force, Pub. L. No. 107-40, § 2(a), 115 Stat. 224 []. In addition, Congress emphasized that the forces responsible for the September 11 attacks 'continue to pose an unusual and extraordinary threat to national security,' and that 'the President has authority under the Constitution to take action to deter

and prevent acts of international terrorism against the United States.' Ibid." Br. in Opposition for the Respondents, *Hamdi v. Rumsfeld*, No. 03-6696.

4. In your Federalist Society speech, you argued:

> During World War II, the federal courts, interpreting domestic statutory and constitutional law, established several precedents that support the President's domestic authority to detain enemy combatants – including U.S. citizens – during wartime.

You rely primarily on *Ex parte Quirin*, a Supreme Court case upholding the trial by military commissions of Nazi saboteurs during World War II, to support the apprehension and detention without charge of American citizens as enemy combatants. However, the Nazi saboteurs in *Quirin* were represented by counsel, able to seek meaningful judicial review of their detentions, and were quickly charged, tried and convicted by military commissions. The Supreme Court emphasized, "We are concerned only with the question whether it is within the constitutional power of the national government to place petitioners upon trial before a military commission for the offenses with which they are charged."

> *Quirin* did not uphold the detention of American citizens as enemy combatants without charge, trial, or access to counsel. Please explain how *Quirin* supports the administration's position on enemy combatants.

Response: I understand and share the concern about detaining American citizens, particularly without access to counsel, including enemy combatants. The treatment of American citizens deserves special attention. I would begin by noting that, to my knowledge, there is no U.S. citizen now being held without access to counsel, or the promise of access to counsel. On December 2, 2003, the Department of Defense announced that it would allow Yaser Esam Hamdi to have access to counsel under its policy permitting access to counsel by an enemy combatant who is a U.S. citizen and who is detained by DoD in the United States after DoD has determined that such access will not compromise the national security of the United States and after DoD has completed intelligence collection from that enemy combatant or after DoD has determined that such access will not interfere with intelligence collection from that enemy combatant. On February 3, 2004, Yaser Hamdi, an American citizen captured in Afghanistan and detained in Charleston, S.C., met with counsel. On February 11, 2004, the Department of Defense announced that, consistent with its policy, Jose Padilla will be allowed access to counsel.

The issue of the detention of American citizens as enemy combatants is a matter currently before the courts. As the chief legal officer for the Department of Defense, I must be careful to refrain from commenting in great detail on matters that are currently in litigation. Even so, I note that the Government, in both the *Hamdi* and *Padilla* cases, has argued that the principles of *Quirin* apply to American citizen enemy combatants. *Quirin* states:

> **By universal agreement and practice the law of war draws a distinction between the armed forces and the peaceful populations of belligerent nations and also between those who are lawful and unlawful combatants. Lawful combatants are subject to capture and detention as prisoners of war by opposing military forces. Unlawful combatants are likewise subject to capture and detention, but in addition they are subject to trial and punishment by military tribunals for acts which render their belligerency unlawful."**

***Ex parte Quirin*, 317 U.S. 1, 30-31 (1942). The Court further stated: "Citizenship in the United States of an enemy belligerent does not relieve him from the consequences of a belligerency which is unlawful because in violation of the law of war. Citizens who associate themselves with the military arm of the enemy government, and with its aid, guidance and direction enter this country bent on hostile acts are enemy belligerents within the meaning of the Hague Convention and the law of war." *Id.* at 37-38.**

The U.S. Court of Appeals for the Fourth Circuit agreed with the Government's arguments in the *Hamdi* case. It stated: "The *Quirin* principle applies here. One who takes up arms against the United States in a foreign theater of war, regardless of his citizenship, may properly be designated an enemy combatant and treated as such. The privilege of citizenship entitles Hamdi to a limited judicial inquiry into his detention, but only to determine its legality under the war powers of the judicial branches." *Hamdi v. Rumsfeld*, 316 F.3d 450, 475 (4th Cir. 2003).

6. The Geneva Conventions govern the status and treatment of detainees in an armed conflict. The U.S. government has long held that, as a party to the Geneva Conventions, it is legally bound by their terms. All captured combatants and civilians are protected by the Geneva Conventions. The Red Cross's official commentary on the Conventions explains:

> Every person in enemy hands must have some status under international law: he is either a prisoner of war and, as such, covered by the Third Convention, a civilian covered by the Fourth Convention, or a member of the medical personnel of the armed forces who is covered by the First Convention. There is no intermediate status; nobody in enemy hands can fall outside the law.

Captured combatants are presumed to be POWs, and must be treated as such, unless and until determined otherwise by a competent tribunal in an individualized proceeding (an "Article 5" tribunal). The U.S. government has long abided by this principle. The Judge Advocate General Handbook states, "When doubt exists as to whether captured enemy personnel warrant POW status, Art. 5 Tribunals must be convened."

At your hearing, you acknowledged that no Article 5 tribunals have been conducted for detainees at Guantanamo Bay. You offered two different explanations for this. You said that the Geneva Conventions do not apply to the war on terrorism:

> The conflict in Afghanistan and the conflict in the global war on terror, just looking at the treaty itself, the Geneva Convention itself, which is a treaty among states, Al Qaeda is not a party. There's no way that the treaty can apply. So as a matter of law, the treaty doesn't apply.

You also suggested that the detainees did not meet the Geneva Convention's four-part test for POWs. However, Article 4(A) makes clear that the four-part test applies only to a militia operating independently of a government's armed forces. Members of the armed forces of a party to a conflict and members of militia or volunteer corps that are part of such armed forces are POWs, as are members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.

> Why do you believe that the government is not required to conduct Article 5 tribunals for Guantanamo Bay detainees? Do you disagree with the Red Cross' view that, "Every person in enemy hands must have some status under international law"? The United States and Afghanistan are both High Contracting Parties to the Convention. Why do you believe that the Geneva Convention does not apply to the conflict in Afghanistan? Do you believe that detained members of the Taliban forces are POWs? Do you believe that detained Taliban soldiers are entitled to Article 5 tribunals? Do you believe that Guantanamo detainees are entitled to Article 5 tribunals to determine whether they are Taliban soldiers or members of Al Qaeda? Please explain.
>
> **Response: Article 5 states in pertinent part: "Should any doubt arise to whether persons, having committed a belligerent act and having fallen into the hands of the enemy, belong to any of the categories enumerated in Article 4, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal." GPW article 5 (emphasis added). In order to trigger article 5, there must be some doubt that the individual at issue would be entitled to POW status by falling within one of the categories of belligerents set forth in article 4 of the GPW. The President has determined that the Taliban, as a group, failed to meet the four factors necessary for receipt of prisoner of war (POW) status. The court in *Lindh* specifically considered the question of whether the Taliban forces had to meet the four factors listed under article 4(A)(2) to be considered a "regular armed force" under 4(A)(1). The *Lindh* court held that the four factor test applies to such a situation. Moreover, the President further determined that because al Qaeda is not, nor could it be, a party to the Geneva Convention Relative to the Treatment of Prisoners of War (GPW), it is not entitled to the protection of the GPW and its members are not entitled to POW status.**
>
> **The President has determined that the detainees are not entitled to POW status and thus tribunals under Article 5 of the GPW are not required. The layers of review employed by the Department of Defense in the current conflict assess at several points in time whether it is appropriate to continue to detain an individual - something that neither Article 5 nor any other portion of the GPW require. On February 13, 2004, the Secretary of Defense announced his intention to create an**

administrative panel that, in addition to the existing reviews, would review the cases of such detainees at least annually.

7. You stated that the Article 5 tribunal "is really a very simple process. In application it's very cursory, it's done very quickly on the battlefield. ... In this case, for all the detainees in Guantanamo, there has been multiplied many-fold of the process normally in an Article V tribunal process."

U.S. military regulations provide detailed procedures for Article 5 tribunals. For example, persons whose status is to be determined shall be advised of their rights at the beginning of their hearings; allowed to attend open sessions and provided with an interpreter if necessary; allowed to call witnesses if reasonably available, and to question witnesses called by the tribunal; have a right to testify or otherwise address the tribunal, and not be compelled to testify. Following the hearing of testimony and the review of documents and other evidence, the tribunal shall determine the status of the subject of the proceeding in closed session by majority vote. Preponderance of evidence shall be the standard used in reaching this determination, and a written report of the tribunal decision is to be completed in each case.

> Have the detainees been provided with the process outlined in these regulations? If not, how do you justify your statement that "for all the detainees in Guantanamo, there has been multiplied many-fold of the process normally in an Article V tribunal process"?
>
> **Response: As explained in my response to question 6, the President determined that the Al Qaeda and Taliban are not entitled to prisoner of war status, and thus tribunals under article 5 are not required. Nevertheless, as Department of Defense officials have stated, each detainee is subject to multiple layers of review that include, among other things, threat assessment, interrogation, psychological analysis, and background checks. On Friday, February 13, 2004, Department of Defense officials conducted a briefing at which some of that review is described. *See* http://www.defenselink.mil/transcripts/2004/tr20040213-0443.html.**

9. Your former colleague Jack Goldsmith, whom you have listed as a reference, has written that the differing public reactions to the military commission orders issued by President Franklin Delano Roosevelt and President Bush are a product of an increase in sensitivity to civil liberties from 1942 to 2001. He cautions that:

> There is a potential danger here. The danger is that in an age of anthrax, nuclear suitcases, and other easy-to-conceal weapons of mass destruction, the threat posed by al Qaeda and other terrorists might warrant tradeoffs between liberty and security that are inconsistent with ordinary respect for civil liberties.
>
> Do you agree with Mr. Goldsmith's view that increased sensitivity to civil liberties poses a "potential danger"? Do you agree that the terrorist threat "might warrant tradeoffs between liberty and security that are inconsistent with ordinary respect for civil

liberties"? Why or why not? Do you believe that the threat posed by terrorism warrants such tradeoffs? Why or why not? If so, what tradeoffs do you suggest?

Response: I believe that the national security can be protected without depriving individuals of the civil liberties provided to them by law.

13. Mr. Rivkin has dismissed concerns about suicide attempts by Guantanamo Bay detainees:

> Of course, prolonged detention may well provoke, at least among some of the detainees, a sense of hopelessness, leading to suicide attempts. The laws of war, however, do not protect against such depression, which is the natural and predictable consequence of the detainees' own choices – in particular the choice to join Osama bin Laden's jihad.

Do you agree that the laws of war do not protect detainees against depression or suicide attempts? Do you believe that the United States has an obligation to take measures to address depression and prevent suicide attempts? Please explain. What measures has the U.S. taken to address depression and prevent suicide attempts by Guantanamo detainees?

Response: Officials of the Department of Defense have noted repeatedly that the Guantanamo detainees are being treated humanely, and are being provided extraordinary medical care, including as appropriate mental health care. Such officials also have addressed publicly their efforts to address depression and potential suicide attempts. I am unaware of any particular obligation to protect against depression or suicide attempts. Nevertheless, as stated above, the Department of Defense is applying extraordinary measures to address those risks.

15. Mr. Rivkin has written:

> [E]ven assuming that the detainees have been subjected to the interrogation methods Burkhalter claims, including painful bindings, contorted positions, sleep deprivation, piercing noises and even beatings ... these do not, as a matter of law, constitute torture. Torture, as explained by the European Court of Human Rights in a 1978 case involving the 'five techniques' used by Britain to interrogate IRA suspects, requires 'suffering of particular intensity and cruelty.' The use of sleep or sensory deprivation, uncomfortable or painful postures, and even a level of physical abuse, does not meet the test.

Do you agree that sleep or sensory deprivation, uncomfortable or painful postures, and even a level of physical abuse never as a matter of law constitute torture? Do you believe that these practices constitute cruel, inhuman, and degrading treatment? Please explain.

Response: I appreciate your concern in this area and recognize that this subject raises difficult legal and policy issues. I hesitate to answer a question regarding my personal views for several reasons. First, if confirmed, I would approach any issue with an open mind and make decisions on the facts and the law in each specific circumstance. Second, I continue to serve as General Counsel of the Department of

Defense. It would be inappropriate for me to express publicly a personal view in this matter, with applies directly to legal issues faced by the Department of Defense. Third, under the rules of professional conduct, I am bound to maintain the confidentiality of information relating to my advice to the Department of Defense.

I note nonetheless that my June 25, 2003, letter in my official capacity as General Counsel of the Department of Defense to Senator Leahy noted, *inter alia*: "[W]e can assure you that it is the policy of the United States to comply with all of its legal obligations in its treatment of detainees, and in particular with legal obligations prohibiting torture. ... As your letter stated, it would not be appropriate to catalogue the interrogation techniques used by U.S. personnel in fighting international terrorism, and thus we cannot comment on specific cases or practices."

LEGISLATIVE AFFAIRS

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, DC 20301-1300

March 9, 2004

The Honorable Edward M. Kennedy
Committee on the Judiciary
United States Senate
224 Senate Dirksen Office Building
Washington, D. C. 20510-6275

Dear Senator Kennedy:

The attached questions were referred to me by Mr. William J. Haynes II for an official response by the Department of Defense.

Please see the attached answers to those questions.

Sincerely,

Daniel R. Stanley
Principal Deputy Assistant Secretary
of Defense
(Legislative Affairs)

Attachment:
as stated

03/09/2004 18:24 FAX 003

DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600

March 9, 2004

MEMORANDUM FOR ASSISTANT SECRETARY OF DEFENSE FOR LEGISLATIVE AFFAIRS

Subject: Requests from Senator Kennedy

In the course of considering the nomination of William J. Haynes II as a circuit judge for the Court of Appeals for the Fourth Circuit, Senator Kennedy posed to Mr. Haynes certain questions that were not appropriate for him to address as a nominee. On February 11, 2004, Senator Kennedy requested an official response by the Department of Defense to two questions and additional information on a Freedom of Information Act request.

Attached are answers to those questions. Please transmit them to Senator Kennedy expeditiously.

Daniel J. Dell'Orto
Principal Deputy General Counsel

Attachments
a/s

Responses to Senator Kennedy's written questions

Question 7:
At your hearing, you stated that you want to return the three children detained at Guantanamo – ages 13 to 15 – to society as soon as possible. It is my understanding that Major General Geoffrey Miller, the Commander of the Joint Task Force at Guantanamo, has told the Defense Department that these children pose a low risk and should be sent home. Is that correct? What is preventing you from returning these children home now?

Response:
The three juvenile detainees to whom the question refers were released from Guantanamo on January 29, 2004 and returned to Afghanistan, where they were met by representatives of the Afghan Government and placed in a program for the reintegration of child soldiers. The Department of Defense worked with non-governmental organizations to provide for the return of these juveniles to an environment where they have an opportunity for reintegration into civil society.

Question 9:
The international standard for separating child from adult soldiers is 18 years of age, not 16. Why haven't the 16- and 17-year-old juveniles at Guantanamo been separated from the adults, as required by international standards?

Response:
The Department of Defense has been very attentive to the safety of each detainee and to the protection of each detainee from harm by other detainees, regardless of age.

Our review of this issue has led us to conclude that there is no international standard that requires separating enemy combatants who are younger than 18 years of age from older enemy combatants. The law of armed conflict does not define with precision the age at which a combatant is considered a child or an adult. The Geneva Conventions are silent on this point but generally recognize that children under the age of 15 who are non-combatants should be accorded treatment different from persons who are older.[1]

Similarly, Article 77 of Additional Protocol I to the Geneva Conventions provides for special treatment to be accorded to children, particularly to those under the age of 15, but does not establish that a child is someone under the age of 18.[2] Although Article 77

[1] See, e.g., Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949, arts. 14, 23, 24, 38, and 50.

[2] Article 77 states:

pertains to the protection of children, the term "children" is intentionally not defined. The drafters of that article considered that the term "child" did not have a generally accepted definition, acknowledged that States have adopted varying age standards, and considered children under the age of 15 as those most in need of special protection.[3] The United States is not a party to Additional Protocol I.

Note also that, although not applicable to the subject of the juvenile detainees at Guantanamo, the primary international human rights treaty dealing with the rights of the child and its Optional Protocol on the Involvement of Children in Armed Conflict do not establish a definite international standard of 18 as the age of majority. The U.N. Convention on the Rights of the Child explicitly recognizes that the age of majority under the law applicable to a child can be less than 18 years of age.[4] Moreover, article 38 of that treaty selects for special protection in situations of armed conflict children who are 15 years of age and younger. In fact, article 38 restates some of the provisions in article 77 of Additional Protocol I. The United States is not a party to the U.N. Convention on the Rights of the Child.

The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict does not define the age at which a person is a child. It recognizes that the armed forces of States parties may include those who are younger than age 18 if enlisted through voluntary recruitment and requires those States, *inter alia*, to raise above age 15 the minimum age for voluntary recruitment into their

---

1. Children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason.
2. The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the Parties to the conflict shall endeavour to give priority to those who are oldest.
3. If, in exceptional cases, despite the provisions of paragraph 2, children who have not attained the age of fifteen years take a direct part in hostilities and fall into the power of an adverse Party, they shall continue to benefit from the special protection accorded by this Article, whether or not they are prisoners of war.
4. If arrested, detained or interned for reasons related to the armed conflict, children shall be held in quarters separate from the quarters of adults, except where families are accommodated as family units as provided in Article 75, paragraph 5.
5. The death penalty for an offence related to the armed conflict shall not be executed on persons who had not attained the age of eighteen years at the time the offence was committed.

[3] C. Pilloud et al., Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949 (1987), pp. 897-903.

[4] U.N. Convention on the Rights of the Child, article 1: "For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."

armed forces.[5] The only absolute standards that it sets at age 18 apply to conscription into the armed forces of a State, and to the recruitment and use of anyone under age 18 by armed groups that are not the armed forces of a State. The United States is a party to the Optional Protocol.

With respect to al Qaeda and Taliban detainees, the President determined that the U.S. Armed Forces will continue to treat them humanely and, consistent with the requirements of military necessity, in a manner consistent with the principles of the Geneva Conventions. As a matter of policy, the Department of Defense treated the detainees assessed to be younger than age 16 in a manner appropriate to their ages and to the military mission. As noted above, there are no detainees at Guantanamo known to be younger than 16 years of age. Each detainee in DoD control is assessed individually, including with respect to special requirements associated with age, medical condition, level of threat, and other factors that may be appropriate in the detention environment. Detainees who may be 16 or 17 years old are no exception.

---

[5] Optional Protocol to the Involvement of Children in Armed Conflict, arts. 1 and 3. While articles 1 and 3 do not set absolute standards with respect to members of the armed forces of a State, they recognize that special protection should be afforded to those under 18 in some circumstances:

"Article 1. States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities."

"Article 3(3). States Parties that permit voluntary recruitment into their national armed forces under the age of 18 years shall maintain safeguards to ensure, as a minimum that: (a) Such recruitment is genuinely voluntary; (b) Such recruitment is carried out with the informed consent of the person's parents or legal guardians; (c) Such persons are fully informed of the duties involved in such military service; (d) Such persons provide reliable proof of age prior to acceptance into national military service."

Response to Senator Kennedy's question of February 11, 2004 regarding a Freedom of Information Act request

Question:
Finally the Department of Defense has not yet responded fully to the Freedom of Information Act request submitted by the National Institute of Military Justice on October 3, 2003, for copies of all written or electronic communications that the Department has either sent to or received from anyone (other than an officer or employee of the United States acting in the course of his or her official duties) regarding the President's November 13, 2000 Military Order, the Secretary's Military Commission Orders, and the Military Commission Instructions. Because of the substantial public interest and concern over the Department's proposed military commissions, it is essential for the Department to comply with this request for public documents in a thorough and timely manner. Also, because these are matters that may throw light upon subjects discussed at your hearing and in follow-up questions to you, we will want to see the requested materials before we consider your nomination. I urge you to give the request your immediate attention.

Response:
The Freedom of Information Act request filed by the National Institute of Military Justice is now the subject of litigation. The request was filed with the Department last fall and the materials that were readily available were released quickly. We are still processing the remainder of the request and will work closely with the Department of Justice in the current litigation to ensure that public documents are made available and that any material subject to an exemption under the Freedom of Information Act is carefully and thoroughly examined so that the proper release decisions are made. The Department of Defense will provide its response to the Institute's request in the course of litigating this case.

SUBMISSIONS FOR THE RECORD

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November 14, 2003

VIA FAX (202/224-4720)

Honorable Saxby Chambliss
416 Russell Senate Office Building
Washington, D.C. 20510

Re: William J. Haynes II -- Nominee for Fourth Circuit Court of Appeals

Dear Senator Chambliss:

I write to ask you to schedule a hearing before the Senate adjourns for Thanksgiving for William J. ("Jim") Haynes, nominee for the Fourth Circuit Court of Appeals, if at all possible. I tried to call you about this yesterday, but you were not available.

As you will see from the attached biographical sketch, Jim is an experienced lawyer and public servant.

He is now General Counsel of the Department of Defense. I have worked with him regarding preparing the Rules of Procedure for the Military Tribunals and have also worked with him on the Department of Defense Technology and Privacy Advisory Committee.

In my opinion, Jim is first rate in all respects and would serve our country well as a United States Circuit Judge on the Fourth Circuit Court of Appeals.

With thanks and good wishes.

Yours sincerely,

Griffin B. Bell

Griffin B. Bell

GBB/bk
Attachment

P.S. Jim went to grammar school in Albany and his wife is from Newnan.

WILLIAM JAMES HAYNES II

William J. "Jim" Haynes is the General Counsel of the U.S. Department of Defense.

Mr. Haynes has devoted much of his professional life to the service of the United States. He was a law clerk to U.S. District Judge James B. McMillan in the U.S. District Court for the Western District of North Carolina. He served four years on active duty as an officer in the U.S. Army.

He later served for three years under then-Secretary of Defense Dick Cheney as General Counsel of the Department of the Army, an office to which he was appointed by President George H.W. Bush. He has served as General Counsel of the Department of Defense under Secretary of Defense Donald H. Rumsfeld since President George W. Bush appointed him on May 24, 2001. In both offices, he was appointed by and with the advice and consent of the Senate.

In the private sector, Mr. Haynes has served as a partner in the law firm of Jenner & Block, as Staff Vice President and Associate General Counsel of the General Dynamics Corporation of Falls Church, Virginia, and as General Counsel of the Marine Group of General Dynamics.

Mr. Haynes was born in Waco, Texas in 1958 to a career U.S. Air Force family. He was a high school State wrestling champion in Louisiana and an Eagle Scout. He earned a bachelor's degree from Davidson College in 1980, and a law degree from Harvard Law School in 1983. He is the recipient of the Army Meritorious Service Medal with Oak Leaf Cluster, the Department of Army Meritorious Civilian Service Award, and the Department of the Navy Distinguished Public Service Award.

Mr. Haynes is married and has three children.

September 2003

WILLIAM J. HAYNES II
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

Department of Defense • 1600 Defense Pentagon, Rm 3E980 • Arlington, VA • 703-695-3341

LEGAL EXPERIENCE

General Counsel of the Department of Defense (May 2001 - present)
The Pentagon, Arlington, Virginia

Partner, Jenner & Block (May 1999 – May 2001)
Washington, District of Columbia

Volunteer, Mercy Corps International (January 1999-May 1999)
Almaty, Kazakhstan

Staff VP and Associate General Counsel, General Dynamics Corporation
(July 1996 – January 1999)
Falls Church, Virginia

General Counsel, General Dynamics Marine Group (July 1997 – January 1999)
Falls Church, Virginia

Partner, Jenner & Block (April 1993 – June 1996)
Washington, District of Columbia

General Counsel of the Department of the Army (March 1990 – January 1993)
The Pentagon, Arlington, Virginia

Associate, Sutherland, Ashill & Brennan (1989)
Washington, District of Columbia

Captain, United States Army (1984 – 1988)
Office of the General Counsel of the Department of the Army
The Pentagon, Arlington, Virginia

Law Clerk for United States District Judge James B. McMillan (1983-1984)
Charlotte, North Carolina

Admitted to Practice: District of Columbia, North Carolina, and Georgia (inactive)

(Continued next page)

WILLIAM J. HAYNES II

EDUCATION

Harvard Law School (J.D. 1983)
Cambridge, Massachusetts

Davidson College (B. A., *cum laude*, 1980)
Davidson, North Carolina

HONORS

Department of the Navy Distinguished Public Service Award (2003)
Honorary Doctor of Laws, Stetson University (1999)
Department of the Army Meritorious Civilian Service Award (1993)
Army Meritorious Service Medal with Oak Leaf Cluster (1986, 1988)
Omicron Delta Kappa (1980)
Phi Beta Kappa (1980)
Army ROTC Scholarship (1976)
Eagle Scout (1971)

PERSONAL

Married to Margaret Campbell Haynes; three children (Will, Sarah, Taylor)

July 2003

Statement of Senator Saxby Chambliss

Mr. Chairman, I am pleased to speak on behalf of Jim Haynes, who has been nominated by the President to the United States Court of Appeals for the Fourth Circuit. Mr. Haynes comes highly recommended by one of my good friends, Judge Griffin Bell, who as you know formerly sat on the old Fifth Circuit Court of Appeals (before it was split into the present Fifth and Eleventh Circuits) and served as President Carter's Attorney General. Judge Bell faxed me a letter last Friday to tell me about his experience with Mr. Haynes, who is currently Chief Counsel for the Department of Defense. Judge Bell and Mr. Haynes worked together on drafting the Rules of Procedure for Military Tribunals. They also worked together on the Department of Defense Technology and Privacy Advisory Committee. I'm going to ask that a copy of Judge Bell's letter and its attachments be placed in the record.

In his letter, Judge Bell writes: "In my opinion, Jim is first rate in all respects and would serve our country well as a United States Circuit Judge on the Fourth Circuit Court of Appeals." It is no surprise to me that Judge Bell speaks so highly of Jim Haynes. Mr. Haynes has a wealth of experience both in private practice, where he worked as a partner in the Washington, D.C., law firm of Jenner & Block, and in government service, where he has served as General Counsel for the Department of Defense and, prior to that, as General Counsel for the Department of

the Army. As a result of these prior positions, Mr. Haynes has twice been confirmed by the Senate after having been successfully reported out of the Armed Services Committee.

Following Mr. Haynes' graduation from Harvard Law School, he clerked for Federal District Judge James B. McMillan of the Western District of North Carolina and then served four years in the United States Army.

Mr. Haynes has some early ties to Georgia, having attended grammar school in Albany, Georgia, which is right down the road from my home town of Moultrie. His wife, Meg, is originally from Newnan, Georgia, and herself is a lawyer who has committed her legal career to child advocacy. But these home-state ties aside, Mr. Haynes' commitment to public service is admirable, and I am grateful to him for it. I welcome him and his family here today and I urge the committee to join me in supporting his nomination. Thank you, Mr. Chairman.

DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600

March 10, 2004

MEMORANDUM FOR ASSISTANT SECRETARY OF DEFENSE FOR LEGISLATIVE AFFAIRS

Subject: Requests from Senator Kennedy

In the course of considering the nomination of William J. Haynes II as a circuit judge for the Court of Appeals for the Fourth Circuit, Senator Kennedy requested copies of documents released to Mr. Eugene R. Fidell in an interim response to a request under the Freedom of Information Act.

Attached are copies of the released documents. Please transmit them to Senator Kennedy expeditiously.

Daniel J. Dell'Orto
Principal Deputy General Counsel

THE SECRETARY OF DEFENSE
WASHINGTON

DEC 3 2001

The Honorable Carl Levin
Chairman
Committee on Armed Services
United States Senate
Washington, DC 20510-6050

Dear Mr. Chairman:

Thank you for the letter you signed with Senator Warner inviting Deputy Secretary Wolfowitz and General Counsel Haynes to testify before your committee's hearing on December 6, 2001, regarding implementation of the Military Order regarding the detention, treatment, and trial of suspected terrorists. I have asked Mr. Powell Moore, Assistant Secretary of Defense for Legislative Affairs, to address this matter. He will be in touch with you soon.

With best wishes,

Sincerely,

U19002 /01

the People

2002 JAN 31 PM 3:05

Mina'Bente Sais Na Lihislatura Gualhan

Senator vicente (ben) c pangelinan
Minority Leader (D)

Secretary of Defense

2 6 2001

SA0001918

Mr George W Bush
President of the United States
The White House
1600 Pennsylvania Avenue NW
Falls Church, VA 22042

Dear Mr President

It has come to my attention through media reports that you have recently signed an executive order, which designate U S territories in the Pacific as a site for military trials of suspected terrorists, as well as utilize these territories as detention centers for possible al-Qaida prisoners

Although the executive order did not specify which U S territories would be used, it is a great concern for the people of Guam—given that Guam is a U S territory in the Pacific—that such decision may as well refer to the island of Guam

I like my fellow senators and other public officials and the people of Guam, have always been supportive of all your efforts in eradicating global terrorism Guam has always done its part in fulfilling its duty to the country, whether it be offering our island for military use, or providing troops to join all the other troops from the mainland in fighting terrorism Guam is in full support of your decision in holding those responsible for the September 11 terrorist attacks on American soil and the global war on terrorism

However, I strongly appeal to you for your reconsideration in this particular decision as part of the global war on terrorism Guam's economy is dependent on tourism, and travel to Guam is dependent of being perceived as a safe destination Aspects of this perception are the island's distance from the Continental United States and designation as a low level direct target The local government touted this in the recent marketing efforts costing over $1 4 million in Japan, in the hopes of reviving visitor arrivals. Over 85% of Guam's visitors are from Japan Recently, the island suffered a set back when the Japanese government named Guam as one of the four destinations to avoid Holding al-Qaida prisoners on Guam and conducting trials here would mire its deeper as a destination to avoid.

Guam's economic lifeblood is dependent on tourism and its attractiveness as a safe destination is one of our greatest assets. Immediately after September 11,

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Tel (671) 472-3452/45 - Fax (671) 472-3566 - Email senator@kuentos.guam.net

U01875-/02

approximately twenty-five thousand tourists, in one week alone, have cancelled their trips to Guam This unprecedented figure continues to dramatically increase each day, and is not expected to decrease any time soon Tourist spots on the island suddenly and sadly turned into ghost towns

As a result of this slow tourist arrivals, many businesses were forced to cut hours, layoff or furlough hundreds of employees Others have filed for bankruptcy. The unemployment rate on Guam has rapidly tripled as compared to the national average Every individual on Guam has felt the shocking effects of the terrorist attacks Thousands found themselves in the unemployment line, many are severely distressed over their financial situation, as they cannot seem to make ends meet

Guam has not, in any way or form, recovered from this situation The local government, in partnership with the private sector, is creatively finding means to assist the unemployed population, simultaneously figuring out ways to stimulate and improve the economy

However, the executive order to detain and hold trials of suspected terrorists or prisoners of war on Guam will only impede any hopes for progress in the island's economic recovery Knowing that there are al-Qaeda prisoners on Guam would significantly discourage tourists to travel on an island where dangerous prisoners are held

Therefore, for the well-being of the people of Guam, and in an effort to assist the island in its economic recovery, I plead for your reconsideration in using the U S territories in the Pacific for military tribunal and detention centers

Sincerely,

vicente (ben) c pangelinan
Minority Leader, 26th Guam Legislature

cc: U S Secretary of Defense
Congressman Underwood
Governor
Lt. Governor
All Senators
All Media

SECRETARY OF DEFENSE

2001 NOV 30 PM 1:26

Franciscan Washington Office for Latin America

SERVICE OF JUSTICE, PEACE AND THE INTEGRITY OF CREATION

November 30, 2001

President George W. Bush
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

Dear Mr. President:

Peace and all good! The Franciscan Washington Office for Latin America is a representative body of the Franciscan Friars (Roman Catholic priests and brothers) in North America. We agree that the actions of September 11 are horrendous acts that have and continue to bring much suffering to innocent people in the United States and other nations in the world. We are however concern about the recent actions of your Administration especially the Executive Order of November 13, 2001 calling for the use of Military Tribunals. The implementation of this type of Tribunal will undermine our standing in the world community and would undermine any confidence as we as a nation search for justice for the victims of the September 11 attacks.

As we continue to condemn the actions of the terrorists, we urge your Administration to work for a true and lasting justice.

Respectfully yours,

Father David Mozuski, OFM
Executive Director

cc: The Honorable Colin Powell, Secretary of State
The Honorable Donald Rumsfeld, Secretary of Defense
The Honorable John Ashcroft, Attorney General

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THE UNIVERSITY OF BRITISH COLUMBIA

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Fax: (604) 822-8782

November 28, 2001

President George W. Bush
The White House, Office of the President
1600 Pennsylvania Avenue
Washington DC 20500, USA

Dear Mr. President,

Re Zacarias Moussaoui et al.

I am writing at the behest of Amnesty International in regard to the Military Order signed November 13/01 allowing for non-US citizens to be tried by special military commissions.

Zacarias Moussaoui, a French national, was arrested in Minneapolis on August 17 and has been held since then without charge as a "material witness" in the investigation into the events of September 11. It has been reported that some US government officials have recommended that he be tried before a special military commission. Any foreign nationals being held in connection with the events of September 11 can be so tried.

Let me say that I fully support and agree with Amnesty International's condemnation of the September 11 atrocities and with the efforts of the United States to bring the perpetrators to justice. In order that justice may be done and may be seen to be done I urge that they be given a fair and public trial before an impartial court in accordance with international standards of justice and without recourse to the death penalty.

I further urge that the Military Order of 13 November be revoked in that it expressly bypasses fundamental principles of law and evidence recognized by US courts, and denies the right of appeal to a higher court, in violation of international law. The Military Order has already eroded international cooperation in the effort to bring the perpetrators to justice: I instance the reported refusal of Spain to send suspects to face trial by a military commission.

Sincerely,

Peter Remnant
Professor Emeritus
cc. The Honourable Donald Rumsfeld, Secretary of Defense, USA

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JOSEPH I. LIEBERMAN, CONNECTICUT
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MARK DAYTON, MINNESOTA
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JIM BUNNING, KENTUCKY
DAVID S. LYLES, STAFF DIRECTOR
LEE BROWN, JR., REPUBLICAN STAFF DIRECTOR

United States Senate

COMMITTEE ON ARMED SERVICES
WASHINGTON, DC 20510-6050

November 28, 2001

Honorable Donald H. Rumsfeld
Secretary of Defense
The Pentagon
Washington, D.C. 20301

Dear Mr. Secretary:

We invite you or Deputy Secretary Paul Wolfowitz and General Counsel William J. Haynes to testify before the Armed Services Committee at 1:00 p.m. on Thursday, December 6, 2001 in room SR-325 of the Russell Senate Office Building on President Bush's November 13, 2001 Military Order on detention, treatment, and trial of certain non-citizens in the war against terrorism.

The purpose of this hearing is to ascertain the Defense Department's plans for implementing the Military Order. The Committee will be interested in understanding how crimes and their elements will be defined; how rules, including rules of evidence and procedure, will be established; and how records of trial will be prepared and reviewed. We are also interested in the procedures to be used, including the membership of military commissions, the qualifications of attorneys, and the burden of proof. We understand that some of these matters may not be decided yet and, in such instances, would like to be informed of the options that are under consideration.

Committee rules require that government witnesses provide a prepared statement. Please provide your statement, both on disk (in WordPerfect or Microsoft Word format) and 150 copies, at least 48 hours before the hearing. Please provide letter-size copies of any charts or handouts for distribution to Members and staff. You may contact Mr. Rick DeBobes at (202) 224-7530 or Mr. Scott Stucky at (202) 224-8629 of the Committee staff to resolve any questions you or your representatives may have in preparing for this hearing.

We look forward to seeing you or Secretary Wolfowitz and Mr. Haynes at the hearing.

Sincerely,

John Warner
Ranking Member

Carl Levin
Chairman

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amnesty international
Gruppo Italia 4
Premio Nobel per la Pace 1977

OFFICE OF THE SECRETARY OF DEFENSE
2001 DEC 13 AM 9:39

The Honourable Donald Rumsfeld,
Secretary of Defense
The White House,
Washington DC 20310
Fax 001 703 697 9080

Milan, December 13,2001

Dear Secretary of Defense,

Being not too young, I do remember the laws established by the Fascist regime in Europe and I remember as well the Eisenhower period and the unfair laws against people suspected to be communist. It was a very sad time for America when we, Europeans, discovered that America was not the country of freedom, we believed to be.

You are now going back to that time and even if I understand your sorrow for the 11 September atrocities, I think that yourshould not break the fundamental rules of democracy and the respect for human rights.

The Military Order of 13 November should be revoked, because it erodes international cooperative efforts. Do not forget that the death penalty is not admitted in Europe and that, as Spain already did, our countries will refuse to send any suspects to fake trials by such illegal courts.

We do want the responsible of the horrible crimes committed against your country to be prosecuted, but illegal trials would undermine confidence in the search for justice and the doubt of an unfair judgement would destroy the good feeling towards your government.

Yours sincerely

Maddalena Lombardi

Via Fratelli Bronzetti 27
20129 Milano (Italia)
Fax +39 02 70006219

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amnesty international

GRUPPO ITALIA 5 - NAPOLI

VIA S. GIUSEPPE DEI NUDI, 20 - 80138 NAPOLI TELEFAX 081/5498888

Naples, December 4 2001

George W. Bush, The President
The White House, Office of the President
1600 Pennsylvania Avenue
Washington DC 20500
USA

Cc Ambasciata degli Stati Uniti d'America
Palazzo Margherita
Via Vittorio Veneto 119/a
00187 ROMA

Dear Mr. President

We are members of Amnesty International - Group Italy 5 – Naples, the international non-governmental organization that defends human rights all over the world wherever they are violated.

We condemn the 11 September atrocities and we urge that anyone in US custody alleged to have been involved in these crimes be tried in accordance with international standards for a fair trial and without recourse to the death penalty.

Amnesty International calls for the Military Order of 13 November to be revoked, on the grounds that it bypasses fundamental principles of justice, including the right of appeal to a higher court, a right which cannot be suspended even in time of emergency.

Amnesty International urges that no-one be brought before the special military commissions.

We state that the Military Order erodes international cooperative efforts.

We want to cite Spain's reported refusal to send any suspects to face such trials.

We argue that any such trial would undermine confidence in the search for justice, for the victims of the 11 September attacks and their families.

We would appreciate your reply regarding this problem.

We want to thank you for your time and consideration.

Sincerely

Amnesty International
Group ITALIA 5 – NAPOLI
c/o Andrea Maurano
Via S. Filippo e Chiara, 20/F
80122 NAPOLI
ITALIA

Amnesty International Italia per la difesa dei diritti umani e la liberazione dei prigionieri chiamati per motivi d'opinione sul mondo
sede nazionale: Via Oliveto Rodolfo De Rossi 16 - 00161 ROMA. TEL. 06 4490 FAX 06 4490222 c/c p 32009

U19038 /01

Statement of Senator Patrick Leahy
Senate Judiciary Committee
Judicial Nominations Hearing
November 19, 2003

Today, the Committee is holding its 23rd judicial nominations hearing this year. This pace stands in sharp contrast to the way President Clinton's nominees were treated by the Republican majority from 1995 through 2000. In those years, there were far fewer hearings for far fewer nominees.

This afternoon we will hear from this President's latest nominee to the Court of Appeals for the Fourth Circuit. Actually, there is no existing vacancy on the Fourth Circuit from Virginia, although an active judge may leave.

Over the course of Senate debate last week Republicans tried to rewrite history by claiming that filibusters of judicial nominees were unprecedented in the Senate. That is simply not correct. Contemporaneous and historical documents show that Senators, including Republican Senators led by Senator Robert Griffin, successfully filibustered President Johnson's 1968 nomination of Justice Abe Fortas to be Chief Justice of the Supreme Court.

The Senate's own website contains an article entitled "Filibuster Derails Supreme Court Appointment," which notes that: "Although the [Judiciary] committee recommended confirmation, floor consideration sparked the first filibuster in Senate history on a Supreme Court nomination." Congressional Quarterly's Guide to Congress (1995) contains a similar account of the events and no amount of partisan rhetoric can alter the historical fact that Justice Fortas' nomination was filibustered in the Senate. In addition to the filibusters of one, mounted through anonymous Republican holds on President Clinton's nominees, filibusters of his nominees also reached the floor and prompted cloture votes by the Senate on other nominees to the federal bench.

Having recently had occasion to revisit the Fortas filibuster, I was reminded that the reason given by some Senators for that filibuster and for their opposition was their concern that Justice Fortas was too close to the White House to be an independent arbiter. There were concerns that his coziness with the President and that Administration would inhibit Justice Fortas' independence to uphold the Constitution and protect against overreaching by the Executive Branch.

Alexander Hamilton wrote that the Senate was to be concerned about judicial candidates that were "in some way or other personally allied" with the Executive. The framers gave the Senate an important role to play in ensuring that the federal bench would not simply be an arm of the Executive Branch nor, as I have said through the years, should the courts be an arm of either political party. We honor the brilliant design in our Constitution when we take our role seriously.

When considering nominees who have worked for the President and advocated his policy choices, the Senate reviews the nominations to make certain that cronyism is not involved and that the nominees will demonstrate independence. The Senate has been highly accommodating in already confirming Judge Bybee, Judge Chertoff and many others nominated from positions within this Administration. Now we are confronted with the nomination of Mr. Haynes, who as general counsel at the Defense Department has been intimately involved in President Bush's controversial policies regarding the detainment of designated individuals and with the Administration's unilateral determinations with regard to military tribunals.

In letters to the Senate, the Department of Justice has indicated that "the Department of Defense is responsible . . . for determining whether a particular individual is an enemy combatant over whom the armed forces should take control." As General Counsel of the Department of Defense, Mr. Haynes has been a key architect of the treatment of detainees and the prosecution of enemy combatants. He himself has noted the "unprecedented relationship" developed at the Department of Defense and the Department of Justice with regard to the Executive Branch's litigation strategies.

Some have suggested that Mr. Haynes was hand-picked for the 4th Circuit by the President's advisors because of his intimate knowledge of this Administration's plans with respect to military tribunals and treatment of detainees. The 4th Circuit is the circuit which hears appeals from the Moussaoui case and the Hamdi detention case among others. The Administration has shown its interest in making the 4th Circuit, its circuit of choice for detentions and policy determinations regarding Americans' civil liberties and for its efforts to avoid substantive review of Administration actions. We will all be interested to hear testimony about whether Mr. Haynes intends to be involved in cases that involve the policy and legal work he has been doing for the Administration while at Defense.

Mr. Haynes' nomination to a Virginia seat on the Fourth Circuit is unusual for several reasons. First, he is nominated to a Virginia seat on this Circuit that is currently not vacant. Second, when he was nominated Mr. Haynes was actually a resident of the District of Columbia. And finally, it is also unusual that the nominee for this Virginia seat is not admitted to practice law in the Commonwealth of Virginia, nor is he a member of the bar of the Fourth Circuit Court of Appeals.

Months ago I sent a letter to Mr. Haynes asking him several questions regarding implementation of the Convention Against Torture (CAT), including specific questions about the rendition of alleged terrorist suspects to foreign governments. Late last night, I received a cover letter with attachments from one of his assistants, all of which studiously avoid discussion of the CAT. This response also left unanswered my question about what guidelines, if any, are followed by the CIA when interrogating suspects. I find this recent correspondence to be totally non-responsive and terribly disturbing.

Another nominee at today's hearing, Mr. Kenneth Karas is currently serving on the prosecution team in the Moussaoui case. I look forward to hearing his testimony

regarding how he will make the transition from prosecuting that case to presiding over cases, should he be confirmed.

Also at today's hearing is Virginia Hopkins, nominated to the U.S. District Court for the Northern District of Alabama. Ms. Hopkins has over 25 years experience in private practice, handling a range of cases including intellectual property and tax and estate planning issues. She is the fourth nominee of President Bush to this court and the seventh nominee for the district courts in Alabama to come before this Committee since July 2001. She is supported by her home-state Senators. Consideration of her nomination is being expedited as a courtesy to Senator Shelby and, of course, to Senator Sessions.

Magistrate Judge Louis Guirola is nominated to the Southern District of Mississippi. It is my understanding that he is the first Hispanic individual to be nominated to the federal bench in Mississippi. Democrats have long supported diversity on our federal judiciary. We have looked forward for some time to the nomination of an African American to serve the people of Mississippi, as well.
I welcome the nominees and their families to the hearing this morning. Both we and they are proceeding on short notice and little time for preparation. Democratic Senators on the Committee should be praised for their willingness to cooperate in expediting Committee hearings of these recent nominations, especially given the personal and partisan attacks they are being subjected to by Republican partisans.

This 23rd hearing for judicial nominees this year is in stark contrast to the way President Clinton's nominees were treated by the Republican majority from 1995 through 2000. For example, I recall that during the entire year of 1996, when judicial vacancies were far higher and rising, the Committee held a mere six hearings all year. During that 1996 session, not a single judge was confirmed to the Circuit Courts -- not one, in contrast to 12 circuit court confirmations this year.

During those years, when judicial vacancies were much higher and more than doubling while the Senate was under Republican leadership, it was easy to go three years without this many confirmation hearings for this many judicial nominees. In fact, Republicans have now held more hearings for President Bush's judicial nominees in less than 11 months than they held in all 24 months of 1999 and 2000 -- combined -- for President Clinton's judicial nominees. During the entire year of 2000, only eight judicial nominations hearings were held.

In 1999, the Committee did not have a hearing to consider a single judicial nominee until June 16th, and during the rest of 1999, it held only seven hearings to consider judicial nominees. That was the third year of President Clinton's second term. Like 1999, this year, 2003, is the third year of this President's term, and Republicans have held more than twice as many hearings for President Bush's judicial nominees as for President Clinton's that year. The Republican double standard is prominently on display.

The number of nominees who have been considered so far this year is at a record high for this Republican leadership, as well. With another four nominees included at this hearing, we will now have held hearings for 85 Article III judicial nominees this year. That is almost 30 more than the highest total in any one year of the Clinton Administration and nearly two times higher than their annual average of 44 nominees considered per year.

Of course during the Clinton years, having a hearing was no guarantee of anything. A number of nominees who participated in hearings were never listed on a Committee agenda for Committee attention and were never considered by the Senate. Among those nominees were Bonnie Campbell of Iowa, Allen Snyder of the District of Columbia, Fred Woocher of California, Clarence Sundram of New York and many more.

With a Republican in the White House, the Senate Republican majority has gone from the restrained pace it had insisted was required for reviewing judicial nominations to overdrive for President Bush's judicial nominees. The Committee has already reported 78 judicial nominees this year, which is far in excess of any year total and almost double the average during the years 1995 through 2000 when a Democratic President's nominees were being reviewed. Of course, the Senate has already confirmed 168 judges, including 68 this year. That is more confirmations this year than in any year from 1995 through 2000 and, in fact, almost double the annual average during those years.

A handful of the Administration's most divisive and extreme nominees have been denied approval by the Senate. So while 168 judges have been confirmed in less than three years and the Senate has already topped President Reagan's four-year total, a handful of those chosen for ideological and political reasons have not been granted consent.

This Committee has its confirmation conveyor belt cracked up to full speed with respect to the nomination of a Republican President as the Republicans' double standard affects their practices and the important work of this Committee.

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Trent Lott

Senator Trent Lott
Statement Introducing Judge Louis Guirola, Jr.
Senate Judiciary Committee Confirmation Hearing
November 19, 2003

Mr. Chairman, I am happy to be here today to introduce my friend Louis Guirola, who is currently serving our country and the State of Mississippi as U.S. Magistrate Judge for the Southern District of Mississippi. Judge Guirola is joined today by his wife Stephanie, and I want to introduce her to the Committee at this time. I have known Judge Guirola for well over twenty years ~~probably closer to 30 years~~ and was pleased when the President nominated him to be a U.S. District Court Judge for the Southern District of Mississippi.

Judge Guirola has been nominated to fill the seat on the bench currently held by Judge Walter J. Gex when Judge Gex takes senior status in March of 2004. It is encouraging to see

first-hand the implementation of the new process which aims to fill federal court seats before they are vacated in order to guarantee the smooth operation of our federal justice system.

Mr. Chairman, Judge Guirola is a 1979 graduate of the University of Mississippi Law School, and he received his undergraduate degree from William Carey College in 1973. He has had a distinguished career in the law over the past quarter of a century and has gained broad experience from the various positions he has held. He has served as an Assistant District Attorney, an attorney in private practice, an attorney for the Jackson County Board of Supervisors, and an attorney for the Mississippi Highway Department.

Judge Guirola began his federal service as an Assistant U.S. Attorney for the Eastern District of Texas in 1990, and he

was named as a U.S. Magistrate Judge for the Western District of Texas in 1993. He served in this position until 1996, when he returned to Mississippi to become a U.S. Magistrate Judge for the Southern District of Mississippi – the position he currently holds. He clearly has an extensive knowledge of the federal court system, and his experience will be a tremendous asset for the country. It is no surprise that the ABA's Standing Committee on the Federal Judiciary has unanimously found Judge Guirola to be "Well Qualified" to serve as a federal district court judge.

Judge Guirola has also demonstrated a commitment to education and instruction. He has been an adjunct professor at William Carey College and the University of Southern Mississippi. He has also given lectures and conducted seminars for the U.S. Attorney General's Advocacy Institute, the Federal

Bar Association, the Mississippi Bar Association, the Mississippi Law Enforcement Officers Academy, the Texas Department of Public Safety, and the U.S. Probation Office. In addition, he has authored a number of legal articles and scholarly pieces.

Judge Guirola is well-known and respected in his community, state and profession. His nomination has received widespread support in the State of Mississippi because of his reputation for fairness and hard work. I know that Judge Guirola will make an excellent District Court Judge, and I look forward to seeing him approved by this committee and confirmed by the Senate without delay.

Warner

STATEMENT TO THE JUDICIARY COMMITTEE ON THE NOMINATION OF WILLIAM J. HAYNES TO SERVE AS A JUDGE ON THE U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT
November 19, 2003

Chairman Hatch, Senator Leahy, and my other distinguished colleagues on the Senate's Judiciary Committee, I thank you for holding this confirmation hearing.

Today, I am pleased to introduce William J. Haynes, who has been nominated by our President to serve as a judge on the United States Court of Appeals for the Fourth Circuit. Jim is supported here today by his family, including his wife Meg and his three children Will, Sarah, and Taylor.

As you all know, the United States Court of Appeals for the Fourth Circuit serves the states of Virginia, West Virginia, Maryland, North Carolina, and South Carolina. Congress has authorized 15 active judgeships on this illustrious court. Today, 12 of these active judgeships are filled by lifetime tenured judges.

Over the history of the Fourth Circuit, there has been a total of 43 judges who have served on the court. Throughout my 25 years in the United States Senate, I have had the honor of participating in the Senate's "advice and consent" constitutional role for 18 of these judges. In fact, of the 12 active judges currently on the court, I have participated in and supported the confirmation of every single one of them.

Mr. Haynes has been nominated to fill the seat of Emory Widener who recently announced his desire to take senior status. Prior to announcing his retirement earlier this year, Judge Widener, who has been on the court since 1972, was the only remaining active judge on the Fourth Circuit whose nomination and confirmation preceded my service in the United States Senate.

Judge Widener is a distinguished jurist who has served in this country's judicial branch for over 33 years - first as a district court judge and then as an appellate court judge on the Fourth Circuit. He is one of the finest jurists ever to serve on the Fourth Circuit, and I have deep admiration and respect for this fine man. Fortunately, because Judge Widener has chosen to proceed to senior status on the bench, rather than retire outright, we will not be immediately losing his depth of experience on the bench.

While Jim undoubtedly has big shoes to fill, I have had the opportunity to meet with him many times and observe his outstanding work at the Department of Defense. Without a doubt, he is up to this formidable task. I have every confidence in his abilities.

After earning his B.A. degree, cum laude and Phi Beta Kappa, from Davidson College and his J.D. degree from Harvard Law School, Jim served as a law clerk for Judge James McMillan on the U.S. District Court for the Western District of North Carolina.

Subsequent to his clerkship, he worked for four years on active duty as a Captain in the Army in the Office of the General Counsel. Then, after leaving active service and practicing law in the private sector for a year, he was nominated by President George H.W. Bush to serve as General Counsel of the Department of the Army. He was unanimously confirmed by the Senate in 1990 for this position.

In 1993, Jim reentered private practice where he worked for almost eight years in a variety of positions until he was nominated in 2001 by President George W. Bush to his current position as General Counsel of the Department of Defense. Jim again received Senate confirmation for this position, this time by voice vote.

As General Counsel of the Department of Defense, Jim has a job with great responsibility. This already demanding job has become even more challenging since September 11th with issues involving terrorists and the war against Iraq. Jim has met these challenges head on and has performed notably.

Jim is obviously a very accomplished American who has dedicated a large portion of his career to public service. He is a very intelligent attorney of the highest integrity, and the Senate has recognized this fact by twice confirming him to important positions within the Executive Branch.

He has also received a number of important military honors. In 1986 and 1988, Jim earned the Army Meritorious Service Medal with Oak Leaf Cluster. In 1993, he received the Department of the Army Meritorious Civilian Service Award. And, in 2003, Jim received the Department of the Navy Distinguished Public Service Award.

Mr. Chairman, every aspect of Jim Haynes' record indicates to me that if Jim is confirmed to this judgeship, he will serve on the Fourth Circuit with distinction. I encourage my colleagues on the Committee to favorably report his nomination to the full Senate.

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