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CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

CONFIRMATION HEARINGS ON APPOINTMENTS TO THE FEDERAL JUDICIARY AND THE DEPARTMENT OF JUSTICE

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CONFIRMATION HEARING ON:

PAULINE NEWMAN AND JAMES HARVIE WILKINSON III

WEDNESDAY, FEBRUARY 22, 1984

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 4:35 p.m., Hon. Strom Thurmond (chairman of the committee) presiding.

Staff present: Vinton DeVane Lide, chief counsel and staff director; and Robert J. Short, chief investigator.

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The CHAIRMAN. The committee will come to order.

Today, the Senate Judiciary Committee is considering two nominations: Dr. Pauline Newman, to be a U.S. circuit judge for the Federal circuit; and Mr. James Harvie Wilkinson, to be a U.S. circuit judge for the fourth circuit.

The Judiciary Committee held a hearing on Mr. Wilkinson's nomination on November 16, 1983. At that time, Mr. Wilkinson was questioned on a variety of subjects and did a very creditable job of answering those questions.

However, shortly after the hearings, several groups contacted me and requested a chance to have their views regarding Mr. Wilkinson's nomination made known in a public forum.

In deference to these groups, the committee has extended the hearing on Mr. Wilkinson's nomination for a second day. The individuals wishing to testify on Mr. Wilkinson's nomination will have an opportunity to express themselves today, and Mr. Wilkinson will be given an opportunity to respond.

The committee will now consider the nomination of Dr. Pauline Newman, to be a U.S. circuit judge for the Federal circuit. Senator Heinz and Senator Specter, I understand, both endorse this nominee, and Senator Heinz, I know, is here today and we would be very pleased to hear from him at this time.

STATEMENT OF HON. JOHN HEINZ, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator HEINZ. Mr. Chairman, thank you very much. I am honored to come before your Judiciary Committee, and indeed I am very pleased to join with my distinguished colleague, Senator Specter, in recommending and introducing a Pennsylvanian who is the

administration's nominee for the U.S. Court of Appeals Federal Circuit. May I say I am delighted with the choice.

Unfortunately, Senator Specter had to go to Philadelphia with the Vice President a few moments ago. He had intended to be here and I anticipate that he will want to submit some remarks for the record, and I have asked his staff to give any such remarks if they would like me to submit them at this time.

Let me begin, Mr. Chairman, by expressing my undivided and wholehearted support for Dr. Pauline Newman. In my opinion, she is uniquely qualified to serve our country as a Federal judge on this particular court.

The highly specialized nature of the recently created Court of Appeals for the Federal Circuit requires an individual to have a depth of knowledge and proficiency in patent, copyright and trademark law.

As you become more familiar with Dr. Newman's background, you will realize, as I have, what a superbly skilled candidate she is. Dr. Newman began her professional career as a chemist, and, after passing her bar examinations, embarked on a very distinguished legal career in patent, trademark, copyright and licensing law that spans the last 25 years.

She has been recognized by her peers in the legal community for work as a specialist on patent, trademark and copyright matters for the American Bar Association and as a member of the Board of Directors of the American Chemical Society. May I add that in that same capacity, Dr. Newman has contributed to the U.S. Trademark Association, the American Patent Law Association and the International Patent and Trademark Association.

Mr. Chairman, I also think something ought to be said on behalf of Dr. Newman's commitment to the quality of life in her community. Her commitment to our country does not end with her working day.

She has incorporated into her responsibilities service on the State Department Advisory Board on International Intellectual Property, the Advisory Committee to the Domestic Policy Review of Industrial Innovation, as well as the Special Advisory Committee on Patent Office Procedures and Practice.

She was a member of the United Nations Scientific, Educational and Cultural Organization, and still finds time to serve on the National Board of the Medical College of Pennsylvania, which is an extraordinarily fine institution.

Without question, I hope the committee will agree with me, and I am sure you will, that she is a candidate, a person of character, integrity, commitment and intelligence that would be a noteworthy addition to our federal judiciary.

The CHAIRMAN. Thank you very much, Senator. We are very pleased to have you here and she is very fortunate to have the endorsement of such an outstanding Senator. I regret that Senator Specter cannot be here, but I understand that he also endorses her. Is that right, Senator?

Senator HEINZ. Mr. Chairman, that is entirely correct. Senator Specter is a very strong supporter of Dr. Newman's appointment.

The CHAIRMAN. Dr. Newman, if you will stand up, I will swear you in.

Do you solemnly swear that the evidence you will give in this hearing shall be the truth, the whole truth, and nothing but the truth, so help you God?

Dr. NEWMAN. Yes.

The CHAIRMAN. Now, do you have any members of your family here you would like to introduce?

Dr. NEWMAN. No, I do not.

The CHAIRMAN. We have a biography of Dr. Newman that we will include in the record.

TESTIMONY OF PAULINE NEWMAN, NOMINEE, U.S. CIRCUIT JUDGE, FEDERAL CIRCUIT

The CHAIRMAN. I have a few questions I will propound to you.

Dr. Newman, you got your B.A. degree from Vassar College?

Dr. NEWMAN. Yes.

The CHAIRMAN. And your M.A. degree from Columbia University?

Dr. NEWMAN. Yes.

The CHAIRMAN. Your Ph.D. degree from Yale University?

Dr. NEWMAN. Yes.

The CHAIRMAN. So you have tried them all.

Dr. NEWMAN. I have tried them all.

The CHAIRMAN. How about the New York University School of Law? You got your LL.B. degree there in 1958. That is the last degree, your law degree?

Dr. NEWMAN. That is the last.

The CHAIRMAN. So you are a scientist and a lawyer, too?

Dr. NEWMAN. Yes.

The CHAIRMAN. In 1981, you testified before the committee's Subcommittee on Courts concerning the Federal Courts Improvement Act of 1981. Your testimony was in favor of the formation of the court of appeals for the Federal circuit. I believe that is correct, is it not?

Dr. NEWMAN. Yes.

The CHAIRMAN. In 1982, you were admitted to practice in that court, is that right?

Dr. NEWMAN. That is correct.

The CHAIRMAN. And now in 1984, you have been nominated to become a Federal judge for that court. Given this unique background, can you offer any suggestions to this committee on any area of the court which you feel needs improvement?

Dr. NEWMAN. Mr. Chairman, when I testified in 1981 in favor of that court, my hope, my expectation was that it would be possible to stem the continuing weakening of patents as an incentive toward industrial innovation.

Now that the court has been functioning for close to 2 years, it has surpassed the expectations of all of us in its role as a force for strength in our industrial community. With that background and from the outside, I have no recommendations of substance that would improve the powerful impact that the court has already made.

The CHAIRMAN. Maybe after you have been on the court for some several years, you may then have some recommendations you would care to make, and feel free to make those to us.

Dr. NEWMAN. Thank you; I shall.

The CHAIRMAN. Dr. Newman, you have a rather extensive background involving patents and trademark law and have written numerous articles on the subject. Do you feel that this experience can be of particular significance to the court at this time, and if so, why?

Dr. NEWMAN. I do indeed, Mr. Chairman. My experience throughout my career has been in technology-based industry. The specialities of patent and trademark law relate directly to about half of the court's work.

These are very complex fields of law and I have been specializing in them for a long time. I believe and hope, recognizing that it is technology that makes these legal actions so complex, that I will indeed have an opportunity to contribute to this court and the development of the law.

The CHAIRMAN. Dr. Newman, the Court of Appeals for the Federal Circuit is responsible for hearing patent appeals from all Federal district courts. It would hear appeals in suits against the government for damages or refunds of Federal taxes, appeals from the Court of International Trade, appeals from the Patent and Trademark Office, and other such agency review cases.

This court, needless to say, is an extremely busy and important one. The workload is great and there are only 12 judges to hear cases. What actions will you take as a judge to ensure that the docket is current, yet the required quality of appropriate judicial review is maintained?

Dr. NEWMAN. Mr. Chairman, I have always worked hard and long; it is my nature. I have always demanded excellence, or an approach to it, of myself. This court has set for itself extremely rigorous standards. I intend to make every effort to meet those standards and to maintain them.

The CHAIRMAN. You do not have a family; I believe you are single.

Dr. NEWMAN. That is right.

The CHAIRMAN. So, that will enable you to give more time to the court, will it not?

Dr. NEWMAN. Perhaps.

The CHAIRMAN. Dr. Newman, in answering the portion of the committee's questionnaire relative to judicial activism, you stated:

> The public interest lies in the fair resolution of disputes and the consistent application of the law. The role of the judicial branch is to apply the law in accordance with the intent of the lawmakers and not to seek to achieve personal policy goals through adjudication.

I want to commend you for that statement.

Now, Dr. Newman, are there ever any circumstances where you would consider it appropriate to decide a case on some basis other than one where the intent of the framers of legislation or constitutional provisions can be detected either through the text of a provision or its surrounding legislative history?

Dr. NEWMAN. Mr. Chairman, activism of that sort is exactly what has, in my opinion, damaged the patent system to a significant extent.

I know that judges must provide for normal evolution of the law; that is the common law tradition. But, to me, a decision contrary to established precedent can only generate fresh litigation, and meanwhile produce the uncertainty and unpredictability that led to the need for the court of appeals for the Federal circuit in the first place.

The CHAIRMAN. Thank you very much. I believe that is all the questions I have and I want to take this opportunity to wish you a happy and successful tenure on the Federal bench.

Dr. NEWMAN. Thank you, Mr. Chairman.

The CHAIRMAN. We will now excuse you and you can stay, if you wish, for the next nominee or you can leave, whichever you prefer.

The next nomination is that of Mr. James Harvie Wilkinson III, if you will come around, Mr. Wilkinson. Mr. Wilkinson, I guess I might as well swear you first, if you will stand up and be sworn.

Do you solemnly swear that the evidence you give in this hearing shall be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. WILKINSON. I do.

The CHAIRMAN. Mr. Wilkinson's record shows that he will bring to the Federal appellate bench a variety of experiences. He has been an outstanding teacher at one of the Nation's foremost law schools, where he taught constitutional law and criminal procedure and Federal courts.

He has been a prolific writer of legal books and articles, principally in the field of constitutional law. He was a law clerk for two terms to Supreme Court Justice Lewis F. Powell, Jr.

As a Deputy Assistant Attorney General of the United States, Mr. Wilkinson supervised the motions, briefs, pleadings, and correspondence of some 50 litigating attorneys in the Department of Justice.

A recent editorial from the Baltimore Sun warmly supports Mr. Wilkinson's nomination. The editorial notes that, "In his writings, he displays what we would describe as a moderate Virginian view of racial rights and wrongs and remedies that we can always respect, regardless of whether we agree with him."

Letters commending the nominee to this committee have recently been received from Richard A. Merrill, dean of the University of Virginia Law School; Walter Horsely, immediate past president of the Virginia State Bar; and Lewis F. Powell III, a Richmond attorney. They speak of the nominee as a man of exceptional talents and qualifications.

Without objection, these letters will be included in the record at this point.

[Material submitted for the record follows:]

UNIVERSITY OF VIRGINIA
CHARLOTTESVILLE-VIRGINIA-22901
SCHOOL OF LAW

OFFICE OF THE DEAN

February 16, 1984

The Honorable Strom Thurmond
Chairman
Committee on the Judiciary
United States Senate
Washington, D. C.

Dear Senator Thurmond:

My purpose in writing is to support the President's nomination of my colleague, J. Harvie Wilkinson, III, for appointment to the United States Court of Appeals for the Fourth Circuit, and to share a perspective that may be helpful to you and other members of the Judiciary Committee.

I warmly endorse Jay Wilkinson's nomination, I also contemplate his departure from this faculty with deep personal regret. Jay has been a dedicated and respected teacher and legal scholar here for the past decade, and his departure will leave a cap that we cannot soon fill. In addition to performing the central functions of a legal academic--teaching and scholarship--with distinction, Jay has played a unique role in the governance of the institution and in the lives of students.

Since his appointment to our faculty in 1973, Jay Wilkinson has ranked among our best teachers. His courses are regularly oversubscribed, and his classes draw praise from students of all abilities and every political persuasion. Jay is noted for a graceful and entertaining style, but also for a willingness to reexamine legal issues and consider on the merits views that diverge from his own. I have never heard a student accuse Wilkinson of attempting to indoctrinate, and many have praised his openness and balance even on issues where they disagree.

Jay Wilkinson enjoyed such remarkable early success as a teacher that in 1975 the Board of Trustees of the Alumni Association made him the first recipient of its now annual award for the University's outstanding young teacher. He is the only member of the law faculty ever to earn this award. Two years later, the University's IMP Society, a group consisting primarily of students, conferred on Jay its annual award to the faculty member who has made the most important contributions to the University community. This past fall Jay was the only member of our faculty elected to the local chapter of Phi Delta Phi, an honorary legal fraternity.

As the Committee knows well, Jay Wilkinson has been a prolific scholar and writer on legal issues since his entry into the profession. His writings have earned him the respect of his colleagues here and the respect of Constitutional law scholars throughout the country. I would not pretend, nor would Jay, that his writings have invariably elicited agreement, but they have been greeted as the work of an able, serious, and open-minded student of Constitutional law.

I could not begin to list all of the Law School and University committees on which Jay Wilkinson has served. His balance and objectivity have

made him a frequent target for "extra duties. Jay's abilities were first enlisted on behalf of the University by former Governor Holton, who appointed him to the Board of Visitors in 1970. He served, as the Board's youngest member, until 1973. Later President Frank Hereford appointed Jay to chair a University-wide committee to evaluate our widely-publicized and controversial Easters Weekend--one of the most contentious, though by no means the most important, assignments Jay has undertaken here.

President Reagan has made a splendid choice in nominating Jay Wilkinson for the Court of Appeals. I am aware of the suggestions that he lacks experience in legal practice, specifically in litigation, and I do not disagree that such experience would be useful. However, as one who has practiced with a major firm (Covington & Burling) and administered a government legal office (FDS's, from 1975 to 1977), I am unconvinced that such experience is essential. In my view, the essential ingredients for effective judicial service are those qualities of seriousness, openness, and concern for others that Jay Wilkinson has exhibited through his legal career.

It is thus with real conviction, if personal regret, that I support Jay Wilkinson's nomination and I urge your recommendation of its approval by the Senate.

Sincerely yours,

Richard A. Merrill
Dean

RAM:csm

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February 15, 1984

The Honorable Strom Thurmond
c/o Duke Short
United States Senate
Committee on the Judiciary
Washington, D. C. 20510

Re: Nomination of J. Harvie Wilkinson, III to the United States Court of Appeals for the Fourth Circuit

Dear Mr. Chairman:

I am a senior partner in the Richmond, Virginia office of Hunton & Williams and the Immediate Past President of the Virginia State Bar. I write today as an individual lawyer in private practice who supports the nomination of J. Harvie Wilkinson, III to fill the vacancy created by the transition to senior status of the Honorable John D. Butzner, Jr. of the United States Court of Appeals for the Fourth Circuit.

I urge the Committee to confirm Professor Wilkinson's appointment to the vacancy on the Fourth Circuit bench. From my own personal knowledge, I can attest to his high standing in his home community for honesty, intelligence, integrity and courage. As I approach my own 25th anniversary at the bar, I am grateful indeed that people with such mental acuity and inner strength continue to be attracted to the legal profession in this country, and particularly that someone as able as Professor Wilkinson now offers himself for public service as an appellate judge in our federal courts.

Over the last eight years, I have been actively involved in the regulation of lawyers and improving their competence in the Commonwealth of Virginia. The Virginia State Bar now has over 17,000 members, and ranks tenth in size in the United States. A state agency that traditionally does not take formal positions in the nominating process for federal judges, its members are vitally concerned with improving the administration of justice throughout the United States.

In 1976, I volunteered to represent Richmond-area lawyers on the Council of the Virginia State Bar. In my first assignment, I was named to a Special Committee on Evaluation and Long-Range Planning and subsequently became its reporter. In compiling that Report, I was struck then, as I am now, with the first paragraph of the Preamble to the

1969 version of the American Bar Association's Code of Professional Responsibility, which reads as follows:

> "The continued existence of a free and democratic society depends upon recognition of the concept that justice is based upon the rule of law grounded in respect for the dignity of the individual and his capacity through reason for enlightened self-government. Law so grounded makes justice possible, for only through such law does the dignity of the individual attain respect and protection. Without it, individual rights become subject to unrestrained power, respect for law is destroyed, and rational self-government is impossible."

This is the charge given to those who practice law in our courts and tribunals. How much more relevant it is to those who offer themselves to serve as a judge in our system of justice. In my judgment, Professor Wilkinson is exceptionally well qualified for this all important task.

During my term as President-Elect and then as President of the Virginia State Bar, I was privileged to attend the Judicial Conference for the Fourth Circuit and to participate with the judges, trial lawyers and others invited to those conferences in discussions of matters of mutual interest to those who would assume the awesome responsibility of "guardians of the law." Preamble, ABA Code of Professional Responsibility 1 (1969). Both bench and bar were actively concerned about reforms in such areas as improving access to the courts, controlling litigation costs and delays, and enhancing professional competence. We need our best minds and our most conscientious workers to help improve the workings of the system from within. With his proven industriousness, Professor Wilkinson will be able to add his keen insight to the furtherance of court reforms in the public interest.

I was also privileged to be invited to serve in the recent past in another role that supports my unqualified endorsement of Professor Wilkinson for the Fourth Circuit vacancy. Over a period of several months in 1979 and 1980, I served on the Search Committee for a new Dean for the University of Virginia Law School. Although Professor Wilkinson was not a candidate at the time, I had a unique opportunity to visit with the faculty at that law school and to see portrayed in biography and commendation many of the leading legal scholars then in residence or at other law schools throughout the country. Indeed, included among the candidates screened were members of the federal appellate bench.

That experience gave me a special insight into the standards of intellectual excellence, integrity and accomplishment set for full-time faculty members at that law school, and the special enhancement sought for the one who would be their Dean. The fact that Professor Wilkinson's return to the faculty last Fall was so eagerly awaited by the Dean and faculty of the Law School has independent significance that speaks for itself.

I offer the foregoing narrative to the Committee,

expecting others to catalog in detail their familiarity with those special qualities most ardently sought in a federal appellate judge. My own endorsement of Professor Wilkinson's nomination embraces, without qualification, those characteristics summarized in Canon 34 of the American Bar Association's Canons of Judicial Ethics (1924):

> "In every particular his conduct should be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor, regardless of public praise, and indifferent to private, political or partisan influences; he should administer justice according to the law, and deal with his appointments as a public trust; he should not allow other affairs or his private interests to interfere with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity."

I join with all those in Virginia who are proud to offer our best for service to this country as a federal appellate judge: seeking to administer justice fairly to all, in the highest traditions of those great Virginians who have preceded him on the federal bench; and ask that these remarks be made a part of the record of the Committee's consideration of this nomination.

Respectfully,

Waller H. Horsley

WHH/bar

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February 15, 1984

Senator Strom Thurmond
c/o Duke Short
Senate Judiciary Committee
United States Senate
Washington, D.C. 20510

Jay Harvie Wilkinson

Dear Senator Thurmond:

Please accept my enclosed statement in support of the nomination of Jay Harvie Wilkinson, III to sit on the United States Court of Appeals for the Fourth Circuit. I understand that the Senate Judiciary Committee will conduct hearings on Mr. Wilkinson's nomination next Wednesday, February 22, 1984. I would be grateful if you would include my statement in the record of those hearings.

If I can provide you or any other member of the Committee with any additional information, please let me know.

Sincerely,

Lewis F. Powell, III /nw

Lewis F. Powell, III

234/816
Enclosure

STATEMENT OF LEWIS F. POWELL, III
BEFORE THE SENATE JUDICIARY COMMITTEE
ON THE NOMINATION OF J. HARVIE WILKINSON, III
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

February 15, 1984

Mr. Chairman, distinguished members of the Judiciary Committee, my name is Lewis F. Powell, III. I practice law at Hunton & Williams in Richmond. I am engaged in general civil litigation in state and federal court, and am a member of the Fourth Circuit Judicial Conference. I very much appreciate this opportunity to endorse the nomination of Jay Wilkinson to sit on the Fourth Circuit Court of Appeals.

I have known Jay Wilkinson personally for as long as I can remember. Moreover, I was fortunate enough to be taught Constitutional Law and Criminal Procedure by Mr. Wilkinson at the Virginia Law School. My endorsemet of Mr. Wilkinson is therefore based upon having known him all my life and having learned from him in the classroom. In addition, as a former district court clerk and a trial practitioner in the Fourth Circuit, I believe I have acquired some notion of the qualifications necessary for effective service on that Court. For the reasons that follow, I can recommend Jay Wilkinson to you without reservation.

No one, I suspect, will have any qualms about Jay Wilkinson's intellectual ability to serve effectively as an appellate judge. From his selection as a Scholar of the House at Yale, to his excellent academic performance at the Virginia Law School, to his service as a law clerk on the Supreme Court, to

his publication of numerous learned books and articles, to his outstanding performance as a professor of law--Mr. Wilkinson has demonstrated a love of scholarship and a distinctive capacity to think and write with great clarity and persuasion. Confirmation of Mr. Wilkinson will carry forward the long and fine tradition in this nation of elevating our best legal minds to the appellate bench.

Mr. Wilkinson also possesses, in abundance, three qualities that are as essential as sheer intellect to effective service on the appellate bench. First and foremost, his personal integrity is absolutely above reproach. I would not hesitate to entrust him with responsibility for matters of great importance. Second, he has an abiding, even passionate, reverence for the Constitution, the Bill of Rights, and the Fourteenth Amendment. Not until I studied Constitutional Law under Jay Wilkinson did I fully appreciate that the fundamental purpose of the Bill of Rights and the Fourteenth Amendment is to protect the individual from the tyranny of the majority. Finally, Mr. Wilkinson has displayed, to me personally and in the classroom, all the ingredients of a sound judicial temperament. He approaches problems honestly, bound only to reach the result yielded by unflinching application of established legal principles.

I hope I may be permitted a final word about two criticisms that I suspect may surface before the Committee--that Mr. Wilkinson lacks sufficient experience to go on the appellate bench, and that he is "too conservative" and thus not acceptable to those who perceive a difference between their philosophy and his. The first criticism, though perhaps understandable, rests on perceived shortcomings that are more than compensated for by Mr. Wilkinson's overwhelming strengths. The second, in my judgment, is simply unfounded.

Regarding Mr. Wilkinson's experience, I respectfully submit to the Committee that he would bring a wealth of perspectives to the Court. Although he has not served as a trial judge or been engaged in trial practice, he has earned considerable recognition as a legal scholar. If you were to poll the faculty and alumni at the Virginia Law School and ask them to identify the leading professors of the last decade, Jay Wilkinson would surely be included by most, if not all, respondents. Moreover, as a law clerk, he assisted at the highest level in the development and application of our jurisprudence. As a newspaper editor, he had ample opportunity, from the outside looking in, to reflect and comment on the judicial system (among many other topics) and its daily impact on all of us. And as a Deputy Assistant Attorney General in the Civil Rights Division, he participated in the formulation and implementation of a significant aspect of the executive branch's efforts to promote equal opportunity for all our citizens.

In short, Mr. Wilkinson has a breadth of experience that should enable him to add considerable luster to an already illustrious Court. From my perspective as a practitioner, it matters a great deal less to me that a nominee for an appellate court have extensive experience on the bench or at the bar than it does that he or she possess the other qualities of which Jay Wilkinson has such an abundance.

The second criticism, which I believe to be unfounded, probably results from a combination of Mr. Wilkinson's background and the necessity felt by some to characterize judicial nominees as "liberal," "conservative," "strict constructionist," or whatever. Such labels serve only convenience, and their convenience frustrates thoughtful evaluation of a nominee's credentials. In my view, Jay Wilkinson defies easy labelling, and that is how it should be.

A good judge should not fit neatly into an ideological pigeonhole. A good judge should approach each case anew, without preconceived notions as to the result, determined only to decide the case in a principled fashion. This simple axiom was the cornerstone of Jay Wilkinson's classroom treatment of Constitutional Law and Criminal Procedure. He insisted that we analyze each case with that precept in mind, and, with one significant exception, he was relentlessly critical of courts that deviated from principled adjudication, regardless of the result.

For the benefit of those who, in particular, have reservations about Jay Wilkinson's commitment to civil rights, I think you will be interested in the "exception" mentioned above. It was his treatment of the Supreme Court's 1954 decision in Brown v. Board of Education.

Constitutional scholars, who for the most part seem unable to reach any consensus with respect to significant decisions, generally agree that Brown is a remarkable example of undisciplined (some would say unprincipled) adjudication that was nonetheless clearly correct on the merits. Chief Justice Warren's brief opinion--it was only 11 pages--for the unanimous Court in Brown is, in essence, more a statement of fundamental moral and social policy than a carefully structured application of the Equal Protection Clause. The Brown opinion, therefore, should have been a vulnerable target for Professor Wilkinson's criticism of result-oriented decisionmaking.

For Jay Wilkinson, however, Brown was different, and markedly so. Although at first he challenged us to analyze the opinion critically and to search for the customary indicia of principled adjudication (of which there were very few), he led us by the end of the class to the firm conviction that not merely the result in Brown, but also the manner in which it was

reached, was correct and necessary. Brown, in Mr. Wilkinson's view, presented the Court, and through it the nation, with an unprecedented opportunity to terminate with the stroke of a pen three centuries of inequity. I very much doubt that anyone leaving Mr. Wilkinson's classroom that morning had any misgivings about his philosophical commitment to equal protection for all of our citizens.

If any doubters remain, I would respectfully direct them to page 62 of Jay Wilkinson's book on the Supreme Court and school desegregation.1/ In words whose eloquence, much like that of Brown, lies in their simplicity, Jay Wilkinson summed up his feelings about the Brown decision and its abiding importance for us all:

> No single decision has had more force than Brown; few struggles have been morally more significant than the one for racial integration of American life.

Thank you.

Respectfully submitted,

Lewis F. Powell, III
February 15, 1984

1/ J. Wilkinson, From Brown to Bakke: The Supreme Court and School Integration, 1954-1978 (1979).

The CHAIRMAN. Now, Mr. Wilkinson, we will be ready to hear from you in a few minutes. I think there is some opposition to you, so we will hear that opposition and then give you a chance to answer the points raised.

So if you have a pencil and a piece of paper, if you want to make note of the points they bring out, then you will have a chance to rebut those points.

Mr. WILKINSON. Thank you, Mr. Chairman.

The CHAIRMAN. Now, you can just sit back there, if you want to, while these witnesses come up.

Now, without objection, we will place Mr. Wilkinson's biography into the record.

I might state that Mr. Wilkinson is married and has two children. He received his B.A. degree from Yale University, his J.D. degree from the University of Virginia.

Now, the various witnesses who are opposing Mr. Wilkinson can all be sworn at one time, I think, to save time. I believe these are the witnesses, if you will just stand as I call your names and I will swear you all in at once: Elaine R. Jones, assistant counsel, NAACP Legal Defense and Educational Fund; Arnoldo S. Torres, national executive director, League of United Latin American Citizens; Richard P. Fajardo, acting associate counsel, Mexican American Legal Defense and Educational Fund; Jack W. Gravely, executive secretary, NAACP, Virginia State Conference, Inc.; C. Lyndon Harrell, Jr., legislation and advocacy, Mobility on Wheels; Bobby B. Stafford, president, Old Dominion Bar Association; Robert Jefferson Roehr, president, Capitol Area Republicans; Pat Winton, National Organization for Women, Virginia.

Where is she?

Ms. HARRISON. She is not here; I am taking her place.

The CHAIRMAN. You are taking her place?

Ms. HARRISON. I am representing two organizations.

The CHAIRMAN. How is that?

Ms. HARRISON. I am Edythe Harrison and I am representing the National Women's Political Caucus and the National Organization for Women.

The CHAIRMAN. Ms. Winton is not here?

Ms. HARRISON. Correct.

The CHAIRMAN. And you are taking her place?

Ms. HARRISON. Yes.

The CHAIRMAN. Edythe Harrison, National Women's Political Caucus of Virginia; so you are representing both of those organizations?

Ms. HARRISON. Yes.

The CHAIRMAN. Thomas DePriest, Virginia Gay Alliance; Armand Derfner, attorney.

Now, I will swear you all, if you will hold up your right hands. The evidence you give in this hearing will be the truth, the whole truth and nothing but the truth, so help you God?

Ms. JONES. Yes.

Mr. TREVINO. Yes.

Ms. GONZALES. Yes.

Mr. GRAVELY. Yes.

Mr. HARRELL. Yes.

Mr. STAFFORD. Yes.
Mr. ROEHR. Yes.
Ms. HARRISON. Yes.
Mr. DEPRIEST. Yes.
Mr. DERFNER. Yes.

The CHAIRMAN. Now, on account of the large number of witnesses, we are going to have to limit the time. Let us see; it is 5 o'clock now. We are going to have to limit the witnesses to 5 minutes each. Now, we will put your statements in the record, if you want to put the whole statement in, but then just tell us offhand in 5 minutes anything you wish to say.

Generally, in 5 minutes, you can say a whole lot, but if you want to say more than that, just hand it to the reporter here and we will put it in the record.

Now, the first panel will come forward, and that is: Elaine R. Jones, Arnoldo S. Torres, Richard P. Fajardo, Jack W. Gravely and C. Lyndon Harrell, Jr., if you will all come up to the table here. You may just pull up more chairs there if you need them.

Now, Ms. Jones, do you want to go first?

Ms. JONES. Mr. Trevino wants to go first, Senator.

The CHAIRMAN. How is that?

Ms. JONES. Mr. Trevino wants to go first and I will yield to the gentleman.

The CHAIRMAN. All right. Go ahead.

STATEMENT OF JOSEPH MICHAEL TREVINO, DIRECTOR OF LEGISLATION, LEAGUE OF UNITED LATIN AMERICAN CITIZENS

Mr. TREVINO. My name is Joseph Michael Trevino. I am here on behalf of the League of United Latin American Citizens, on behalf of Mr. Arnold Torres, the executive director. I am director of legislation.

Good afternoon, Mr. Chairman, distinguished Members of the Senate. First, I would like to thank you on behalf of the league for giving us this opportunity of presenting testimony today.

The league is the oldest and largest Hispanic membership organization in the country, with 100,000 members in 43 States. Mr. Chairman, let me begin by stating the league's interest in the certification process is long-standing and in keeping both with the responsibilities of an informed citizenry and advocating for an independent judiciary which administers the law in a fair, even-handed, and effective manner.

Speaking about the judiciary system in this, our country, brings to mind a conversation I had with Jim Range, formerly legislative director for Senator Howard Baker. Mr. Range recounted to me some conversations he had had with persons whom he encountered while traveling abroad.

Mr. Range was surprised to hear that the one aspect of American life which was most respected and admired, in fact, was the U.S. judicial system, which in their minds was and continues to be free, independent and, above all, just. We, at LULAC, actively support and advocate for a free and independent, just judiciary.

As suggested, Mr. Chairman, because time is brief, I will ask that the full text of my testimony and attachments be incorporated into

the record, and I will be brief and give you a summary of the major points.

We oppose, and would hope that this body rejects the nomination of Mr. J. Harvie Wilkinson. Mr. Wilkinson is guilty of intellectual dishonesty. While the nominee was editor of the editorial page of the Virginian-Pilot during 1979 through 1981, a public debate ensued regarding the selection of judges for four newly created Federal judgeships.

The conclusion of many of those editorials was that the secrecy of the whole process darkens public distrust, while certainly that is not applicable here because we do have the opportunity for public views, for which we are quite thankful.

Of particular interest of those editorials is one entitled "Choosing Judges on Merit." This editorial supported the notion of a judicial nominations commission, in the hope that, "the commission will provide a high-grade and less political review of the character, temperament, intelligence, mental and physical fitness, education, legal ability, experience, general interest and past conduct of each person considered."

Were we to hold Mr. Wilkinson to that same standard, I suggest that he would not meet any of those criteria. Mr. Wilkinson does not have any significant or noteworthy advocacy experience which could compensate for not meeting the American Bar Association's minimum of 12 years' post law school experience for judgeship nominees.

While Mr. Wilkinson is an author and editor for the editorial page, neither of these literary experiences could be construed to compensate for the absence of evidenciary, procedural, trial or advocacy experience. At best, his literary interest, as reflected in the editorials, is one opposing present-day social problems and criticizing the government and courts for implementing alternative solutions, where he has not supported one solution over another, much less posed an alternative himself.

Of the editorials attributed to Mr. Wilkinson during his tenure at the Virginian-Pilot which were researched, the one entitled "Capital Punishment is Necessary" is particularly troubling to us.

Mr. Wilkinson supports capital punishment on the basis that, "I just do not trust parole agencies." The nominee supports capital punishment and questions whether the irreversible penalty serves as a deterrent. His response is, "Maybe it does and maybe it does not, but let us give at least the innocent the benefit of this doubt."

Despite many of the cites that I have here, there are certain quotes from the Congressional Record of the recent debate on the death penalty. There have been many studies that indicate that in the States that do not have the death penalty, they have a lower percentage of murder rates in those States than States that do have the death penalty.

We are particularly concerned, as the Bureau of Justice Statistics reports that for all of calendar year 1982, about half the 64 persons who left death row by means other than death had both their convictions and their sentences vacated.

Additionally, we have a particular concern because, of the 1,267 persons that are on death row today, 66 of them are Hispanic.

Finally, from LULAC's perspective——

The CHAIRMAN. I believe your time is up. We will just place the rest in the record.

Mr. TREVINO. Thank you, sir.

The CHAIRMAN. Thank you very much.

[Material submitted for the record follows:]

PREPARED STATEMENT OF JOSEPH MICHAEL TREVINO

GOOD AFTERNOON, MR. CHAIRMAN, DISTINGUISHED MEMBERS OF THE SENATE. FIRST, I WOULD LIKE TO THANK YOU ON BEHALF OF THE LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC) FOR ALLOWING ME, JOSEPH MICHAEL TREVINO, LULAC LEGISLATIVE DIRECTOR, TO PRESENT OUR VIEWS REGARDING THE JUDICIARY GENERALLY AND MR. J. HARVIE WILKINSON'S NOMINATION TO THE 4TH CIRCUIT COURT IN PARTICULAR. LULAC IS THE OLDEST AND LARGEST HISPANIC ORGANIZATION WITH A MEMBERSHIP OF OVER 100,000 MEMBERS IN 43 STATES RECENTLY ESTABLISHED COUNCILS IN MEXICO, CENTRAL AMERICA, WEST GERMANY, AND OKINAWA. FOUNDED IN CORPUS CHRISTI, TEXAS, LULAC'S CENTRAL CONCERNS ARE FOR FULL SOCIAL, POLITICAL, ECONOMIC, AND EDUCATIONAL RIGHTS FOR HISPANICS IN THE UNITED STATES.

MR. CHAIRMAN, LET ME BEGIN BY STATING THAT THE LEAGUE'S INTEREST IN THE CERTIFICATION PROCESS IS LONGSTANDING AND IN KEEPING BOTH WITH THE RESPONSIBILITIES OF AN INFORMED CITIZENRY AND ADVOCATING FOR AN INDEPENDENT JUDICIARY WHICH ADMINISTERS THE LAW IN A FAIR, EVENHANDED AND EFFECTIVE MANNER. SPEAKING ABOUT THE JUDICIARY SYSTEM IN THIS, OUR COUNTRY, BRINGS TO MIND A CONVERSATION I HAD WITH MR. JIM RANGE, FORMERLY LEGISLATIVE DIRECTOR FOR SENATOR HOWARD BAKER. MR. RANGE RECOUNTED TO ME CONVERSATIONS HE HAD HAD WITH PERSONS WHOM HE ENCOUNTERED WHILE TRAVELING ABROAD. MR. RANGE WAS SURPRISED TO HEAR THAT THE ONE ASPECT OF AMERICAN LIFE WHICH WAS MOST RESPECTED AND WAS ADMIRED IN FACT THE U. S. JUDICIAL SYSTEM, WHICH IN THEIR MIND WAS AND CONTINUES TO BE FREE, INDEPENDENT, AND ABOVE ALL, JUST. WE, AT LULAC, ACTIVELY SUPPORT AND ADVOCATE FOR A FREE, INDEPENDENT AND JUST JUDICIARY.

REGARDING MR. J. HARVIE WILKINSON'S NOMINATION TO THE BENCH FOR THE 4TH CIRCUIT COURT, LULAC URGES THIS BODY TO REJECT HIS NOMINATION ON THE FOLLOWING GROUNDS:

MR. WILKINSON IS GUILTY OF "INTELLECTUAL DISHONESTY." WHILE THE NOMINEE WAS EDITOR OF THE EDITORIAL PAGE OF THE VIRGINIAN-

PILOT DURING 1979 THROUGH 1981 A PUBLIC DEBATE ENSUED REGARDING THE SELECTION OF JUDGES FOR FOUR NEWLY CREATED FEDERAL JUDGESHIPS. IT CAN BE ASSUMED THAT THE EDITORIALS PUBLISHED DURING THAT TIME CARRIED THE APPROVAL OF THE NOMINEE. SEVERAL EDITORIALS REFERRING TO THE THEN PRESENT DAY PROCEDURE FOR SELECTING JUDGESHIPS WERE PUBLISHED (ATTACHMENTS 1, 2, & 3).

AMONG THE CONCLUSIONS REACHED BY THESE EDITORIALS WAS THE FACT THAT "THE SECRECY OF THE WHOLE PROCESS DARKENS PUBLIC DISTRUST." (ATTACHMENT 1) BUT OF PARTICULAR INTEREST IS THE EDITORIAL ENTITLED "CHOOSING JUDGES ON MERIT" (ATTACHMENT 2). THIS EDITORIAL SUPPORTED THE NOTION OF A JUDICIAL NOMINATIONS COMMISSION IN THE HOPE "THAT THE COMMISSION WILL PROVIDE A HIGH-GRADE AND LESS POLITICAL REVIEW OF 'THE CHARACTER, TEMPERAMENT, INTELLIGENCE, MENTAL AND PHYSICAL FITNESS, EDUCATION, LEGAL ABILITY, EXPERIENCE, GENERAL INTEREST, AND PAST CONDUCT OF EACH PERSON CONSIDERED."

WERE WE TO HOLD MR. WILKINSON TO THE SAME STANDARD THE EDITORIAL SUGGESTED, WE MUST CONCLUDE THAT THE NOMINEE DOES NOT MEET THOSE STANDARDS. FOR EXAMPLE, WITH RESPECT TO THE CRITERION OF EXPERIENCE MR. WILKINSON DOES NOT NEARLY MEET THE LEVEL OF EXPERIENCE WHICH MOST NOMINEES TO THE APPELLATE LEVEL BENCH. MR. WILKINSON DOES NOT HAVE ANY SIGNIFICANT OR NOTEWORTHY ADVOCACY EXPERIENCE WHICH COULD COMPENSATE FOR NOT MEETING THE AMERICAN BAR ASSOCIATION'S MINIMUM OF 12 YEARS POST-LAW SCHOOL EXPERIENCE FOR JUDGESHIP NOMINEES. WHILE MR. WILKINSON IS AN AUTHOR AND EDITOR FOR THE EDITORIAL PAGE, NEITHER OF THESE LITERARY EXPERIENCES COULD BE CONSTRUED TO COMPENSATE FOR THE ABSENCE OF EVIDENTIARY, PROCEDUREAL, TRIAL OR ADVOCACY EXPERIENCE. AT BEST, HIS LITERARY INTEREST, AS REFLECTED IN THE EDITORIALS, IS ONE OF POSING PRESENT DAY SOCIAL PROBLEMS AND CRITICIZING THE GOVERNMENT AND COURTS FOR IMPLEMENTING ALTERNATIVES AND SOLUTIONS WHERE HE HAS NOT SUPPORTED ONE SOLUTION OVER ANOTHER, MUCH LESS POSE AN ALTERNATIVE HIMSELF.

WITH RESPECT TO HIS CHARACTER, MR. WILKINSON'S ACTIVITIES

IN PURSUIT OF HIS SELF-INTEREST CAST A SHADOW OF DOUBT ON THIS MOST IMPORTANT OF JUDICIAL TRAITS. FOR EXAMPLE, MR. WILKINSON IN A PUBLISHED COMMENT ATTRIBUTED TO A VIRGINIA CONGRESSIONAL AIDE HAS "DONE EVERYTHING EXCEPT TAKE OUT BILLBOARDS AND AIRPLANES WITH STREAMERS." (ATTACHMENT 3). IF ACCURATE, THIS REPORT RAISES SERIOUS QUESTIONS ABOUT MR. WILKINSON'S PERCEPTION OF A FEDERAL APPELLATE LEVEL JUDGESHIP. LULAC ASKS, DOES THE NOMINEE PERCEIVE THE BENCH AS A POSITION TO BE LOBBIED FOR, OR ONE WHICH IS DESERVED ON THE BASIS OF MERIT?

OF ALL THE EDITORIALS ATTRIBUTED TO MR. WILKINSON DURING HIS TENURE AT THE VIRGINIAN-PILOT, WHICH WERE RESEARCHED, THE ONE ENTITLED "CAPITAL PUNISHMENT IS NECESSARY," APRIL 23, 1981 IS PARTICULARLY TROUBLING. MR. WILKINSON SUPPORTS CAPITAL PUNISHMENT ON THE BASIS THAT "I JUST DON'T TRUST PAROLE AGENCIES." (ATTACHMENT 4). THE NOMINEE SUPPORTS CAPITAL PUNISHMENT AND QUESTIONS WHETHER THIS IRREVERSIBLE PENALTY SERVES AS A DETERENT. HIS RESPONSE, "MAYBE IT DOES. AND MAYBE IT DOESN'T. BUT LET'S AT LEAST GIVE THE INNOCENT THE BENEFIT OF THIS DOUBT." MR. WILKINSON IS PREPARED TO SENTENCE PEOPLE TO DEATH DESPITE STUDIES WHICH INDICATE THAT THE MURDER RATE PER 100,000 POPULATION IN NON-DEATH PENALTY STATES HAS BEEN CONSISTENTLY LOWER BY ABOUT 100% THAN IN STATES WHICH HAVE THE DEATH PENALTY. (CONGRESSIONAL RECORD, FEBRUARY 9, 1984 AT S 1207 ATTACHMENT 5). ON THE GROUNDS THAT THE NOMINEE DISTRUSTS PAROLE AGENCIES, HE SUPPORTS CAPITAL PUNISHMENT DESPITE THE "BUREAU OF JUSTICE STATISTICS REPORTS THAT FOR ALL OF CALENDAR YEAR 1982, 'ABOUT HALF THE 64 PERSONS WHO LEFT DEATH ROW BY MEANS OTHER THAN DEATH HAD BOTH THEIR CONVICTIONS AND THEIR SENTENCES VACATED.'" (CONGRESSIONAL RECORD, FEBRUARY 9, 1984 AT S 1210 ATTACHMENT 6). GIVEN THIS EXAMPLE OF THE DANGER OF ERROR AND THAT ALMOST SIX PERCENT OR 66 OF THE 1276 MEN AND WOMEN ON DEATH ROW ARE HISPANICS, IT IS TROUBLING TO SEEK SUPPORT FOR A NOMINEE THAT HAS EXHIBITED A PRE-DISPOSITION OF OPTING FOR SUCH DIRE AND IRREVERSIBLE PUNISHMENT ON SUCH GROUNDS.

FINALLY, FROM LULAC'S PERSPECTIVE AND WITH RESPECT TO BI-LINGUAL EDUCATION, MR. WILKINSON HAS DISPLAYED BOTH IGNORANCE AND A CALLOUS DISREGARD FOR THE CONTRIBUTION OF HISPANICS BOTH TO THIS COUNTRY'S INDUSTRIAL DEVELOPMENT AND MILITARY EFFORTS. MR. WILKINSON, IN THE EDITORIAL "BILINGUAL MADNESS," SEPTEMBER 5, 1980, ASKS, "WHAT FEELINGS AND LOYALTIES WILL THEY [SPANISH-SPEAKING AMERICANS] DEVELOP TOWARD A COUNTRY WHOSE DOMINANT TONGUE MANY BUT DIMLY UNDERSTAND." (ATTACHMENT 7). IT SEEMS MR. WILKINSON IS UNAWARE THAT HISPANICS HAVE THE HIGHEST NUMBER OF MEDAL OF HONOR WINNERS OF ANY ETHNIC GROUP IN OUR COUNTRY. IS MR. WILKINSON UNAWARE THAT DURING EACH OF THE MAJOR WORLD CONFLICTS IT IS THE MEXICAN OF YESTERDAY WHO IS THE HISPANIC-AMERICAN OF TODAY THAT HAS AND DOES WORK WHERE MOST AMERICANS WOULDN'T. FURTHER, IT SEEMS THAT MR. WILKINSON IS UNAWARE THAT THE 1980 CENSUS REPORT FOUND THAT WELL OVER 75% OF THE HISPANIC-AMERICAN FAMILIES CLAIM ENGLISH AS THE LANGUAGE SPOKEN AT HOME. CLEARLY, MR. WILKINSON'S OPPOSITION TO BI-LINGUAL EDUCATION DOES NOT REFLECT A WELL INFORMED NOR WELL REASONED OPINION, BOTH SKILLS CONSIDERED PRE-REQUISITES TO A JUDICIAL APPOINTMENT.

IN SUMMARY, MR. CHAIRMAN, MR. WILKINSON HAS, THROUGH HIS EDITORIALS, PROVIDED US A WINDOW INTO HIS MIND. FROM OUR VANTAGE POINT, MR. WILKINSON IS A BRIGHT MAN, BUT HE LACKS THE ADVOCACY EXPERIENCE WHICH CONTRIBUTES TO THE OVERALL REQUIREMENTS OF AN APPELLABLE LEVEL JUDGE. WHILE HE MUST BE GIVEN AND FAIRLY DESERVES CREDIT FOR HIS ACCOMPLISHMENTS, LULAC QUESTIONS WHY SOMEONE WITH MR. WILKINSON'S CREDENTIALS HAS BEEN CHOSEN ABOVE OTHER WHITE MALES, MINORITIES, AND WOMEN WHO ARE QUALIFIED AND SHOULD BE CONSIDERED BY THIS COMMITTEE?

IN CLOSING, IT IS LULAC'S POSITION THAT CONFIRMATION OF THIS NOMINEE WOULD BE TANTAMOUNT TO IMPLEMENTING ON-THE-JOB TRAINING AT THE FEDERAL APPELLATE LEVEL BENCH.

THANK YOU.

Attachment 1

[From Norfolk Virginian-Pilot, Feb. 21, 1980]

CHANGE IT

The Virginia Senate has again voted to change the way we choose judges in Virginia. It's high time the House of Delegates followed suit.

"If it ain't broke, don't fix it" is the cry of those resisting change. But the Virginia system is broke—down to the last axle.

Who can honor a system so unblushingly political? Last year, two state legislators had their law partners, named to judgeships. A third dismissed the wishes of his city's bar to plump his old legislative sidekick on the circuit bench.

This year, Delegate Floyd Bagley of Prince William modestly offered himself for our state judiciary. In the present climate, who could begrudge the attempt?

Appointing judges gives lawyer-legislators the appearance of an edge in court. That cheats the opposing lawyer, his client, and the public. "I have a great deal of impact on who's going to be the judge from my district," admits state Senator Frederick Gray, D-Chester. Mr. Gray, a proponent of reform, insists that "the potential for political influence is far greater in the courts" than before state agencies.

The secrecy of the whole process darkens public distrust. Former Delegate Richard Hobson, D-Alexandria, once described the system as "I won't mess with your judge and you don't mess with mine."

No fewer than 175 judges are voted on each session. Confession of ignorance is commonplace. "Most of you [know] absolutely nothing" about the judges' real qualifications, argued Mr. Gray to his colleagues in last week's Senate debate.

Someone needs help; the Senate reform bill would provide it. It establishes a 15-member Judicial Nominations Commission to take evidence from local nominating committees and review the "character, temperament, intelligence, mental and physical fitness, education, legal ability, experience, general interest, and past conduct of each person considered," something for which the legislature now has precious little time.

True, the commission's recommendations (three for each new vacancy) would be non-binding on the legislature. But just show us the Honorable who would disdain this established screening process to place his crony on the bench.

The Senate reform would raise public respect for those who wear the robes and for those who fit them. It would buffer, but not eliminate, political influence on the Virginia judiciary.

Traditionally, the House Courts of Justice Committee is a graveyard for such thoughts. But Norfolk Delegate Tom Moss, who has opposed the bill in years past, has an open mind this time. So does Norfolk Delegate George Heilig, who nonetheless predicts the bill will "probably die, based on past history."

Pity. In a legislature with a far higher percentage of lawyers than any other in the country, the selection of judges should be beyond reproach.

Attachment 2

[From Norfolk Virginian-Pilot, Jan. 18, 1979]

CHOOSING JUDGES ON MERIT

At long last the Virginia Senate has passed legislation that may remove selection of local judges from the whims of local legislators. The bill now travels to the House of Delegates where, alas, its future is uncertain.

Senate debate on the bill was distinguished chiefly by the hypocrisy of its opposition. Senator William E. Fears, D-Accomack, lambasted the press for trying "to enter in the [judicial] selection process." That from the very same Honorable who persuaded the General Assembly to displace a competent sitting District Court judge with his own law partner.

Portsmouth Senator Willard J. Moody charged that bank presidents, insurance companies, and large corporations would be picking judges under the new bill, not the legislators who "know their local bar association members best." This from the very same gentleman who ignored the wishes of his own local bar association in appointing his old legislative sidekick, former Delegate Lester E. Schlitz, to a Portsmouth circuit judeship.

Back in 1949, the eminent Harvard political scientist V.O. Key Jr. condemned the Virgina judicial selection process as a means of "keeping the electoral machinery and other perquisites in Democratic hands in counties with Republican majorities."

Though the appointive powers of circuit judges have now been greatly restricted, the judiciary remains the foremost vestige of Democratic dominance in Virginia, the judgeship the political plum local legislators would least like to lose.

But to keep it they will pay a steep political price. No system can endure whose staunchest defenders perpetrate the boldest abuses. Or whose slipshod nature has now drawn the ire of detracting Democrats. Often, noted Norfolk Delegate Joseph Leafe last week, "we don't know who we are voting for or what their qualifications are." Richard Hobson, D-Alexandria, ironically described the system as "I won't mess with your judge and you don't mess with mine."

All this the merit selection bill is attempting to correct. It's neither perfect nor free of politics. The fifteen members of the state Judicial Nominations Commission will be appointed by the General Assembly, and the commission's recommendations can be overruled. Five of the fifteen members will be non-lawyers. Local committees will assist the commission in its work.

The commission's membership strikes us as rather large; its quality is as yet unknown. But the concept of the commission—not its amendable particulars—is the valued thing. The hope is that the commission will provide a high-grade and less political review of "the character, temperament, intelligence, mental and physical fitness, education, legal ability, experience, general interest, and past conduct of each person considered," something the legislature has precious little time for now.

Norfolk's Stanley Walker and Virginia Beach's Joe Canada were the only Tidewater Senators to support this bill. The rest would continue playing politics with the bench. Mr. Moody likes to assure us that "no state has any better judges than Virginia."

* * * * * * *

Mr. Byrd, at the president's behest, had named two "blue ribbon" lawyer-layman committees to choose candidates. Two lists produced and forwarded to the White House contained the names of ten white males.

Needled by women's and minority organizations because of the lack of female and non-white lawyers on the lists, the president wished the senator to make revisions. Mr. Byrd wasn't so inclined. As matters stand, Mr. Carter doesn't want to recommend Mr. Byrd's choices to the Senate for confirmation, and the Senate isn't likely, under custom of long standing, to cross a colleague.

Agitation to democratize the lists is not surprising. Equity aside, this administration—with the Senate's concurrence—will make the greatest wholesale selection of federal judges ever. The expansion of better than 30 percent from 495 judges to 647, will include 117 district judges and 35 new members of circuit benches. The appointments are for life, so disappointed aspirants would have to wait for attrition to take a toll. Yet the bar association took the correct position when it insisted, with Senator Byrd, that merit should rule judicial selections.

Virginia's lawmakers are in the process of electing judges, which means finding candidates the Democratic caucus is happy with. The method is essentially anointive, leading at times to conflicts among local interests.

* * * * * * *

Not that bar association recommendations control judicial elections. That condition has been demonstrated occasionally in regard to Norfolk judgeship appointments. It regrettably will be again when this legislature considers rival candidates put up by Portsmouth's bar association and that city's legislative delegation.

* * * * * * *

Barring utopian excellence in man that transcends law, politics and the bench can never be strangers. However, it is never too soon to begin stressing merit over connections, a departure that could usefully occupy Virginia's lawmakers at this session.

Attachment 3

[From the Norfolk Virginian-Pilot, Nov. 15, 1983]

J. HARVIE WILKINSON'S INCONSISTENCIES

(By Frederick Herman)

I have followed with some interest various news articles on the possibility of J. Harvie Wilkinson III's appointment to serve as a judge on the U.S. Court of Appeals for the 4th Circuit.

My curiosity was aroused by such comments as: "He's made phone calls, visited congressmen's offices and done everything except take out billboards and airplanes with streamers," which was attributed to a Virginia congressional aide.

I was also interested in reporter Margaret Edds' comments in her "Inside Virginia" column of Sept. 18, in which questions were raised as to the political overtones of the appointment; Mr. Wilkinson's conservative leanings; the president's failure to adequately consider members of minority groups for the post and, above all, the candidate's lack of experience in the courtroom.

The Standing Committee of the American Bar Association, which evaluates perspective nominees to federal courts, feels that such candidates should have "been admitted to the bar for at least 12 years." Obviously Mr. Wilkinson has considerably less legal experience even if one includes his stint as a professor of law at the University of Virginia. He would thus seem to fall short of the standard for a judgeship if non-political criteria were applied.

Mr. Wilkinson, however, faces another grave problem—his own words. For a number of years he was editor of The Virginian-Pilot and during his tenure the question of judicial appointments was raised. One must suppose that the editorials published at that time (1979–1981) carried Mr. Wilkinson's approval. These dealt with at least two of the issues raised in his own case—political influence and experience.

On Jan. 18, 1979, The Virginian-Pilot carried a long editorial, "Politics behind the robe," which, among other things, described the blatant political considerations involved in the selection of judges for four newly created federal judgeships and concluded that ". . . it is never too soon to begin stressing merit over connections. . . ." On Feb. 9, 1979, an editorial, "Choosing judges on merit," lambasted the highly politicized nature of selecting Virginia judges. Interestingly enough, the editorial quoted approvingly almost verbatim the evaluation criteria for appointment to state judgeships. We get more of the same call for selecting judges on merit and not politics on Feb. 21, 1980, "Change it," and on March 8, 1980, "Was it really racist?" The list goes on and on.

After reading all this, one must wonder about the consistency of Mr. Wilkinson's views. No one should detract from Mr. Wilkinson's many and varied abilities. He was an editor and is a law professor of distinction. He served ably, albeit very conservatively, as assistant attorney general in the office of Civil Rights in the Justice Department. He is young, energetic and certainly ambitious and eager to learn. In spite of all of this, he fails to meet his own stated criteria, as shown by the editorials published in The Virginian-Pilot during his tenure as editor, for an appointment to the federal bench.

Consistency might be a sign of a small mind, but principles one so firmly expressed should not be disregarded when opportunity knocks. Mr. Wilkinson would add to his own stature if he would be patient, acquire the experience he is lacking and then, in due time, become a candidate for a judgeship. At such time his candidacy would not be tainted by questions of politics, failure to meet all of the American Bar Association's criteria and his own inconsistencies—while his other achievements would be fully recognized.

Mr. Herman is an architect in Norfolk.

Attachment 4

[From the Norfolk Virginian-Pilot, Apr. 23, 1981]

CAPITAL PUNISHMENT IS NECESSARY

(By J. Harvie Wilkinson III)

So it has come to that. Sirhan Sirhan will probably be released in 1984.

That's right. The man who killed Robert Kennedy now stands three years from freedom.

A California official calls Sirhan "a model prisoner." The parole board promises to treat him like any other murderer, which means 16 years and out.

Attaboy, California. Flash assassins the green light. Sirhan plans to seek asylum in Libya, where veneration awaits.

That's one reason I support capital punishment. I just don't trust parole agencies.

Their thing is prison space not public safety. The plight of the prisoner looms before them. His next victim is namelessly abstract.

The single-file slaughter of hostages, the grisly headhunts for singers and presidents, the mass drowning of a family, the butchery of young blacks in Atlanta, the

bombing of public places—violence has assumed new and vivid colorations even as the means of punishing it have paled.

In 1977, the Supreme Court implied that "the death penalty may be properly imposed only as to crimes resulting in the death of the victim."

Why should that be so? Does Hinckley deserve to live because his bullet strayed an inch from Reagan's heart? Why should Jim Brady's recovery spare his assailant's life?

Does capital punishment deter? Does the prospect of execution tame the thoughts of persons who would kill?

Maybe it does. And maybe it doesn't. But let's at least give the innocent the benefit of this doubt.

Opposition to capital punishment is rooted in nightmares of the Holocaust, the Stalinist purges, the noose, and the lynching bee—the ghastly litany of villainy visited upon innocent citizens by malignant mobs and states.

But the danger today has come to be the reverse: not that America will abuse the innocent, but that it will fail to protect them. Capital punishment is one means of protection: a guarantee that he who coldly takes one life will never take another.

The Hartford Courant argues that capital punishment "is almost always meted out only to the economically and educationally deprived in society."

Once that was true. Today, every indigent has at least one lawyer and two years of appeals. Today, crime is more discriminatory than punishment. The poor lack funds to purchase even relative safety. To me, equal justice means those who murder the children of Atlanta, no less than those who stalk presidents, deserve The Chair.

Opponents argue that capital punishment lowers society to the level of those it seeks to condemn.

Nonsense. Capital punishment reaffirms the sanctity of innocent life by imposing ultimate sanctions on the taking of it. It stands, says Justice Potter Stewart, as "an expression of society's moral outrage at particularly offensive conduct."

Critics claim capital punishment is irreversible. So are capital crimes.

Critics claim the death penalty is inhumane. So is imprisonment. Gary Gilmore and Steven Judy chose to die rather than face life imprisonment. How many others privately ponder that same choice?

I take no joy in this column. I respect those who disagree. I listen when a friend argues that retributive brands of justice are mean and obsolete. I don't want any brand of justice without strict safeguards and procedure.

I am sickened by capital punishment. The only thing that sickens me more are the heinous crimes that deserve it.

ATTACHMENT 5

One way or another, the official choices—by prosecutors, judges, juries, and Governors—that divide those who are to die from those who are to live are on the whole not made, and cannot be made, under standards that are consistently meaningful and clear, but that they will continue to be made, under no standards at all or under pseudo-standards without discoverable meaning.

Mr. President, I asked the Library of ngress to do a report on racial fac- s in the imposition of capital punishment in 1981. That report, which has already been made part of the RECORD, reviews a number of situations, a number of circumstances, as relates to who gets life and who gets death. But it shows that in an analysis of the data compiled by Bowers and Pierce, there is:

A consistent pattern across all four States: Black killers, and the killers of whites, are more likely than white killers and the killers of blacks to receive the death penalty * * * their data shows that type of murder did not account for racial differences in the probability of receiving the death penalty. For both felony and nonfelony homicides the same differences by race of both offender and victim appeared.

And that is worth repeating because it shows a consistent pattern of the influence of race in the imposition of the death penalty. "Black killers, and the killers of whites, are more likely than white killers and the killers of blacks to receive the death penalty" in America and that is post-Furman, not pre-Furman.

Mr. President, another persuasive ason why the Senate should reject this attempt to reinstitute the death penalty is that capital punishment has not been proven to be an effective deterrent to crime. In fact, the death penalty may actually have a stimulating effect upon those deranged individuals who see it as a way of attracting attention to themselves.

Studies on the deterrent effect of the death penalty are nearly unanimous in finding that capital punishment acts as no greater deterrent than does life in prison. In fact, a comparison of the average murder rates in those States with the death penalty and those without it shows that the average murder rate in States with the death penalty is about twice as high as it is in the States without the death penalty.

I wish our friend from South Carolina was here to explain to us how it is that he can reach a conclusion that the death penalty deters when the statistics show year after year pre-Furman—post-Furman, that the murder rate in States that have the ith penalty is significantly higher ...an the murder rate in those States that do not have the death penalty.

I asked the Library of Congress to do a comparison for me using the FBI's uniform crime statistics and the capital punishment report released by the Bureau of Justice Statistics. In each of the 6 years examined, the Library of Congress researched States with capital punishment and without and came to the conclusion that States that have capital punishment have about twice as high an average murder rate than did the States without capital punishment.

Here are some of the figures:

In 1977, the murder rate per 100,000 population in death penalty States was about 10.9 percent. The murder rate per 100,000 population in nondeath penalty States was about 5.4 percent.

In 1978, the death penalty, the murder rate in death penalty States was 10.2 percent; in nondeath penalty States, 5.6 percent.

In 1979, the murder rate in death penalty States was 11.2 percent; in nondeath penalty States, 6.3 percent.

In 1980, the death penalty States had a murder rate of 11.4 percent; the nondeath penalty States had a murder rate of 6.6 percent.

In 1981, the death penalty States had a murder rate of 10.7 percent; the nondeath penalty States had a murder rate of 5.6 percent.

In 1982, the death penalty States had a murder rate of 10.3 percent and the nondeath penalty States had a murder rate of 5 percent.

When we put together the average over the last 6 years that are reflected in that chart we see that death penalty States have a murder rate of 10.78 percent whereas States without the death penalty have a murder rate of 5.75 percent.

Now that is about twice as high a murder rate in States that have the death penalty as in States that do not. And we have a chart in the back of this Chamber which graphically illustrates that difference, and for those who will consider voting for this bill because they believe capital punishment acts as a deterrent to homicides I hope they will look at the figures because the figures are persuasive that if anything there is a reverse relationship between capital punishment and the murder rate.

The States that have capital punishment, rather than deterring murders, have about twice as high a murder rate as the States that do not have capital punishment.

Mr. President, the issue again here today is not really whether we are in favor of or opposed to the death penalty. The issue today is whether we are going to stop debate after barely over a day's debate on a broad bill that provides the death penalty under many, many circumstances.

The New York Times in an editorial this morning wrote the following:

A vote to cut off Senate debate on a death bill is scheduled for today. A vote against cloture will be a vote to keep talking—until after a recess and until the Senate can start sifting for sense instead of rushing for blood.

We are going to be voting to stop debate on a bill which, for instance, permits the death penalty to be imposed in circumstances where the defendant has not himself killed or attempted to kill or even intended that a killing take place or that lethal force be employed.

Can we as Members of a historic body which has protected the right to deliberative debate, spending a week on the question of withholding on interest and dividends, spending weeks on the gasoline tax, can we in good conscience as the repositories of tradition of this Senate which has allowed for deliberative debate on critical issues say that there has been adequate debate on a bill which permits the death penalty to be imposed in some circumstances where there has not even been an intent, an attempt to kill or intention to do great bodily harm? Does that rise to the dignity of the description of my friend from Illinois of supporting the death penalty within carefully prescribed limits?

I think not. I think we are entitled to significant debate on this bill before we vote on it. And then we must vote on it, because not only does it contain many specific provisions that are worthy of debate, but it also contains the fundamental choice of whether or not this society is willing to say that the death penalty deters, that the death penalty is in fact, an appropriate response of the State to a violent act by one of its citizens.

The Catholic bishops, in their statement on capital punishment, said the following:

It is morally unsatisfactory and socially destructive for criminals to go unpunished. But the forms and limits of punishment must be determined by moral objectives which go beyond the mere inflicting of injury on the guilty. Thus, we would regard it as barbarous and inhumane for a criminal who had tortured or maimed a victim to be tortured or maimed in return. Such a punishment might satisfy certain vindictive desires that we or the victim might feel, but the satisfaction of such desires is not and cannot be an objective of a humane and Christian approach to punishment.

That is why so many representatives of so many national religious organizations have appealed to us in a letter which each one of us has received, which reads as follows:

DEAR SENATOR: As representatives of national religious organizations we appeal to you to oppose S. 1765, a bill to reinstate the death penalty, which may come before the Senate in the near future. We oppose any legislation which sanctions the use of capital punishment.

We believe in the sanctity of human life. The taking of human life, whether it be an independent criminal act or sanctioned by the state, is inhumane. Our religious convictions lead us to the belief that each individual has worth and dignity.

We recognize that government has the responsibility to protect its citizens. Such responsibilities are necessary and should be carried through in a positive manner that leads to a safe, equitable, and just society. Our work brings us into touch with the deepest dimensions of the lives of both the victims and the perpetrators of violent crimes in our communities. We have witnessed the tragedy brought into the lives of victims of violent crime and also in the lives of those who commit such crimes. We be-

ATTACHMENT 6

one, the likelihood of error or improper imposition is so minor as to be virtually negligible. The committee report on the bill explicitly makes that claim in the following terms:

The committee finds this argument—

This argument, I emphasize, is the argument that an innocent human being may be executed by mistake—

The committee finds this argument to be without great weight, particularly in light of the procedural safeguards for criminal defendants mandated by the Supreme Court in recent years. The Court's decisions with respect to the rights of the individuals, particularly those expanding the right to counsel, together with the precautions taken by any court in a capital case, have all but reduced the danger of error in these cases to that of a mere theoretical possibility.

This is, indeed, a sanguine expression of confidence in our judicial system. The Bureau of Justice Statistics reports that for all of calendar year 1982, "about half the 64 persons who left death row by means other than death had both their convictions and their sentences vacated."

Both convictions and sentences means, not that sentences of death were commuted, but that the convictions themselves were found to be invalid. And that occurred in "about half" of 64 cases.

If this is an example of the infallible system of human courts—regardless how much effort is expended to perfect them—then the committee's airy claim that the danger of error has been reduced to that of a mere theoretical possibility is baseless.

The committee report also quotes approvingly the words of the minority report of a Massachusetts Special Commission of 1961:

We do not feel * * * that the mere possibility of error, which can never be completely ruled out, can be urged as a reason why the right of the State to inflict the death penalty can be questioned in principle * * *. If errors are then made, this is the necessary price that must be paid within a society which is made up of human beings and whose authority is exercised not by angels but by men themselves.

This is indeed a unique view to take, not only of a presumptive State "right" to inflict death, but of the value of individual life to our society—a society and a system of government premised and founded on respect for the individual.

It is worth pointing out that the Constitution of the United States does not grant expressly to government the "right" to take life. It does, on the other hand, expressly deny government the right to inflict certain kinds of punishments.

So, for any minority of any commission to argue—as this Massachusetts commission minority argues in 1961—that some kind of State right to inflict death even exists is to betray a disregard for and incomprehension of our Constitution, which is breathtaking in scope.

And for the Judiciary Committee majority to cite such a perverse and misguided judgment shows only the thinness of the entire defense against the compelling and irrefutable fact that as long as we authorize capital punishment, we authorize the possibility of killing an innocent human being.

The irrevocable nature of the death penalty is precisely one of the reasons that I believe it can never be justified. We, as human beings, with all the fallibility that our human condition implies, do not have it within our moral capacity to authorize the taking of a human life. We may believe that we can, somehow, arrogate to ourselves such a power, but we will simply be condoning a usurpation of moral authority.

We cannot legitimize such a usurpation by any appeal to theories of government or morality. It is simply not given to human beings to make ultimate judgments, and the life and death judgment is nothing if not ultimate.

Constitutional experts disagree on the constitutional grounds for authorizing a death penalty. They disagree as to the kinds of procedural safeguards the Constitution requires. Experts in criminal justice disagree about the effect of the death penalty as a deterrent. The majority of our Nation's religious faiths strongly deny the moral basis for it.

(Mr. DANPORTH assumed the chair.)

Mr. MITCHELL. On this subject, in fact, the only semblance of agreement that even exists goes directly against the recommendation of the committee majority. I speak of the extremely broad-based opposition of all sectors of our religious community, who deny the moral authority for it, who deny the benefit to society from it, who deny any proper justification for the taking of human life except self-defense.

It is adduced, in the committee's report, that "protection of the society" assumes a moral imperative that legitimizes a Government-sanctioned imposition of death.

That is an ironic development in a nation and a society which has, painfully and carefully over the last two centuries, made huge strides in the civilizing task of limiting the Government's rights over individuals. Our society is as it is today, in part, because of our continued history of denying to Government the moral authority to take any steps it may think are needed to protect society. Indeed, our society has found that its protection is most assured when Government's reach is limited.

So to make the claim that the protection of society somehow compels the death penalty is to take an enormous leap beyond the perimeters of what we have allowed our Government to do to protect us. We have in the past and would in the future reject the Government's efforts to protect us by limiting political debate because some ideas are dangerous to society. Yet we are willing to grant to Government the supreme power that it may, through its imperfect human servants, take the life of a human being under certain conditions.

That seems to me to be a power that no government ought to have. It is a power that no government can infallibly apply. And it is a power that no government has the moral authority to claim.

When we consider the practical implications of this claim that the protection of society demands a death penalty, the realities are so completely at odds with the claim that the claim evaporates.

Consider the reality of what is being proposed. In this bill, the death penalty is intended to be applied to particularly nefarious murderers, as well as to nonmurderers, on the basis that by depriving these individuals of life, we will protect society.

There are in this Nation—or were at the end of last year—33,526 convicted murderers. They ranged from people who had encompassed the unintentional death of another through some act of their own to those who coldbloodedly committed murder for hire. There were, however, only 1,163 actually on death row.

Through the fortuitous and circuitous processes of the law, a judgment has been reached by men and women in juries and courtrooms all over America that society demands the death of some 1,100 individuals who committed murder, but not of 32,000 others who also committed murder. These cases were all tried at the State level.

There is no reason to believe that a Federal death statute would show a significantly higher percentage of murderers condemned nationwide than has been the experience at the State level. I find no assumption or intention in the committee report to indicate that there is an intention to sentence more Federal prisoners to death row. To the contrary, the report carries clear language indicating the committee's desire that the penalty be applied only in the most extreme cases. So the actual outcome can be reasonably expected to somewhat parallel the outcome of State murder convictions and sentences.

Yet, if that is the case, then the committee says society will be safer to some noticeable degree if about 3 percent of federally indicted murderers are executed.

What kind of rational thought process can lead to such a conclusion? The demonstrated fact in literally thousands of State murder convictions is that the death penalty is applied in a random manner.

A very recent University of Iowa Law School study of the predictability of death sentences under the new, approved death penalty statutes reveals that virtually nothing has changed

Attachment 7

[From the Norfolk Virginian-Pilot, Sept. 5, 1980]

BILINGUAL MADNESS

In an effort to woo Hispanic and other ethnic voters, the Carter administration is prepared to trample on the liberties of state and local schools.

Those who swore the new federal Department of Education would be a "hands-off" bureaucracy were foolish. Already, its hands have been laid on local school curricula.

The issue now is bilingual education. New federal regulations demand that localities instruct foreign-born children in their native languages if two or more classes have 25 such children enrolled. For the two to five years the children receive such instruction, they are expected to get remedial English on the side.

The new regulations go beyond anything the Supreme Court has required. They appear to violate the statute under which the Department of Education was created. Certainly they flout every assurance of non-intrusion that the Department's backers gave.

But Jimmy Carter thinks bilingual education is what Hispanic, Vietnamese, Korean, and other ethnic voters want. We think if Jimmy Carter were looking for a way to divide this country, he couldn't have done a better job. Bilingualism postpones the day many minorities will enter the linguistic mainstream. It prolongs their condition of linguistic "illiteracy." Rather than bilingualism for non-English speaking children, we should be immersing them in English from the moment they arrive at our schoolhouse doors.

That's the view of Virginia School Superintendent S. John Davis, who plans to challenge the new regulations at a public hearing in Chicago on September 17. That's the view too of Virginia Attorney General J. Marshall Coleman who pledges to contest their enforcement in federal court.

Mr. Davis advocates what educators call the ESL (English-as-a-second-language) approach. This approach argues sensibly that the more English is used in schools, the faster children will learn to speak it. Fairfax County alone has an ESL population of more than 2,500 students representing 50 different languages. Tests, says Dr. Davis, have repeatedly proved ESL's educational effectiveness.

Dr. Davis has one other reason for resisting federal mandates; money. Implementing bilingualism would cost the taxpayers of Virginia an extra $10 million each year.

Implementation, says Virginia Education Secretary Wade Gilley, also means "that in addition to the more common languages such as French, German, or Spanish, we might have to find teachers who could teach in Vietnamese or even Swahili."

It's sad when presidential politics outlaws common sense. It's tragic when such politics mortgages the common destiny of a nation.

By 1990, Spanish-speaking Americans will surpass blacks as our most numerous minority. What feelings and loyalties will they develop toward a country whose dominant tongue many but dimly understand?

The compassionate course is to teach them English, the sooner the better. The principled course is to preserve the option of localities to do so, in the face of this latest federal power grab.

If defending these principles means going to court, then Virginia should.

The CHAIRMAN. Mr. Fajardo, where is your home? I do not have it on this sheet. Are you from Virginia?

Mr. TREVINO. Myself, sir?

The CHAIRMAN. Yes.

Mr. TREVINO. No, sir, I live here in the District and I represent the League of United Latin American Citizens. I hail from northern Mexico, via San Antonio, TX.

The CHAIRMAN. National executive director, League of United Latin American Citizens, and that is Washington, DC.

Mr. TREVINO. Yes, sir, that is Arnold Torres.

The CHAIRMAN. Thank you.

All right. Who is next to appear?

STATEMENT OF HELEN C. GONZALES, ASSOCIATE COUNSEL, MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND

Ms. GONZALES. Mr. Chairman, my name is Helen Gonzales. I am the associate counsel for the Mexican American Legal Defense and Educational Fund here in Washington, DC.

Mr. SHORT. Which organization are you with?

Ms. GONZALES. I am with the Mexican American Legal Defense and Educational Fund.

The CHAIRMAN. Now, let us see; I had down here Richard P. Fajardo.

Ms. GONZALES. Right; I am appearing instead of Mr. Fajardo.

The CHAIRMAN. You are appearing in his place?

Ms. GONZALES. That is correct, Mr. Chairman.

The CHAIRMAN. And your name is?

Ms. GONZALES. Helen Gonzales. Can I just start my time now, Mr. Chairman, since I was answering questions?

The CHAIRMAN. You may proceed.

Ms. GONZALES. Thank you. I appear before you today to express our opposition to the nomination of J. Harvie Wilkinson to the U.S. Court of Appeals for the Fourth Circuit. Our opposition, Mr. Chairman, is based on the fact that Mr. Wilkinson does not meet the threshold qualifications for appointment as a Federal judge. Thus, it becomes clear that the nomination is premised solely on the conservative political philosophy which Mr. Wilkinson shares with this administration.

If this nomination is approved, it will be but another slap in the face to minorities and women alike who are repeatedly told that they cannot be given judicial or other appointments because they lack the qualifications necessary for these positions.

Federal appellate judges serve a very important role in our society. Their decisions can have a tremendous impact on individuals and communities. It is thus critical that individuals appointed to these positions be of the highest professional caliber.

In order to promote this goal, the American Bar Association has developed minimal criteria for evaluating a nominee to the Federal bench.

Since leaving law school, Mr. Wilkinson has had only a total of 8 years of legal experience, none of which includes trial work. While the ABA's minimal criteria call for substantial trial experience, this standard has been broadened in its application to include advocacy work generally.

However, even under this broader view, Mr. Wilkinson fails to meet the ABA's standard. Mr. Wilkinson's legal experience has left him completely unexposed to either client representation or practical advocacy experience. Thus, the record clearly shows that he lacks the experience necessary for appointment to the appellate bench.

It is also interesting to note that during his tenure at the Virginian-Pilot, a number of editorials were published which criticized the judicial selection process for being unduly political.

One such editorial concluded that "it is never too soon to begin stressing merit over connections." In this case, however, since merit is lacking, one must presume, as a recent editorial by the

Virginian-Pilot itself did, that Mr. Wilkinson's greatest qualification to serve on the bench is his conservative philosophy.

It is ironic, then, that Mr. Wilkinson would seek a position for which he lacks sufficient credentials to meet his own merit standard. It is also ironic that despite Mr. Wilkinson's insistence that appointments be based on merit and not political considerations, newspaper articles have indicated he has been lobbying extensively on his own behalf.

The Reagan administration has consistently denounced the use of affirmative action on the grounds that it leads to the appointment or hiring of unqualified individuals. Mr. Wilkinson himself wrote or approved editorials during his tenure strongly raising the same implication. Yet, both he and the administration now appear willing to subvert their own merit selection philosophies when it concerns the appointment of a white male.

Therefore, allowing Mr. Wilkinson to become a Federal judge is fundamentally unfair to the many qualified Hispanics, blacks, and women who have been repeatedly denied Federal judgeships because they allegedly failed to meet the ABA's minimal standards.

Appointment of Mr. Wilkinson, despite his current lack of more than 8 years of legal experience would create a double standard. Clearly, there must be others, including women and minorities, who, in fact, are qualified under the ABA's standard for this appellate judgeship.

The ABA's minimum standards under which others are judged should not be waived merely because a candidate is of the correct political philosophy.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

[Material submitted for the record follows:]

PREPARED STATEMENT OF HELEN C. GONZALES

Good afternoon, I want to thank the Chairman and the distinguished members here today for allowing me to testify on behalf of the Mexican American Legal Defense and Educational Fund (MALDEF). My name is Helen Gonzales and I am the Associate Counsel for the Washington, D.C. office. MALDEF is a national legal and educational organization devoted to protecting the civil rights of close to fifteen (15) million Mexican Americans and other Hispanic Americans. Currently, we have offices in San Francisco, Los Angeles, Sacramento, Denver, San Antonio, Chicago and here in Washington, D.C.

I appear before you today to express our opposition to the nomination of J. Harvie Wilkinson to the U.S. Court of Appeals for the Fourth Circuit. Our opposition, Mr. Chairman, is based on the fact that Mr. Wilkinson does not meet the threshold qualifications for appointment as a federal judge. Thus, it becomes clear that the nomination is premised solely on the conservative political philosophy which Mr. Wilkinson shares with this Administration. If this nomination is approved it will be but another slap in the face to minorities and women alike who are repeatedly told that they cannot be given judicial or other appointments because they lack the qualifications necessary for those positions.

Federal appellate judges serve a very important role in our society. Their decisions can have a tremendous impact on individuals and communities. It is, thus, critical that individuals appointed to these positions be of the highest professional caliber.

In order to promote this goal, the American Bar Association (A.B.A.) has developed minimal criteria for evaluating a nominee to the federal bench. An individual should be admitted to the Bar a minimum of twelve years, have substantial trial experience as a lawyer or federal judge, and, in exceptional cases, limited trial experience will suffice where the nominee has distinguished accomplishments in the field of law.

Since leaving law school, J. Harvie Wilkinson served one year as a U.S. Supreme Court law clerk, six years as a law professor, and one year in the U.S. Department of Justice. He also spent three years as an editorial page editor for The

Virginian-Pilot. Thus, Mr. Wilkinson has only a total of eight years of legal experience, none of which includes trial work. While the A.B.A.'s minimal criteria calls for "substantial trial experience," this standard has been broadened, in its application, to include advocacy work, generally. However, even under this broader view, Mr. Wilkinson fails to meet the A.B.A. standard. He is not even admitted to practice before the Court of Appeals to which he has been nominated nor to any of the federal district courts within that Fourth Circuit.

Mr. Wilkinson's positions at the University of Virginia Law School and at the Justice Department left him completely unexposed to either client representation or practical advocacy experience. Thus, the record clearly shows that he lacks the experience necessary for appointment to the appellate bench.

It is also interesting to note that during Mr. Wilkinson's tenure as an editor to The Virginian-Pilot, a number of editorials were published which criticized the judicial selection process for being unduly political.[1/] One such editorial concluded that, "it is never too soon to begin stressing merit over connections."[2/] In this case, however, since "merit" is lacking one must presume, as a recent editorial by The Virginian-Pilot did, that Mr. Wilkinson's greatest qualification to serve on the bench is his conservative philosophy.[3/] Based on this lack of practical, legal experience even his former employer had to admit that his nomination should not be confirmed.

It is ironic, then, that Mr. Wilkinson would seek a position for which he lacks sufficient credentials to meet his own "merit" standard. In the selection of judges he, understandably, supported review of such criteria as legal ability and experience.[4/] As

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1/ Choosing Judges on Merit, The Virginian-Pilot, Feb. 9, 1979; Change It, The Virginian-Pilot, Feb. 21, 1980; Was It Really Racist, The Virginian-Pilot , March 8, 1980.

2/ See, e.g. Politics Behind the Robe, The Virginian-Pilot, Jan. 18, 1979.

3/ Wilkinson as Judge?, The Virginian-Pilot, Jul. 29, 1983. Mr Wilkinson's published views on a number of issues parallel those of this Administration. See, e.g. Busing Embers, The Virginian-Pilot, Sept. 15, 1978; Busing Blues, The Virginian-Pilot, Feb. 11, 1980 (editorials during Wilkinson's tenure at The Virginian-Pilot opposing busing); See also Former Pilot Editor Named To Top U.S. Civil Rights Post, The Virginian-Pilot, June 6, 1982 (quoting Wilkinson for his opposition to court-ordered busing and numerical quotas).

4/ Choosing Judges on Merit, The Virginian-Pilot, Feb. 9, 1980.

indicated above, however, he falls short on these two key prerequisites.

It is also ironic that despite Mr. Wilkinson's insistence that appointments be based on merit and not political considerations, he has apparently been lobbying extensively on his own behalf. This point is reflected in the comment attributed to a Virginia congressional aide who described Mr. Wilkinson's political lobbying for the judgeship: "He's made phone calls, visited Congressmen's offices, and done everything except take out billboards and airplanes with streamers."5/

Thus, one has to surmise that Mr. Wilkinson believes that he need not follow his own advice.

The Reagan Administration has consistently denounced the use of affirmative action on the ground that it leads to the appointment, or hiring, of unqualified individuals. Mr. Wilkinson, himself, wrote, or approved, editorials during his tenure as an editor, strongly raising this same implication.6/ Yet, both he and the Administration, now appear willing to subvert their own "merit selection" philosophies when it concerns the appointment of a white male.

Therefore, allowing Wilkinson to become a federal judge is fundamentally unfair to the many qualified Hispanics, Blacks, and women who have been repeatedly denied federal judgeships because they, allegedly, failed to meet the A.B.A.'s minimal standards. Appointment of Mr. Wilkinson, despite his current lack of more than eight years of legal experience, would create a double standard. Clearly there must be others including, women and minorities, who are, in fact, qualified under the A.B.A.'s standards for this appellate judgeship. The A.B.A.'s minimum standards, under which others are judged, should not be waived merely because a candidate is of the correct political philosophy.

5/ "J. Harvie Wilkinson's inconsistencies, "The Virginian-Pilot, Nov. 15, 1983.

6/ "Politics Behind the Robe", Supra, and Hire Faculty for Quality, The Virginian-Pilot, Dec. 22, 1980.

Senator THURMOND. Now, who is next to appear?
Mr. GRAVELY. Me, Mr. Chairman; Virginia NAACP.
The CHAIRMAN. Now, Ms. Gonzales, where is your home?
Ms. GONZALES. Washington, DC.
The CHAIRMAN. Washington, DC., all right.
Now, next is——
Mr. GRAVELY. Jack W. Gravely, representing the Virginia State Conference, NAACP.
The CHAIRMAN. You are representing the NAACP in Virginia?
Mr. GRAVELY. State of Virginia, yes, sir.
The CHAIRMAN. We will be glad to hear from you.

STATEMENT OF JACK W. GRAVELY, EXECUTIVE SECRETARY, VIRGINIA STATE CONFERENCE, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. GRAVELY. OK. Can my time begin now?
Mr. Chairman, my name is Jack W. Gravely. I am the executive secretary of the Virginia State Conference, NAACP. I am a full-blooded Virginian, born, reared, and educated in the State of Virginia. I am also a graduate of the University of Virginia School of Law, receiving my J.D. degree from that university in 1972.
I am here to speak on behalf of the Virginia NAACP to voice our opposition to the confirmation of J. Harvie Wilkinson III, as judge on the Federal bench of the Fourth U.S. Circuit Court of Appeals in Richmond, VA.
The Virginia State Conference NAACP opposes this confirmation because of the following reasons. First, we feel he is simply unqualified to serve as a Federal judge. He lacks judicial experience, but clearly we understand that alone is not enough.
To place him in the lofty position of a Federal judge would do violence to the system of selecting Federal judges in this country. For many years, other groups and individuals could not pass the legal requirements of experience before assuming the position of a Federal judge, and we ask that this committee and the U. S. Senate do not cheapen the price of admission now.
Our research fails to indicate that Mr. Wilkinson has ever tried a case in a court of law. We stand to be corrected, but our investigation fails to uncover any practical courtroom experience as a lawyer on the part of the nominee. He simply lacks practical experience as a lawyer for the job.
Second, the Virginia State Conference NAACP opposes this nomination because of his limited, yet well defined, judicial philosophy. He represents an attack upon the Supreme Court's interpretation of the Constitution. His judicial philosophy is repugnant to the basic American legal principles of fairness, equality and justice for all men and women.
In summarizing, we oppose this nomination because of his lack of judicial experience, his lack of lawyering experience, his lack of demonstrated commitment to fairness, and our belief that his appointment is intended to accomplish within the legal arena the reversal of policies that some cannot change within the halls of state houses, city councils and the halls of Congress.
Respectfully submitted, Mr. Chairman, by the Virginia NAACP.

The CHAIRMAN. Thank you.
Mr. GRAVELY. Could I donate the balance of my time to——
The CHAIRMAN. Mr. Gravely, where is your home?
Mr. GRAVELY. My home is Richmond, VA.
The CHAIRMAN. Now, let us see; who wants to go next?

STATEMENT OF C. LYDON HARRELL, JR., LEGISLATION AND ADVOCACY, MOBILITY ON WHEELS INC.

Mr. HARRELL. Your Honor, the folks on the right want me to go next. [Laughter.]
Mr. SHORT. Could you identify yourself for the record?
Mr. HARRELL. My name is C. Lydon, L-y-d-o-n, not Lyndon, sir—I am not a politician—Harrell, H-a-r-r-e-l-l. I am from Norfolk and I am representing a handicapped group entitled Mobility on Wheels, Inc. It is a United Way agency representing the southeastern tidewater area.
The CHAIRMAN. You may proceed, Mr. Harrell.
Mr. HARRELL. I would like first to make it plain that I am not here to oppose the nomination of Mr. Wilkinson. If my personal opinion was any value, from what I know of him, I would endorse him.
But we are here, Ms. Dennison with me in the wheelchair, to raise before the committee and ask the committee to determine from him what his position is as to the civil rights of the handicapped.
The CHAIRMAN. Would you like for questions to be propounded to him on that subject?
Mr. HARRELL. Yes, sir; I have written them down.
The CHAIRMAN. When he comes up to testify, I will be glad to propound your questions.
Mr. HARRELL. All right, sir. He has these questions now, but if I may I would like to make a few remarks as to what these civil rights we are talking about are.
The CHAIRMAN. Well, if you have furnished him a copy, maybe he could reply to those for the record. In other words, if you have given him a copy, then we will put your questions in the record and his answers in the record.
Mr. HARRELL. Yes, sir.
The CHAIRMAN. Thank you. Did you have anything else you wanted to say?
Mr. HARRELL. Yes; I wanted to make a comment, sir, as to what these civil rights we are talking about are. I would like to give you some examples, if I may. If you get tired of listening, please stop me.
Some time ago, a young lady in a wheelchair went to Old Dominion University, which is a State university, and applied for a job. She was qualified. They said, "Yes, we will give you a job in the administration office, but how are you going to get into the office?" They refused to put a ramp in, so she could not get in to take the job they offered her. Now, the question is, were her civil rights denied.
The CHAIRMAN. Well, now, where was that, in Virginia?
Mr. HARRELL. Yes, sir.

The CHAIRMAN. Well, Virginia does not have a law to take care of handicapped people like that?

Mr. HARRELL. It has a section, sir; I can mail it to the committee, if you would like.

The CHAIRMAN. If they have a law and it is not being conformed to, action could be brought to require them to do it.

Mr. HARRELL. Yes, sir.

The CHAIRMAN. Now, if they do not have a law, then, of course, that would be up to the legislature and you would have to work with them.

Mr. HARRELL. Another example, sir, is the public service hospital in Norfolk, which is not in existence anymore. They refused to put a ramp in to the administration building, so a wheelchair person could not even apply for a job there; they could not get in to apply.

The officers' club at Breezy Point—I am a retired naval officer—has three steps to get in. If a person in a wheelchair wants to go in, they have to go in through the back door by the garbage cans, and the wheelchair people call that the roach approach.

My wife refuses to go because I have to pull her up and down the steps every time I go, and they will not be caused to suffer that indignity to be dragged in and out of a building. The question is, were her civil rights being denied.

The Federal building in Norfolk now is a good example of the situation. Prior to the building of that building, my wife and I went to the head GSA man in the area and requested that it be built according to the specifications so that the handicapped people could use the restrooms. He told us that he could not build it in any fashion different from what Washington sent down to him.

I wrote to the GSA office in Washington and they sent him the wrong plans, and today you cannot use those toilets if you are a paraplegic or a quadriplegic.

The CHAIRMAN. Well, if there is anything about the Virginia law, you all might contact the Governor and the legislature. Now, if there is anything at the Federal level that is not being done that should be done, I would suggest you contact your Senators and your Members of the House from Virginia, because these handicapped people should be taken care of.

Mr. HARRELL. Well, I thank you for your feelings, sir, and what we would like for you to do is——

The CHAIRMAN. Now, here in Washington, in these buildings here, I think they have taken care of it here. For instance, Senator East is handicapped; he is in a wheelchair and the Senate put in some special arrangements where he can come to the Senate.

In other Federal buildings here, I think they have done that and they ought to do it in other places where there are people who desire to use those facilities. But, again, I say if it is in the State of Virginia, I would suggest you contact the governor or the State legislature. And if it is at the Federal level, contact your Senators and Members of the House.

We are glad to have you here and I am very sympathetic to what you have to say.

Mr. HARRELL. Thank you, sir.

The CHAIRMAN. Now, I believe, Mr. Derfner, you wanted to go with this group?

STATEMENT OF ARMAND DERFNER, ATTORNEY, WASHINGTON, DC

Mr. DERFNER. Yes, if you do not mind, Senator.

The CHAIRMAN. All right. You may proceed.

Mr. DERFNER. My name is Armand Derfner and I am a member of the South Carolina Bar. I am currently in Washington but my home is in Charleston and I have an active practice in the fourth circuit, in which the nominee will sit.

I appreciate the opportunity to come here today to address the nominee's qualifications from the point of view of a practicing lawyer who has to go into court and face judges.

From my point of view, the problem is that the nominee simply does not have the experience and does not have the qualifications at this point to be a judge on the U.S. Court of Appeals.

The American Bar Association and this committee have traditionally applied standards that call for experience, and those are real requirements. When you were a judge in South Carolina, Mr. Chairman, you could not have done that job without the practical experience that you had gained.

As a practicing lawyer, when I go in front of a court, I need to know that the judges there are people who have had experience either in trials or in appeals or in representing clients or in commercial transactions, whatever it is, but some kind of experience, which unfortunately this nominee does not have.

Now, we have been told that he gained experience during his time in the Justice Department, and he has been kind enough to give us a list of the cases that he cited to the American Bar Association as the ones in which he played his most significant role.

From what I can tell from those cases, his role in those cases was far from litigation. Essentially, he was screening documents and he did not in any way—and could not have because of his lack of experience—supervise or participate in the process of litigating and trying those cases.

I have taken a look at several of the cases, and with the short amount of time that I have I do not want to go into any detail. But, for example, in my statement I talk about the problem of intervention. Apparently, the nominee was the architect of a policy of opposing intervention in Government cases by the very people, black parents of schoolchildren, who were the most affected. He did that, apparently, knowing that they would not have another opportunity to be heard, because of a fifth circuit rule. See *Hines* v. *Rapides Parish School Board,* 479 F. 2d 762 (5th Cir. 1973).

The very first case he lists for the American Bar Association, *United States* v. *Ector County,* involved an agreement between the United States and the school district, which was not agreed to by people who had been allowed to intervene.

The agreement was presented to the district judge, who was apparently asked to sign it without holding a hearing, which he did. Now the fifth circuit, just in the last 2 months, has bitterly criticized and reversed that case and sent it back because it said the intervenors had a right to be heard, *United States* v. *Crucial,* 722 F. 2d 1182 (5th Cir. 1983).

This is the kind of policy, as I understand it, that the nominee has been instrumental in carrying out, and it is something that he could not have done in good faith if he were familiar with the realities of trying a case.

In the area of handicapped people's rights, Mr. Wilkinson listed his role in the case of *Connecticut Association of Retarded Citizens* v. *Thorne,* yet there he engaged in meetings with officials of the State of Connecticut who were representing the defendant without notifying or having there the line attorneys who were trying the case.

That, again, is simply inconceivable from somebody who understood the realities of trying a case. Now, I am not talking about what the nominee's views are or what his attitude is toward the law or the Constitution. I am talking about whether the person has the experience and has been through the fray to be the kind of judge that has that kind of understanding.

There are other cases here. I am not going to go into detail on all of them, but frankly my understanding is that the nominee did not in any of these cases—no matter how many people it is said that he supervised in some formal sense—participate in the litigation. And that really is not a substitute for experience because he just did not get any.

If I might just say one sentence to finish up, I have no illusions. The likelihood is that this nominee may well be confirmed, but if this committee and the Senate vote to confirm him, knowing everything that we have been told—or that blacks and minorities and women have been told over the years—about what the requirements are, then you will know that it is wrong, and we will all know that those standards that we were told about for so many years really never mattered at all.

I ask you to be fair and to approach this with sincere evenhandedness, and I think under those standards this nominee, simply does not meet the standards that we have been told should be applied.

Thank you very much.

The CHAIRMAN. Thank you.

Mr. DERFNER. I have a statement which I handed up to the counsel, and I have several documents that I would like to supply to the committee.

[Material submitted for the record follows:]

Prepared Statement of Armand Derfner

For most cases in the federal courts, the circuit courts of appeal are effectively the law of the land. They decided 28,000 cases last year. In about 2500 of these cases, the Supreme Court was asked to hear a further appeal, but it could so in only about 100.

The responsibility of the circuit courts is carried out by fewer than 150 judges in thirteen circuits. J. Harvie Wilkinson III, of Virginia, has been nominated to fill one of those seats. He would sit on the Fourth Circuit, which hears all the appeals from the States of Maryland, Virginia, West Virginia, and North and South Carolina. Last year the Fourth Circuit decided 2700 cases.

Mr. Wilkinson is 39 years old and has been out of law school for 11-plus years.

The American Bar Association's standards for federal judicial nominees call for a minimum of 12 years experience. No person in recent memory has been nominated for the appellate bench with less. The ABA has three levels of acceptable recommendation--exceptionally well qualified, well qualified, and qualified. Mr. Wilkinson received a rating of qualified, the lowest acceptable rating. It is reported that even the decision to give Mr. Wilkinson the rating of "qualified," rather than "not qualified," was a subject of considerable controversy on the ABA committee.

The problem with Mr. Wilkinson is not simply the short time he has been out of law school, but his dearth of experience since that time. His resume may be that of a bright young man with promise for the future, but there is nothing to suggest that he is ready now for a judgeship, especially on the United States Court of Appeals. Such positions, as the ABA points out, should be reserved for those men and women who meet not only the stringent criteria required of any federal judges but in addition "have an unusual degree of overall excellence that would provide an inspiration and an example to trial judges."

Since leaving law school, Mr. Wilkinson's 8 years of legal experience consists of a year as a Supreme Court law clerk, 6 years as a law professor, and a year in the Justice Department. The other 3 years since law school graduation were spent as a newspaper editor in Norfolk.

During his 8 years of law-related work, it does not appear that he has ever represented a client, tried a case, written a brief, or argued an appeal, whether for a paying client or in a pro bono matter. Indeed, it appears that even today he is not admitted to practice in the very court on which he is to sit, nor in any district court in the circuit (or any other district court).

His sole experience came during his single year in the Justice Department. There he screened the work of lawyers engaged in cases, but could hardly do any real supervising, and took virtually no active role in any cases himself. The closest he got to a case appears to have been a simple motion he presented in the Baton Rouge school desegregation case.

Of course there have been first-rate judges who had little litigation experience before going on the bench, but these others at least had experience in other types of law practice, whether in advising clients, negotiating transactions, engaging in administrative proceedings, or any of a large number of other ways that lawyers can gain experience.

Likewise, some of our finest judges have had academic backgrounds, but they have been distinguished teachers of long-standing, and have generally leavened their academic experience with exposure to other aspects of the law. For example, the Fourth Circuit has another judge who came from a law school, U.S. Circuit Judge J. Dickson Phillips. Phillips had been Dean of the School of Law of the University of North Carolina for 15 years at the time of his appointment in 1978. He had been admitted to the Bar for 30 years, and in addition to his eminence as a teacher, had also been in private practice for a dozen years. At

the first hearing on Mr. Wilkinson's nomination, a comparison was made to Justice Felix Frankfurter--but of course there is no real comparison. When Justice Frankfurter was nominated in 1939 he had been a law professor for a quarter of a century, and in addition to his nationwide preeminence in the academic world, his other experience was extraordinarily varied, beginning with his five years as an Assistant United States Attorney in the Southern District of New York, and never stopping after that. Finally, Mr. Wilkinson mentioned several other former law teachers--Judges Winter, Posner, Scalia, and Breyer--but again a short look at their careers shows just how far different their situations are from Mr. Wilkinson's.

The paucity of Mr. Wilkinson's experience is all the more curious in light of his own steadfast insistence on pure merit selection of judges--in the past. His newspaper editorials include at least a dozen repeatedly criticizing the selection of judges on any basis other than merit. His criticism extends not only to appointment for political reasons, but also to appointment of people without sufficient experience, particularly women and blacks. In light of these editorials, perhaps it is not surprising that his own newspaper, the Norfolk Virginian-Pilot, has criticized his nomination.

The lack of experience is not a technical issue. We appoint our judges not to be theoretical philosophers of the law, but to decide cases, great and small, that raise live issues between live litigants. We also insist that those cases be decided not on the basis of abstractions, but on factual records consisting of evidence produced at trials. Circuit judges, especially, need to be sensitive to that fact because they will not see the witnesses, but will be confronted with cold records and will have to try to put themselves in the shoes of the district judges who <u>have</u> been there. While litigation experience may not be absolutely essential for a circuit judge, some awareness of the problems of proving and defending a case is essential. That awareness can be gained in many ways, none of which Mr. Wilkinson has ever gone through.

His Justice Department service--essentially reviewing drafts of briefs and memoranda to make certain they did not contradict the policy goals of the Attorney General--illustrates the problems created by his inexperience. Apart from displaying a great unfamiliarity with the problems of presenting cases, two good, specific examples of his failure to understand the realities of litigation involve the questions of remedies and intervention.

Remedies. The Administration claims that it has sought more effective remedies for discrimination--for example, dealing with employment discrimination by emphasizing recruitment of qualified minority applicants rather than specific hiring goals. Yet Mr. Wilkinson has consistently blue-penciled efforts in specific cases that are necessary to make recruitment an effective remedy. Any litigator knows that recruitment will not work unless there are incentives such as recruitment goals (not to be confused with hiring goals), or reporting provisions. Such provisions were and remain a standard approach in cases in other sections of the Civil Rights Division, and they do not raise whatever philosophical problems some people have with hiring goals; yet Mr. Wilkinson refused to allow their use, even when a school district was willing to agree. The net result is to make it impossible for recruitment to do the job claimed for it, which means either going to a more stringent remedy or more likely (since Mr. Wilkinson is apparently unwilling to adopt any stronger remedy under any circumstances) just giving up on any remedy of any kind.

Intervention. In many areas of the law, enforcement suits can be brought by both the Justice Department and by private citizens. Frequently, the Justice Department will intervene in an ongoing private suit, or vice versa. Until two years ago, it was virtually unheard-of for the Justice Department to oppose intervention by private citizens where those citizens had a direct interest in the controversy (for example, black parents intervening in a Justice Department suit to desegregate their school district). Yet, in recent cases supervised by Mr. Wilkinson, the Department has adopted the position that intervention by black parents should be denied on the ground that the Department adequately represented their interests--even while Department personnel said privately the reason they opposed intervention was because they regarded the intevenors as their adversaries. These cases have resulted in great embarrassment to the Department because, in addition to the trnasparency of the claim that the Department was adequately representing the intervenors' interests, there were several cases about the same time where the Justice Department supported the intervention of white petitioners for intervention. Moreover, in one of Mr. Wilkinson's cases (Charleston County, South Carolina) the Department stood alone in its anti-intervention position because even the school board defendants did not oppose intervention; in the other case (Choctaw County, Mississippi) Mr. Wilkinson redrafted a memorandum, turning it from one supporting intervention into one opposing it on the ground that the Department could do everything the intervenors were complaining about. The net result is that (1) the intervenors have been kept out of the case, (2) they have been prevented from filing their own case, under a fifth circuit rule--which Mr. Wilkinson was either unaware of or unconcerned about--providing that only one lawsuit may be filed in such circumstances, and (3) more than a year later, not one thing has been done in the case.

Mr. Wilkinson's editorials reflect the same attitude: a preoccupation with opposition to remedies for problems. He says he is opposed to certain remedies--school busing and hiring quotas. If that were all he was opposed to, he would obviously have some company. In fact, though, there is little sign that he has ever supported any remedy. Thus, he has written editorials saying hiring goals should be scrapped in favor of encouraging recruitment--only to oppose effective recruitment when the opportunity came his way in the Justice Department. Likewise, among his editorials and his Justice Department tenure, the list of his dislikes includes bi-lingual education and effective remedies for discrimination against handicapped people,

How he would propose to solve any of these problems he does not say. Yet these are precisely the problems that a federal judge, especially a circuit judge, must grapple with.

Mr. Wilkinson is probably the least experienced appellate nominee ever seen. For many years, efforts to appoint qualified minority people and women to the federal bench were stymied by claims that there were few potential nominees with enough experience. Only in the past few years have numbers of blacks and women had the experience necessary to meet the exacting standards of the ABA and the United States Senate. Ignoring the standards for Mr. Wilkinson, after all the talk over the years, is simply unfair.

If a black or a woman with his qualifications were nominated, Mr. Wilkinson would be the first to write an editorial insisting on merit selection rather than "affirmative action." Mr. Wilkinson does not meet the standards for confirmation as a United States Circuit Judge. If he is confirmed, that will send us all a clear message that the standards don't really mean anything after all.

The CHAIRMAN. Thank you. Now, I believe Ms. Elaine Jones will be next.

STATEMENT OF ELAINE R. JONES, ASSISTANT COUNSEL, LEGAL DEFENSE AND EDUCATIONAL FUND, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Ms. JONES. Thank you, Senator Thurmond; thank you very much. My name is Elaine Jones. I am associate counsel with the NAACP Legal Defense Fund. I am a native of Norfolk, VA; that is my home. I entered law school with Mr. Wilkinson in 1967.

For 13 years, I have been a practicing attorney, litigating in several circuits, including the fourth circuit, and the fifth circuit. I have tried cases at the trial level and argued cases on appeal.

I graduated from the University of Virginia Law School 2 years ahead of Mr. Wilkinson. Mr. Wilkinson dropped out to run for political office and came back.

You know, Mr. Chairman, over 125 persons have been nominated by Mr. Reagan for the Federal bench. I have never appeared before this Committee during the Reagan administration to oppose any nomination. This is my first, so it is not a question of Mr. Wilkinson's political philosophy, and I readily admit that mine differs from his.

It is, however, a question of his experience. Mr. Wilkinson has a total of 8 years of law-related experience; that is it, 8 years. He has no advocacy experience whatsoever. Now, when I say advocacy experience, I do not mean trial work, necessarily, because there are lots of lawyers who do not go to court.

I am talking about having represented a client at some point in his life. I am talking about having written a brief, argued an appeal, having done something that shows that he understands the nature of attorney-client relationships. That is a huge gap in Mr. Wilkinson's background and one, since he is a young man, that he can take time to develop before being appointed to the fourth circuit court of appeals.

I have read Mr. Wilkinson's submissions. I do come here with some reluctance. I have read his writings; I have read his editorials for the 3 years he served as the editor of the editorial page of the newspaper, The Virginian-Pilot. Norfolk is my hometown, so I am familiar with that newspaper.

We have before us, frankly speaking, hesitantly speaking, a man who at this stage in his career is facially unqualified to be appointed to the fourth circuit court of appeals. He compares himself to other academics. He says, look at Ralph Winter and Stephen Breyer in his testimony on November 16.

In my statement, at pages 3 and 4, I talk about those qualifications of other academics. Yes, academics should be appointed to the court, but when you look at Mr. Wilkinson, stacked up against other academics, he falls far short. I mean these academics and others have 16 years, 17 years, 22 years, 25 years, teaching experience and having done other work as well.

My final point on that, Senator Thurmond, is that I do not know what the ABA did. I mean, it boggles my mind that they can find

Mr. Wilkinson meets their minimal qualifications. If he meets their minimal qualifications, then their qualifications are meaningless.

Now, it is my understanding—and it is up to the committee to document, and I am under oath so I cannot state it categorically—but it is my understanding that Mr. Wilkinson initially was found preliminarily unqualified by the American Bar Association circuit representative, and that they then considered him on a formal vote and after intense lobbying gave him their minimum rating of "qualified".

Now, if that, in fact, did happen, the committee can investigate and determine. If it did occur, I do not know why it happened. I know the committee was lobbied heavily and intensely, although Mr. Wilkinson has opposed lobbying and politics in the judicial process.

One final thing: I have looked at every appellate court judge in this country; I have looked at every judge who now sits on a Federal appellate court of appeals. Mr. Wilkinson falls far short of any of them; he does not measure up.

Thank you very much.

[Material submitted for the record follows:]

PREPARED STATEMENT OF ELAINE R. JONES

Mr. Chairman, my name is Elaine R. Jones and I am an associate Counsel with the NAACP Legal Defense Fund. I am a native Virginian; I attended law school with Mr. Wilkinson, and I have practiced law in the federal courts, including the Fourth Circuit, for over thirteen years.

I have testified before this Committee several times on subjects of mutual interests, subjects ranging from the voting rights act to procedures for evaluating judicial nominees.

Yet at no time have I been more reluctant to appear than today. But as a matter of fairness and principle I have little choice.

Since he has been President, Mr. Reagan has nominated more than 125 persons to the Federal bench, many of whose philosophy and views on fundamental social issues might differ from mine. However, prior to this appearance I have not appeared before this Committee to testify on a single one of Mr. Reagan's nominees. Mr. Wilkinson's is my first appearance on a judicial nominee during this administration.

After having read Mr. Wilkinson's submissions, having interviewed and talked with people with whom he has worked and reviewing his overall record, I have concluded that it would be fundamentally unfair for this committee to confirm Mr. Wilkinson.

There is a fundamental question of fairness here that must be raised. And that is the issue of fairness with regard to the judicial selection process. It is a question that runs to the American Bar Association's Standing Committee on the Federal Judiciary.

We have before us a nominee who, when viewed objectively, is facially unqualified for appointment to the appellate bench.

At the time of his nomination he had been in the field of law barely eight years, six of those as a law professor. Even adding the three years of his newspaper experience, at the time of nomination Mr. Wilkinson did not have twelve years at the bar which is the requirement of the American Bar Association (ABA). A very strong argument can be made that 12 years at the bar, which is the ABA standard, means for an appellate nominee 12 years of

law-related work, in which case Mr. Wilkinson has only 8. For the six years that he has taught law school we understand that Mr. Wilkinson is highly regarded as a law professor, yet we do not think that that qualifies as "significant evidence of distinguished accomplishment in the field of law," which is the applicable language in the ABA standards when one has limited trial experience (p.3). However, Mr. Wilkinson has no trial experience, nor any out of court experience representing the interests of a client. Nor, we understand, is he even a member of the Circuit court to which he has been nominated to serve. It is then quite confusing to see how, if one uses principles of merit selection, that Mr. Wilkinson merits this appointment. In his testimony before this Committee on Wednesday, November 16, 1983 Mr. Wilkinson refers to the nomination of Stephen Breyer (1st Circuit), Ralph Winter (2nd Circuit), Antonia Scalia (D.C. Circuit) and Richard Posner (7th Circuit) for the proposition that academics can serve ably on the appellate courts. That is true.

However, the issue is not whether academics can serve (they certainly can and should), the issue is the qualifications of Mr. Wilkinson to serve, with 8 years of law-related experience and only 6 years in academic life with no advocacy experience whatever.

At the time of his nomination, Stephen Breyer had 16 years of law-related experience, 12 of those as a law professor at Harward; Ralph Winter had 22 years teaching experience and taught at Yale Law School; Antonio Scalia had been a member of the bar over 20 years, had taught law for nearly 12 years at the University of Chicago, Stanford and the University of Virginia, an additional 6 years in the actual practice of law and 6 more years in government service. Richard Posner had over eighteen years at the bar, 11 years in academic life and more than six years in government service. Mr. Wilkinson's comparisons simply do not hold up when one reads the record. Much has been made by Mr. Wilkinson himself of his similarity to others "academics" who were successfully appointed to the bench. A survey of those appointed in the last few years to the appellate bench shows that there is no other member of any Circuit Court of Appeals who has been out of law school such a short period of time, has so little law-related experience, and who has no courtroom or

advocacy experience. It is a formidable combination of inadequacies.

Minorities and women have often been reminded that as a general proposition they do not have the requisite experience to serve on the appellate bench because they have only graduated from law schools in significant numbers over the past 10-15 years. Every minority and woman appointed to the appellate bench in the last two administrations has objectively met and/or exceeded the applicable ABA standard.

If a minority or a woman, with the amount of experience Mr. Wilkinson has, had been interested in an appellate judgeship she/he would not have gotten to first base. First, they would have most certainly been found unqualified by the ABA; secondly, they would not have received the nomination; and thirdly, if they had received the nomination, I do not believe they would have ever passed the scrutiny of this Committee.

If no advocacy experience and limited teaching experience is enough to earn a qualified rating for the appellate bench, then the ABA standard is meaningless, as is the selection process.

The Committee now considers the nominaton of a white male from a privileged background who has connections of power and who does not meet the qualification standards now met by every federal appellate jurist in the Country. We urge the Committee to act on principle. If Mr. Wilkinson is confirmed it will tell the world more clearly than anything else, that there is a double standard: one for minorities, women and all other appellate judges and another for Mr. Wilkinson.

We ask now only for fairness: that the standard that applies to all other federal appellate jurists in the Country be applied to Mr. Wilkinson. If that is done, this nominee will not be confirmed.

The CHAIRMAN. Thank you very much. I see you are a good talker, anyway. [Laughter.]

Ms. JONES. I hope you were listening, Senator.

The CHAIRMAN. To every word. [Laughter.]

We are glad to have you with us.

Ms. GONZALES. Mr. Chairman, if I may just make one point, I meant to ask that my complete statement be put into the record, please.

The CHAIRMAN. Without objection, your statement will go in the record.

Ms. JONES. All of us, Mr. Chairman, would like to do that.

The CHAIRMAN. Yes. The statements, if you did not finish them—in other words, we will pick up where you left off. [Laughter.]

We do not want the Government to print twice, but we want your full statements in the record.

You will see to that?

Mr. SHORT. Yes, sir.

The CHAIRMAN. All right. Now, we will excuse you all, and thank you very much for your appearance.

We will now take the second panel. Although I am the only one here today, the full committee will consider this testimony. Now, Mr. Bobby Stafford, Mr. Robert Jefferson Roehr—is that Pat Winton? Who is Pat Winton?

Ms. HARRISON. I am representing two organizations.

The CHAIRMAN. I see. Give your name now.

Ms. HARRISON. Edythe Harrison, and I would appreciate, seeing that I am going to represent the other organization that was allotted time, if I may just have——

The CHAIRMAN. You are representing both organizations?

Ms. HARRISON. Yes, so if I may have just 2 extra minutes to represent the other organization.

The CHAIRMAN. Do you think it will be a different argument from that organization?

Ms. HARRISON. Well, there might be a couple of additional points, sir.

The CHAIRMAN. Now, Thomas DePriest will complete this group.

Who wants to go first?

TESTIMONY OF BOBBY B. STAFFORD, PRESIDENT, OLD DOMINION BAR ASSOCIATION

Mr. STAFFORD. I will, Mr. Chairman.

The CHAIRMAN. All right, Mr. Stafford. I believe you are from Williamsburg County, SC.

Mr. STAFFORD. That is correct, Mr. Chairman, and it is a great pleasure for me to appear here. Of course, I am always down in South Carolina and I am a member of that bar. I was born in North Carolina, raised principally in South Carolina, educated in higher education in North Carolina; subsequently, law school in Washington.

I am a member of the Washington bar, the Virginia bar, and the South Carolina bar, and I have practiced in Georgia, Florida, South Carolina, Virginia, and the District of Columbia.

The CHAIRMAN. Well, you are a man for all seasons. [Laughter.]

We are glad to have you with us. You may proceed.

Mr. STAFFORD. Mr. Chairman, I am president, also, of the Old Dominion Bar Association. The Old Dominion Bar Association is a statewide bar association which has existed since 1941 in the Commonwealth of Virginia.

I am pleased to have this opportunity to appear before this committee.

The CHAIRMAN. Is that a different association from your Virginia Bar Association?

Mr. STAFFORD. That is correct, Your Honor.

The CHAIRMAN. Well, is this black lawyers or is it just a separate organization of black and white both?

Mr. STAFFORD. Well, we have some of both, but I think if you would define it, I think it is mostly blacks at the present time.

The CHAIRMAN. All right, you may proceed.

Mr. STAFFORD. I am pleased to have this opportunity to appear before this committee. However, it is with significant pain and reluctance that the Old Dominion Bar Association expresses its opinion respecting the nomination of Mr. J. Harvie Wilkinson as a judge for the U.S. Court of Appeals for the Fourth Circuit.

However, as attorneys who practice before the U.S. Court of Appeals for the Fourth Circuit, it is the Old Dominion Bar's obligation to come forward and speak up on this nomination.

The ODBA firmly believes that the appointment of Mr. Wilkinson to the U.S. Court of Appeals for the Fourth Circuit would diminish the respect of the bench and bar for the quality of judicial experience on the court and for the appointment and selection process for judicial judges.

Mr. Chairman, I have a statement and I would ask that it be submitted to the record, and I would like to comment and elaborate further.

As I well know, you are a former judge, and one of the speakers alluded to that. As we all know, we do have an appreciation for a broad range of experiences, and particularly I am concerned not necessarily with law experiences, even though those related in the practice of law—I think we have come to a respectable opinion with respect to those kinds of experiences as to what they can lend to one's credibility and one's wisdom and judgment in terms of being elevated to a higher position.

Consequently, it is our view, as discussed before our executive committee of the Old Dominion Bar, that the nominee does not possess these kinds of experiences. We believe that involvement with many of the human problems—the problems that lawyers have, the problems that litigants have, problems with people and the law—we can come to the conclusion that these kinds of experiences will make one more apt to understand the depth and perception of those human problems.

We feel that if the nominee had these varied experiences and background, he would lend the kind of credibility and certainly would enhance his qualifications and competence to be elevated to such a high position where he is going to review several layers of administrators, courts, and lawyers underneath him.

One can only appreciate, I believe, the type of problems and the depth of those problems underlying that decisionmaking by others

if one has had a multifaceted development careerwise so that he could render competent decisions.

For these reasons, the ODBA could not standstill without letting its views be known.

Thank you.

[Material submitted for the record follows:]

PREPARED STATEMENT OF BOBBY B. STAFFORD

Mr. Chairman, I am Bobby B. Stafford, President of the Old Dominion Bar Association ("ODBA"). The Old Dominion Bar Association (ODBA) is a statewide bar organization which has existed since 1941 in the Commonwealth of Virginia. I am pleased to have this opportunity to appear before the committee; however, it is with significant pain and reluctance that the ODBA expresses its opinion respecting the nomination of Mr. J. Harvie Wilkinson as a judge for the United States Court of Appeals for the Fourth Circuit. However, as attorneys who practice before the U.S. Court of Appeals for the Fourth Circuit, it is ODBA's obligation to come forward and speak up on this nomination. The ODBA firmly believes that the appointment of Mr. Wilkinson to the United States Court of Appeals for the Fourth Circuit would diminish the respect of the bench and bar for the quality of judicial experience on the court and for the appointment and selection process for judicial judges.

As practitioners before this court, we are keenly aware of the need for and the expectation that the judges who adjudicate our cases will possess exemplary judicial qualifications who have been carefully selected from the most experienced and able members of the bench or bar. We again wish to emphasize that there are tremendous risks for a bar association to oppose a lifetime judicial appointment. However, in the event the Senate confirms Mr. Wilkenson for appointment to the Fourth Circuit, the high quality of the judiciary could be seriously compromised.

The constitutional importance of an independent and able federal judiciary is unquestioned. And, the Senate's duty to confirm each nominee for the federal judiciary is clear evidence of the profound public interest in assuring that qualified persons are entrusted to the powerful position of a federal judgeship.

To facilitate the public interest, the American Bar Association Standing Committee which evaluates judicial nominees, long ago established minimum evaluation criteria a nominee for the federal bench should possess. The ABA criteria clearly require (1) admission to the bar at least a minimum of twelve years, (2) substantial

trial experience as a lawyer or federal judge, and (3) in exceptional cases limited trial experience will suffice where the nominee has distinquished accomplishments in the field of law. Mr. Wilkinson is believed not to possess any of these qualifications. The ODBA has recently learned that Mr. Wilkinson is not even admitted to practice before the U.S. Court of Appeals for the Fourth Circuit for which he seeks an appointment, nor any of the federal district courts in the Curcuit. This is alarming.

Notwithstanding its evaluation criteria, the ABA has expediently and miraculously found Mr. Wilkenson qualified for appointment as a federal judge. In your consideration of the ABA's departure from its evaluation criteria, it should be noted that the ABA evaluation criteria and its recommendation are merely an aid to the Senate and not a supplement nor substitute for the judgment of this committee or the United States Senate. The ODBA considers the ABA's finding that Mr. Wilkinson is qualified to be a federal judge an affront to deserving and qualified practitioners and jurists of all races and both sexes in the Commonwealth of Virginia. Mr. Wilkinson has not had any practical legal experience to carry to the bench. Practical legal experience is not limited to trial experience, but may be derived from client contact, motion practice, administrative proceedings, or other advocacy experience.

Attorneys who argue cases before judges of the Fourth Circuit must have unquestioned confidence in the ability of the judges to understand quickly, soberly and intelligently the issues presented. Attorneys generally have only thirty (30) minutes to argue their cases, whether legal issues raised are procedural or substantive or whether such issues involve preservation of life, liberty or property. The judges must often resolve issues presented based on the law cited in a short brief as well as based on their prior experience as a jurist and/or practicing attorney. There is no time -- and there should be no need -- to explain to the judges the exigencies of a legal practice, whether plaintiff's or defendant's counsel or as a defense attorney or prosecutor in order to assure that the judges evaluate the issues in the proper framework. Accordingly, in view of Mr. Wilkinson's lack of practical experience at the bar or on the bench, he would be sub-

stantially disadvantaged as an appellate judge and this would inure to the profound detriment of the lawyers who will appear before him. It must not be forgotten that these lawyers will be representing clients who have important legal and factual disputes.

At the time of his nomination, Mr. Wilkinson has been a member of the bar not quite twelve years, he also has not had the benefit of having attorney-client relationships. An attorney derives significant growth through the wide breath of attorney-client relationships. The attorney-client relationship critically affects the decisions that counsel makes and directly influences and shapes the posture of counsel's case as it appears before the appellate court. Absent practical experience derived through attorney-client relationships, Mr. Wilkinson would be required to make his decisions by vicariously considering or hopelessly speculating about practical considerations that affect legal issues and inferences. These practical considerations which are so vital to the appellate bench in the fair resolution of important controversies would be "second nature" to an experienced lawyer or judge. Such a glaring deficiency in Mr. Wilkinson's qualifications can only lead him to apply mechanically principles of law to resolve legal issues, while failing to comprehend or perceive practical considerations that will impact on his opinions. The federal bench, the bar and the public deserve and expect a truly qualified appointment who has the requisite experience and depth to consider justly those disputes which will come before the bench.

In conclusion, having had no attorney-client relationships, no trial experience, no distinquished accomplishments in the field of law and/or no judicial experience, Mr. Wilkenson is clearly unsuited for the federal appellate bench. Given his record of achievement in various and sundry endeavors, with time Mr. Wilkinson may be able to obtain the requisite legal experience to qualify for appointment to the federal bench.

Mr. Chairman, the ODBA respectfully requests this committee on behalf of its members and all the trusting citizens of the Fourth Circuit to give Mr. Wilkinson an opportunity to obtain the requisite legal experience before being thrust into the position of a federal appellate judge. It is our considered opinion as practitioners in the Circuit that this nomination should not be confirmed.

Thank you.

The CHAIRMAN. Thank you very much, Mr. Stafford.
Who is the next witness?

STATEMENT OF EDYTHE HARRISON, NATIONAL WOMEN'S POLITICAL CAUCUS OF VIRGINIA, AND NATIONAL ORGANIZATION FOR WOMEN

Ms. HARRISON. I will go next, sir.
The CHAIRMAN. Ms. Harrison, you may proceed.
Ms. HARRISON. I would like to request, please, that my statement be submitted for the record.
The CHAIRMAN. All right. Your statement will be included in the record. In case you duplicate the statement, then we will reserve the right to eliminate duplication.
Ms. HARRISON. Thank you. Mr. Chairman, I am Edythe Harrison, a resident of Norfolk, VA, speaking for the National Women's Political Caucus and, included today, the National Organization for Women. I am a past member of the Virginia General Assembly and have been a community activist in a variety of projects for many years.
I came to know Mr. Wilkinson personally when he resided in Norfolk, when he was the editor of the Virginian-Pilot newspaper; this was the editorial page editor. I am well acquainted with his beliefs and modes of expression through his writings and personal conversations, and I am here to comment on Mr. Wilkinson's judicial temperament as revealed in his own writings as the editorial page editor, and in his books.
It is obviously with some uneasiness that I testify due to what I consider a good, personal relationship with Mr. Wilkinson. However, as chair of the second district women's political caucus and as a very concerned citizen, I feel obligated to share with the committee my knowledge on this appointment.
We have heard, and I agree, that Mr. Wilkinson lacks the experience in representing clients, whether in or out of court. He lacks experience either as a lawyer sweating out a case with a client whose life, liberty, or future is at risk, or as a judge, called upon day after day to render discriminating opinions about difficult matters.
In view of these facts, it is more than relevant to consider his performance as an editorial writer to glean insight into this man as a journalist, a lawyer, and a person. This is especially so in view of the fact that Mr. Wilkinson cites his 3 years' experience for this appellate judgeship.
I must ask certain questions. I must ask if he was temperate in his judgments. Did his editorials reveal the writer as a person of depth, of learning, and mature insight, or someone deficient in these qualities? Was he arrogant? Was his language precise and thoughtful? Did he enlighten as well as provoke?
Did he liken his responsibilities in the post of editor to those of a judge, who must give due weight to all sides of a controversy, examine and state carefully the arguments on all sides, and make his decision from the best available evidence to him?
Unfortunately, our conclusion is that Mr. Wilkinson falls short in all aspects. An editorial writer does what a judge does. Editorial

writers, like judges, confront controversial issues, and both should be fairminded, look at both sides of the question, and pose reasonable solutions.

Since Mr. Wilkinson, again, is relying on this experience, it is very important to look at his writings for the qualities that would indicate this judicial temperament. In evaluating his editorials, we looked for this evidence of fairmindedness and compassion and one who understands the complexities and practical implications inherent in legal disputes.

A judge may be a political appointee, but judges are not politicians. Mr. Wilkinson's style has the forensic tone of a campaigning politician or of an adversary lawyer in front of a jury, and not the mediating tone of an impartial judge.

Mr. Wilkinson obviously is intelligent and aware of the problems in society. In his editorials, he asks all the provocative, rhetorical questions, often inflammatory in style, but he offers no solutions to these problems.

Now, this is acceptable for a teacher or a writer, who can deal in hypotheticals, but it is not appropriate for a judge, or even an editorial writer who must feel a responsibility to the community which looks to him for enlightenment. But it certainly is not appropriate for a judge, who must take responsibility for his words, knowing that his words will become law.

His editorials have covered a number of highly controversial subjects. Issues are arguable, but Mr. Wilkinson does not argue the case if arguments mean weighing for or against and coming to one's own conclusion. His adversarial style forces the argumentation to move exclusively between two absolute extremes.

I would like to make two additional points for the other organization, please. I would like to point out that on the most agonizing questions of race, education, and equal opportunity, Mr. Wilkinson offers not enlightenment, but rhetoric that is empty with a scholarly, intellectual gloss, which is really useless as a guide to reasonable resolution of fundamental social problems.

I will quote just from one of his editorials, but the rest will be submitted: "Compulsory busing is madness. Compulsory busing between city and suburb is madness multiplied," writes Mr. Wilkinson.

Is this the best thinking of a legal scholar who has explored the complex issues involved in dismantling separate but unequal racially identifiable schools? Is all busing madness? Is busing in conjunction with paired and magnet schools to upgrade schools, teaching, and educational programs madness?

Is busing to remedy State-caused inequities in the financial support of schools invariably madness?

One other point: Mr. Wilkinson's lack of judicial temperament is a serious problem, but there are some serious questions in everyone's mind as to how Mr. Wilkinson has achieved the process of getting himself nominated.

It has been quoted in the press that he lobbied for this position. A congressional aide was quoted as saying he did everything but take out a billboard. This is especially distressing when, in editorial after editorial that Mr. Wilkinson wrote while at the Virginian-Pilot, he criticized the role of politics in judicial appointments.

But even all this lobbying does not explain why the American Bar Association has given the endorsement. By their own rules, it is not clear. I am not saying there is anything improper, but the committee must be aware that there is a longstanding connection between Justice Powell and Mr. Wilkinson.

He was the clerk for Justice Powell. The relationship of these two men is well known. Justice Powell's law firm represented the bank that Mr. Wilkinson's father headed. Mr. Wilkinson even worked at the Powell law firm in high school. After clerking with Justice Powell, Mr. Wilkinson wrote about Mr. Powell in his book, "Serving Justice," and said in that book that when Mr. Powell was appointed to the Supreme Court, Mr. Wilkinson felt the Supreme Court had been saved and: "I could not help thinking of my chances for clerkship."

This inside track to a judicial nomination runs counter to everything Mr. Wilkinson has written about merit appointments to the bench. Writing on the theme of merit versus raw political selection of judges was a recurrent theme.

He says: "Judges ought to be selected on the basis of merit and not on the basis of political ties." I could continue; it is all part of the record and part of Mr. Wilkinson's writing.

I would close in quoting Mr. Wilkinson when he said: "It is never too soon to begin stressing merit over connections," and we agree. Thank you.

The CHAIRMAN. Thank you. We will put your entire statement, if you have more, in the record.

Ms. HARRISON. Thank you.

[Material submitted for the record follows:]

PREPARED STATEMENT OF EDYTH C. HARRISON

Mr. Chairman, I am Edythe C. Harrison, a resident of Norfolk, Virginia, speaking for the National Women's Political Caucus. I am a past member of the Virginia General Assembly, and have been a community activist in a variety of projects in the arts, education, and community development for many years.

I came to know Mr. Wilkinson personally when he resided in Norfolk as the Editorial Page Editor of the Virginian-Pilot. I am well acquainted with his beliefs and modes of expression through his writings and personal conversations. I am here to comment on Mr. Wilkinson's judicial temperament as ~~believed~~ revealed in his own writings while at the newspaper and in his books.

It is with some uneasiness that I testify due to what I consider a good personal relationship with Mr. Wilkinson. However, as the Chair of the 2nd District Women's Political Caucus and as a concerned citizen, I feel obligated to share with this committee my knowledge on this appointment.

Mr. Wilkinson lacks experience representing clients whether in or out of court. He lacks experience either as a lawyer sweating out a case with a client whose life, liberty, or fortune are at risk, or as a judge called upon day after day to render discriminating opinions about often difficult matters. In view of these facts, it is more than relevant to consider his performance as an editorial writer to glean insight into this man as a journalist, lawyer and as a person. This is especially so, in view of the fact that Mr. Wilkinson cites his three years as an editorial writer in support of his experience for this appellate judgeship. I must ask if he was temperate in his judgments? Did his editorials reveal the writer as a person of depth, learning, and mature insight, or someone deficient in these qualities? Was he arrogant? Was his language precise and thoughtful? Did he enlighten as well as provoke? Did he liken his responsibilities in the post of

Editor to those of a judge, who must give due weight to all sides of a controversy, examine and state carefully the arguments on all sides of a controversy, and make his decision from the best evidence available to him?

Unfortunately, my conclusion is that Mr. Wilkinson falls short in all aspects. An editorial writer does what a judge does. Editorial writers, like judges, confront controversial issues and both should be fair minded, look at both sides of the question, and pose reasonable solutions. Since Mr. Wilkinson is relying heavily on his editorial experience as a basis for his appointment, it is appropriate that we look at his editorial writings for the qualities that would indicate judicial temperament. In evaluating his editorials we look for evidence of fair mindedness, compassion, and one who understands complexities and practical implications inherent in legal disputes.

A judge may be a political appointee but judges are not politicians. Mr. Wilkinson's style has the forensic tone of a campaigning politician or of an adversary lawyer in front of a jury, not the mediating tone of an impartial judge. His discourse suggests a pre-judgment that would obstruct his ability to judge fairly. Mr. Wilkinson obviously is intelligent and aware of the problems of this society. In his editorials he asks all the provocative rhetorical questions - often inflammatory in style but he offers no solutions to these problems. This is acceptable for a teacher or writer who can deal in hypotheticals, but it is not appropriate for a judge -- or even an editorial writer who must feel a responsibility to the community who looks to him for enlightenment -- but it is certainly not appropriate for a judge who must take responsibility for his words knowing they will become law.

His editorials cover a number of highly controversial subjects. A look at his editorial language tells us something about his ability to be fair minded. The issues are arguable. Mr. Wilkinson does not argue the case if arguing means weighing the arguments

for and against and coming to one's own conclusions. His adversarial style forces the argumentation to move exclusively between two absolute extremes. I give a couple of examples: Through emotionally laden lexical choices such as, and I offer as direct quotes from his editorials the following language: "nightmares of the Holocaust; malignant mobs; stalking presidents; sanctity of innocent life; heinous crimes" he forces the reader into these extremes and then concludes that there is no other choice. This crystallization into two irreducibly opposed viewpoints is more the discourse of a lawyer than that of a judge. In fact, his adversarial rhetoric repeatedly defies logic. Indeed he deals ruthlessly with the very principles of logical argumentation, all the while maintaining a facade of logical structure.

Mr. Wilkinson is given to extravagant, misinformed, intemperate, inflammatory, stereotypic statements. For example: Regarding one minority group, Mr. Wilkinson very unsympathetically writes," their rhetoric was that of the maligned. The march urges an end to all social economic, judicial, and legal oppression of lesbian and gay people." "Their demands," said Mr. Wilkinson," "should be resisted because the last thing we need is a fresh wave of lawsuits whenever some employee is allegedly dismissed or passed over because of 'sexual preference.'" Does Mr. Wilkinson define justice in terms of a reduced caseload? Is justice a matter of convenience for the judges? Is this what we mean by judicial economy? All that most people ask of government is that they be accorded the same legal rights as other citizens, being held accountable for what they are as individuals, not because of their minority differences. This is a point that should not have to be explained to a man who may sit on the bench.

It should also not have to be explained that while it may be appropriate to support capital punishment, it is inappropriate to support capital punishment because, quoting Mr. Wilkinson, "I just don't trust parole agencies." That kind of injudicious statement casts aspersions on a whole class of hardworking public

servants and is certainly a dubious reason for supporting this issue.

We all know what the problems are. As an editorial writer he inflamed us with the problems but never enlightened us with solutions or even attempts at solutions. A judge does not have the luxury of avoiding solutions to important, complex legal problems. Professors and editorial writers, for all the useful work they do, have the luxury of approaching problems from an ivory tower perspective. I am not an attorney but I understand why the American Bar Association requires a particular number of years out of school -- and legal practice for a number of years. I understand the reasons for this standard. Mr. Wilkinson's youth, lack of experience and immaturity are impediments to wise decision making.

On the most agonizing questions of race, education, and equal opportunity, Mr. Wilkinson offers not enlightenment, but empty rhetoric with a scholarly intellectual gloss which is useless as a guide to reasonable resolution of fundamental social problems.

"Compulsory busing is madness, compulsory busing between city and suburb is madness multiplied," writes Mr. Wilkinson. Is this the best thinking of a legal scholar who has explored the complex issues involved in dismantling separate but unequal racially identifiable schools? Is all busing 'madness?' Is busing in conjunction with paired and magnet generally upgraded schools, teaching and educational programs 'madness'? Is busing to remedy state caused inequities in the financial support of schools invariably madness? Is judicious busing, not for the purpose of racial balance but for the purpose of good libraries, good order, and good learning programs in all of a city or regions schools ' madness multiplied'?

In the controversial and highly emotional subjects of busing, capital punishment, bi-lingual education, and in vitro fertilization Mr. Wilkinson used the editorial page to confuse and inflame rather than explain. These are issues that beg for discourse and reason

and not inflamatory rhetoric that never solves problems. Unfortunately these are not the only subjects that received the same type of treatment.

As if Mr. Wilkinson's lack of judicial temperament were not enough, there is some serious question as to how he achieved this nomination. Achieved is the right word because he engaged actively in the process of getting himself nominated. He lobbied for his own position. A Congressional aid was quoted, "he did everything except take out a billboard." This is especially distressing when in editorial after editorial, Mr. Wilkinson has been harshly critical of the role of politics in judicial appointments. But even all this lobbying does not explain the American Bar Association endorsement. By their own rules he is clearly not qualified but he received the endorsement anyway. It is generally understood that Justice Powell "permitted his name to be used" in support of Mr. Wilkinson's nomination and this may have turned the tables in so far as the ABA endorsement is concerned.

I am not saying there is anything improper, but the Committee should be aware there is a long standing connection between Justice Powell and Mr. Wilkinson. He was clerk for Justice Lewis Powell. The relationship of these two men is well known. Justice Powell's law firm represented the bank that Mr. Wilkinson's father headed. Mr. Wilkinson even worked at the Powell law firm in high school. After clerking, Mr. Wilkinson wrote about Mr. Powell in his book "Serving Justice" and said in that book that when Mr. Powell was appointed to the Supreme Court Mr. Wilkinson felt the Supreme Court had been saved and "I could not help thinking my chances for clerkship."

This inside track to a judicial nomination runs counter to everything Mr. Wilkinson has written about merit appointments to the bench. Writing on the theme of merit versus raw political selection of judges was a recurrent theme during his editorship. Concerning the selection of judges by the Virginia General Assembly he writes, "Judges ought to be selected on the basis of merit, not

on the basis of political ties. At present, the choice of new judges rests, in practice, with the legislative delegations from jurisdictions involved. The temptations are great - at times irresistable to elevate to the bench the law partners, colleagues, and cronies of legislators." Mr. Wilkinson expressed hope that the proposed Bar Judicial Nomination Commission which would have been appointed by the Bar Association would provide a "high grade and less political review of the character, temperment, intelligence, mental and physical fitness, education, legal ability, experience, general interest and past conduct of each person considered." Mr. Wilkinson said, "It is never too soon to begin stressing merit over connections." We agree.

The CHAIRMAN. We thank you for appearing; we are very pleased to have you with us.

Now, we have two witnesses left, Mr. Roehr and Mr. DePriest. Which one wants to go first?

STATEMENT OF THOMAS DePRIEST, PRESIDENT, VIRGINIA GAY ALLIANCE

Mr. DEPRIEST. Mr. Chairman, I am Thomas B. DePriest, one of the founders and the current president of the Virginia Gay Alliance, a statewide organization of gay men and lesbians who are working to enhance our civil rights in the Commonwealth of Virginia. We presently have chapters in 5 of the State's 10 congressional districts. I am also an attorney and I am a member of the bar in both Virginia and the District of Columbia. And for your information, I do reside in Arlington, VA.

It is with some regret personally that I must urge the committee to reject the President's nomination of J. Harvie Wilkinson III to the Fourth Circuit U.S. Court of Appeals. I am a graduate of the University of Virginia Law School, where I took a class from Mr. Wilkinson.

He is extremely intelligent and personally charming. His classes were favorites among the students, and I suspect they are today as well. However, his teaching career and his editorials in the Norfolk Virginian-Pilot demonstrate that he lacks the judicial temperament which a circuit court judge must exercise on a regular basis.

For example, his editorial of October 16, 1979, written shortly after 75,000 gay people had marched up Pennsylvania Avenue here in Washington seeking full civil rights and an end to governmental discrimination based on sexual orientation, opposed the goals of the march because, to quote Mr. Wilkinson, "the last thing we need is a fresh wave of lawsuits whenever some employee is allegedly dismissed or passed over because of sexual preference."

He went on to confuse civil rights protection with approval or endorsement of, to use his phrase, "an incompatible sexual lifestyle."

Homosexuality, of course, is not incompatible with any other particular lifestyle. It is present throughout history, in every culture, in every segment of society. It is not even incompatible with heterosexuality, as gay fathers and mothers well know, even if Mr. Wilkinson does not.

In his editorial of January 4, 1981, Mr. Wilkinson trapped himself in the old right-wing illogic of the 1950's. He was disturbed that a homosexual employed at the National Security Agency was allowed to keep both his job and his security clearance as his sexual orientation became known.

Mr. Wilkinson concluded, "Homosexuals are, of course, capable of great loyalty and service to this country, but their sexual orientation poses unacceptable intelligence risks." Mr. Wilkinson in 1981 ignored the same obvious fact which Joseph McCarthy and his followers ignored in the 1950's.

A homosexual is a potential security risk only to the extent that he or she will suffer economic loss by the public revelation of his or her homosexuality. In a society which does not attach second-class political status to citizens because of their sexual orientation, the average homosexual poses no greater security risk than the average heterosexual.

Unfortunately, as his earlier editorial demonstrated, Mr. Wilkinson opposes any movement in this Nation toward full civil rights and equal treatment for gays. In other words, because Mr. Wilkinson wants to deny me my civil rights, since I am known to be gay, he would also deny me any opportunity for security or military employment as well.

I do not believe that Mr. Wilkinson represents the kind of pluralistic society which this Nation has sought to create since it began over 200 years ago. Mr. Wilkinson's editorials consistently illustrated his moralistic intolerance of any viewpoint other than his own.

His race, his sex, his economic and social status, his education—all of these combine to shape an individual who cannot understand what it means to be a second-class citizen in America.

Mr. Wilkinson, whatever his other qualifications, must not serve as one of the judicial guardians of minority liberties and freedoms. Indeed, we already know that he will not. If the courts do not protect what are, by definition, minority opinions, where can these minorities go for redress?

In addition, as you know, Mr. Wilkinson has no prior judicial experience. For that reason alone, this committee should oppose his nomination. His former employer, the Norfolk Virginian-Pilot, has refused to endorse his nomination for that very reason.

Clearly, our judicial system should function with only the most qualified and most dispassionate judges. The Fourth Circuit U.S. Court of Appeals is not the place from which Mr. Wilkinson should wage his ideological crusades.

Mr. Wilkinson was and remains, I am sure, a remarkable law professor. He was a provocative editorial writer. He is a charming individual, but he is unfit to hold the office for which he has been nominated.

The CHAIRMAN. Thank you.

Now, Mr. Roehr, I believe you are the last witness.

STATEMENT OF ROBERT JEFFERSON ROEHR, PRESIDENT, CAPITOL AREA REPUBLICANS

Mr. ROEHR. Yes, sir. Thank you very much, Mr. Chairman. I am very grateful for this opportunity here to speak before the Senate Judiciary Committee.

Capitol Area Republicans is a political organization of the Washington metropolitan area that represents gay Republicans who have served and continue to serve the Republican Party long and well in the District of Columbia, Maryland, and the State of Virginia.

As an example, I am a former congressional candidate, a member of the steering committee of the D.C. Reagan-Bush 1984 Committee, and an employee of the Republican National Committee. We as an organization seek what is best for our party and our country.

It is on this basis that we must oppose the nomination of Mr. Wilkinson. We certainly agree with the rest of the people who have spoken today on the lack of judicial and trial experience that Mr. Wilkinson has had. We feel no need to go further here.

We think it would be useful, though, to turn to what some other people have stated with regard to Mr. Wilkinson's nomination. Upon hearing of Wilkinson's consideration for the circuit court, James C. Roberts, past president of the Virginia State Bar Association, said, "We feel that they—experience as a judge and lawyer—are pretty important ingredients when a person is getting into that sort of position. I must say it—consideration of Wilkinson—comes as a surprise to me."

How did the State bar officially react to the Wilkinson nomination? Did it give Mr. Wilkinson its highest rating as being extremely well qualified? The answer is no. Did it bestow its second highest rating, the accolade of being well qualified for this position? Again, the answer is no.

Finally, after what was rumored to be some very heavy arm-twisting on the part of Wilkinson patrons, the bar association did manage to concede Wilkinson as qualified for this position, though in light of his experience, I find that difficult to understand.

The senior Senator from Virginia, Mr. Warner, is not convinced of Mr. Wilkinson's qualifications. The Senator previously considered Mr. Wilkinson, but instead forwarded the names of three eminent Virginia jurists as his recommendations to the vacancy on the Fourth Circuit.

After the Wilkinson nomination was announced, Senator Warner stated a policy of extensive review and of no decision to support or oppose the nomination until the conclusion of these hearings. Clearly, Senator Warner is yet to be convinced of Mr. Wilkinson's qualifications.

The Virginian-Pilot was Mr. Wilkinson's employer for 3 years. They should know him well, but greeted the news of the nomination with the editorial, "Wilkinson as Judge?" and answered in the negative. The Pilot stated:

> On experience, however, Mr. Wilkinson comes up short. As a law clerk at the U.S. Supreme Court and as professor of law, he has learned the legal process, but that is not the same thing as actually participating in trials.

Our primary knowledge of Mr. Wilkinson comes through his editorials in the Virginian-Pilot. It is here that he has demonstrated a clear preference for what he perceives of as his personal preferences, at the expense of protecting the individual rights of those Americans who do not conform to his world view.

In a 1979 editorial entitled "Marching for Gay Rights," Wilkinson played havoc with the concepts of equality and equal protection under the law, which are the bedrock of our Constitution. He admitted the fact of discrimination against homosexuals, but denied remedy, in part because of process—"the last thing we need is a fresh wave of lawsuits"—and in part because of sociopsychological gibberish.

In this instance, Wilkinson did not hesitate to go outside the law and exercise a judicial activism in defense of his personal perceptions of traditional values.

We believe that a jurist should be totally committed to the concept of equality under the law and protection of minority rights within this framework. Mr. Wilkinson's editorials often seem to deny such a commitment.

We attempted to speak directly with Mr. Wilkinson to clarify questions raised by his writings. We thought then an editor who earlier wrote with regard to judicial appointments would have been open to this. Mr. Wilkinson unfortunately was not.

We hope, in conclusion, that both this committee and the full Senate will see fit to deny this appointment.

Mr. SHORT. Thank you very much, Mr. Roehr.

We will take a brief recess until the chairman can return.

[The committee stood in recess from 5:47 p.m. to 5:52 p.m.]

The CHAIRMAN. Mr. Wilkinson, you can come around now.

Senator Denton has a few questions here. If you could just answer those for the record, we will pass those to you.

TESTIMONY OF JAMES HARVIE WILKINSON III, NOMINEE, U.S. CIRCUIT JUDGE FOR THE FOURTH CIRCUIT

Mr. WILKINSON. Surely.

The CHAIRMAN. Now, you have heard these statements made by various witnesses and their charges. Do you care to rebut anything they have had to say?

Mr. WILKINSON. Well, Senator, the questions have mostly related to my experience.

The CHAIRMAN. Speak a little louder; I cannot hear you.

Mr. WILKINSON. I think the questions mostly related to my experience, and in the November 16 hearing I talked at some length about that and indicated that I thought my experience with two terms as a Supreme Court clerk, and my experience as a Deputy Assistant Attorney General of the United States in the Department of Justice, and my experience in the classrooms at the University of Virginia in teaching subjects with which I will be dealing on the court, and my experience, also, in writing a number of law review articles and in writing books on legal subjects, all combine to provide an experience that would enable me to do a very challenging job.

But I would just like to rest on the comments that I made in the November 16 hearing on that point.

The CHAIRMAN. In other words, you take the position that your experience as a law clerk to Justice Powell, your experience as a Deputy Assistant Attorney General, and your experience as a law teacher is adequate and is sufficient for an appointment of this kind?

Mr. WILKINSON. Yes, sir; I do.

The CHAIRMAN. Now, this is not a trial judge; that is true. For a trial district judge, it would appear that some trial experience would be almost essential. But this is an appellate court where you would just write opinions, and some people feel that it is not necessary to have the trial experience that you would have to have as a district trial judge.

But at any rate, I wanted to get your opinion and see what you had to say.

Mr. WILKINSON. Yes, sir.

The CHAIRMAN. We can pass it on to other members of the committee and the record will be available to them.

Now, is there anything else you would care to say?

Mr. WILKINSON. Well, just briefly, Senator Thurmond, I have only a brief statement. I just wish to assure the committee that my record on civil rights is one of moderation and one of goodwill, and I have left for the record a statement and accompanying documents to that effect this morning.

I also, Mr. Chairman, would like to thank those groups and organizations which have appeared today in the interest of airing their concerns, and I want to assure those groups and organizations that if I am confirmed, I will be a fair and openminded judge.

I think many of the organizations represented here today play a very active and important role in the judicial process, and I just want them to be assured not that I would always agree, but that I will certainly always listen, and that I will be as fair and openminded as I can be on every single case.

The CHAIRMAN. Well, I am sure they will be glad to hear that statement by you. Now, is there anything else you wish to say?

Mr. WILKINSON. No, Mr. Chairman. That would conclude my remarks.

The CHAIRMAN. Well, I think that concludes the hearings and we will now stand adjourned.

[Whereupon, at 5:57 p.m., the committee was adjourned.]

BIOGRAPHIES

PAULINE NEWMAN

NOMINEE, U.S. CIRCUIT JUDGE, FEDERAL CIRCUIT

Birth: June 20, 1927, New York City.
Legal residence: Pennsylvania.
Marital status: Single.
Education: 1944-45—Queens College; 1945-47—Vassar College, B.A. degree; 1947-48—Columbia University, M.A. degree; 1948-51—Yale University, Ph.D. degree; 1955-58—New York University School of Law, LL.B. degree.
Bar: 1958—New York; 1979—Pennsylvania.

Experience: 1951-54—American Cynamid Company, Research chemist; 1954 to present—FMC Corporation, Philadelphia, PA; 1961-62—Specialist, Science Policy Group, United Nations Educational, Scientific and Cultural Organization, Paris, France.

JAMES HARVIE WILKINSON III

NOMINEE, U.S. CIRCUIT JUDGE, FOURTH CIRCUIT

Birth: September 29, 1944, New York, N.Y.
Legal Residence: Virginia.
Marital status: Married to Lossie Grist Noell, 2 children.
Education: 1963-67—Yale University, B.A. degree; 1967-72—University of Virginia Law School, J.D. degree.
Bar: 1972—Virginia.
Experience: 1972-73—Law clerk, Hon. Lewis F. Powell, Jr., U.S. Supreme Court; 1973-78—University of Virginia Law School; 1973-75—Assistant professor of law; 1975-78—Associate professor of law; 1978-81—Landmark Communications, Inc., editor of the Norfolk Virginian-Pilot; 1982-83—Deputy Assistant Attorney General, Civil Rights Division, U.S. Department of Justice; 1983 to present—University of Virginia Law School, professor of law.

CONFIRMATION HEARING ON:

SARAH EVANS BARKER, HARRY L. HUPP, AND EDWARD J. GARCIA

WEDNESDAY, MARCH 7, 1984

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 2:11 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Strom Thurmond (chairman of the committee) presiding.

Staff present: Robert J. Short, chief investigator.

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The CHAIRMAN. The committee will come to order.

We meet today to consider certain appointments by the administration to the position of U.S. district judge. They are as follows: Sarah Evans Barker, of Indiana, to be U.S. district judge for the Southern District of Indiana; Harry L. Hupp, of California, to be U.S. district judge for the Central District of California; and Edward J. Garcia, of California, to be U.S. district judge for the Eastern District of California.

I believe Senator Quayle and Senator Lugar are both here to testify on behalf of Mrs. Barker. We will hear from them first, and then we will take the nominee.

STATEMENT OF HON. RICHARD G. LUGAR, A U.S. SENATOR FROM THE STATE OF INDIANA

Senator LUGAR. Mr. Chairman, it is with great pleasure that I introduce to you today Sarah Evans Barker, who President Reagan has nominated to serve as U.S. district court judge for the Southern District of Indiana. This is an important and historic occasion for me and for the State that I represent. If confirmed by this committee and the full Senate, as I certainly hope that she will be, Mrs. Barker will be the first woman to serve as a Federal judge from Indiana. Mrs. Barker has ably served as U.S. attorney for the Southern District of Indiana these past 3 years. She is definitely the most qualified man or woman in Indiana to serve for this position on the Federal bench. Not only will Mrs. Barker be an excellent judge, she will serve as an important symbol in the legal community and in our society that women deserve not just equal protection but equal advancement.

All of us have been working here in the Senate to promote women for more leadership positions in our institutions. Mrs. Barker's nomination more than fits that bill.

As you know, Senator Dan Quayle and I established a nonpartisan merit selection committee 3 years ago to review all Federal judge appointments in Indiana. The committee, chaired by former Governor Otis R. Bowen, reviewed the applications of numerous qualified attorneys throughout Indiana for the vacancy created by the death of Judge Cale Holder last year. Mrs. Barker was one of three persons recommended to the White House for the judgeship, and I believe the President made the best choice in nominating her.

As testimonial to that fact, when I had the opportunity 2 months ago to announce that the President was going to nominate Mrs. Barker, several hundred leaders from Indiana's legal, social service, and government communities turned out at an early morning press conference in good will and support. Judge S. Hugh Dillin voluntarily came forward to praise Mrs. Barker.

Mrs. Barker has been well trained for the Federal bench. A native of Mishawaka, IN, she received her bachelor's degree from Indiana University. She came to Washington first to work for the D.C. Board of Parole, and then for Congressman Gilbert Gude of Maryland. In the meantime, she received her law degree from George Washington University and was hired by our distinguished colleague from Illinois, Senator Charles Percy, to serve as staff attorney on the Permanent Committee on Investigations.

She then returned to Indianapolis, married Ken Barker, and began to practice law and to raise a family. I have had the pleasant opportunity to spend some time with Ken and Sarah, their three beautiful children, and with Sarah's fine parents. We are all very proud of her achievements, and I am sure this committee and the Senate will be impressed by her abilities.

I deeply appreciate this opportunity to introduce this nominee.

The CHAIRMAN. We are very pleased to have you here, Senator. Now we will hear from the junior Senator from Indiana.

STATEMENT OF HON. DAN QUAYLE, A U.S. SENATOR FROM THE STATE OF INDIANA

Senator QUAYLE. Thank you, Mr. Chairman. I just echo everything that the senior Senator from Indiana has said. I would emphasize a couple of points.

One, this is really a historic moment for us, both Senator Lugar and myself, in being able to recommend to this committee the nomination. We hope and anticipate that she will be confirmed, Sarah Evans Barker. It really is a great time because in Indiana she is the first woman who will serve on the Federal judiciary in the State of Indiana. She is obviously not the first woman in the Nation but the first in Indiana.

I want to underscore that the merit commission that Senator Lugar referred to gave her very high and excellent recommendation on her judicial background, her capabilities as serving as the U.S. district attorney in Southern Indiana. And her excellent legal

credentials that she brings to the bench is the reason that she is being appointed and being recommended to this committee.

I believe that this is really, in a way, a generational appointment as well. She is 40 years of age. She will be there a long, long time, in all probability, probably longer than many in this room will be in the U.S. Senate, barring any unforeseen circumstances. So, I think that what we are doing is making an appointment that is going to have lasting impact on the State of Indiana.

They do have three children. As a matter of fact, they are almost the same age, Mr. Chairman, you might be interested, as the Quayle children: 9, 7, and 5 are mine, and we go in reverse order; we have two boys and a girl. I believe that they have two girls and a boy, 9, 7, and 4.

It is really a proud moment for me. I have a written statement that really gets into her credentials quite fully. In a way, this is sort of a welcoming back for Sarah. She served, as Senator Lugar pointed out, working for Senator Percy. So, Illinois has a vested interest in what Indiana does in this case. We welcome her back to Washington for a brief period of time to be, hopefully, confirmed in an expeditious and deliberate manner as I know you will exercise, Mr. Chairman.

She really will be a tremendous addition to the Federal judiciary. She has outstanding credentials. She will be a real asset to the legal community in Indiana, as has already been demonstrated by their public announcements and public support of this very fine nominee.

Thank you for the courtesy that you extended to us in your usual fine fashion. Thank you very much.

The CHAIRMAN. Thank you very much. We will hear from Mrs. Barker in just a few minutes.

I want to excuse these Senators. I know how busy they are. I got tied up a while ago and was delayed a few minutes.

I want to tell you, Mrs. Barker, that Indiana has two of the finest Senators here. You are to be congratulated for having the support of both of these gentlemen. Sometimes that is not the case. With their great influence and their great integrity and standing and stature here, I am sure you will have no trouble getting through.

We will hear from you in a few minutes, if you will have a seat in the back.

Mrs. BARKER. Thank you.

The CHAIRMAN. You Senators are excused, if you wish to go, or stay if you wish to remain.

Senator LUGAR. Thank you, Mr. Chairman.

Senator QUAYLE. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Wilson, I believe you have two nominees here: Mr. Hupp, of California, and Mr. Garcia, of California. You may proceed with either one you wish first.

STATEMENT OF HON. PETE WILSON, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator WILSON. Thank you very much, Mr. Chairman. I appreciate greatly the opportunity and the privilege of appearing before

your committee. I enjoy the task of introducing to you two exceptionally well qualified jurists, seasoned, experienced jurists who have been nominated by the President of the United States to serve upon the Federal bench in California.

Judge Edward J. Garcia has been nominated to the bench for the Eastern District, and Judge Harry L. Hupp for the Central District of California.

Listening to my colleagues from Indiana, who have had the wisdom to establish judicial qualification advisory committees, judicial selection committees, I was pleased and reassured. Having done the same thing and having been well served by four such committees in my State, I am pleased to report to the committee the results of their efforts. In each of the Federal judicial districts, several distinguished members of the bar have reviewed the credentials of outstanding applicants who have been recommended for appointment and who have themselves expressed interest in being judicial candidates.

I have taken great time and effort to study the results of the deliberations of these selection advisory panels. With respect to the current appointments, I consider that I am privileged today to present to you Judge Garcia for the eastern district and Judge Hupp for the central district. They are men of the highest personal and judicial caliber.

Judge Garcia is a native of Sacramento. He was appointed by Governor Reagan in 1972 as a judge of the Sacramento Municipal Court. He has been reelected to three subsequent terms and now serves as presiding judge of that court. Last year, the members of the Sacramento County Bar rated him the ablest municipal court judge in Sacramento. They characterized him as, "hard-working, an extremely knowledgeable jurist, a judicial conservative with a sharp tongue and a no-nonsense approach." I think that bespeaks a sharp mind as well. Judge Garcia has made the law a labor of love. He worked his way through night school at the University of the Pacific in Stockton, earning his degree with distinction in 1958. His professional background prior to assuming the bench includes 13 years in the office of the Sacramento district attorney, with 3 years as chief deputy district attorney.

Mr. Chairman, Judge Garcia has clearly demonstrated his abilities as a seasoned prosecutor, a distinguished attorney, an individual blessed with singular judicial temperament. He knows well both the law and how to make our system of justice work as it was hoped it would, with efficiency as well as with compassion.

Judge Harry L. Hupp of San Gabriel, CA, was also appointed by Governor Reagan in 1972 as a judge of the Los Angeles Superior Court.

Regarding Judge Hupp, let it suffice that attorneys practicing in this largest court system in the world, the Los Angeles County Bar, have chosen him as trial judge of the year and have universally found him to be a prodigous worker. He has impressed them both with the volume and the very high quality of his work on the bench.

Judge Hupp is a graduate of the Stanford Law School, having graduated in 1955 and served on the Stanford Law Review at that time.

While practicing law in the distinguished Los Angeles firm of Beardsly, Hufstedler, and Kemble for 18 years, he also served on school boards and on numerous boards of legal and community organizations. And Judge Hupp has attained broad judicial experience by serving in a majority of the trial departments of the Superior Court.

Mr. Chairman, my judicial qualification committee rated Judge Hupp to be by far the best qualified judge for appointment to the Federal court in the Central District. In fact, when one member of the bar was asked whether Judge Hupp had any defects, he responded, after a long contemplative pause: "Well, he smokes, and he is far too bright for that." I do not know whether he has continued smoking, but, Mr. Chairman, he and Judge Garcia are jurists of whom we can be very proud. They are superbly qualified for additional service to their Nation as members of the Federal bench. California and the country will benefit immensely from the talents of these exceptional people.

Knowledgeable observers say that Edward Garcia and Harry Hupp are among the very best talents that the legal profession in California has produced, the very best that can be offered to the Federal bench. I heartily agree. I encourage this committee to act promptly in reporting these nominations favorably to the full Senate.

Mr. Chairman, since you have indulged me on other occasions in different fashions, let me just say that I rarely adduce as evidence for the committee's consideration newspaper headlines; but there is one that I cannot resist and I am compelled to offer it. It says: "Wilson Makes Judicious Choices for Bench." In all candor, Mr. Chairman, I am compelled to agree.

I am very proud to present these two gentlemen to you today. Thank you for your courtesy.

The CHAIRMAN. We will be glad to put that in the record.

[Material submitted for the record follows:]

WILSON MAKES JUDICIOUS CHOICES FOR BENCH

Like clockwork, the judges appointed by each California governor become campaign issues every four years.

Are they tough enough on crime? Did they qualify merely by being the governor's cronies or big campaign donors?

But there is one redeeming factor in any governor's judicial appointments: Every six years, voters get a chance to turn the rascals out.

That's not true of federal judges. They are appointed by presidents for life. But presidents don't usually choose the majority of the judges they appoint.

Senators do. Each senator in the same party as a sitting president recommends prospective judges to serve in his or her state, and most presidents go along with the choices. No president has enough qualified personal acquaintances to fill all the district judgeships at his disposal.

The system has led to federal judgeships in California for such longtime political figures as Stephen Reinhardt, appointed by Jimmy Carter, and A. Andrew Hauk, a Lyndon Johnson appointee usually rated by lawyers as the worst federal judge in California.

That's why the three judicial appointments recommended so far by Republican Pete Wilson, California's newest U.S. senator are such eyebrow-raisers.

His three choices not only are apparently qualified, but none has any known previous political links to the senator.

The three:

—Alicemarie Stotler, a former Orange County Superior Court judge first appointed to the bench by former Gov. Edmund G. Brown Jr. This recommendation is re-

markable because of Wilson's 1982 campaign commercials criticizing Brown's judicial appointments.

—Edward J. Garcia, a Sacramento Municipal Court judge first appointed by then-Gov. Ronald Reagan. Garcia, inactive politically for many years, has been ranked as the Sacramento area's ablest municipal judge by local lawyers.

—Harry L. Hupp, a 13-year veteran of the Los Angeles Superior Court. Also first appointed by Reagan, Hupp was chosen as trial judge of the year by attorneys practicing in Los Angeles, the largest court system in the world.

These appointments suggest that Wilson may be that rare bird: A politician who tries to keep at least some campaign promises.

His pamphlets in 1982 read like a do-gooder's delight. "As a U.S. senator, I will recommend tough judges who will put repeat offenders behind bars," said one tract. "I will base the appointments entirely upon merit."

Wilson obviously can't keep to the letter of that promise. Any choices he makes must be cleared with the Reagan administration before he announces them. That's why there are no Democrats among his picks. But the choices are a cut above the common run of blatantly political appointments.

Partly that's because of the screening committee Wilson set up soon after taking office. This group, similar to the one used by Democrat Sen. Alan Cranston during Democrat administration, is made up of lawyers Wilson trusts.

Their job is to pick candidates acceptable to both Wilson and Reagan who will not embarrass either the president or the senator on the bench or during the confirmation process.

"The screening is mostly ours," says a Wilson aide. "But of course we know what the White House is looking for. Still, we really are making a sincere effort to do this professionally, with as little cronyism as possible."

So far, not even the most dogmatic, party-line Democrats can have many quarrels with that statement. True, Cranston has no voice in the appointments. But then, he never gave his Republican colleagues a voice, either, when Democrats occupied the White House.

Given those conditions and the realities of political patronage, Californians could have been saddled with far worse judges than the Wilson choices.

The CHAIRMAN. Senator, thank you very much.

I want to congratulate these two nominees here, Mr. Harry L. Hupp, and Mr. Edward J. Garcia, upon their appointment here to be Federal district judges.

I want to tell you gentlemen that Senator Wilson is a man in this body who is held in high esteem. He has made very strong statements for both of you here today. And that will go a long way to help you get confirmed. We are very proud of the work he has done here. I do not know of any Senator who has come in in such a short time and made such an indelible impression on the Senate as Senator Wilson. So, you are very fortunate to have him to endorse you so highly.

We are going to excuse him now. I know he is busy.

Senator WILSON. Thank you very much, Mr. Chairman.

The CHAIRMAN. You gentlemen will please keep your seats. Mrs. Barker, please come up again. I will swear you all at once.

Do you solemnly swear that the testimony you give in this hearing will be the truth, the whole truth, and nothing but the truth, so help you God?

Mrs. BARKER. I do.

Judge HUPP. I do.

Judge GARCIA. I do.

The CHAIRMAN. Mrs. Barker, would you care to introduce any of your family who are here?

Mrs. BARKER. Yes, I would, Mr. Chairman. I have my husband, Kenneth R. Barker, who is sitting here. He is a lawyer in Indianapolis.

The CHAIRMAN. Do you have any friends here you want to introduce?

Mrs. BARKER. I have several friends with whom I used to work when I was a Senate employee, some with Senator Percy. They are here in the audience.

The CHAIRMAN. We are glad to have all of you here.

Do you have any family here, Mr. Hupp, or friends you want to introduce?

Mr. HUPP. I do not, Senator.

The CHAIRMAN. Mr. Garcia, do you have any family or friends here you want to introduce?

Mr. GARCIA. Mr. Chairman, I have the same problems that Judge Hupp has. We received such short notice that I could not get my wife out of school, my son out of his job, and bring them down here with me. And my friends are 3,000 miles away.

The CHAIRMAN. We will proceed now. I will take you first, Mrs. Barker. Without objection, we will place your résumé in the record, which explains your education and experience.

TESTIMONY OF SARAH EVANS BARKER, NOMINEE, U.S. DISTRICT JUDGE, SOUTHERN DISTRICT OF INDIANA

The CHAIRMAN. Mrs. Barker, you have served as U.S. attorney for the Southern District of Indiana since 1981, I believe. Do you feel this experience will be beneficial to you as a Federal judge?

Mrs. BARKER. Yes, sir, I do. Many of the functions that the U.S. attorney performs are quasi-judicial functions, in that you are passing on cases and making a decision as to whether or not they ought to be presented to the grand jury with a recommendation for indictment. Beyond that, the U.S. attorney serves as a unique sort of advocate in our system. It is not enough that the U.S. attorney be an adversary alone; you have to keep your eye on the need for impartiality, and that is certainly a hallmark of being a member of the judiciary.

The CHAIRMAN. Do you believe that it will be helpful to you as a district court judge to have a sentencing commission to establish uniformity in sentencing?

Mrs. BARKER. Yes, sir, I do.

The CHAIRMAN. We have included that in a bill passed by the Senate on sentencing.

Mrs. BARKER. Yes, I am aware that there are proposals pending. Without taking a specific position on those, I think it would be helpful. That is one of the most difficult functions that a Federal district judge performs. That sort of guidance that would bring about additional uniformity would be very helpful.

The CHAIRMAN. Mrs. Barker, what kind of guidelines should a judge follow in determining propriety of Federal intervention into State affairs?

Mrs. BARKER. I think guidelines that bring forth a certain restraint and considerable discretion. When the Federal judiciary moves into the arena of State law and State policymaking, it ought to be only under compelling circumstances, when the law requires it, and not for any other purpose.

The CHAIRMAN. Do you believe, as I interpret the Constitution, when the Union was formed that the States delegated certain powers to the Union and have reserved all other powers to themselves?

Mrs. BARKER. That is my understanding of history as well, Mr. Chairman.

The CHAIRMAN. Do you have any concern about strong advocates of public issues being appointed to the Federal bench?

Mrs. BARKER. I would have some concerns. I think one of the important functions of a judge is to give forth the appearance of impartiality and a certain detachment so that you can implement the law without regard to whatever philosophical or policymaking predispositions you have. It is not a bar, certainly, but it would be a matter that would raise concern. After all, it is important that the judge generate respect in the community.

The CHAIRMAN. Mrs. Barker, in response to a portion of the committee questionnaire concerning the characteristic of judicial activism, I believe you stated in part—and I quote: "These tendencies obscure the importance of the doctrine of separation of powers and erode the principle of stare decisis."

The separation of powers are powers delegated to each branch of government, legislative, executive, and judicial. And then they are separated from the division of powers between the Federal Government and the States. Do you adhere strictly to the Constitution on those matters?

Mrs. BARKER. I do, Mr. Chairman. The Constitution is the controlling law of the land, and I would.

The CHAIRMAN. Do you believe that the Constitution should be strictly construed?

Mrs. BARKER. Yes, I do, Mr. Chairman.

The CHAIRMAN. Mrs. Barker, what is the proper application of stare decisis in constitutional law? Specifically, what is the duty of a Federal judge when confronted with a case in which one of the precedents of his court clearly conflicts, in your judgment, with the Constitution as that judge interprets it?

Mrs. BARKER. The principle of stare decisis is a guideline for decisionmaking, but the Constitution itself ought to prevail.

The CHAIRMAN. Thank you very much, Mrs. Barker. I want to congratulate you again on your appointment. I feel certain that you will be confirmed without any trouble. I wish you a happy tenure on the bench.

Mrs. BARKER. Thank you, Mr. Chairman.

The CHAIRMAN. Now we will take the others. Without objection, the résumé on Judge Hupp will be placed in the record.

TESTIMONY OF HARRY L. HUPP, NOMINEE, U.S. DISTRICT JUDGE, CENTRAL DISTRICT OF CALIFORNIA

The CHAIRMAN. Judge Hupp, you have served on the superior court of Los Angeles County for approximately 12 years, I believe.

Judge HUPP. That is correct, Mr. Chairman.

The CHAIRMAN. I believe this court is a trial court of general jurisdiction.

Judge HUPP. That is correct.

The CHAIRMAN. During this period, you have presided over many cases, I presume.

Judge HUPP. Yes.

The CHAIRMAN. I am confident that you are very knowledgeable of State laws. Do you foresee any difficulty in the transition from the State court to the Federal district court?

Judge HUPP. I do not see any difficulty, Mr. Chairman. It obviously is going to take study as to applicable Federal procedures insofar as they differ from the State, a study which I have already embarked upon.

The CHAIRMAN. Do you feel well versed in the Federal law?

Judge HUPP. I believe so. In California, many of our procedures and systems are very parallel to the Federal system. I do not anticipate any difficulty in acquiring the necessary knowledge to administer a Federal judgeship.

The CHAIRMAN. In reviewing your file, I noted that you received the Outstanding Trial Jurist Award from the Los Angeles County Bar Association in 1983, last year. You are to be congratulated for being the recipient of this award. I am confident that you are well thought of as a State court judge.

Do you believe litigants in State courts receive the same level of fairness, due process, and quality of justice as do litigants in Federal courts?

Judge HUPP. At least as California goes, which is where my knowledge is, yes.

The CHAIRMAN. I presume, of course, that you feel that they should receive equal treatment in either court.

Judge HUPP. I agree.

The CHAIRMAN. The same is true in any court.

Judge HUPP. I agree.

The CHAIRMAN. Judge Hupp, do you feel that a judge should assume direct control over complex issues in cases in order to avoid delays and to effectively manage such cases?

Judge HUPP. Yes. As a matter of fact, this is the style in our Central District of California. I agree with it. I think it has to be done in order to smoothly move the case load from filing to conclusion.

The CHAIRMAN. What are the standards that you use in deciding that the court had a continuing administrative responsibility to oversee the implementation of one of its orders?

Judge HUPP. I am sorry, Senator, I did not hear that.

The CHAIRMAN. What are the standards that you will use in deciding that your court had a continuing administrative responsibility to oversee the implementation of one of its orders?

Judge HUPP. Obviously, you have to monitor the case as it progresses through your court. You have to get status reports at appropriate times, set up settlement conferences at appropriate times, in order for the court to keep current, making sure that case is moving from beginning to end.

The CHAIRMAN. You have been recommended very highly. You have an outstanding record. I feel certain you will make an excellent Federal district judge. I wish you success and happiness on the bench.

Judge HUPP. Thank you, Mr. Chairman.

The CHAIRMAN. You are now excused, if you wish to leave, or you can remain where you are.

We will take Judge Garcia next.

Without objection, your résumé will be placed in the record.

TESTIMONY OF EDWARD J. GARCIA, NOMINEE, U.S. DISTRICT JUDGE, EASTERN DISTRICT OF CALIFORNIA

The CHAIRMAN. Judge Garcia, you have been a judge in the Sacramento Municipal Court since 1972, I believe.

Judge GARCIA. That is correct, Mr. Chairman.

The CHAIRMAN. This court, I understand, is a trial court of limited jurisdiction.

Judge GARCIA. Yes.

The CHAIRMAN. It has jurisdiction over cases filed in Sacramento County where the civil or monetary claim does not exceed $15,000 and in misdemeanor or criminal cases where the penalty does not exceed 1 year in the county jail and a fine of $1,000.

I will ask you the same question that I asked Judge Hupp earlier. Do you foresee any difficulty in the transition from the State court to the Federal district court?

Judge GARCIA. I foresee no difficulty, Mr. Chairman. However, it is going to take a lot more hard work to learn Federal procedure, which presently, I must confess, I am unfamiliar with.

The CHAIRMAN. Do you feel qualified to assume this new responsibility?

Judge GARCIA. Yes, I do, because I had the same feeling of inadequacy 12 years ago when I was appointed to the municipal court. I learned that, just by working hard, long hours, and applying yourself, you can learn the business.

The CHAIRMAN. Judge Garcia, would you tell the committee how you would handle an incident in which counsel for one of the parties in your court was obviously not a skilled litigator and was not prepared adequately to represent the interests of his or her client?

Judge GARCIA. Unfortunately, that happens more often than we would like. In a criminal case, I think under State law it is my duty in California to protect the rights of the defendant. However, in a civil case if I was faced with that problem, I think you sink or swim in a civil case with the attorney that you hire; you can sue him later on for malpractice if you wish, but I would not interfere in a civil case under those circumstances.

The CHAIRMAN. Judge Garcia, I consider judicial temperament to be a prerequisite for a Federal judge. I have seen some Federal judges embarrass attorneys, embarrass jurors, embarrass witnesses, and flaunt their power. A Federal judge has almost unlimited power. I think people who have power ought to be the humblest people. How do you feel about judicial temperament?

Judge GARCIA. I agree with that sentiment 100 percent, Mr. Chairman. Inside my bench is a little wall and behind it a little sign that the attorneys and litigants cannot see that I have had in front of me for almost 3 years now. It reminds me to be patient and courteous to the litigants and the parties. Whenever I find myself getting out of hand, I bite my tongue, look at my sign, and bring myself back to the ground.

The CHAIRMAN. Counsel just suggested you move that sign to the Federal court with you.

Judge GARCIA. I fully intend to, Senator. I have heard of federalitis.

The CHAIRMAN. Judge, the phrase judicial activism is often used to describe the tendency of judges to make decisions on issues that are not properly within the scope of their authority. What does the phrase judicial activism mean to you?

Judge GARCIA. Probably legislating from the bench, which I am against. I think that the courtroom is not the proper forum because of its limitations in receiving evidence and because you only have the interests of the litigants before you. It is not the place to implement or devise broad social policies. I think that is for the legislature.

The CHAIRMAN. The Constitution provides that the legislative branch makes the law, the executive branch administers the law, and the judicial branch interprets the law. Do you thoroughly agree with that conception of the Constitution?

Judge GARCIA. Yes. That is the true separation of powers. I think, however, the judiciary, in its role of testing laws against the Constitution, should do it with deference to the legislature and the executive branch of the government, which are more responsive to the public and the citizenry.

The CHAIRMAN. Judge, I feel you are well qualified to fill this position. I wish you success and happiness with your new responsibility after you have been confirmed.

We are very pleased to have all of you nominees here today. That now concludes the hearing.

[Whereupon, at 2:40 p.m., the committee was adjourned.]

BIOGRAPHIES

SARAH EVANS BARKER

NOMINEE, U.S. DISTRICT JUDGE, SOUTHERN DISTRICT OF INDIANA

Birth: June 10, 1943, Mishawaka, IN.

Legal residence: Indiana.

Martial status: Married to Kenneth Ralph Barker, 3 children.

Education: 1961-65—Indiana University, B.S. degree;

1966-67—Marshall-Wythe, College of Law; 1967-69—American University Law School, J.D. degree.

Bar: 1969—Indiana.

Experience: 1969—Legislative assistant, Congressman Gilbert Gude, U.S. House of Representatives;

1969-71—Legislative assistant, Senator Charles Percy, U.S. Senate;

1971-72—Special counsel, Permanent Subcommittee on Investigations, U.S. Senate;

1972—Director of Research, Director of Scheduling and Advance, Senator Percy Re-election Camp;

1972-77—Assistant U.S. attorney Southern District of Indiana, (First Assistant 1976-77);

1977-81—Associate & Partner, Bose, McKinney & Evans;

1981 to present—U.S. attorney, Southern District of Indiana.

HARRY L. HUPP

NOMINEE, U.S. DISTRICT JUDGE, CENTRAL DISTRICT OF CALIFORNIA

Birth: April 5, 1929, Los Angeles, CA.
Legal residence: California.
Marital status: Married to Patricia D. Tibbetts, 4 children.
Education: 1947-50—Pomona College;
1952-55—Stanford University, B.A. degree, LL.B. degree.
Bar: 1956—California.
Military service: 1950-52—U.S. Army.
Experience: 1955-72—Associate, 1955-60, partner, 1961-72, Beardsley, Hufstedler & Kemble;
1972 to present—Judge of the Superior Court, Los Angeles County.

EDWARD J. GARCIA

NOMINEE, U.S. DISTRICT JUDGE, EASTERN DISTRICT OF CALIFORNIA

Birth: November 24, 1928, Sacramento, CA.
Legal residence: California.
Marital status: Married to Dorothy Gernhardt Garcia, 3 children, 3 step-children.
Education: 1949-51—Sacramento City College, A.A. degree;
1954-58—McGeorge School of Law, LL.B. degree.
Bar: 1959—California.
Military service: 1946-49—U.S. Army Air Corps.
Experience: 1959-72—Deputy District Attorney, Sacramento County District Attorney's Office, Supervising Deputy District Attorney 1964-69, Chief Deputy District Attorney 1969-72.
1972 to present—Judge, Sacramento Municipal Court District.

CONFIRMATION HEARING ON NEAL B. BIGGERS

WEDNESDAY, MARCH 14, 1984

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 2:11 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Strom Thurmond (chairman of the committee) presiding.

OPENING STATEMENT OF CHAIRMAN STROM THRUMOND

The CHAIRMAN. The committee will come to order.

Today we have met to hold a hearing for the U.S. district judge in the State of Mississippi. Neal B. Biggers of Mississippi has been appointed by the President to be the district judge for the Northern District of Mississippi.

Senator Cochran is here at this time, and I know how busy he is. We are going to hear from you first so you can leave if you want to after that or stay if you wish. So you may proceed, Senator.

STATEMENT OF HON. THAD COCHRAN, A U.S. SENATOR FROM THE STATE OF MISSISSIPPI

Senator COCHRAN. Thank you very much, Mr. Chairman.

Mr. Chairman, I am really pleased today to be able to present to the committee and introduce my good friend Neal Biggers, whom the President has nominated to be U.S. district judge for the Northern District of Mississippi.

Neal Biggers is one of the State's best trial judges. He serves as a circuit court judge in our State court system. He has so served for the past 9 years, and prior to that, he was a district attorney prosecuting cases in a district that includes a multicounty area.

Previously, he served as an attorney in private practice. In all of those positions, Mr. Chairman, he has distinguished himself and has stood out as one of the brightest and best young lawyers and judges we have produced in Mississippi.

He graduated from the University of Mississippi Law School. He was educated at Millsaps College, one of the fine liberal arts institutions in the South where he received a bachelor of arts degree.

He's from Corinth, MS, up in the northeast part of the State. He served in the Navy prior to going to law school. But in his entire career, Mr. Chairman, he has always been the kind of person who has been looked up to by fellow lawyers, by fellow judges and by the citizens of our State at large.

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I am very proud to have been able to recommend him to the President for this nomination, and I am very pleased the President has acted on it as he has and submitted his name to the Senate.

I hope that the committee will review his qualifications and quickly recommend his confirmation to the Senate. I am convinced that because of his temperament, his good character, and his experience, he will serve with great distinction as a Federal judge.

With that, Mr. Chairman, I'll leave him in your hands.

Senator Stennis has submitted a statement and regrets that he could not be here. Senator Stennis supports the nomination fully and without reservation, according to his statement, and I ask that the statement be made apart of the record.

The CHAIRMAN. Without objection, Senator Stennis' statement endorsing Judge Biggers will go in the record at this point.

[Material submitted for the record follows:]

PREPARED STATEMENT BY SENATOR JOHN C. STENNIS

Mr. Chairman, I am pleased to express my full and complete support for the nomination of Neal B. Biggers to be United States District Judge for the Northern District of Mississippi.

I know Judge Biggers personnally and am familiar with his record of highly professional conduct on the bench in Mississippi. He has been a judge in the trial court of general jurisdiction in my state for the past nine years.

Judge Biggers' performance has earned the respect of the attorneys who have appeared before him. The people in his community know him to be a man of high character and integrity.

I have talked at length with him about his duties as a federal judge, and am fully satisfied that he not only has the capacity but also has the dedication and devotion to duty that go with this highly important office. He is worthy of this trust and will bring honor to himself, to the office that he holds, and to the State of Mississippi.

I am supporting his nomination fully and without reservation.

Senator COCHRAN. Mr. Chairman, with your permission, too, I would like to introduce to the committee Judge Biggers' wife Joanne, who is here with us today.

The CHAIRMAN. We are glad to have you with us.

Senator COCHRAN. They are also the parents of a daughter Sherron, who is 20 years of age. She is not here today.

The CHAIRMAN. How old is their daughter, did you say?

Senator COCHRAN. Twenty years of age. She is as pretty as her mamma, too, Mr. Chairman.

The CHAIRMAN. I was going to say her mother does not look like she is much over 20 years old herself.

Senator COCHRAN. Mr. Chairman, thank you very much for the indulgence of the committee. At this time, I need to go Chair another committee that is in session. With your permission, I will do that.

The CHAIRMAN. Judge Biggers, I just want to say before he leaves that you are to be congratulated on having such a highly respected Member of this Senate to recommend you for this place.

Senator Cochran, a comparatively new Senator in the Senate, is held in high esteem by his colleagues, and he is held in high esteem by the President and the members of this administration.

The fact that he has endorsed you will practically insure your confirmation.

Judge BIGGERS. Thank you. Mr. Chairman.

The CHAIRMAN. I am very pleased that Senator Stennis has also endorsed you. Of course, Senator Stennis has been here a long time and is highly respected also.

At this time, we will excuse Senator Cochran, if he wishes to go.

And if you will stand up now and be sworn.

Do you swear that the testimony you give in this hearing shall be the truth, the whole truth, and nothing but the truth so help you God?

Judge BIGGERS. I do.

TESTIMONY OF NEAL B. BIGGERS, NOMINEE, U.S. DISTRICT JUDGE, NORTHERN DISTRICT OF MISSISSIPPI.

The CHAIRMAN. In October 1983, I received a letter from Mr. Robert Copeland president of the Alcorn County branch of the NAACP in which he requested an opportunity to appear before this committee and testify on the nomination of Judge Biggers.

Subsequent to that, I received a followup letter from Mr. Copeland which I will now, without objection, enter into the record.

Mr. Copeland's letter reads as follows:

Dear Senator Thurmond.

It is addressed to me as chairman.

The record will show that I have previously sent you a letter regarding the nomination of Neal B. Biggers, Junior, for a U.S. District Judge in Northern Mississippi wherein I stated my opposition to his nomination and requested to testify in front of the Committee. Additional investigation to the court records here in Alcorn County, MS, along with my personal interviews, have led me to believe that my earlier opinion was, perhaps, premature. The purpose of this letter is to retract my previous one and to let you know that I am now of the opinion that Judge Biggers will be a fair and impartial Federal judge.

That is signed by Robert F. Copeland.

Judge Biggers, I believe you served as a district attorney for the first judicial district of Mississippi from 1968 to 1975.

Judge BIGGERS. That is correct, Senator.

The CHAIRMAN. Since that time, I understand you have served as a circuit court judge for the same district.

Judge BIGGERS. Yes, sir.

The CHAIRMAN. And that you are still serving in that capacity, I believe.

Judge BIGGERS. Yes, sir.

The CHAIRMAN. I am confident that you are very knowledgeable of State laws. I am just wondering if you foresee any difficulty in the transition from the State court to the Federal district court.

Judge BIGGERS. Senator, I really do not. The Federal rules of civil procedure and the Mississippi State rules of civil procedure are identical; and of course, the constitutional law in the criminal area is the same whether you are in State court or Federal court.

The only difference that I see that I would be involved with in Federal court that I am not involved with now would be certain civil constitutional questions that come up, and they are not areas that I think would cause any great difficulty.

I think I can learn them. I am never going to know all the law. I think I will always be learning every week something new and I do not foresee any problem with learning this area also.

The CHAIRMAN. Judge, in response to a portion of the committee questionnaire concerning judicial activism, you stated in part, "The legislative branch of Government is better equipped to determine policy matters. The role of an administrator or watchdog over other institutions would better be left to other areas of the government."

Now, what are the standards that you will use in deciding that your court might have a continuing administrative responsibility to oversee the implementation of one of its orders?

Judge BIGGERS. One standard that I think would be applied, Senator, would be a case in which there is no other governmental agency to insure that the order is carried out other than the court.

For example, there is a case now, *Gates* v. *Collier,* in the Federal courts in Mississippi involving a continuing watchdog study of the State prison system. In that case, a few named plaintiffs came in and objected to conditions there.

The court granted the relief that they prayed for and held that the State was to make continuing reports to the court concerning whether or not the system was being changed to abide by the orders of the court.

In that instance, that's an example where it seems to me that there is no other governmental agency that can insure that those orders are going to be carried out other than the court itself.

But if there is any other governmental agency that could be an overseer of courts' orders, I think they should do it.

The CHAIRMAN. Now, some Federal judges have practically taken over the running of certain State institutions, taken over the running of schools and other matters which many feel are reserved under the Constitution to the States of the Nation, because all powers not specifically delegated to the Union are reserved to the States under the Constitution.

How do you feel about matters of this kind?

Judge BIGGERS. As I stated in the questionnaire, I believe that the courts are not best equipped to be administrators and overseers. As Justice Jackson said one time, we must presume that there are other governmental agencies besides the courts that have the capacity to govern.

In my opinion, the legislative branch is better equipped to establish policy and to see that that policy is enacted than are the courts. The courts, in my opinion, are not equipped to be overseers and administrators. They are there in my opinion, the primary function of a court is to settle a dispute that is brought before it between parties, and once that dispute is settled, the case is disposed of.

The CHAIRMAN. The Constitution provides that we have the three branches. The Congress to make the law, the executive branch to administer the law, and the judicial branch to interpret the law.

Do you feel that the judicial should confine itself to the way the Constitution set it out?

Judge BIGGERS. Most of the time, yes, sir. Of course, if it is clear what the Constitution meant and what the writers of the Constitution had in mind, then all the times it should confined to that.

Certainly in some instances, I feel that we have areas that we are involved in now in Government that the writers of the Consti-

tution never had the slightest idea that the Government would be involved in now.

For example, interstate commerce, the clause dealing in interstate commerce is an example. I am sure the writers had no idea back in 1787 what was going to be involved in interstate commerce in 1984.

But if it is clear, if the meaning is clear, I lean toward the strict construction of the Constitution.

The CHAIRMAN. I am glad to hear you say that.

I believe there was a decision handed down a few years ago by the Interstate Commerce Commission in which they held a man who is running an elevator in a building to just haul people up and down the building was in interstate commerce simply because some of the businesses in that building did business in interstate commerce.

To me, such a holding is ridiculous, and it seems to me we ought to observe the intent of the framers of the Constitution. If we do not like that, then move to amend the Constitution but not try to do it by statute or cointerpretation.

Do you agree with that?

Judge BIGGERS. I agree with it, Senator.

The CHAIRMAN. Now, judge, on some occasions I have observed that some Federal judges have been rather overbearing. I have seen some in the courtroom that many people felt were overbearing, discourteous to witnesses, to jurors, to lawyers, and there is really no excuse for this. I think it is a lack of good judicial temperament.

How do you feel about that?

Judge BIGGERS. I feel that it is a lack of judicial temperament and to some extent just common courtesy. It has always been my attempt to decide a case on the merits of the case, on the issues involved, on the law and on the facts that are presented and not on the personalities of the people who are involved in the case.

We all have our humanity and there are some people who come before the court that we like. Some people who come before the court that we might not like personally, but I have always tried, and I think any judge should set that aside and decide the case on the merits that are there and not on the people who are involved.

The CHAIRMAN. In 1980, prisoner petitions comprised approximately 14 percent of all U.S. district court civil litigation filings. Various proposals have been made to limit collateral attacks on convictions including additional requirements calling for complete exhaustion of State remedies, time limitations on the filing of petitions and eliminating master's authority to hold evidentiary hearings.

As I stated earlier, you have been a prosecutor and now serve as a State court judge. With this background, do you feel there is a need to alter the degree of access to Federal courts by State prisoners, and if so, what recommendations in this area would you make?

I might say we recently passed a bill here in the Senate, habeas corpus, to limit the time of appeal for cases that have gone through all the State courts, and I believe it allows one year for any other appeal in the Federal court. The rise in the Federal court I believe is a 2-year period.

There has to be an end to this litigation, and not just on and on and on. I was just wondering from your experience as a prosecutor and a judge how you feel about it.

Judge BIGGERS. Well, Senator, we see eye to eye on that. I have felt frustrated over the years with cases that never seem to end. I think the harshest criticism that the judicial branch of Government in this country faces now results from the laymen who look at the cases and they say there is no end to them, and they cost too much. It costs too much to process them, and they never end.

It would appear to me that as far as this area of State prisoners having access to the Federal courts is concerned that the Congress, who I suppose will be the ones that would have to do it, would serve the country well in coming up with a solution to this problem of double appeals that we have, and I do not know how it could be done.

However, one possibility that comes to mind is creating a special Federal court. Of course, in a criminal case in State court, once the supreme court of the State decides that case and it passes on the constitutional questions, it can be appealed from there to the U.S. Supreme Court.

As you know, because of their tremendous workload, in 99 percent of the cases the U.S. Supreme Court denies certiori. In doing that, they do not pass on the Federal questions, and it leaves open the possibility of the defendant coming back up through the Federal district court through these habeas corpus hearings.

I recently had a case that I was involved in that was 10 years old before it was finally disposed of, a criminal case, and that is just too long.

One possibility that I have heard mentioned, which would have to be an enactment of Congress, would be to establish some kind of a special intermediate court of appeals to which the State prisoners would appeal to after affirmance by the State supreme court; and that court of appeals would decide the Federal questions that are brought before it on that case.

From that court of appeals, then it would go to the U.S. Supreme Court, and if the Supreme Court denies certiorari, then the Federal questions have been decided. The defendant has had his day in court, access to the Federal courts, and it has been decided, and he would not, thereafter, have the opportunity to start down at the Federal district court level and go all the way back up the ladder again.

THE CHAIRMAN. Sometimes a judge may have a certain feeling of conscience or sense of justice in one direction but it may conflict with the clear meaning of a statutory or constitutional provision.

I presume you would resolve that in favor of the clear meaning of the constitutional provision or the statute, even though it would not be your feeling if you were making the law?

Judge BIGGERS. I would, Senator. Of course, you take an oath to uphold the Constitution of the United States and the laws thereof. I think that takes precedence.

The CHAIRMAN. Well, I hope you enjoy your service on the bench. Again, I want to say that you are fortunate to be endorsed by very highly respected Senators here, Senator Cochran and Senator Stennis. I have been in the Senate with Senator Stennis for a long time

and there is no one respected here higher than he is, and Senator Cochran has made a very fine impression since he has been here, and I am very pleased that you have the endorsement of both of these gentlemen.

Judge BIGGERS. I am, too, Senator. They both were outstanding lawyers before they got here and I know they have a great respect for the law and that makes their recommendation more meaningful to me.

The CHAIRMAN. Do you have anything else you want to say?

Judge BIGGERS. No, sir.

THE CHAIRMAN. That concludes the hearing.

[Whereupon, at 2:33 p.m., the committee adjourned at the call of the Chair.]

BIOGRAPHY

NEAL B. BIGGERS

NOMINEE, U.S. DISTRICT JUDGE, NORTHERN DISTRICT OF MISSISSIPPI

Birth: July 1, 1935, Corinth, MS.

Legal residence: Mississippi.

Marital status: Married to Jo Anne Abernathy Biggers, 1 child.

Education: 1953-55—University of Mississippi; 1955-56—Millsaps College, B.A. degree; 1960-63—University of Mississippi Law School, J.D. degree.

Bar: 1963—Mississippi.

Military service: 1956-60—U.S. Naval Reserve.

Experience: 1963-68—Private practice; 1968-75—District attorney, First Judicial District of Mississippi; 1975 to present—Circuit court judge, First Judicial District of Mississippi.

CONFIRMATION HEARING ON:

ROBERT R. BEEZER, H. RUSSEL HOLLAND, AND EDWARD C. PRADO

TUESDAY, MARCH 20, 1984

U.S. 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. Strom Thurmond (chairman of the committee) presiding.

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The CHAIRMAN. The committee will come to order.

We had some emergencies to arise here to detain us a few minutes.

Today, we are met to consider the nomination or Robert R. Beezer, of Washington, to be U.S. circuit judge for the ninth circuit, and H. Russel Holland of Alaska, to be U.S. district judge for the District of Alaska, and Edward C. Prado, of Texas, to be U.S. district judge for the Western District of Texas.

I believe we have some distinguished Senators here this morning. You are here, I presume, in the interest of Robert R. Beezer to be a circuit judge. Is that correct?

Senator GORTON. That is correct, Mr. Chairman.

The CHAIRMAN. We have the able and distinguished Senator from Washington here, who has only been here a few years, but he is now the senior Senator, and we are very pleased to have him, an able former attorney general and an excellent Member of the Senate.

We will be glad to hear from you now, Senator.

STATEMENT OF HON. SLADE GORTON, A U.S. SENATOR FROM THE STATE OF WASHINGTON

Senator GORTON. Thank you, Mr. Chairman. Senator Evans and I are both pleased and honored to introduce Mr. Robert R. Beezer of Seattle to this committee.

Mr. Beezer is President Reagan's nominee for a vacancy on the U.S. Court of Appeals for the Ninth Circuit. Mr. Beezer is a partner in one of the most prestigious law firms in the Northwest, Schweppe, Krug, Towsend & Beezer. He is a past president of the Seattle-King County Bar Association, a former governor of the

Washington State Bar Association, and is named in the publication "The Best Lawyers in America."

His active participation in the legal community of the State of Washington will serve him well as he undertakes the difficult task of filling the position held by my distinguished friend, the Honorable Eugene Wright who, until his recent transfer to senior status.

Mr. Chairman, I wish Mr. Beezer well in that challenge. I am confident that he possesses the talent necessary to meet it in a highly distinguished fashion.

Now, I would yield, if I may, to my colleague, Senator Evans.

The CHAIRMAN. We are very pleased to hear from the able junior Senator from Washington, Senator Evans.

STATEMENT OF HON. DANIEL J. EVANS, A U.S. SENATOR FROM THE STATE OF WASHINGTON

Senator EVANS. Thank you, Mr. Chairman. I would like to second the remarks of my colleague from Washington. I have known Bob Beezer for many, many years. In fact, in reminiscing, I remember very well that as a candidate for the State legislature more than a quarter of a century ago, his father, Arnold Beezer, another distinguished attorney from Seattle, was one of the leaders of that legislative district and of great assistance to me during my first campaign.

I am confident Mr. Beezer has the qualifications not only for the task he faces, but the ability to become a distinguished jurist. He is someone who will represent not only the State of Washington, but the United States, exceedingly well on the Ninth Circuit Court of Appeals.

The CHAIRMAN. Mr. Beezer, I congratulate you upon having the support of your Senators, and I can assure you that this will go a long way in your confirmation.

We thank you Senators for being present. You may stay, or leave, whichever you prefer.

We will have the Senators from Alaska next. Senator Stevens, I notice, is here, and Senator Murkowski. Do you want to come around with Mr. Holland?

We are very pleased to have our able and distinguished assistant majority leader here, and we will be pleased to hear from him at this time. Senator Stevens.

Senator STEVENS. Thank you very much, Mr. Chairman.

Let me put my full statement in the record, if you will.

The CHAIRMAN. Without objection, your entire statement will go in the record.

Senator STEVENS. It is a real privilege to introduce to you Russel Holland, with whom I practiced law prior to coming to the Senate, and I will say to my good friend, the Chairman, that I don't think any Senator has ever done what I did. I just walked away from my law firm and completely trusted Mr. Holland to be totally honest and open with me in handling all of the disbursements of funds and the handling of the cases that came in. I didn't sell him the firm, he just acquired it.

He has done extremely well. He treated me as he has every other member of the bar and the public, in an honest, and open

and frank way, and he has been selected from a group of candidates upon whom the Alaska Bar Association conducted a survey. In that survey, it was apparent that Russ' colleagues thought highly of him, and we are most pleased that the President recognized these qualities and nominated him for this judgeship.

So I want to tell you that without qualification Russel Holland will be a very distinguished U.S. judge.

[Material submitted for the record follows:]

PREPARED STATEMENT OF SENATOR TED STEVENS

Mr. Chairman, I want to thank you and other members of the committee for scheduling the hearing today on Mr. Holland's nomination. I realize the considerable time constraints you and other members of the committee have been operating under in recent weeks. I especially want to thank you, Mr. Chairman, for all your assistance in expediting the review of Mr. Holland's nomination.

Members of the committee, today it is my pleasure to introduce to you Russ Holland, who is the President's nominee to the United States District Court for the District of Alaska. The Alaska delegation solidly supports this nomination. Mr. Holland is from Anchorage, Alaska, and he is well known and well regarded as a trial lawyer in our State. Mr. Holland has been a member of the Alaska bar since 1963. He was an assistant United States Attorney in Alaska from 1963 through 1965. He obtained his education, both undergraduate and graduate, at the University of Michigan.

Mr. Chairman, I can speak from personal experience that Russ' knowledge of the law and his lawyering skills are excellent. More importantly, however, is the judicial temperament I believe he will bring to the Federal bench, Russ feels as I do that judges are better off executing the law rather than rewriting it. I know he won't hesitate to do the best job that he can in balancing the collective interests of our society against those of individuals, but he will at the same time exercise the type of judicial restraint that I believe is now needed in our Federal court system.

Again, Mr. Chairman, it gives me great pleasure to introduce to you an Alaskan that I, Senator Murkowski and all of Alaska are very proud of, Mr. Russel Holland.

The CHAIRMAN. Thank you very much, Senator. We are honored to have you before this committee.

Now, we will be glad to hear from the able junior Senator, Senator Murkowski.

STATEMENT OF HON. FRANK H. MURKOWSKI, A U.S. SENATOR FROM THE STATE OF ALASKA

Senator MURKOWSKI. Thank you, Mr. Chairman.

I join with my colleague, the senior Senator, Senator Stevens, in supporting the confirmation of Russ Holland for U.S. district judge in Alaska. Russ has practiced law in excess of 20 years, and certainly has distinguished himself as a fair and honest attorney who has always provided the very highest standard of legal service to his clients.

He is known in my State as an industrious and thoughtful individual, and he will certainly make an excellent addition to the Federal judiciary.

I very much appreciate the opportunity to appear in support of the confirmation of my good friend and distinguished Alaskan, Russ Holland, for U.S. district judge.

I thank you.

Senator STEVENS. Mr. Chairman, if you will let me put one other matter on the record, that is, we have very few district judges, as you know, in Alaska, and the incumbent is stepping down and is going to leave the State for a substantial period of time. I am most

hopeful, we are most hopeful, that we will be able to move Mr. Holland's nomination along so that we will have two sitting judges at all times in Alaska.

We will be pleased to work with the chairman and the members of the committee in any way to see to it that that takes place following the committee's determination, of course, of his qualifications.

The CHAIRMAN. Senator, we will put him on the agenda for the next meeting, which will be Thursday of this week. At that time, we hope to have a quorum, and we can get him confirmed by the committee. Thank you, Senator. We are glad to have you with us, and I want to say, Mr. Holland, that you are fortunate to have the full support of both your Senators. They are both held in high esteem here. We hope to act on your nomination in a very expeditious manner. We are very pleased to have you.

If you Senators want to stay, you may, although if you have to leave, I know you are busy. We will question him in a few minutes.

Thank you.

Senator STEVENS. Thank you.

Senator MURKOWSKI. Thank you very much.

The CHAIRMAN. I see the senior Senator from Texas is here, Senator Tower. I believe you are here, Senator, in the interests of Mr. Prado of Texas. We will be glad to hear from you.

STATEMENT OF HON. JOHN TOWER, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator TOWER. Thank you very much, Mr. Chairman. I appreciate the opportunity to appear this morning and present to the committee Edward Charles Prado of San Antonio, TX, the President's nominee to be a Federal district judge for the western district of Texas.

I would like to submit my entire statement for incorporation into the record, if I may.

The CHAIRMAN. Without objection, your entire statement will go in the record.

[The prepared statement of Senator Tower follows.]

PREPARED STATEMENT OF SENATOR JOHN TOWER

Mr. Chairman, I am pleased and honored to introduce to you today Mr. Edward Charles Prado, who has been nominated by the President to the U.S. District Court for the Western District of Texas.

Ed Prado is a native of San Antonio, where he is well-known and respected. After graduating from Edgewood High School, Mr. Prado attended San Antonio Junior College and the University of Texas at Austin, where he received his Bachelor of Arts degree. He then entered the University of Texas School of Law from which he received his Juris Doctor degree in May 1972.

Upon graduation from the University of Texas, he was commissioned as a Second Lieutenant in the U.S. Army, having been named Distinguished Military Graduate at the University. Mr. Prado served as an infantry officer and is presently a Captain in the U.S. Army Reserve on inactive status.

In addition to his impressive academic and military record, Mr. Prado has also had considerable experience in the legal profession. In 1972 he served as Assistant District Attorney for Bexar County, prosecuting primarily criminal matters. In 1976 he was named Assistant Federal Public Defender for the Western District of Texas and served in this capacity for four years, thus giving him extensive experience on the defense side of the Federal docket. During his service in this capacity, he was selected as Outstanding Federal Public Defender.

In February, 1980, Mr. Prado was appointed as a State District Judge in Bexar County. The honors which he received during the 1972 to 1980 period are indicative of his competence and the enormous respect that he has earned from his colleagues and community.

He was named outstanding Young Lawyer of San Antonio, in 1980, and also received the U.S. Attorney General's Achievement Award and the LULAC National Conference Award for Meritorious Legal Service.

In 1981, the President nominated Mr. Prado as U.S. Attorney for the Western District of Texas, a position which he now holds and which he has held with distinction since his nomination and confirmation by the Senate. Indeed, his integrity and expertise as an attorney, coupled with his devotion to the legal profession and his community, are demonstrative of all the qualities necessary in a member of the Federal bench. Further, he possesses that sort of judicial temperament that would greatly enhance our Federal judicial system.

Mr. Chairman, in my view if Mr. Prado is confirmed by the Senate, he will bring these same outstanding qualities to the Federal bench. He has demonstrated fairness and adherence to the precepts of the Constitution, an intimate knowledge of the law, and compassion for his fellow human beings. Should he be confirmed, I am confident of his ability to assume this important position.

Mr. Chairman, this nomination signifies the commitment of this Administration to appoint the most qualified jurists to our Federal judiciary, I believe that Edward C. Prado can and will fulfill the enormous responsibility of providing a fair and impartial system of justice, a right guaranteed by our Constitution to all of our citizenry.

Therefore, I recommend without reservation that you approve the nomination of Edward Prado to this important position.

The CHAIRMAN. If you care to say anything in addition, we will be glad to hear from you.

Senator TOWER. Mr. Chairman, this young man was chosen from a field of very outstanding potential candidates for the Federal judgeship in the western district of my State. He is a distinguished graduate of the University of Texas Law School, and has been engaged in private practice. He has served as a public defender, a State district judge, and currently serves as the Federal district attorney for the Western District of Texas.

This young man is qualified in every way for the position to which he has been nominated. He is very fairminded, evenhanded, and I believe, very importantly, possessed of an excellent judicial temperament.

He has very, very strong support from his fellow members of the bar, and I recommend him for confirmation without any qualification or reservation.

I might add, knowing that you are interested in such matters, Mr. Chairman, that he is also a Reserve captain in the Army of the United States, having served as an infantry officer in the Army, and has that rich aspect of his background.

I would like to somewhat echo the words of Senator Stevens and urge that this appointment be confirmed as expeditiously as possible. We have a very, very crowded docket in the Western District of Texas. We deal with quite a lot of criminal matters, including drug trafficking, in that particular district. So it is a very heavily laden docket, and I think the interests of justice would be well served if he could be expeditiously confirmed.

Again, Mr. Chairman, I thank you for the opportunity to appear, and I am very proud and pleased, and consider it a personal honor, to strongly and without reservation or qualification recommend this young man for the position of judge of the Federal Western District of Texas.

The CHAIRMAN. Thank you very much, Senator. We are glad to have you here.

I want to congratulate Mr. Prado for having your fine support. Mr. Prado, you have got the support here of one of the most powerful men in Washington, Senator Tower. Unless something shows up we don't know about, you will have no trouble getting confirmed, I am sure. We will put you on the agenda for next Thursday, so your nomination can come up at that time.

Thank you, Senator, for your presence.

Senator TOWER. Thank you, Mr. Chairman.

The CHAIRMAN. If you want to stay, feel free. If you don't, I know you are busy, and you may leave.

Senator TOWER. I don't know that my staying would help him any, because he can answer the tough questions a lot better than I can. He doesn't need any coaching from me. Thank you, Mr. Chairman.

The CHAIRMAN. We will now take up the nominations in the order in which they came up. Mr. Beezer will come first, and Mr. Holland and Mr. Prado.

If all three of you gentlemen will stand, I will swear you at the same time.

Do you solemnly swear the testimony you will give in this hearing will be the truth, the whole truth, and nothing but the truth, so help you God.

Mr. BEEZER. I do.

Mr. HOLLAND. I do.

Mr. PRADO. I do.

The CHAIRMAN. All right. We will take Mr. Beezer first. Your biographical material will be placed in the record.

Mr. Beezer, do you have any family or friends here you want to introduce?

TESTIMONY OF ROBERT R. BEEZER, NOMINEE, U.S. DISTRICT JUDGE, NINTH CIRCUIT

Mr. BEEZER. Yes, Mr. Chairman, I would like to introduce to you my wife, Hazlehurst.

The CHAIRMAN. Is that your wife, or your daughter, standing up back there?

Mr. BEEZER. I do have some friends both from the District of Columbia Bar and from the Washington State Bar who are in attendance, and I will not introduce them individually.

The CHAIRMAN. We are very pleased to have you all with us.

I am interested in the judicial temperament of a man who goes on the Federal bench. I have seen some Federal judges intimidate lawyers and witnesses and jurors, and I think it is just entirely uncalled for.

How do you feel about the attitude of a Federal judge, what it should be in dealing with others in the courtroom?

Mr. BEEZER. Mr. Chairman, I feel very strongly that courtesy is a virtue that should be possessed by all of us. There is really no excuse for being rude to counsel, to the parties, court personnel, clerks, and others who are part of the judicial process. I would expect to conduct myself in judicial life as I have tried to do with

my own clients, my associates, and partners, in the office, the office staff and help and clerks, and that is to be guided by the principle of courtesy.

I think that will take one a long way in terms of the conduct of judicial business.

That, however, is not to say that courts aren't governed by rules which require adherence, and in turn firmness.

In applying rules, one can do so courteously and at the same time be firm about it, and certainly not be publicly critical of young attorneys, of practitioners that are trying their first case or making their first arguments before the court, and do what can be done behind the scenes to encourage more education and more quality for practitioners, but not to engage in public criticism which has been quite rampant in the press of late.

The CHAIRMAN. I have got 20 minutes here to hear from you three judges, so if you all will make your answers as short as you can, we will appreciate it.

Suppose you had a matter come up in which you had a strong opinion, and yet the clear meaning of a statute or a constitutional provision is the other way. How would you rule on that?

Mr. BEEZER. Mr. Chairman, I will take an oath that affirms that I will support and defend the constitution of the United States, and there is really no choice given to me but to follow the constitutional principles.

The CHAIRMAN. On the other hand, I might ask you this question, now.

Suppose the courts had handed down decisions one way, but you are absolutely convinced that the interpretation was wrong, that it should be construed another way. How would you rule then?

Mr. BEEZER. If my convictions were bottomed in constitutional principles, I certainly would follow that in terms of a dissent if that were required. I believe that appellate courts should attempt to resolve their differences and to speak with a single voice, but if a constitutional principle were involved, I would have no difficulty in being the lone dissent or the voice in the wilderness, if you will.

The CHAIRMAN. Down through the years, courts have reversed themselves because they reach different conclusions, and I am glad to hear you take that position.

Mr. Beezer, a recent annual report of the Executive Administrative Officers of the U.S. Courts indicated that the workload of the 12 U.S. Courts of Appeal continues to rise. Approximately 28,000 new appeals were filed in 1982. This represents a 50-percent increase over the previous record of 1981, and a 68-percent increase above the number of appeals filed for 1975, and 1982 was also the first year that filings exceeded the level of 600 per panel.

Do you have any recommendation as to how the number of cases on appeal can be reduced?

Mr. BEEZER. Mr. Chairman, the jurisdiction of the Court of Appeals is fixed by Federal statute, and if the wisdom of Congress is to deny appeals from administrative proceedings and other matters that have been built into the statutes, that is going to cut back on the number of cases filed.

I don't see any way to say to a party or his attorney, "As long as you are within the jurisdictional requirements of the Court of Ap-

peals, you can't file." I know the court is dismissing some cases on technical grounds. I know that the court is limiting oral argument in some cases, but the basic filings are going to continue to rise.

I know in the ninth circuit, we have over 150,000 attorneys, I believe, in all the States and territories involved. There is a tremendous market out there for litigation, and the attorneys are going to keep filing, and the courts are going to hear those appeals as long as the jurisdictional requirements remain as they are.

The CHAIRMAN. I think those are all the questions we have.

Mr. BEEZER. May I express my thanks to you, Mr. Chairman, for conducting these hearings so promptly following the appointment—nomination—of March 1.

The CHAIRMAN. We hope we get you on the agenda for next Thursday, and we hope you have a nice service on the bench.

Mr. BEEZER. Thank you, sir.

The CHAIRMAN. We ask Mr. Holland, now, to come around.

Without objection, Mr. Holland, we will place your résumé in the record.

I believe you were born in Michigan, attended the University of Michigan, and law school there, too.

TESTIMONY OF H. RUSSEL HOLLAND, NOMINEE, U.S. DISTRICT JUDGE, DISTRICT OF ALASKA

Mr. HOLLAND. Yes, sir, that's correct.

The CHAIRMAN. Mr. Holland, as I understand, you were a law partner of Senator Stevens?

Mr. HOLLAND. Yes, sir, I was, some 15 years ago.

The CHAIRMAN. How many members did you have in your firm?

Mr. HOLLAND. At the last, Senator, there were just the two of us. Prior to that, we were a part of a somewhat firm, perhaps five, six members.

The CHAIRMAN. Do you have any members of your family here you want to introduce?

Mr. HOLLAND. Thank you, Senator. I do not. I am here alone today.

The CHAIRMAN. You are a long way from Alaska to bring people.

Mr. HOLLAND. I am, sir.

The CHAIRMAN. Now, you have been a practicing attorney, I believe, since 1965. Is that right?

Mr. HOLLAND. Yes, that's correct.

The CHAIRMAN. You have been nominated for the position of U.S. district judge for the District of Alaska. Now, what do you feel will be the most rewarding aspect of serving in this capacity?

Mr. HOLLAND. Mr. Chairman, I think one of the most rewarding aspects of this job, for me, would be to get out of the role of being an advocate. While I have enjoyed that, I sometimes find it frustrating in that I tend to form conclusions about how things ought to be done, and I would like to see them effected, and I think serving in the capacity of a judge, where I can resolve disputes, rather than participate in them, would probably be the most rewarding aspect of the job.

The CHAIRMAN. Some judges, Federal judges especially, have taken to themselves, it seems, an arrogance of power, and they

have attempted to take over school districts, and they have attempted to inject themselves into matters that are under State institutions, and issue rules and regulations, and they are really going beyond their scope of authority.

Now, we not only have the separation of powers of the three branches, but you have a division of powers. The Federal Government has only those powers under the Constitution which have been specifically delegated to it in the Constitution. The States have all other powers. I assume you agree with that?

Mr. HOLLAND. Yes, sir.

The CHAIRMAN. Now, will it be your intention as a judge to leave to the local States the running of their own institutions and confine your jurisdiction as provided in the Constitution?

Mr. HOLLAND. Very definitely, Mr. Chairman. The Constitution and the Federal laws on occasion come in conflict with State matters, and when that happens, those disagreements, those conflicts, must be resolved, but otherwise, the States ought to be limited, and left, to doing their business without interference from the Federal courts.

The CHAIRMAN. Has your practice been mostly criminal, or civil, or a combination?

Mr. HOLLAND. My practice has been almost exclusively civil, Senator.

The CHAIRMAN. Do you think you will have any difficulty in criminal cases?

Mr. HOLLAND. No, I don't. Quite fortuitously, there is the Judiciary Center School coming up next week, and I plan to take off from my practice some 6 weeks before I would be sworn in to bone up on a number of things.

The CHAIRMAN. That would be very helpful. Of course, young lawyers generally start out in the criminal field and kind of make a reputation and get before the public. They end up, generally, in the civil field, where they make more money. And so, evidently, you have arrived at that state already.

Mr. HOLLAND. Yes, sir, that is essentially what happened to me.

The CHAIRMAN. We wish you a successful tenure on the bench, and your nomination will be on the agenda for next Thursday.

Mr. HOLLAND. Thank you very much, Mr. Chairman. I would like to thank the Senators for the support that I received from them, and I thank you very much.

The CHAIRMAN. You are now excused.

Our next candidate is Mr. Prado, Judge Prado. Will you come around, Judge?

Judge Prado, you have previously served, I believe, as a State district judge for Bexar County. Is that right?

TESTIMONY OF EDWARD C. PRADO, NOMINEE, U.S. DISTRICT JUDGE, WESTERN DISTRICT OF TEXAS

Mr. PRADO. Yes, Mr. Chairman, that is correct.

The CHAIRMAN. How is that pronounced?

Mr. PRADO. "Bayer."

The CHAIRMAN. And how do you spell it?

Mr. PRADO. The "x" is silent in the spelling, B-e-x-a-r. It is an Indian term and, like Mexico, the "x" is pronounced like a "j." Really, it should be "Bayhar," but Texans, now, we pronounce it "Bayer," just make the "x" silent.

The CHAIRMAN. It is spelled "Bexar," but pronounced "Bayer"?

Mr. PRADO. That is correct.

The CHAIRMAN. I am glad to learn some Texas pronunciations.

Now, I believe at present you are U.S. attorney for the Western District of Texas.

Mr. PRADO. Yes, sir.

The CHAIRMAN. How long have you been district attorney there?

Mr. PRADO. A little over 3 years.

The CHAIRMAN. Have you enjoyed your work there?

Mr. PRADO. Yes; it has been very challenging, very exciting, representing the United States in court, whether it be a criminal case, or representing Mr. Watt, or Mr. Block.

The CHAIRMAN. Have you actually tried cases there as district attorney, or have you left it to your assistants, mostly?

Mr. PRADO. Our office has 29 assistants, and sometimes it is quite a bit of a headache to try to be the administrator of that office, but I have managed to get into court and be involved in some of the more significant criminal trials that we have had in our district.

The CHAIRMAN. I guess you have overseen cases that were tried, though, whether you tried them yourself or not. You more or less supervised them, I presume, as district attorney.

Mr. PRADO. Yes, sir, most definitely. We have all types of cases, and we are so spread out that I do get around the district and see what the assistants are doing.

The CHAIRMAN. I presume you feel this experience has been helpful to you, and will be helpful when you become a Federal judge.

Mr. PRADO. Oh, most definitely. I have either been involved in, or supervised, almost every type of Federal case that is imaginable that can come before the court, and it, and it has given me quite a deal of experience and has prepared me well, I think, for a State judgeship—for a Federal judgeship.

The CHAIRMAN. We have recommended in this crime package we passed, and also in a separate bill on sentencing that a crime commission be set up, a sentencing commission be set up. Some judges might give 2 years for a crime, and another one 30 years. We feel that some go too far either way, and so this commission is going to recommend some standards or guidelines. Do you think that would be helpful?

Mr. PRADO. Yes, sir; I have seen it firsthand, first as a Federal public defender and now, more recently, as U.S. attorney. I have seen inconsistencies in very similar cases. I have seen an individual go into one court and get a slap on the wrist, and almost the same fact situation in another court, where someone gets a lot more severe sentence, and it was just a matter of the luck of the draw as to what judge they were before, and in discussing this with my colleagues from around the country, other U.S. attorneys, I see the inconsistencies in the different regions of our country.

There has to be some consistency in order to have a fair system of sentencing throughout the country.

The CHAIRMAN. You heard the other question I asked a few moments ago about judicial activism by Federal judges taking over authorities that really belong to the States, trying to run school districts and State institutions and so forth.

How would you feel about that?

Mr. PRADO. I think that the role of a judge is to preside and decide over the controversy that is before him, and to try to restrict his decisionmaking as much as possible to that controversy or that case that is before him, and if at all possible try to avoid making overextensive decisions that have overall impacts throughout the country, or throughout an area. He should try to be as restrictive to the controversy that is before him as possible.

The CHAIRMAN. Under the division of powers, the Federal jurisdiction extends in certain directions, and then it stops. The States have authority, too. I am a strong believer in preserving the rights of the States. As long as we have 50 strong States, I don't think you will ever have a dictator to arise in this country. But if the Federal Government centralizes more and more power in Washington and deprives the States of their authority and their rights, they become nothing more than territories. I am in favor of keeping strong States, and I think we should preserve that distinction between the authority of the Federal Government and the authority of the States. How do you feel about that?

Mr. PRADO. I agree with you, Senator. Having been in the Federal system as an attorney exclusively for some time, I have come across some abuses of the powers that Federal judges have, and I certainly have a lot more respect for a judge, a Federal judge, because of that, and it has made me aware of some of the abuses that can happen when a Federal judge overextends his authority and attempts to get involved in administrative matters which should be left to local government.

The CHAIRMAN. Without objection, we will place your résumé in the record.

Do you have anything else you want to say?

Mr. PRADO. Yes, sir, if I could introduce my family, who are up here with me.

The CHAIRMAN. We would be glad to have you to introduce your family, and any friends you have here with you at this time.

Mr. PRADO. Present with me today is my mother, Mrs. Bertha Prado, my wife, Maria, and our son, Edward, who is in the first grade, and is on spring break and was lucky enough to be able to come up here with us.

The CHAIRMAN. We are glad to have all of you with us on this occasion.

We hope you enjoy your service on the bench, and we will have your nomination before the committee next Thursday, on the agenda at that time. I hope we can get it expedited.

I hope you enjoy your service on the bench.

Mr. PRADO. Thank you.

The CHAIRMAN. That completes the hearing. We now stand adjourned.

[Whereupon, at 10:46 a.m., the committee was recessed, to reconvene subject to the call of the Chair.]

BIOGRAPHIES

ROBERT R. BEEZER

NOMINEE, U.S. CIRCUIT JUDGE, NINTH CIRCUIT

Birth: July 21, 1928, Seattle, WA.
Legal residence: Washington.
Marital status: Married to Hazlehurst Plant Smith Breezer, 3 children.
Education: 1946-48—University of Washington; 1950-51—University of Virginia, B.A. degree; 1953-56—University of Virginia, Law School, LL.B. degree.
Bar: 1956—Washington.
Experience: 1956 to present—Schweppe, Krug, Tausend & Beezer (firm has had several different names).

H. RUSSEL HOLLAND

NOMINEE, U.S. DISTRICT JUDGE, DISTRICT OF ALASKA

Birth: September 18, 1936, Pontiac MI.
Legal residence: Alaska.
Marital status: Married to Hazlehurst Plant Smith Beezer, 3 children.
Education: 1954-58—University of Michigan, B.A. degree; 1958-1961—University of Michigan Law School, LL.B. degree.
Bar: 1963—Alaska.
Experience: 1961-1963—Law Clerk, Chief Justice Nebit, Alaska Supreme Court; 1963-1965—Assistant U.S. attorney, District of Alaska; 1965-1966—Stevens & Savage, associate; 1966—Stevens, Savage, Holland, Reasor & Erwin, partner; 1967—Stevens, Savage, Holland, Erwin & Edwards, partner; 1967-68—Stevens & Holland, partner; 1968-1970—Private practice; 1970-1978—Holland & Thornton, partner; 1978—Holland, Thornton & Trefry, partner; 1978 to present—Holland & Trefry, partner.

EDWARD C. PRADO

NOMINEE, U.S. DISTRICT JUDGE, WESTERN DISTRICT OF TEXAS

Birth: June 7, 1947, San Antonio, TX.
Legal residence: Texas.
Marital status: Married to Maria Anita Jung Prado, 1 child.
Education: 1965-67—San Antonio Junior College, A.A. degree; 1967-69—University of Texas, B.A. degree; 1969-72—University of Texas School of Law, J.D. degree.
Bar: 1972—Texas.
Military service: 1972-1980—U.S. Army Reserve.
Experience: 1972-1976—Assistant district attorney, Bexar County; 1976-1980—Assistant Federal Public Defender, Western District of Texas; 1980—State district judge, 187th Judicial District, Bexar County; 1981 to present—U.S. attorney, Western District of Texas.

CONFIRMATION HEARING ON:

JOSEPH J. LONGOBARDI, EDWARD LEAVY, TERRENCE W. BOYLE, AND WILLIAM D. BROWNING

WEDNESDAY, APRIL 11, 1984

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met at 2:05 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Strom Thurmond (chairman of the committee) presiding.

Also present: Senator Biden.

Staff present: Vinton DeVane Lide, chief counsel and staff director; Deborah K. Owen, general counsel; Mark H. Gitenstein, minority chief counsel; and Deborah G. Bernstein, chief clerk.

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The CHAIRMAN. We meet this afternoon to hold confirmation hearings on judges. The first one—I believe the Senator from Delaware is here—Joseph J. Longobardi.

Is that the way you pronounce it?

STATEMENT OF HON. WILLIAM V. ROTH, JR., A U.S. SENATOR FROM THE STATE OF DELAWARE

Senator ROTH. Thank you very much. I want to express my personal appreciation to you for scheduling this confirmation hearing so promptly.

Let me say at the outset that I very strongly support Vice Chancellor Longobardi for this most important position. I say that because he brings to the Federal district court a remarkable background of experience and knowledge, having served on two State courts, having worked in the attorney general's office, and having been in the private practice of law for 17 years.

In his distinguished career, Chancellor Longobardi served as deputy attorney general of Delaware and on the Delaware Superior Court. He held this position from 1974 to 1982. And Governor Du Pont named him to the court of chancery. On both occasions, he was unanimously approved by the Delaware State Senate.

I might add, Mr. Chairman, while serving on the superior court, Chancellor Longobardi served as the chairman of the judicial conference committee, which successfully resolved the constitutional

confrontation between the judicial and legislative branches of the State government.

In 1981, he received a national award in recognition for a paper on court administration and caseload management. He put his theories into practice while serving on the superior court. And a new caseload management system, which he designed and implemented for the court, has won the attention and praise of many other State courts.

So, Mr. Chairman, Judge Longobardi will be a welcome addition to the Federal branch, and I am proud to have recommended his nomination. I hope the committee will give him expeditious and favorable consideration.

The CHAIRMAN. Thank you very much, Senator.

We are very pleased to have you here. Feel free to stay, or if you have to leave, we will understand.

And we will come back to him after awhile. I want to hear all the Senators first. I know how busy they are.

And Senator Biden——

Senator ROTH. I want to express my appreciation to Senator Biden for his role.

The CHAIRMAN. Thank you.

Next is Edward Leavy of Oregon. Senators Hatfield and Packwood come up.

Senator Hatfield, the senior Senator, I guess you can proceed.

STATEMENTS OF HON. MARK O. HATFIELD, A UNITED STATES SENATOR FROM THE STATE OF OREGON

Senator HATFIELD. Thank you, Mr. Chairman and members of the committee.

Mr. Chairman, Senator Packwood and I have the high privilege of presenting to you and to this committee for consideration as an appointee to the Federal district court in Portland a very outstanding gentleman by the name of Edward Leavy, who has had some 30 years of experience in the practice and administration of law. He was a graduate of the University of Portland cum laude. Then he took his law degree at the University of Notre Dame, cum laude, and then began his practice in Oregon.

Then he served 3 years as the district attorney of Lane County, OR. He served 4 years as a district judge of Lane County, OR. He served 15 years as a circuit court judge in the State of Oregon. He served as a temporary appointee to the Oregon Supreme Court. And then since 1976, for almost an 8-year period he has served as the U.S. magistrate for the U.S. Government.

Mr. Chairman, there really is not much more that can be said of this very outstanding man. He has been given by the Bar Association of Oregon its highest ranking for a number of judicial appointments over his life. And he has been a very active citizen in the community.

He is married, has four children, and is an outstanding man that we are proud to present to you at this time.

I would like to defer to my colleague, Senator Packwood, for any additional remarks. But we are both most happy to be here today to present Ed Leavy.

The CHAIRMAN. Thank you very much, Senator.

We are very pleased to have you, Senator Packwood.

STATEMENT OF HON. BOB PACKWOOD, A U.S. SENATOR FROM THE STATE OF OREGON

Senator PACKWOOD. Mr. Chairman, members of the committee, I thank you very much.

Let me echo what my senior colleague, Senator Hatfield, has said and add just a bit to it.

Not only are we getting a man for a trial court position that has had extraordinary trial court experience, 15 years as a circuit court judge in Oregon and then 8 years as a magistrate for the Federal court in which he has tried many cases, but I have heard over and over and over from trial lawyer upon trial lawyer in the State of Oregon that Ed Leavy is the best judge in the State of Oregon. Trial lawyers have said this without derogation to any of the other Federal court judges, but just that Ed Leavy is an extraordinary judge.

Ed Leavy was recommended the time before last when a Federal district court judge was picked by a bar selection committee by Senator Hatfield. He was one of the five recommended by the bar selection committee and the one that was picked by the administration.

A majority of the American Bar Association committee has recommended him as exceptionally qualified. I think that Senator Hatfield and I can both say that it is unique and almost unusual opportunity to present a man who is already so extraordinarily highly thought of by the practitioners who will be appearing before him or who have previously appeared before him.

The CHAIRMAN. Senator, we are glad to have you with us. And I might say that you stand very highly endorsed, Judge Leavy, by Senator Hatfield and Senator Packwood. I do not know whether there is any other State that has two chairmen or not, but Senator Hatfield, of course, is chairman of the Appropriations Committee, and Senator Packwood of the Commerce Committee. And both are fine men, and you are fortunate to have both of them on your side.

I know they are busy and they are excused if they wish to go. Or they can stay if they wish.

Mr. LEAVY. I just want to say thanks to both of them.

The CHAIRMAN. We will take the rest of the Senators.

Senator Biden has arrived in the meantime. He is an active member of this committee, a very distinguished member. He has a judge here, Longobardi, from Delaware.

And, Senator, would you want to speak to that?

STATEMENT OF HON. JOSEPH R. BIDEN, JR., A U.S. SENATOR FROM THE STATE OF DELAWARE

Senator BIDEN. Mr. Chairman, let me begin by explaining why I was not here at the outset. The Budget Committee is meeting right now and an amendment by Senator Kassebaum and myself had been introduced at 2 o'clock, so I made an opening statement and came right down.

I would ask unanimous consent that the statement I prepared on behalf of my support of Judge Longobardi be placed in the record as if read at this time.

And let me amplify it on only two points. We are a small State, Delaware, the State of Delaware. We have a very proud, proud tradition of judicial excellence. I think it is fair to say that the American Bar Association shares that view. And our State courts have been the models for many State courts across the country.

Vice Chancellor Longobardi has been a force in the Delaware legal community for over 25 years, and in the last 10 years has been one of the more preeminent men in the legal profession in the State of Delaware. Without going into my whole statement, in the interest of time, I would like to emphasize how strongly I support Mr. Longobardi's nomination. And I must say very bluntly were I in the position of having had to make the choice Senator Roth had to make, I just as well would have made the same exact choice. I think he is a first-rate man and scholar and has the judicial temperament required for such an important job.

I will not take any more of the committee's time at this moment. I would like to welcome his son, Joe, who, I might add, is a graduate of my high school. We both went to the same Catholic prep school. And Mrs. Longobardi as well. I welcome them both and look forward to the expeditious confirmation of this nomination in the committee and on the floor.

[Material submitted for the record follows:]

PREPARED STATEMENT OF SENATOR JOSEPH R. BIDEN, JR.

Mr. Chairman, vice chancellor Joseph Longobardi has been a credit to the legal profession of the State of Delaware for more than 25 years and has been one of my State's preeminent legal figures for well over a decade. I very strongly support his nomination to the United States District Court for the District of Delaware. I also would like to congratulate my good friend and colleague, Senator Roth, for making such an excellent choice.

Vice Chancellor Longobardi's biography and Judiciary Committee questionnaire will be included in the record but I would like to take a moment to point out some of his more notable accomplishments.

Vice Chancellor Longobardi has successfully engaged in a wide array of endeavors in the legal profession. After graduating from the Temple University School of Law, where he was associate editor of the Temple Law Review and received the S.A. Shull Award for excellence in legal research and writing. He returned to his native State of Delarware to begin his legal career as a self-employed practitioner in Wilmington. From 1959-1961 he served as deputy attorney general of Delaware, and then returned to private practice.

In 1974 Vice Chancellor Longobardi left the private practice of law when he was appointed to the Superior Court of Delaware by Governor Sherman Tribbett. He held that position until 1982 when he was named by Governor Pete DuPont to be Vice Chancellor of the Court of Chancery, which is the Court of Equity in Delaware and is held in very high esteem for the quality of its work.

It is clearly evident, then, that Vice Chancellor Longobardi has a diverse and highly accomplished legal background, and is well qualified to be a District Court Judge.

I would like to take note of one particularly outstanding accomplishment that I think is indicative of the quality of judge we are getting. In 1981, while serving on the Superior Court, he wrote a manuscript concerning the Superior Court's criminal caseflow management program entitled "A study in caseflow management." He received an award from the National Center for State Courts for that manuscript, a condensed copy of which was published by the National Center for State Courts in its State Court Journal in 1982.

Even more important than what this tells us about the high quality of the vice chancellor's scholarship, however, is what it tells us about his ability as a trial

judge. The caseflow management program, for which the vice chancellor was largely responsible, had a very significant impact on the effective and efficient administration of justice in the Delaware judicial system. For example, prior to implementation of the program, criminal felony cases in Delaware took an average of between 15 and 24 months from arrest to disposition. But at the high point of the program that time period had been reduced to 62 days. That, needless to say, is an extraordinary accomplishment and is a reflection of the efficient and intelligent way in which the vice chancellor manages his courtroom.

Mr. Chairman, I believe there is no question that Vice Chancellor Joseph Longobardi will be a Federal District Judge of the highest caliber. I strongly endorse his nomination.

The CHAIRMAN. I just want to say to you, Mr. Longobardi, that although these Senators are in different parties, they both speak highly of you. One of them recommended you and the other endorses you. We are very pleased.

Mr. LONGOBARDI. I thank both of them.

The CHAIRMAN. We will now pass on to the next Senator. I think Senator Helms is here from North Carolina. He has Mr. Boyle. If he and Mr. Boyle would come around.

Is Senator East going to appear?

STATEMENT OF HON. JESSE HELMS, A U.S. SENATOR FROM THE STATE OF NORTH CAROLINA

Senator HELMS. He will be here shortly.

Mr. Chairman, sometimes we come to present nominees as a matter of perfunctory privilege. But this time I come enthusiastically and gratefully to this young man for being able to offer his services.

Terry Boyle—Terrence William Boyle, whom the President of the United States has nominated to serve as U.S. district judge for the Eastern District of North Carolina, is a remarkable, remarkable young man. He is highly respected. He is a competent attorney in a law firm which happens to be one of the most prestigious law firms in eastern North Carolina. His practice has taken him regularly before both State and Federal courts.

He is held in high esteem by members of the bar. So many of them have contacted me since I proposed Mr. Boyle's name to the President. And a little later on, I am going to ask the Chair if some of the communications can be made a part of the record because I think it is significant that so many people took it upon themselves to pay their respects to this young man.

Now, Terry Boyle served as secretary-treasurer of the first judicial district bar in 1982–83. He is currently serving as vice president of the district bar. He is a member of the American and North Carolina Bar Associations, North Carolina Bar, and the District of Columbia Bar Association. He is also a member of the family law section of the North Carolina Bar Association, and he has been a lecturer in the continuing legal education program for the Wake Forest University School of Law.

Now, Mr. Chairman, I hope the Chair will indulge me by making my full statement a part of the record and I will just summarize the balance of it.

The CHAIRMAN. Without objection, the entire statement will be in the record.

Senator HELMS. I thank the chairman.

Now, let me stress the point that Terry Boyle enjoys strong support across North Carolina. I have carefully checked with scores of leading attorneys, both Democrats and Republicans. And without exception, they have been most enthusiastic about Mr. Boyle's nomination.

For example, the Honorable John V. Hunter III, of Raleigh, who has served for many years in the House of Delegates of the American Bar Association, has given his unqualified endorsement to Mr. Boyle. And let me mention a very fine gentleman, perhaps one of the most respected and distinguished attorneys in North Carolina, Mr. Gerald F. White. He served on the State bar council many years, and he wrote to me as follows, and this is one quote out of the letter. He said,

I know the attorneys in my district, and I also know that your recommendation of Terry Boyle to serve on the Federal bench would meet with the enthusiastic approval of the members of our First District Bar. We need a Federal Judge from northeastern North Carolina, and this would make a good balance of judicial residency without our Eastern District. Please select this most qualified attorney to this appointment.

Mr. Chairman, I would further ask your indulgence. I have here a sample of the communications I received. And if it would not be an imposition, I would like for those to be made a part of the record as well as my statement.

The CHAIRMAN. Without objection, they will be.

Senator HELMS. I thank the Chair.

[Material received for the record follows:]

PREPARED STATEMENT OF SENATOR JESSE HELMS

Mr. Chairman, it is an honor and a privilege to be with you and the other distinguished members of this committee this afternoon to introduce to you Mr. Terrance William Boyle, whom the President of the United States has nominated to serve as United States District Judge for the Eastern District of North Carolina.

Terry Boyle is a highly respected and competent attorney in the law firm LeRoy, Wells, Shaw, Hornthal and Riley—one of the most prestigious law firms in eastern North Carolina. His practice has taken him regularly before both State and Federal Courts. He is held in high esteem by prominent members of the bar, many of whom have gone to the trouble of voicing their support for his nomination.

Terry Boyle served as Secretary-Treasurer of the First Judicial District Bar in 1982–1983. He is currently serving as Vice President of the District Bar. He is a member of the American and North Carolina Bar Associations, the North Carolina State Bar, and the District of Columbia Bar Association. He is admitted to practice in the Eastern District of North Carolina and the Fourth Circuit Court of Appeals. He is also a member of the Council of the Family Law Section of the North Carolina Bar Association. He has been a Lecturer in the Continuing Legal Education Program at the Wake Forest University School of Law.

I have first-hand knowledge of Terry Boyle's competence, dedication and character. He served as legislative assistant on my Senate staff in 1973. I was the beneficiary of his exceptional legal skills and, most importantly, his high moral character and uncompromising integrity. Before joining my staff, he served with distinction as Minority Counsel to the Committee on Banking, Finance and Urban Affairs in the U.S. House of Representatives. He worked his way through the American University Law School, graduating in 1970.

Terry Boyle is actively involved in the religious, civic, and community life of northeastern North Carolina. He and his family are members of St. Ann's Catholic Church in Edenton. He is a member of the Elizabeth City Rotary Club. From 1974–1977, he served on the Edenton Historical Commission.

Terry Boyle resides in northeastern North Carolina, an area of my state that cannot now claim a sitting federal district judge. The other federal judges in North Carolina reside in Raleigh and the southeastern section of our state.

As a consequence, few terms of court are held in the Elizabeth City Division. I am confident that Terry Boyle's appointment would be appreciated by the lawyers and citizens of this part of the state. It has been quite a while since a U.S. District Judge came from the Elizabeth City Division.

Mr. Chairman, Terry Boyle wholeheartedly shares your deeply held views, and those of President Reagan, on the proper role of the Federal Judiciary in our system of government. He is committed to the cause of freedom and personal dignity and justice for all Americans as guaranteed by our Constitution.

In conclusion, Mr. Chairman, I would stress that Terry Boyle enjoys strong support in North Carolina. I have carefully checked with scores of leading attorneys, both Democrats and Republicans, without exception they have been most enthusiastic about this nomination. For example, the Honorable John V. Hunter, III, of Raleigh, who served for many years as a member of the House of Delegates of the American Bar Association, has given his unqualified endorsement to Terry Boyle.

Similar endorsements have come from a former Speaker of the N.C. House of Representatives, and many others. All have paid tribute to Mr. Boyle's competence, training, experience and integrity.

The Honorable Gerald F. White of Elizabeth City, who has served on the State Bar Council for many years, wrote as follows: "I know the attorneys in my District, and I also know that your recommendation of Terry Boyle to serve (on the federal bench) would meet with the enthusiastic approval of the members of our First District Bar. . . We need a federal judge from northeastern North Carolina. This would make a good balance of judicial residency with our Eastern District. Please select this most qualified attorney for this appointment."

I have here a number of letters and telegrams from citizens in North Carolina who support Terry Boyle's confirmation, and I ask that they be made part of the Record.

Thank you, Mr. Chairman, for the privilege of introducing Terry Boyle to this committee.

Elizabeth City, NC, December 29, 1983.

Senator JESSE HELMS
Century Post Office Bldg., Raleigh, NC.

DEAR SENATOR HELMS: I strongly recommend that you nominate Terrence W. Boyle to the vacant district judgeship of the Eastern District of North Carolina.

Sincerely,

O.C. ABBOTT.

I heartily endorse Terrence W. Boyle for the Eastern District of North Carolina Federal judgeship vacancy. I firmly believe that he will be an excellent Federal judge.

C. GLEN AUSTIN,
Attorney at Law, Elizabeth City, NC.

Senator JESSE HELMS,
Century P.O. Bldg 602; Raleigh, NC.

DEAR SENATOR HELMS: I strongly recommend that Terrence W. Boyle be appointed Federal judge for the Eastern District.

Sincerely,

C. CHRISTOPHER BEAN,
Attorney at Law, Edenton, NC.

Senator JESSE HELMS,
Century Post Office Bldg., Raleigh, NC.

This is a confirmation copy of a telegram addressed to you:

We Highly recommend the appointment of Terrence W. Boyle to the bench of the U.S. District Court of the Eastern District of North Carolina.

WALTER G. EDWARDS,
WALTER G. EDWARDS, JR.,
Attorneys at Law.

Senator JESSE HELMS,
Century Post Office Bldg., Raleigh, NC.

We highly recommend the appointment of Terrence W. Boyle to the bench of the U.S. District Court of the Eastern District of North Carolina.

WALTER G. EDWARDS,
WALTER G. EDWARDS, JR.,
Attorneys at Law.

Senator JESSE HELMS,
Century P.O. Bldg., Raleigh, NC.

I recommend and urge you to nominate Terrence W. Boyle as Federal Judge.

E. RAY ETHERIDGE.

Senator JESSE HELMS,
Century P.O. Bldg., Raleigh, NC.

DEAR SENATOR HELMS: This is to avise that we wholeheartedly endorse and support the appointment of Terrence W. Boyle as United States Federal District Judge for Eastern North Carolina.

GODWIN & GODWIN,
Attorneys, Gates, NC.

Senator JESSE HELMS,
Century Post Office Bldg. 602, Raleigh, NC.

Have learned of eastern district federal judgeship vacancy and respectfully recommend and respectfully suggest attorney Terrence W. Boyle of Elizabeth City, North Carolina, top flight in every respect.

JOHN H. HALL, JR.,
Attorney at law, Elizabeth City, NC.

JESSE HELMS,
Century Post Office Bldg. 602, Raleigh, NC.

DEAR SENATOR HELMS: As a member of and past president of first judicial district bar I heartily recommend Terrence Boyle for appointment to the Federal judiciary.

Sincerely,

WALLACE H. MCCOWN,
Attorney at law, Manteo, NC.

Senator JESSE HELMS,
Century Post Office Bldg. 602, Raliegh, NC.

I highly recommend Terrence W. Boyle for the U.S. District Court judgeship for the Eastern District of North Carolina. Terry is the vice president of the first district bar of North Carolina and is well liked and highly respected.

JOHN V. MATTHEWS, JR.,
Hertford, NC.

Please accept my earnest recommendation for Terrence W. Boyle to appointment as Federal District Judge for the Eastern District of North Carolina.

JOHN S. MORRISON,
Former U.S. Magistrate, Eastern District of North Carolina, Elizabeth City, NC.

Senator JESSE HELMS,
Century P.O. Bldg. 602, Raleigh, NC.

DEAR SENATOR: I heartily recommend and endorse Terrence W. Boyle of Elizabeth City for the Federal judgeship in the Eastern District. He is a man of the highest integrity and has the highest qualifications for the position of anyone I know.

Sincerely,

DAVID W. BOONE,
Attorney, Elizabeth City, NC.

Senator JESSE HELMS,
Century Post Office Bldg. 602, Raleigh, NC.

DEAR SENATOR HELMS: We strongly and fully support the nomination of Terrence W. Boyle of Elizabeth City for appointment as a U.S. St Court Judge for the Eastern District of North Carolina.

Sincerely,

KELLOGG, WHITE, EVANS, SHARP & MICHAEL,
Attorneys at Law, Manteo, NC.

Senator JESSE HELMS,
Century P.O. Bldg. 602, Raleigh, NC.

DEAR SENATOR: I heartily recommend and endorse Terrence W. Boyle of Elizabeth City for the Federal judgeship in the Eastern District of North Carolina.

Sincerely,

G. ELVIN SMALL III,
Attorney, Elizabeth City, NC.

Senator JESSE HELMS,
Century P.O. Bldg. 602, Raleigh, NC.

DEAR SENATOR: I heartily recommend and endorse Terrence W. Boyle of Elizabeth City for the Federal judgeship in the Eastern District of North Carolina.

Sincerely,

MAX S. AND CHARLES T. BUSBY,
Attorneys, Edenton, NC.

WHITE, HALL, MULLEN, BRUMSEY & SMALL,
ATTORNEYS AT LAW,
Elizabeth City, NC, December 29, 1983.

Senator JESSE HELMS,
Century Post Office Building, Raleigh, NC.

DEAR SENATOR HELMS: I have practiced law in the first judicial district of North Carolina for almost thirty years, and I consider this to be one of the most important letters that I have ever written.

I understand that a United States District Judgeship vacancy exists in the Eastern District of North Carolina in that Judge Dupree is now on senior status.

Senator, I strongly urge that you recommend to the President that he nominate Terrence W. Boyle of Elizabeth City to fill this highly important position. Terry Boyle is eminently qualified by character, by training, and by experience to serve as a United States District Court Judge. He is a gentleman of the first order; he has a wide knowledge of the law; and he has a broad range of experience as a practitioner of law, particularly including active trial work. Such an appointment of this attorney to this judicial position would be superb. There is no other word for it.

I have served on the State Bar Council from the first district for a number of years. I know the attorneys in my district, and I also know that your recommendation of Terry Boyle to serve in this position would meet with the enthusiastic approval of the members of our first district bar. I am convinced that your favorable action in the foregoing respect would also be applauded by the bench and bar and general public statewide.

We need a Federal judge from northeastern North Carolina. This would make a good balance of judicial residency within our eastern district. Please select this most qualified attorney for this appointment.

Because of Terry Boyle's superior qualifications as an attorney, some time ago I recommended him for an "A" rating in Martindale-Hubbell Law Directory, and I expect that he will be so rated this year.

Senator Helms, in summary, I say that if you set in motion the action that will bring Terry Boyle to the Federal Bench, his distinguished service as a United States District Judge will make you proud that you had an important part in it.

Thank you for considering this communication.

With kind wishes, I am

Sincerely,

GERALD F. WHITE.

U.S. SENATE,
Washington, DC, January 19, 1984.

Mr. GERALD F. WHITE,
Attorney at Law,
White, Mullen, Brumsey & Small,
Elizabeth City, NC.

DEAR GERALD: It goes without saying that I genuinely appreciate your comments about my recommendation of Terry Boyle. Terry is indeed a fine and competent young man, and I hope he will be nominated and confirmed—and that he will serve with distinction for 30 or more years.

I am dedicated to doing whatever I can to assure a strong judicial system in our country. I intend to continue to do all I can to encourage our judges to be attentive to the greatest Constitution ever devised by the minds of patriots.

I was not surprised that the news media sought to emphasize Terry's family ties. But I can assure you that I selected Terry because I am personally aware of his ability, character and dedication. That is why I so genuinely appreciate hearing from you.

With kind regards.

Sincerely,

JESSE HELMS.

HUNTER, WHARTON & HOWELL,
ATTORNEYS AT LAW,
Raleigh, NC, December 30, 1983.

Hon. JESSE HELMS,
U.S. Senator, Raleigh, NC.

DEAR SENATOR HELMS: I was immensely pleased to hear that you are considering the nomination of Terrence W. Boyle of Elizabeth City to the federal judgeship in the Eastern District of North Carolina.

Over about the past two years, I have worked very closely with Mr. Boyle in a matter in which we represent the same party. We prepared the case together, tried it together, and it is presently on appeal. I have found Mr. Boyle to be a lawyer of outstanding integrity, ability and energy. I was so impressed with his performance in the matter we have handled together that, after the trial, I wrote a letter to his senior partner praising his performance as a lawyer; this is something which I have seldom done during the 24 years that I have been in private practice in North Carolina.

I would expect Mr. Boyle to perform with distinction on the federal bench and to bring honor to North Carolina. I am ready to state my unqualified endorsement of him to any person or committee having a role in processing the nomination.

Very truly yours,

JOHN V. HUNTER III.

TRIMPI, THOMPSON & NASH,
ATTORNEYS AT LAW,
Elizabeth City, NC, January 10, 1984.

Re Terrence W. Boyle.

Hon. JESSE HELMS,
U.S. Senate, Washington, DC.

DEAR SENATOR HELMS: When I read about your nominating Terry Boyle for federal judgeship in this area, I was elated. We had given up any hope of having a

judge from this area, and to see a peer like Terry nominated is certainly encouraging.

I have known Terry for a number of years, mostly from opposite sides of cases. Intelligent, hardworking, diligent, cautious, self-deprecatory and honest, balanced with humor and dry wit. I can not think of many people before whom I would rather try a case. He could take a federal judgeship in stride, notwithstanding the dizzying aspect of the position. I'm sure that it would not go to his head; I can't imagine Terry developing arrogance or self-righteousness. With his integrity, abusing his position would absolutely be out of the question. Terry, in my opinion, has that rare commodity called judicial temperament.

In writing this letter I'm speaking for Everett Thompson and Tom Nash, my law partners, who have also signed this letter. I think Everett especially will miss Terry if he becomes a judge because of the rapport they have had over the years, yet he is 100% behind your choice. We talked about it last week and realized how astute and logical choosing Terry was, not only for his capability, but for the geographics. A natural triangle of judges from Wilmington, Raleigh and Elizabeth City would give the public and lawyers much greater access. The importance of such access will become more pronounced with the development of our area, particularly on the coast.

We admire you not only for the wisdom of your choice, but for your courage in making it. Those who will say that the nomination was made for Mr. Ellis's sake will have chosen to ignore Terry's character and capabilities and the clear benefit to the federal judiciary in eastern North Carolina.

You have our firm's complete and unqualified support for your decision, for which you also have our heartfelt thanks.

Sincerely,

By

JOHN G. TRIMPI.
C. EVERETT THOMPSON.
THOMAS P. NASH IV.

The CHAIRMAN. Senator East, we would be very pleased to hear from you on Mr. Boyle's nomination.

STATEMENT OF HON. JOHN P. EAST, A U.S. SENATOR FROM THE STATE OF NORTH CAROLINA

Senator EAST. Mr. Chairman, I deeply appreciate the opportunity to be here with my distinguished senior colleague from North Carolina to indicate my strong support for an outstanding nominee, Terrence Boyle. Mr. Boyle is the fourth Federal judge that President Reagan has nominated. All three of the previous nominees were confirmed by this committee and by the U.S. Senate. Senator Helms and I both feel very strongly that Mr. Boyle is consistent with the quality and stature of the persons we have presented before this panel, and before the Senate, in the past.

And so it is without reservation that we recommend him to you, Mr. Chairman. I know that these things are matters of record, but let me point out that Mr. Boyle is a graduate of Brown University and the American University, Washington, College of Law. He is a member of the bar in the District of Columbia as well as North Carolina. He has served here on Capitol Hill, the minority counsel on the Subcommittee on Housing of the House Committee on Banking. He has served as a legislative assistant in the U.S. Senate. Mr. Boyle is presently a member of what I would call the most prestigious law firm in eastern North Carolina, located in Elizabeth City.

By the way, eastern North Carolina is my bailiwick, my neck of the woods. I come from Greenville. Mr. Boyle's home is Edenton, which is a fine historic town in eastern North Carolina not far from the law firm's office in Elizabeth City.

I have two quotations that I would like to offer here, Mr. Chairman, for the record, that sum up better than I can Mr. Boyle's qualifications. I am quoting from Mr. D.W. Wells, whom I know very well. He is a former superior court judge and president of the North Carolina Bar Association. He said of Terrence Boyle, and I quote,

We believe Senator Helms made a wise choice. He is a very capable lawyer and, in my opinion, will be a very fine judge. He has had a wide variety of trial experience and is equipped to handle the trial work.

Another attorney in the area, Gerald F. Whiteman, said that "He is a mature, seasoned attorney." Overall, the reaction of area lawyers is overwhelmingly in favor of Terry Boyle. He is a top-flight attorney who is very active in trial practice in the State and Federal courts.

My conclusion, then, Mr. Chairman, is that Mr. Boyle's legal education is impressive and solid. He has had extensive practice and experience, and is highly respected by the bar of North Carolina. There is ample evidence to document that.

So I hope that this committee will proceed expeditiously to approval of Mr. Boyle and his final confirmation by the U.S. Senate. And again it is my pleasure to join with my senior colleague in this recommendation.

I thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

And I just want to tell Mr. Boyle that he is fortunate to have both of his Senators come in here in person and endorse him. Both of these gentlemen are held in high respect in this body. They are a great influence. And we want to thank them for taking their time and endorsing Mr. Boyle.

The Senators are excused unless you want to remain, whatever you prefer to do.

Senator EAST. I appreciate that, Mr. Chairman.

Senator HELMS. Thank you.

The CHAIRMAN. Our next nominee is Mr. William Browning. I believe he is endorsed by Representatives Udall and McNulty, if you gentlemen will come around.

Now, Senator Goldwater, I understand, and Senator DeConcini both have statements endorsing Mr. Browning. Maybe they will come in. If not, we will put their statements in the record.

[Material submitted for the record follows:]

PREPARED STATEMENT OF SENATOR BARRY GOLDWATER

Mr. Chairman, Members of the Committee: Today, you have before you the nomination of Bill Browning for a judgeship on the U.S. District Court. This nomination is one that I support wholeheartedly and without reservation. Since I have known him, Bill has been a credit to his profession and his community. Without going into the details of his background, I can say that he is as capable and qualified as any person who has ever been chosen for this position. Naturally, I feel a certain pride in Bill because he is a native Arizonan as I am but, as far as I am concerned, this just adds to his qualifications.

As I am sure you are aware, the position of judge of the U.S. District Court is one of the most important parts of our judicial system. With the importance of this position, it is incumbent on all of us to demand the best qualified and most capable people to fill these slots. In one way or another, all of us are affected by the decisions rendered by these Federal judges. Because of that, it is not an easy job to find

the right person to safisfy the legal and ethical requirements that are so necessary to the maintenance of a fair and impartial judiciary.

In recommending Bill to President Reagan and endorsing him to this Committee, I think that I can assure the legal community that they will be gaining an extremely capable judge. By virtue of the honors and commendations that have come his way, Bill Browning is certain to act in the highest traditions of our Constitutional system.

In looking back at the process that brought us here today, I am reminded of an anecdote about Benjamin Franklin. Upon emerging from the final session of the Constitutional Convention, Ben Franklin was approached by one of the ladies in the waiting crowd. "What," she asked, "have you given us?" To which Franklin replied, "A republic, madam, if you can keep it." Indeed, that is just what we are doing here today—maintaining the Republic. The nomination and confirmation of Bill Browning will keep alive the heritage that was entrusted to us by Ben Franklin and his compatriots.

PREPARED STATEMENT OF SENATOR DENNIS DECONCINI

I regret that I cannot be at the hearing this afternoon to introduce and urge the confirmation of William D. Browning as a United States District Judge for the District of Arizona.

I have known Bill for a long time. I practiced law with him in Tucson, Arizona, and at times I opposed Bill on opposite sides of a legal problem. Always, he was intelligent, industrious, filled with common sense, and fair, cordial, and gentlemanly. In short, he demonstrated all of the qualities that make for a good judge.

Bill graduated from law school in 1960 and has practiced law in Tucson since that time. He served admirably in the United States Air Force and later in the Arizona Air National Guard. He demonstrated leadership in the legal community as president of the Pima County Bar Association in 1967-1968 and was president of the Arizona State Bar in 1972-1973. He has gained experience as a judge and made his contribution to the legal community in Tucson by serving as judge pro tem of the Superior Court of Arizona, serving without compensation in order to reduce the case backlog that existed.

Bill at times demonstrates irreverence and that is a quality that will serve him well as a United States District Judge.

Lifetime appointments to the Federal bench cannot and should not be taken lightly. Occasionally judges with lifetime appointments have tended to forget that they are still human beings with the same weaknesses and probability of error as they had prior to their appointment and confirmation. Bill's occasional irreverence will allow him to reflect back and keep from taking himself too seriously.

I would like to also acknowledge the presence to Zeke Browning, who is most assuredly Bill's better half. The team of Zeke and Bill Browning are one of the outstanding couples in the Tucson community.

In short, although I have disagreed with the President on occasion, in this instance I can only commend him for his excellent appointment of Bill Browning to the United States District Court. I wholeheartedly endorse that appointment and will work toward a speedy confirmation. Bill is a welcome addition to the United States District Court.

The CHAIRMAN. We will be very pleased to hear from you, Congressman Udall, at this time.

STATEMENT OF HON. MORRIS K. UDALL, A U.S. REPRESENTATIVE FROM THE STATE OF ARIZONA

Mr. UDALL. Thank you, Mr. Chairman.

It is with a great deal of pride and satisfaction that I appear here today to urge confirmation of the appointment of William D. Browning of Arizona to the U.S. district court. My acquaintance with Mr. Browning goes back about 25 years when, as a young graduate lawyer, he worked for me as an intern. He was starting his own two-man law firm and rented space from a great old law firm called Udall & Udall on Court Avenue in the city of Tucson.

I followed his career. We have been close friends over the years. I have watched him mature and become one of the most respected and able lawyers in southern Arizona.

He was active in many bar association matters, serving as president of the Pima County Tucson Area Bar Association. He was president of the State of Arizona Bar Association in 1970. He has been very active in all of these matters and has been a leader in reform of the courts and improving of our court system in Arizona.

I think I speak for the entire legal establishment in saying there has never been a better qualified candidate for U.S. district judge in southern Arizona in modern times. And it is with a great deal of pride and pleasure that I urge this committee to recommend and the Senate to confirm the nomination. You will make no mistake with this candidate.

I defer to Congressman McNulty.

The CHAIRMAN. We will be glad to hear from you.

STATEMENT OF HON. JAMES F. McNULTY, JR., A U.S. REPRESENTATIVE FROM THE STATE OF ARIZONA

Mr. MCNULTY. Thank you, Mr. Chairman. Good afternoon.

My testimony will be in two short pieces. The first are my own qualifications.

I am a member of the bar association of Arizona. That is my life, my identity, my profession, my persuasion, my meaning, my real life. I have been a member of the Board of Governors of the State bar of Arizona and the American Judicial Society, a member of almost all the committees of the State bar at one time or another, a member of the law college association of the University of Arizona, member of the board of advisors of the University of Arizona. And I feel qualified to testify on the subject of Mr. Browning.

I have had the pleasure of appearing once before you testifying on behalf of the nomination of the now Justice Sandra Day O'Connor 2 years ago. Mr. Browning has been known to me for nearly 25 years as a lawyer on the other side of civil litigation. As a member of the county bar, we went through all the chairs there. That is a large bar association, some 1,200 lawyers. He is a member of the State bar where he went through all the chairs again.

He brings to this task—and the State has an integrated bar—his own personal honor, his professional competency, his fairness, and finally I think the quality that you simply cannot be a competent judge without, and that is a decent sense of humor.

He is known to all the members of the profession as a straight arrow. And he will perform admirably and usefully to the society of southern Arizona. And I would urge you most strongly to recommend him favorably to the Senate.

The CHAIRMAN. Thank you very much.

Mr. Browning, I want to congratulate you on being endorsed so highly by two prominent Members of the House of Representatives. And we will give your Senators a chance if they care to make statements. Otherwise, we will place their statements in the record. We are honored to have these Members of the House come over to this side of the Capitol. We are also glad to see you gentlemen. And come back again.

Mr. UDALL. Thank you.

Mr. MCNULTY. Thank you, Mr. Chairman.

The CHAIRMAN. Now, we will take up all you gentlemen if you want to come up to the table. We will swear you all in at once, and we will take you up in the order in which we started out.

Joseph J. Longobardi, Edward Leavy, Terrence Boyle, and William D. Browning, if you will all hold up your hand and be sworn.

[Nominees sworn.]

TESTIMONY OF JOSEPH J. LONGOBARDI, NOMINEE, U.S. DISTRICT JUDGE, DISTRICT OF DELAWARE

The CHAIRMAN. Do you go by the title of Vice Chancellor Longobardi, is that correct?

Judge LONGOBARDI. Yes, Senator. Vice chancellor. But judge is just as easy if you prefer that.

The CHAIRMAN. And you have a long and interesting career in public service starting in about 1957 when you were admitted to the bar in Delaware. Since that time, you have been a deputy attorney general for the State of Delaware, associate judge for the Superior Court of Delaware.

Is the superior court the highest trial court?

Judge LONGOBARDI. That is right, Senator.

The CHAIRMAN. And now you are vice chancellor of the court of chancery for the State of Delaware.

Now, what do you believe will be the most difficult aspect of the transition from the State court to the U.S. district court? And how have you prepared yourself for this change?

Judge LONGOBARDI. Senator, I do not believe it is going to be much of a difficult problem for me at all. It appears that my life experiences, my professional experiences have been almost a preordained groundwork for getting into that court.

In the superior court, I had extensive trial experience. both civil and criminal. And in the court of chancery, I have extensive experience with regard to corporate litigation, which would fall in very nicely with the SEC and patent jurisdiction in that court.

The CHAIRMAN. Vice Chancellor Longobardi, what are the standards that you would use in deciding that your court had a continuing administrative responsibility to oversee the implementation of one of its orders?

Judge LONGOBARDI. Senator, my general philosophy is to avoid that situation, if at all possible. I think those things are best left to people who have the expertise, the experience and training to do that job.

The CHAIRMAN. Vice Chancellor Longobardi, in answering a portion of the committee's questionnaire pertaining to equal justice under law, you answered in part, and I quote, "As a judge in the superior court of Delaware, I have used ministers as an alternative to prison."

Will you tell the committee the circumstances where you have used this alternative approach to prison and the recidivism rate of those individuals involved.

Judge LONGOBARDI. Senator, I was sort of adopted by a minister in my town while I was in private practice. And over those 17

years, he had occasion to refer people to me who could not afford their own counsel. And during those years I was able to perform some legal services for these people.

After going on the superior court bench, I frequently used this same minister to counsel young people who I thought only needed some opportunity to see what the other side was like, people from their own background, some person who had a background that was not privileged, and on occasion have probated these kinds of young people to him. Although there was not any statutory authority for that kind of probation, I did it because I thought I had the inherent jurisdiction to do it.

And almost to the man, those have been success stories. Primarily because this minister was able to deal with those people for a fairly long period of time on a 1-to-1 basis.

The CHAIRMAN. I presume you would have no qualms about carrying out the law, whether it is the death penalty or lesser punishment for crimes committed and would take the course of action that you feel is in the best interest of the public?

Judge LONGOBARDI. I have no qualms in following what is required of me.

The CHAIRMAN. The phrase "judicial activism" is often used to describe the tendency of judges to make decisions on issues that are not properly within the scope of their authoritities.

What does the phrase "judicial activism" mean to you?

Judge LONGOBARDI. Senator, this is an area that is obviously highly controversial. And you can talk to any different number of people and get different interpretations. I think I might answer that by telling you that my general philosophy in dealing with cases in my jurisdiction has been to use judicial restraint rather than judicial activism. I find that limiting the issues, looking very narrowly at jurisdictional questions, looking very narrowly at questions about standards serve me and serve my purposes better than trying to solve the world's problems.

The CHAIRMAN. We will now move on to Mr. Leavy, and without objection, we will place a short resume of each of these gentlemen in the record.

TESTIMONY OF EDWARD LEAVY, NOMINEE, U.S. DISTRICT JUDGE, DISTRICT OF OREGON

The CHAIRMAN. Judge Leavy, you have had a long term of service in the State court dating back to 1957, I believe, when you became a district judge of Lane County district court, and in 1960 when you became sector judge. Since 1966, you served as U.S. magistrate.

Judge, do you feel that this experience will be beneficial to you as a United States district judge? And if so, how?

Judge LEAVY. Well, first of all, the State court experience helped me, of course, in becoming familiar with the mechanics of operating the court and knowing the limitations of those proceedings and the value of the State courts in the total picture. Having been a U.S. magistrate, I have had the experience of trying both jury and non-jury civil cases in the court in which I sat as judge. And all of those things I view as helpful.

The CHAIRMAN. Judge Leavy, it has been suggested that our prisons turn prisoners into more professional criminals. What in your opinion can or should be done to improve prison rehabilitation?

Judge LEAVY. From the judicial standpoint, Senator, I feel that the cause of rehabilitation would be served if we would make our sentences more swift and more certain and take away from prisoners the frustrating hope that somehow they are going to beat the rap after the case, that is after they are once tried and convicted, they should not be continually given a hope that they are somehow going to escape what has already been adjudicated.

The CHAIRMAN. Excuse me just a minute.

Judge, do you feel that a district court judge should assume direct control over complex issues in cases in order to avoid the effect of handling such cases?

Judge LEAVY. Yes, I do. I think that many cases need management in order to get them on towards termination and be sure that the parties are really interested in litigating their issues. If they are not, the cases should be out of the system. And if they are in the system, we should work to conclude them.

The CHAIRMAN. Judge, suppose you had a conflict between your own conscience and your own sense of justice and the clear meaning of a statutory or constitutional provision, how would you rule on a matter of that kind?

Judge LEAVY. Well, I would feel duty bound to rule in accord with the Constitution or the law as it is made clear. And I do not feel that each time a new judge is appointed, we accept a new constitution. And if I had any reservation about that from a standpoint of conscience, now would be the time to say so and opt out of the system.

If a person cannot accept this Constitution as a judge or as an officer of any branch of Government, he or she should not undertake it.

The CHAIRMAN. Now, suppose you felt very strongly that a certain statute was unconstitutional. Would you feel, although there might be a different feeling in your heart of the matter, would you feel that you would be willing to hold it unconstitutional in spite of some of the other judges above you?

Judge LEAVY. Yes, yes, I would.

The CHAIRMAN. Judge, I think that covers my questions to you. We will pass on to Mr. Boyle.

TESTIMONY OF TERRENCE W. BOYLE, NOMINEE, U.S. DISTRICT JUDGE, EASTERN DISTRICT OF NORTH CAROLINA

The CHAIRMAN. Mr. Boyle, you have been in private practice I believe since 1974. You were counsel to a subcommittee up here in the House. Then you were legislative assistant to Senator Helms.

Mr. BOYLE. Yes, Mr. Chairman.

The CHAIRMAN. So you had considerable experience around here. How many years were you here in all?

Mr. BOYLE. I was here 6 years, Mr. Chairman.

The CHAIRMAN. You were born in New Jersey, then you decided to move to North Carolina after you served here?

Mr. BOYLE. That is right, Mr. Chairman.

The CHAIRMAN. Now, has your experience on the Hill been helpful to you in the practice of law?

Mr. BOYLE. Yes, Mr. Chairman. And hopefully it will be even more helpful if I am confirmed and sit on the bench. I think it has given me a perspective of the importance in the role of the legislative branch of Government in our system and the prerogatives that belong to the legislature. And I have been very sensitive to those.

The CHAIRMAN. And, Mr. Boyle, what kind of guidelines do you feel the judge should follow in determining propriety of Federal judiciary intervention in the State affairs? Are you concerned about strong advocates of public issues being appointed to a public bench?

Mr. BOYLE. Mr. Chairman, I think that the Federal courts must look first to their core of jurisdiction. And they are courts of limited jurisdiction. They must recognize that the States are the reservoir of general jurisdiction and sovereignty. And beyond the scope of Federal jurisdiction, the Federal courts ought not to wander.

The CHAIRMAN. Some of these judges have taken over the operation of school districts and State institutions and other matters which appear in the State.

Now, whether they did it because they felt it was necessary to prevent discrimination or whether they did it because they became archons with power or whether they felt it was their duty or what, how do you feel in general about letting the States run their own State institutions?

Mr. BOYLE. Mr. Chairman, there has got to be a bounds between the sovereignty of the States and the constitutional protections and rights of all of the people. So long as the States have honored that bounds, the Federal courts have no role to play in the State's rights.

The CHAIRMAN. I imagine under what you say you would be reluctant to have to assume jurisdiction somewhere in assigning a State institution so that the State could operate its own institutions without interference?

Mr. BOYLE. That is right, Mr. Chairman. The courts ought to limit themselves to judicial controversy and not broad administrative matters.

The CHAIRMAN. Now, we have included in the sentencing bill we passed in the Senate—the House has not passed it yet—sentencing commission that would set guidelines and standards for uniformity in sentencing.

Do you think that would be helpful?

Mr. BOYLE. I think it would, Mr. Chairman, so long as the court had some discretion in exceptional circumstances to either reduce or otherwise reflect the sentence to the particular case. But, by and large, that is a positive step.

The CHAIRMAN. If they went beyond those guidelines, they would have to explain why?

Mr. BOYLE. We have that in our North Carolina courts, and it is called presumptive sentencing. And it is very effective.

The CHAIRMAN. What, in your opinion, is needed to speed up the disposition of Federal cases? Some of the dockets are clogged and they cannot get a trial within the time period, and there is a limited time for criminal trials, as you know. And they have a difficult time getting those cases tried.

Do you think the judges have to work long hours, and are you willing to work longer hours?

Mr. BOYLE. The answer is yes, I am willing to work long hours. And I think judges should and do work longer hours. It may be the allocation of resources needs to be applied. Our district has been very successful in bringing its dockets current.

The CHAIRMAN. I know some Federal judges who have done a fine job who did work long hours and cleaned up the docket. And it has not been done in years.

Mr. BOYLE. Yes, Mr Chairman.

The CHAIRMAN. I think that is all the questions I have for you.

TESTIMONY OF WILLIAM D. BROWNING, NOMINEE, U.S. DISTRICT JUDGE, DISTRICT OF ARIZONA

The CHAIRMAN. Mr. Browning, I believe you have been a practicing attorney since 1960.

Mr. BROWNING. That is correct, sir.

The CHAIRMAN. And you have been nominated for a position of U.S. district court judge.

Do you foresee any difficulty in the transition from advocate to an impartial jurist?

Mr. BROWNING. No, I do not, Senator. And I have given the matter considerable thought. I have practices in these courts, I have worked within the bar association confines of State legislative bodies to improve and understand the court, not the Federal courts but the State courts. And I think that I have a good understanding of them and their work. And I think that I could make that transition reasonably well.

The CHAIRMAN. Now, I have seen judges in the courtroom, I am sure with arrogance of power, embarrass jurors and witnesses and court officials and others. And I have always felt that was completely unnecessary. The judge has all the power in the world, maybe more power than they ought to have. And it seems to me that people can be thoughtful of others. And I think they more or less call this judicial temperament.

Do you think you have the judicial temperament to handle matters in an even and balanced way?

Mr. BROWNING. Well, I would hope so, Senator. I have been on the receiving end of some of that treatment you have talked about over the years, and have the same opinions that you have about it. I think that the judge, since he can do something about disrespect if it is directed at him, has a higher obligation than the lawyer does to show respect. And I would hope that that would be my continuing view on the subject while I am on the bench.

The CHAIRMAN. Mr. Browning, how would you handle an instance in which counsel for one of the parties in your court was obviously not a skilled litigator or was not prepared to represent his client, what would you do?

Mr. BROWNING. I am not entirely sure. I think what I would probably do is recess court and ask to see both of them in chambers and try to explain that, if necessary, recess the case in order to give the other party time to secure competent counsel or to ade-

quately prepare the case. It is sort of a tough question. To some extent, a judge should not become an advocate in the proceedings.

If it were a criminal case and it were so imbalanced, as you have described, I think there might be constitutional issues that would require that the case be handled—be recessed and new counsel assigned. If it were a civil case, I think I would handle it in the way I have described.

The CHAIRMAN. Mr. Browning, are there any circumstances where you would consider it appropriate to decide a case on some basis other than the one where the intent of the legislation or constitutional provision can be detected either through the text of the provision or surrounding legislative district?

Mr. BROWNING. No, sir, none that I can think of.

The CHAIRMAN. I presume you believe the Constitution says what it means and means what it says?

Mr. BROWNING. That is correct, Senator, I do.

The CHAIRMAN. And you will abide by the Constitution in the administration of justice in your court?

Mr. BROWNING. I certainly would.

The CHAIRMAN. I think that completes the hearing.

I will be very pleased to have you all introduce your families.

Would you like to introduce yours?

Judge LONGOBARDI. Thank you, Mr. Chairman.

I would like to introduce my wife and my son, Joseph.

The CHAIRMAN. We are very pleased to have you all with us.

Any family or friends, Judge Leavy?

Judge LEAVY. Senator, I would like to introduce Ed Allen, a friend of mine from Eugene, OR, and Bert Johnson, also a friend of mine from Eugene, OR.

The CHAIRMAN. Glad to have you.

Mr. Boyle.

Mr. BOYLE. My family is not here, Mr. Chairman. Thank you.

The CHAIRMAN. Do you have any friends here?

Mr. BOYLE. Just Mr. Frumin and Mr. Wilson.

The CHAIRMAN. Senate staff, we are glad to have you.

Mr. Browning.

Mr. BROWNING. I would like to introduce my wife.

The CHAIRMAN. Is that your wife or your daughter?

Mr. BROWNING. My wife, Senator.

The CHAIRMAN. Senator East has a resolution here by the chairman of the board of commissioners endorsing Mr. Boyle for judgeship. Without objection, that will be put in the record.

[The following was received for the record:]

CHOWAN COUNTY, NC

RESOLUTION

Whereas, Mr. Terrence W. Boyle is a resident of Chowan County and a highly respected attorney in the prestigious law firm of LeRoy, Wells, Shaw, Hornthal and Riley; and

Whereas, Mr. Boyle has served in many civic and professional associations including Secretary-Treasurer of the First Judicial District Bar, Vice-President of the District Bar, lecturer in the Continuing Legal Education Program at Wake Forest University School of Law, a member of both the Edenton Historic Commission and the Elizabeth City Rotary Club; and

Whereas, he also served as legislative assistant to Senator Helms and as Minority Counsel to the Committee on Banking, Finance and Urban Affairs in the United States House of Representatives; and,

Whereas, Mr. Boyle graduated from American University Law School in 1970; and

Whereas, Mr. Boyle has gained the esteem and respect of both the legal community and the citizenry of northeastern North Carolina; and,

Whereas, Mr. Terrence W. Boyle has been recommended by United States Senator Jesse Helms to President Ronald Reagan for nomination as United States District Judge for the Eastern District of North Carolina.

Now, therefore, the Chowan County Board of Commissioners expresses its wholehearted support for the appointment of Mr. Terrence W. Boyle to this judgeship and urges all members of the United States Senate to expeditiously approve this well-earned nomination.

Resolved, this day, February 6, 1984.—Anne K. Spruill, Clerk.

The CHAIRMAN. Does anybody have anything else they wish to say? If not, we stand adjourned.

[Whereupon, at 2:50 p.m., the committee adjourned, subject to the call of the Chair.]

BIOGRAPHIES

JOSEPH J. LONGOBARDI

NOMINEE, U.S. DISTRICT JUDGE, DISTRICT OF DELAWARE

Birth: April 29, 1930, Wilmington, DE.

Legal residence: Delaware.

Marital status: Married to Maud L. Lasher, 2 children.

Education: 1948-49—University of Maryland; 1949-1950—University of Delaware; 1950-1952—Washington College, B.A. degree; 1952—University of Maryland, School of Law; 1954-1957—Temple University School of Law, LL.B. degree.

Bar: 1957—Delaware.

Experience: 1957-59 and 1961-64—Private practice; 1959-61—Deputy Attorney General, State of Delaware; 1965-1972—Longobardi & Schwartz; 1972-1974—Murdoch, Longobardi, Schwartz & Walsh, P.A.; 1974—Murdoch, Longobardi & Walsh; 1974-82—Associate Judge, Superior Court of Delaware; 1982 to present—Vice Chancellor, Court of Chancery, State of Delaware.

EDWARD LEAVY

NOMINEE, U.S. DISTRICT JUDGE, DISTRICT OR OREGON

Birth: August 14, 1929—Aurora, OR.

Legal residence: Oregon.

Marital status: Married to Eileen Hagenauer Leavy, 4 children.

Education: 1947-50—University of Portland, A.B. degree; 1950-1953—University of Notre Dame, LL.B. degree.

Bar: 1954—Oregon.

Experience: 1953-54—Private practice, Eugene, OR; 1954-1957—Deputy district attorney, Lane County, OR; 1957-1961—District judge, Lane County District Court; 1961-1976—Circuit judge, Lane County Circuit Court; 1976 to present—U.S. magistrate, District of Oregon.

TERRENCE W. BOYLE

NOMINEE, U.S. DISTRICT JUDGE, EASTERN DISTRICT OF NORTH CAROLINA

Birth: December 22, 1945, Passaic, NJ.

Legal residence: North Carolina.

Marital status: Married to Debra Ann Ellis Boyle, 3 children.

Education: 1963-67—Brown University, B.A. degree; 1967-70—American University, Washington College of Law, J.D. degree.

Bar: 1970—District of Columbia; 1974—North Carolina.

Experience: 1970-73—Minority Counsel, Subcommittee on Housing Committee on Banking and Currency, U.S. House of Representatives; 1973—Legislative Assistant to U.S. Senator Helms; 1974 to present—LeRoy, Wells, Shaw, Hornthal & Riley (firm has had other names), associate 1974-77, partner 1977 to present.

WILLIAM D. BROWNING

NOMINEE, U.S. DISTRICT JUDGE, DISTRICT OF ARIZONA

Birth: May 19, 1931, Tucson, AZ.
Legal residence: Arizona.
Marital status: Married to Zerilda Sinclair Browning, 4 children.
Education: 1949-54—University of Arizona, B.S.; 1957-60—University of Arizona, LL.B. degree.
Bar: 1960—Arizona.
Military service: 1954-57—U.S. Air Force; 1958-61—Arizona Air National Guard.
Experience: 1960-62—Estes & Browning, Tucson, AZ, 1962-69—Rees, Estes & Browning; 1969-72—Estes Browning & Zlaket; 1973-74—Browning & Druke; 1974-76—Browning, Druke & Hawkins; 1976-81—Slutes, Browning, Zlaket & Sakrison; 1981 to present Slutes, Browning, Sakrison & Grant.

CONFIRMATION HEARING ON:

LLOYD D. GEORGE AND ALICEMARIE H. STOTLER

WEDNESDAY, APRIL 25, 1984

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 2 p.m., in room SD-228, Dirksen Senate Office Building, Hon. Strom Thurmond (chairman of the committee) presiding.

Also present: Senator Laxalt.

Staff present: Vincent DeVane Lide, chief counsel and staff director; Robert J. Short, chief investigator; Allan Spence, investigator, Jack F. Nash, Jr., and Frederick D. Nelson, counsels.

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The CHAIRMAN. The committee will come to order.

We are meeting today to consider the confirmation of two Federal judges, both for the district court. First is Lloyd D. George, of Nevada, to be U.S. district judge for the district of Nevada.

I see Senator Laxalt is here, so we will go ahead and get started. Is Senator Hecht coming, do you know, Senator Laxalt?

Senator LAXALT. Yes sir, it is my understanding that he is going to try and come by.

The CHAIRMAN. Have a seat, Senator. We are delighted to have you with us, and we would be very pleased to hear from you.

STATEMENT OF THE HON. PAUL LAXALT, A U.S. SENATOR, FROM THE STATE OF NEVADA

Senator LAXALT. I thank the chairman.

It is a very great privilege for me to introduce to this committee an extraordinarily talented and dedicated public servant.

Not only has Lloyd George already established an excellent judicial record in his years on the bankruptcy bench; he has also distinguished himself as a leader in his church and in a multitude of civic organizations, and as a loving husband, father, and grandfather. I might indicate to the chairman and the committee that his wife is also present.

The CHAIRMAN. His wife hardly looks like a grandmother.

Senator LAXALT. I came to know Lloyd George when, as Governor of Nevada, I worked with him in his capacity as president of the Clark County Association for Retarded Children. In his efforts

to help meet the needs of Nevada's handicapped young people, he displayed a concern for the public good that has characterized his entire career.

After his graduation from Brigham Young University, Judge Lloyd George served as a fighter pilot in the Air Force before going on to law school at the University of California at Boalt. Following more than a decade of private law practice, he was appointed a judge on the U.S. Bankruptcy Court, where he has served for the past 10 years—and, I might say, with great distinction.

Recognized as one of the Nation's finest bankruptcy jurists, Judge George is a member of the National Bankruptcy Conference, and is one of five judges in the ninth circuit to serve on the Bankruptcy Appellate Panel. He has also had the honor of serving on the National Board of the Federal Judicial Center. And also, Mr. Chairman, he has been equally successful and energetic in his civic involvements. While his community service efforts are too numerous for me to catalog here, I will note that he is a member of the board of trustees of the National Conference of Christians and Jews and that he is also active in the Business and Professional Association of Southern Nevada.

In his new job, Judge George will be able to put his public service commitment and judicial experience to good use. There is a tremendous backlog of cases in the Federal courts of Nevada that must be dealt with at once. I am confident that Lloyd George, who keenly understands the proper, well-defined role of a judge in our democratic system of government, will handle this task superbly.

I urge his prompt confirmation.

Also, Mr. Chairman, I would like to thank, the staff of the committee because, recognizing how urgent it is to Nevada that this appointment be filled, they have worked swiftly with the Federal Bureau of Investigation to conclude the preliminary work.

I thank the chairman and the committee.

The CHAIRMAN. We rushed it up at your request, because we understood the urgency involved out there, and I am very pleased we could go forward with this hearing here today.

Senator LAXALT. I might say also that I have had, as the chairman has, occasion to appoint many judges. These nominations are often controversial and many times not without a good deal of negative testimony. I can say without qualification that in the appointment of this man, I have had nothing but compliments. There has been absolutely no criticism, which, probably more than anything else, speaks to his great credit.

The CHAIRMAN. Well, you have given him a high recommendation. Are you going to stay a minute while Senator Hecht testifies?

Senator LAXALT. I would be pleased to.

The CHAIRMAN. Senator Hecht, we will be glad to hear from you now.

STATEMENT OF HON. CHIC HECHT, A U.S. SENATOR FROM THE STATE OF NEVADA

Senator HECHT. Thank you, Mr. Chairman.

After hearing Senator Laxalt's remarks, they are basically the same as what I have. I just would like to reiterate about the great

feeling everyone in Nevada has for this distinguished judge. He has served with great distinction. He has the complete support of the legal profession. He is an attorney's attorney. He is a wonderful husband, a wonderful father, deeply religious, and is respected by the community as a dedicated citizen, and lastly, but not least, he has served his country in time of war, and he is a great American.

So, it is my privilege to be here today.

The CHAIRMAN. Thank you very much.

Mr. George, I just want to say that you could not have been recommended by two finer Members of the Senate than Senator Laxalt and Senator Hecht. Senator Laxalt has been here for a number of years. I have had the pleasure of serving with him, and I do not know of a man in the Senate who is held in higher esteem than he is.

Senator Hecht is a new man, and he has made a fine impression here, and a lot of friends, and you are very fortunate to have both these men endorse you so highly. If I did not know you, I would be willing to vote for you on their recommendation.

We are very pleased to have them here. If they wish to go, they can go; if they wish to stay, they can stay. But we will proceed now.

We might just go ahead and question you while we are waiting on Senator Wilson.

If you will stand now, Mr. George, I will swear you in.

Do you swear that the testimony you will give in this hearing will be the truth, the whole truth, and nothing but the truth, so help you, God?

Judge GEORGE. Yes.

The CHAIRMAN. Please have a seat.

TESTIMONY OF LLOYD D. GEORGE, NOMINEE, U.S. DISTRICT JUDGE, DISTRICT OF NEVADA

The CHAIRMAN. Judge George—you are a bankruptcy judge?

Judge GEORGE. Yes.

The CHAIRMAN. You have been a bankruptcy judge for the district of Nevada since 1974, I believe.

Judge GEORGE. That is correct.

The CHAIRMAN. This is a trial court of special jurisdiction, handling cases arising out of the Bankruptcy Code. I am confident that you are very knowledgeable of the laws pertaining to bankruptcy and related matters. I wonder, however, if you foresee any difficulty in the transition from a code of limited jurisdiction to the Federal district court, as it has such broad powers?

Judge GEORGE. Mr. Chairman, I certainly see some challenges, but I do not see any insoluble challenges. Clearly, the courts are very different. I will be dealing with a far broader spectrum of constitutional law questions. I will be dealing with criminal matters. I have not as a judge done so in the past. Jury trials will be somewhat different. I have tried a number of jury trials as a bankruptcy judge, and I have had good experiences with them, and I think the litigants and counsel have been pleased.

I think there are some pluses, as well—the fact that I am comfortable in the courtroom, that I have handled a good many major

civil matters and managed cases to a major extent, I think, will be helpful. But I am anxious and happy to meet the challenges that I am satisfied confront me.

The CHAIRMAN. Judge George, do you feel that a district court should assume direct control over complex issues and cases in order to avoid delays and to effectively manage such cases?

Judge GEORGE. Senator Thurmond, I feel that a judge is in part a manager, and I think, at least in my judgment, a judge should be familiar with the case and do whatever is necessary to make it move.

I think the line between assuming the attorney's role and controlling the case is an obvious one, and I think a judge should not interfere with the presentation of competent counsel. But I do think that a judge is a manager and is obligated, I think, to call upon attorneys for status reports, occasionally—pretrial conferences, I think, can be extremely important—and pretrial preparation can, I think, make a 1-week trial out of perhaps a 2-week trial. So I do think that a judge has management responsibilities.

The CHAIRMAN. Judge George, would you tell the committee how you would handle an instance in which counsel from one of the parties in your court was obviously not a skilled litigator and was not prepared to adequately represent the interest of his or her client?

Judge GEORGE. Senator Thurmond, I suppose it would depend somewhat, if one were dealing with a criminal trial. While I am of the belief that in criminal matters, one is entitled to a fair trial, not necessarily a perfect trial, I suppose there would have to be a determination and an evaluation as to the level of competency, and it may be very wasteful to proceed if it were evident that the competency level were such as not to be able to have a fair trial.

In a civil action, if it were a jury trial, it seems to me that, again, a judge should be cautious if he were assisting, as I think judges can properly do, not to create a feeling of bias in favor, especially for the jury.

My inclination would be and has been to counsel with attorneys in chambers, to try to give them some direction, and to try to encourage always a meaningful opening statement so that the attorney would think about where he was going. Again, much of this could perhaps be cured by wise pretrial procedures, in the first instance. If it were evident that it was a major matter, and considering all of the factors, it may be well, even in a civil case, to invite and encourage a continuance and perhaps impose sanctions so that the other party prepared would not be put in an unfair circumstance because of the unpreparedness of an attorney.

The CHAIRMAN. Judge George, in response to a portion of the committee questionnaire concerning judicial activism, you stated in part: "I believe that courts should be exceedingly careful in using their authority to avoid usurping the role of the other branches of Government."

I am very glad to see you make that statement, because it seems to be popular today for judges, because they can usurp authority, to take over control of school districts, hospitals, and other State institutions which ought to be under the State and not the Federal Government.

Now, I was just wondering, what are the standards that you would use in deciding that your court had a continuing administrative responsibility to oversee the implementation of one of its orders?

Judge GEORGE. Again, Senator Thurmond, it would seem to me, presupposing that the court had properly dealt with a supposed constitutional problem—the prison circumstance in Nevada comes to mind, Senator—and presupposing that a decision had been made that facilities were inadequate, it would seem to me that the court should exercise a good deal of restraint and it should allow other branches of Government to deal with those problems. There may be any number of constitutionally acceptable solutions, and it would seem to me that all of those should be explored.

I suppose it would be important that the order be specifically explicit so that other branches of Government would know what is, in fact, expected. I think, as well, it would be important to maintain a rapport of patience and a step proceeding, perhaps, to accomplish a proper end.

I think only as a very last resort, if one were dealing with recalcitrant parties, would it be appropriate to utilize contempt powers or writ of mandamus, but I think anyone with a great deal of power should exercise it very cautiously and wisely, Senator Thurmond.

The CHAIRMAN. Judge, you come with a fine reputation. You are recommended very highly by two outstanding Senators, and I want to wish you a successful tenure on the bench. I will try to expedite this matter by getting your name on the agenda for tomorrow. And your two Senators can help me get a quorum of this committee so we can get you confirmed tomorrow.

Senator LAXALT. We pledge our complete cooperation, Mr. Chairman.

The CHAIRMAN. Fine. We are delighted to have you with us, and you are now excused.

Judge GEORGE. Thank you so very much.

The CHAIRMAN. And thank you, Senators, for coming and testifying in his behalf.

Senator LAXALT. We thank the chairman.

The CHAIRMAN. Our next nominee is Alicemarie H. Stotler. We are very pleased to have you with us, and Senator Wilson is here now, and we will be glad to hear from him.

STATEMENT OF HON. PETE WILSON, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator WILSON. Thank you very much, Mr. Chairman.

I have the great pleasure to introduce to the committee today Alicemarie Stotler, the President's nominee for the Federal district court for the Central District of California. She comes with a very distinguished background and record, and I will hit only the highlights of these and assure the chairman that there is far more than he has time to hear.

The CHAIRMAN. I would be glad to put her résumé in the record, if you wish, to save you time.

Senator WILSON. All right, sir. We will be grateful for that.

Let me just explain that I think she is superbly qualified by education, by experience, and by her own particular talents. I must tell you that she received the highest rating possible from the judicial screening committee that I engage. She enjoys a reputation that is not just enviable, but—I will put it this way, Mr. Chairman—I hope that all of my recommendations are as warmly received and as broadly applauded as has been this one.

Alicemarie Stotler is a graduate of the University of Southern California. She also earned her legal degree there. While at the University of California, she was the winner of a statewide moot court competition. She also won the American Jurisprudence Award for Federal Civil Procedure, which will stand her in good stead in light of her oncoming responsibility.

She is admitted not only to the California State Bar, but to the Federal court bar for the northern and central districts, and was admitted to the U.S. Supreme Court.

She is certified by the California Board of Legal Specialization as a criminal law specialist, in recognition of her experience and performance as the first full-time woman deputy district attorney in the Office of the Orange County District Attorney, a very fine office.

She has won high commendation from her colleagues of the bar and also on the bench, as a criminal law specialist and also as a lawyer in general private practice. She comes with considerable judicial experience. She spent 2 years on the municipal court bench, and thereafter was elevated to the superior court bench. And I think perhaps it says a great deal that she was voted Judge of the Year, not only by the Orange County Trial Lawyers' Association in 1978, but by the Orange County Trial Lawyers' Secretaries, who perhaps know as much as the trial lawyers and are as good or better judges of character.

The list of her professional, charitable, and educational affiliations is very lengthy. She, as a new member of the municipal court, served as a justice pro tempore in the appellate courts of California, which is highly unusual. She has chaired the family conciliation court committee of the superior court. She has served on sections of the California State Bar Association having to do with a number of different subjects, and during her tenure on the Orange County Superior Court, served on the criminal panel, the civil law and motion calendar, the family law panel, general trials, appellate department, and general trials.

She is, despite her obvious tender years, someone who comes to this new responsibility not just adequately prepared, but I will say again, superbly prepared. She has been a teacher of the law. She is a skilled jurist, acknowledged to be so, acknowledged to be one of the finest prosecutors in the history of that Orange County District Attorneys' Office.

So I will simply say, sparing the Chair further explanation, and perhaps, sparing the candidate embarrassment, that it is an unusual pleasure and, in fact, a privilege for me to be able to introduce Alicemarie Stotler and to commend her to this committee's attention.

The CHAIRMAN. Judge Stotler, I want to congratulate you upon being appointed by the President to be a Federal district judge, and

you are fortunate to have the recommendation of such an able and fine Senator as Senator Wilson of California. He is a new Senator here, but he has gained great stature already and is held in high esteem by his fellow Senators. I am not going to ask him to stay long, if he wants to go, but he is welcome to stay.

Senator WILSON. Thank you very much, Mr. Chairman.

The CHAIRMAN. Judge Stotler, if you will stand, I will swear you in for your testimony.

Do you swear that the testimony you will give in this hearing will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mrs. STOTLER. Yes.

The CHAIRMAN. I believe your husband is here. Would you wish him to be recognized?

Mrs. STOTLER. If I may, Mr. Chairman, I have both my mother present, Mrs. Loretta Huber, from California.

The CHAIRMAN. We are delighted to have all of you here.

Mrs. STOTLER. And my husband, Mr. James Stotler.

Thank you so much.

The CHAIRMAN. Do you have some more members back there?

Mrs. STOTLER. I happen to have some unexpected rooters, if I may, Mr. Chairman. They are going to give a speech here, and they just happened to drop by.

The CHAIRMAN. We are very glad to have them here.

STATEMENT OF ALICEMARIE H. STOTLER, NOMINEE, U.S. DISTRICT JUDGE, CENTRAL DISTRICT OF CALIFORNIA

The CHAIRMAN. Judge Stotler, I believe you sat for approximately 2 years as a municipal court judge in Newport Beach. Is that right?

Mrs. STOTLER. Yes, sir.

The CHAIRMAN. And for approximately 5 years as a superior court judge in Santa Ana, CA.

Mrs. STOTLER. That is correct.

The CHAIRMAN. Is the superior court judge out there the highest trial court in the State?

Mrs. STOTLER. Yes, it is.

The CHAIRMAN. Do you have the power of death in criminal cases?

Mrs. STOTLER. That is correct. It is general jurisdiction, and I have heard death penalty cases, yes.

The CHAIRMAN. Unlimited jurisdiction in civil matters, I presume.

Mrs. STOTLER. Correct.

The CHAIRMAN. Judge Stotler, do you feel that this experience will be of assistance to you in performing the duties of a Federal district court judge?

Mrs. STOTLER. Oh, I certainly do, Mr. Chairman, yes. I would expect that having learned to manage the caseload of a municipal court and then the superior court will be something that will help to cope with what I understand to be the volume in the district to which I hope to be assigned.

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In addition, because of the breadth of cases, most civil matters that I would anticipate appearing in the district court are matters that I have seen before, and as the Senator just mentioned, I have handled criminal cases from A to Z, with all possible consequences, and so I feel somewhat comfortable dealing with those types of matters, as well. I think that experience should hold me in good stead.

The CHAIRMAN. You do not think there will be any trouble making a transition from that experience in the practice of law to be a Federal district judge, do you?

Mrs. STOTLER. What troubles there might be, Mr. Chairman, I am confident that I can and will overcome, and I look forward to learning new substantive matters with which I have not dealt before, but I think I have applied myself to scholarly studies in the past, and I would like to do it again.

The CHAIRMAN. You have practiced in the Federal court, I assume.

Mrs. STOTLER. My practice was minimal with respect to Federal matters, limited primarily to magisterial matters that were in Orange County as opposed to Los Angeles County. But I have been reading diligently already on matters of Federal procedure as well as criminal procedure.

The CHAIRMAN. Now, I want to ask you a question about judicial temperament. I think it is very important for a jurist to possess proper judicial temperament. I have seen some judges embarrass jurors and witnesses and lawyers in the courtroom and want to flaunt their power, and I think that is just completely out of reason and should never be done. I think the person with the most power should be humble, so to speak, because he has got all the power he wants. A Federal judge has tremendous power.

How do you feel about judicial temperament?

Mrs. STOTLER. Well, I agree with the Senator's remark. Part of the philosophy that I have about judging is that the power goes with the office, and I am merely a conduit, although the expression of that particular power brought to bear on a certain case that is before me, and I do not understand why it is that a judge would want to embarrass, certainly, jurors, who are called upon out of the blue to serve on a case, and I do not think that that begets any efficiency. It seems to me that if the judge is wrapped up in trying to vindicate his or her ego to explain what a powerful individual he or she might be, we are not accomplishing the goal, which is to litigate the case at hand and hopefully, effectuate justice.

I think if we were doing labelling of judicial temperament, it would include qualities of patience, treating litigants and attorneys and jurors with dignity, intelligence, courtesy, and basically, trying to attend to the matter at hand, which is to dispense justice, handle litigation promptly and efficiently, without trying to demean or belittle anyone.

The CHAIRMAN. Judge, do you feel it would be helpful to you as a district court judge to have a sentencing commission to establish uniformity in sentencing? We have passed a bill through the Senate here, and a crime package that would have a commission that would set the minimum and maximum sentences, and a judge

would have to explain if the judge went beyond or below those standards.

Mrs. STOTLER. I am sure on a limited basis, this is something I have had experience with in the California system. Sentencing is usually one of the most difficult jobs for any judge to deal with, because the punishment has to fit the crime; the defendant and society's rightful needs in perhaps avenging some wrong which has been done society. Such a commission, it seems to me, would be a very welcome addition to the criminal justice system, so that nationwide, the Congress and the judiciary would have guidelines as to where a sentence should fall in a criminal case, and certainly, a judge is in the best position to make explanations as to why a sentence needs to be higher or lower in any given case. This sounds like a very good idea to me.

The CHAIRMAN. There are several elements I think a judge has to consider in sentencing. Some years ago, I was a circuit judge, which was the highest trial court second to the superior court in California, and one of the most difficult things I had to do was to try to pass the right sentence on people. Sometimes, I wondered if I did the right thing, because some have backgrounds that are far different from others, and some, the motive of the crime is far different—it may be murder, but the viciousness of it or the matters involved. And then, you have got your public here, and you have got to set an example for the public. And it is a very difficult thing to try to pass the proper sentence in a case. And your experience as a superior court judge ought to be of considerable help to you along that line.

Mrs. STOTLER. I would hope so, Senator, and I think perhaps renewed emphasis on participation by people who have been wronged by crimes may be helpful input, so that if it is appropriate under the bill just mentioned, where the court can hear from people who have been wronged by the crime. Sometimes, there is some feedback there that hopefully will tell the judge that the sentence is right, as opposed to wrong.

The CHAIRMAN. If you could just read people's minds, and what is in their minds as to whether they are truly sorry for what they did and will not repeat, it would make such a big difference. But of course, you cannot do that. You have to judge their demeanor as best you can during the trial, and their past history, and the prospect of committing a crime again, and there are a lot of factors you have to take into consideration, because after all, the welfare of the public is paramount, in my opinion.

Mrs. STOTLER. That is correct.

The CHAIRMAN. In response to a portion of the committee questionnaire concerning judicial activism, I believe you said,

> Most members of the judiciary try to apply the law to a specific problem guided by statute, regulation, or case precedent. On rare occasions, such guidance is lacking, as on those occasions as when the court is most vulnerable to the criticism under discussion, because the individual judge is creating the law, rather than applying a known commodity.

Judge, where in your view does a conscientious judge draw the line between judicial decisionmaking and legislative decisionmaking, and what are the criteria you would consider in resolving

whether or not a decision was the type that should be made by a judge as opposed to an elected legislative body?

Mrs. STOTLER. Usually, the subject matter of the lawsuit will have been addressed at some point by the appropriate legislative body, and the judge has some guidance by whatever may already be on the books in terms of what is the subject for legislative action.

When I sat on the civil law and motions calendar, we would see cases come through that were basically made up with a new cause of action that had not been legislatively recognized, and in those instances it seemed to me that if it was a policy matter that affected great numbers of people, it was probably not a matter for judicial decisionmaking, but something that had to be subject to legislative scrutiny. The judiciary is rarely in a position to make up good policy which will have broad application, and rather, is better designed to deal with a given controversy where there is a justifiable issue involved.

So I usually feel that I can recognize a case that is the kind that belongs to the Congress, and that is the body that should deal with the problem if a remedy is required, rather than a judicial decision being called for. It depends upon the subject matter, usually.

The CHAIRMAN. I am sure a great many judges attempted to take actions that really fall in the legislative realm, so to speak, but I think if they would just ask themselves the question, which branch does this come under—is the legislative body to make the law; is it an executive function to administer the law, or is it a judicial matter to interpret the law—and we have had so many judges, though, that look like they want to legislate, and from all I have known and heard about your background, I feel assured that you will stick to the judicial branch.

Mrs. STOTLER. I certainly hope so, Senator.

The CHAIRMAN. I want to mention to you that I got a call a couple of days ago from Judge Charles E. Simon, the chief district judge in South Carolina, who is out in California at a meeting, and he recommended you highly. I do not know whether you have met him or not, but he had been talked to by some lawyers or judges out there about you, and he is a former law partner of mine, too, so I just want to tell you that he gave you a fine recommendation.

Mrs. STOTLER. Well, I thank you for telling me that. I am quite surprised, and I did not know.

The CHAIRMAN. Judge Charles E. Simon, Jr. You might want to drop him a note. He is in Aiken, SC, where I am from.

Mrs. STOTLER. I will do that, Senator.

The CHAIRMAN. Now, without objection, I am going to ask the reporter here to place a résumé of you and also Judge George in the record.

Those are all the questions I have. I hope you have a successful and happy tenure on the bench.

Mrs. STOTLER. Thank you very much.

The Chairman. And we will try to get you on the agenda for tomorrow and get quick action. Sometimes we have trouble, with the Senators so busy, in getting a quorum at the Judiciary Committee. So tell Senator Wilson to be sure to speak to as many Senators to try to help us get a full quorum tomorrow.

Mrs. STOTLER. Thank you. I will.
The Chairman. We now stand adjourned.
[Whereupon, at 2:35 p.m., the committee was adjourned.]

BIOGRAPHIES

LLOYD D. GEORGE

NOMINEE, U.S. DISTRICT JUDGE, DISTRICT OF NEVADA

Birth: February 22, 1930, Montpelier, ID.
Legal residence: Nevada
Marital status: Married to LaPrele Badouin George, 4 children.
Education: 1948-50 and 1952-55—Brigham Young University, B.S. degree in 1955; 1958-1961—University of California Boalt Hall, J.D. degree.
Bar: 1961—Nevada.
Military service: 1955-1958—U.S. Air Force.
Experience: 1961-1965—Law Office of Jack Pursel; 1965-69—Private practice; 1969-71—Albright, George, Johnson & Steffen, partner; 1971-74—George, Steffen & Simmons, partner; 1974 to present—U.S. bankruptcy judge, District of Nevada.

ALICEMARIE H. STOTLER

NOMINEE, U.S. DISTRICT JUDGE, CENTRAL DISTRICT OF CALIFORNIA

Birth: May 29, 1942, Alhambra, CA.
Legal residence: California.
Marital status: Married to James A. Stotler.
Education: 1960-61—UCLA; 1961-64—University of Southern California, B.A. degree; 1964-67—University of Southern California School of Law, J.D. degree.
Bar: 1967—California.
Experience: 1967-73—Assistant district attorney, Orange County; 1973-76—Stotler & Stotler; 1976-78—Judge, municipal court, Orange County; 1978-83—Judge, superior Court, Orange County; 1983 to present—Stotler & Stotler.

CONFIRMATION HEARING ON CAROL E. DINKINS

WEDNESDAY, MAY 9, 1984

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 2 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Strom Thurmond (chairman of the committee) presiding.

Also present: Senators Specter and Biden.

Staff present: Robert J. Short, chief investigator; and Cynthia C. Lebow, minority staff director.

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The CHAIRMAN. I see the distinguished Senator from Texas here so we will proceed. Senator Tower, we are delighted to have you with us. Will you have a seat and make your presentation. The committee will come to order.

I might just say a word before you start.

I am very pleased today to have before the committee the nominee for Deputy Attorney General of the United States, Mrs. Carol E. Dinkins.

This is a nomination of some historic significance in that Mrs. Dinkins is the first woman ever nominated for the position of Deputy Attorney General.

Mrs. Dinkins is well known to many members of this committee. She served as Assistant Attorney General for the Land and Natural Resources Division at the Department of Justice from 1981 to 1983, and I might add that her performance in this position brought great credit to herself and to the Department. After leaving the Department of Justice, Mrs. Dinkins returned as a partner in the law firm of Vinson & Elkins where she previously served from 1973 to 1981.

Mrs. Dinkins is an individual of fairness, honesty, independence, and experience. She has the ability to mediate and resolve problems while, at the same time, continuing to maintain the respect of all parties involved. I am sure she will meet the many challenges ahead with perseverance and fortitude.

The President is to be commended for nominating an individual of such high caliber. I am confident Mrs. Dinkins will serve in an exemplary manner and will make an outstanding Deputy Attorney General. She is from Texas, and the senior Senator from Texas,

Senator Tower, one of the most influential members of the Senate, is here to endorse her.

Senator Tower, we would be glad to hear from you.

STATEMENT OF HON. JOHN TOWER, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator TOWER. Thank you very much, Mr. Chairman.

It is really a great pleasure and honor for me to present to the committee today a native Texan who has been nominated by the President to be Deputy Attorney General of the United States, Mrs. Carol E. Dinkins.

Mrs. Dinkins is a stranger neither to the committee nor the Department of Justice. As you noted, Mr. Chairman, she recently served as Assistant Attorney General for Land and Natural Resources from 1981 to 1983. In July of last year, after a successful tenure at the Department, she returned to her former law firm in Houston, Vinson & Elkins—just a little old country law firm down in Houston which I think now is probably one of the largest law firms in the United States. The numbers change from time to time so we are not sure.

Mr. Chairman, the mere fact that the President decided to call Carol back into service to this Nation and the administration is indicative of the respect for and esteem in which the President holds Mrs. Dinkins. Further, it depicts clearly the effective manner in which she performed her duties as Assistant Attorney General.

Carol graduated from the University of Texas at Austin in 1969 with a bachelor of science degree in education, after which she received her juris doctor degree from the University of Houston College of Law in 1971.

Prior to joining Vinson & Elkins, Carol was on the adjunct law faculty at the University of Houston while working at the Texas Law Institute of Coastal and Marine Resources. In 1973, she became associated with Vinson & Elkins and was made a partner in 1979. She was practicing with the firm until her nomination by the President in 1981 as Assistant Attorney General.

She is a member of the American Bar Association, the State Bar of Texas and the Houston Bar Association, and is a fellow of the Texas Bar Foundation. Additionally, she is a member of the Houston Chamber of Commerce, and other civic and professional organizations. While serving as Assistant Attorney General, Mrs. Dinkins was appointed as Chairman of the President's Task Force on Legal Equity for Women, as a Commissioner on the Native Hawaiian Study Commission, and as a Member of the National Consumer Cooperative Bank Board.

The Nation is privileged to have among its citizenry those individuals who are willing to make personal sacrifices to become public servants. Abigail Adams once asked, "If we do not lay out ourselves in the service of mankind, whom should we serve?" Mrs. Dinkins has, once again, made this sacrifice to serve mankind, and I am pleased that the President has chosen to nominate Carol to the No. 2 position in the Department of Justice.

It is my hope, of course, Mr. Chairman, that the committee will act expeditiously and favorably on the nomination of this enor-

mously capable and prestigious person for this extremely important position.

The CHAIRMAN. Mrs. Dinkins, because of your own fine qualities and experience, together with the splendid endorsement given you by the senior Senator from Texas, chairman of the powerful Armed Services Committee, I am assured of your approval.

Senator, you may remain or leave if you wish to do so.

Senator Bentsen submitted a statement supporting Mrs. Dinkins, which, without objection will be put in the record.

[Material submitted for the record follows:]

PREPARED STATEMENT OF SENATOR LLOYD BENTSEN

Mr. Chairman, only 3 short years ago I appeared before your committee to support Ms. Dinkins' nomination for the post of Assistant Attorney General for the Land and Natural Resources Division.

Today, I have again come before the committee to endorse this historic nomination of the first woman Deputy Attorney General of the United States. A native Texan, Ms. Dinkins, brings a wealth of experience and stellar credentials to this important post.

Ms. Dinkins is a graduate of two distinguished Texas academic institutions: The University of Texas at Austin, and the University of Houston Law Center. Ms. Dinkins' academic, private and public sector work experiences have distinguished her as a leading authority in environmental and land use law.

In 1979, Ms. Dinkins attained the distinction of being named the first woman partner of one of the country's finest law firms, Vinson & Elkins, after 6 years of association. Her 1981 Senate confirmation to Justice provides Carol Dinkins with an additional honor of being named the first woman Assistant Attorney General for the Land and Natural Resources Division.

During her tenure with the Department of Justice she established the Environmental Crimes Unit, which investigates and prosecutes criminal violations of environmental statutes, such as the Hazardous and Clean Water Acts.

I believe Carol Dinkins' integrity, intellect, and demonstrated ability makes her the leading choice for this important appointment.

Thank you.

The CHAIRMAN. If you will stand up we will swear you. Do you swear that the testimony you will give at this hearing will be the truth, the whole truth, and nothing but the truth, so help you God?

Mrs. DINKINS. Yes, I do.

The CHAIRMAN. Senator Specter, do you have a statement to make?

STATEMENT OF SENATOR ARLEN SPECTER

Senator SPECTER. I want to thank the senior Senator from Texas for his appearance here today.

I wanted to be present for at least part of this proceeding to express to you my respect for your candidacy and the very great importance the position holds. I know others of the Judiciary Committee would want to be here, but they all have very busy schedules. You are up for a very, very important position.

The CHAIRMAN. Without objection, we will place a statement by the junior Senator from Texas, Senator Lloyd Bentsen, in the record following the statement of the senior Senator from Texas, Senator Tower.

Mrs. Dinkins, would you like to introduce any of your family or friends who are here with you?

Mrs. DINKINS. No thank you, Senator.

The CHAIRMAN. Incidentally, I see the U.S. district attorney for South Carolina is here, Mr. Henry McMasters. We are pleased to have you attend the hearing.

Mr. MCMASTERS. Thank you, sir.

The CHAIRMAN. I have been told we have to have two more lawyers in the drug enforcement program in South Carolina. I just talked to Mr. McMasters about this subject and asked his opinion. He said he highly endorses that request so you don't leave here today until I can see you.

Mrs. Dinkins, you are presently a partner in the law firm of Vinson & Elkins?

TESTIMONY OF CAROL E. DINKINS, NOMINEE, DEPUTY ATTORNEY GENERAL, DEPARTMENT OF JUSTICE

Mrs. DINKINS. Yes, sir.

The CHAIRMAN. Prior to joining the Department of Justice, you served as Assistant Attorney General.

Mrs. DINKINS. Yes, I did.

The CHAIRMAN. Would you please tell the committee the arrangement you have made to resolve your financial interest in this firm.

Mrs. DINKINS. I have advised the firm I will resign my partnership upon confirmation by the Senate, and I will have no other continuing interest in the law firm.

The CHAIRMAN. In other words, you are severing your connections.

Mrs. DINKINS. Yes.

The CHAIRMAN. Do you anticipate cases coming before the Department of Justice in which you or your firm might have been involved and, if so, what action to do you intend to take in such cases?

Mrs. DINKINS. There may indeed be cases or future cases before the Department that my former firm is involved in. If that is the case, I will by directive instruct the Department that I am not to be involved in but to be recused from all such cases or matters.

The CHAIRMAN. I believe your husband is also a lawyer and he is in another law firm out there, I think you told me yesterday.

Mrs. DINKINS. Yes, sir, and I will be recused from all cases and matters in which his firm is involved that come before the Department. I have filed a recusal letter with the committee.

The CHAIRMAN. I wanted to bring that point out because I think it is important because, where you have such a close relationship as husband and wife, I think that is the only appropriate step you you can take, and I want to commend you for doing that.

Mrs. Dinkins, what do you consider to be the major problems facing you at the Department of Justice if you are confirmed a Deputy Attorney General?

Mrs. DINKINS. The things I am concerned about are matters pending before the Congress such as the crime package and immigration bill. It is my intent to do anything I can to work with this committee and with the House Judiciary Committee to make sure we get those things approved.

The CHAIRMAN. Mrs. Dinkins, what are your major goals and priorities and what actions, if any, have you taken to accomplish these tasks?

Mrs. DINKINS. My major goals in the Department are to get the crime package and the immigration bill passed. I have advised Mr.

McConnell and other members of the Department that I am available to work in any way that would be appropriate and helpful to assure passage of that legislation.

I also want to continue the system of coordination department-wide that was commenced under this administration to make sure the U.S. attorneys and local law enforcement officials are involved in setting priorities and in carrying out those priorities in law enforcement matters.

The CHAIRMAN. There is one here today from South Carolina. You may want to talk to him before you leave.

Mrs. DINKINS. I will be sure to do that.

The CHAIRMAN. I realize as Deputy Attorney General, you will be responsible for all civil actions at the Department of Justice. I wonder, however, if you have any specific thoughts on what actions might be taken by the Department to curtail the activities of individuals involved in organized crime?

Mrs. DINKINS. This is an area that is very important and it is one the administration has worked very hard to move forward on. The budget in the Department has been extended considerably, particularly to deal with organized crime. I support that effort and I will work to make sure that we train people and get them into the field in this area as quickly and as effectively as possible.

The CHAIRMAN. I don't know of anything today that is more important than taking steps to curtail organized crime and drug activities.

Do you feel enough resources have been allocated for these areas?

Mrs. DINKINS. I think the Department has taken steps to make sure sufficient resources in this area are available to the Department, and I certainly support that sort of work in the budget area and in the area of resources.

The CHAIRMAN. The chairman of the President's Commission on Organized Crime was before the Judiciary Committee this morning, Judge Kaufman from New York. We think this Commission is very important. It has tasks to be performed and he has been of great service to his country. I plan to hold at least one organized crime hearing in my own State concerning motorcycle gangs. I don't know if you have had an opportunity to study or learn about some of their activities.

Mrs. DINKINS. No, sir, I have not studied it but I have read a little about it and I know it is a serious problem.

The CHAIRMAN. Mrs. Dinkins, in 1982 you presented a paper to the American Bar Association's Hazardous Waste Workshop on enforcement litigation. What do you see as the problems confronting the Department of Justice in being more actively involved in the investigation and prosecution of those responsible for hazardous waste violations, and how would you resolve such problems?

Mrs. DINKINS. At the time I delivered that speech, we were working in a concentrated way to try to deal with criminal activities in the hazardous waste area. After giving that speech, we sought additional resources, and we organized an environmental crimes unit within the Land and Natural Resources Division. We staffed it with experienced prosecutors. Since that time, the EPA has added some experienced investigators, about two dozen of them, and there

has been considerable training of those investigators since that time.

I think both the Department and the EPA have worked very hard to try to improve the ability to deal with hazardous waste crimes, and I feel that is moving along very well.

The CHAIRMAN. I recently addressed a meeting of the members of our Regional Crime Information Center at their winter conference in Nashville, TN. I was extremely impressed with the hard-working indication displayed by these fine law enforcement officers. ROCIC is one of the six multistate regional intelligence projects. These organizations do an outstanding job, in my opinion, in coordinating and providing information to local law enforcement officers that is usually not available from the Federal level.

Mrs. Dinkins, my question is actually in two parts. First, do you support the activities of these multistate projects and, second, would you be willing to meet with their directors in order to obtain input and get first-hand information in resolving the problems of mutual concern?

Mrs. DINKINS. Senator, I would be very pleased to meet with them and, indeed, I would be pleased to meet with you about the programs. It is something I am not familiar with but I would like to learn about it.

The CHAIRMAN. Mrs. Dinkins, I recently learned as a result of the exchange of information that occurred at the ROCIC conference, seven murders were solved at just one conference. Two of these involved law enforcement officers. One was a 6-year-old unsolved murder of a deputy sheriff. Additionally, others have been identified in other unsolved murders. Incidentally, at that conference, I saw a film of a man Lukas and a Mr. O'Tool who have been arrested and charged with many crimes. I understood that at that time that they had evidence that maybe he had confessed to 87 crimes. He confessed to 87 murders, and this center down there was very essential and important in uncovering a lot of these crimes. I came away from that center feeling that they are really doing a magnificent job, and that is why I would appreciate your meeting with them.

Mrs. DINKINS. I will look forward to it.

The CHAIRMAN. Traditionally, the Deputy Attorney General has been responsible for oversight of the day-to-day operations in the Justice Department. Do you know whether that will continue to be duties of the Deputy Attorney General or have you talked to the Attorney General and does he have other matters in mind for you?

Mrs. DINKINS. We have not talked specifically about the duties. It is my understanding they will be the same as you have seen in the past in this administration, but I will be available to do whatever the Attorney General needs me to do.

The CHAIRMAN. I think those are all the questions I have in mind at this time.

Senator Denton has some questions here. If you will respond to those for the record, I would appreciate it. I will get the staff director to hand those to you.

I understand Senator Biden is on his way down here.

We will take a 5-minute recess until he arrives.

[Brief recess.]

The CHAIRMAN. The committee will come to order.

The distinguished ranking minority member of this committee is now present, Senator Biden. He and I work very closely together. The cloakroom is in the majority now and he cooperates with me, and if the Democrats ever get a majority, which I hope they won't, I will cooperate with him.

STATEMENT OF SENATOR JOSEPH R. BIDEN, JR.

Senator BIDEN. Thank you, Mr. Chairman. If that ever happens, Mr. Chairman, I can assure you if that day ever arrives, I will look forward to your cooperation.

Mr. Chairman, I apologize for being late. I have a series of questions. I will not ask that all of them be answered at this time; but with your permission and for the record, I would like to submit to the nominee six questions relating to personal finances for the record.

The CHAIRMAN. Without objection, that will be done. Will you answer those for the record.

Mrs. DINKINS. Yes, Mr. Chairman.

Senator BIDEN. I have a whole series of questions which I will not tie you up on now but they are questions about which we should have some insight into your notions of how we should be conducting certain portions of our endeavors in the Justice Department from fair housing to Grove City and others which I will not again tie you up with now, but I would like for the record prior to our voting on your confirmation which I expect will come very rapidly, but let me begin with a few questions relating to the management of the Department of Justice. For the past 5 months, top-appointed positions in the Department of Justice have been in a state of flux and some might even suggest there has been some mild confusion. The Attorney General announced he intends to resign in January. As a result of inquiry, he acceded to the request of the President to remain although he is less than enthusiastic about remaining until after the November election, and quite possibly we will have the matter resolved by then.

When Deputy Attorney General Schmults resigns and vacancies exist in the Civil Division and the Office of Legal Policy, all of this brings me to the question of who is going to be running the Justice Department?

You are being appointed to a very significant position. The significance increases in light of the circumstances in which you are going into the Department. Have you had any extended conversations with the Attorney General of the United States about your decision to accept the nomination of the deputy position?

Mrs. DINKINS. Yes, Senator Biden, I have.

Senator BIDEN. What do you understand the Attorney General's intentions regarding his tenure in the Justice Department?

Mrs. DINKINS. The Attorney General advised me he would stay until the end of the year or until sometime next year when his successor is confirmed.

Senator BIDEN. Obviously, I am not being facetious in asking the question because this could be a de facto hearing for you to become

Attorney General of the United States if he chose not to stay on, which would be his right not to stay on.

It is certainly a possibility that the allegations against Mr. Meese would be extended beyond the time the Congress plans to stay in session. I sincerely hope that will not be the case. In that event, the nomination of another individual would have to be carried over to the 99th Congress.

You are quite sure Mr. Schmults, based on your discussions with him, would remain until a successor was chosen or until after the next election; is that correct?

Mrs. DINKINS. Yes, Senator Biden. I can't tie Mr. Smith down for him but I did discuss it with him and that is certainly my understanding.

Senator BIDEN. Obviously, the reason for this is not just an idle exercise as to what Mr. Smith is thinking today or will Mr. Smith stay in Washington. As qualified as you may be, I consider it to be a very, very important decision, as we all do, as to your appointment to this position.

Quite frankly, I think you have had an admirable record in the area of environmental policy, and I think you have demonstrated some fine judgmental qualities. Having been in a tough spot—and you may not want to acknowledge you were in a tough spot—I think you were in a tough spot but you don't have a lot of experience beyond that area of law.

Can you tell us why you think you are qualified for this number two slot and tell us in what areas you will function, and what will be your responsibilities in a Smith-run Attorney General's Office.

Mrs. DINKINS. I think the experience I have had lends itself very well to the position of Deputy Attorney General. I think it is true in this instance. I know all of the people in the Department. I have worked with them. I worked very successfully with them. I know many Members of Congress, and I have testified numerous times before Congress in my previous tenure. I also know many of the people in the agencies. I think because I know these people, because I have worked successfully with them, because I have been working in the Government in the recent past and know how it operates and know what to look for and I know what to be concerned about that I can fulfill this position very well.

Senator BIDEN. Do you feel qualified to make judgments on antitrust law, for example? It is an area of some considerable flux right now, I think for good reasons. Is that an area you would feel you had the expertise to be making judgment calls about at this point?

Mrs. DINKINS. I do not hold myself out as an antitrust expert but I hold myself out as a lawyer who can make tough decisions. I do that after I have weighed all sides of the question. I would do it only after seeking the advice of the people who are expert in this area and then consulting with other people who may not be expert but who have sound judgment and can give me sound advice on these issues. I will be very cautious in making decisions, but I think I am capable of doing it.

Senator BIDEN. Just this week, the Associate Attorney General Mr. Jensen presented the Department's fiscal year 1985 budget. I think this was a valuable opportunity for him to present his past accomplishments and future direction of the Department. It is es-

sential that there be the balance of power between the executive branch and the legislative branch.

I have reviewed the presentation made by Mr. Jensen and I have concerns I would like to discuss with you.

Although your nomination was only received by the Senate on Friday, let ask were you involved in the discussions and/or consultations with Mr. Smith and Mr. Jensen and Mr. Meese or anyone else with regard to the Department's budget submission?

Mrs. DINKINS. No, I was not.

Senator BIDEN. What would be your view as to the immediate requirement that will come upon you if in fact you are confirmed by this committee and by the Senate in the next several weeks? How deeply do you plan to get involved in the authorization process and the funding questions?

Mrs. DINKINS. I will get involved in any of those questions that call for my involvement. If it is still pending before the committee, once I have been confirmed, if I am confirmed, and there are outstanding questions by the committee, I will certainly be involved in discussing those. If there is anything that the committee would like to know about my views once I have studied the budget requests, certainly I would be happy to discuss that with you.

Senator BIDEN. I happen to have been a real fan of the man whose job you would be filling. I found him to be always available, extremely bright, and he impressed me with the range of knowledge he had on some of the very diverse subject requirements that he had to deal with and you will have to deal with.

One of the things that concerned me a little bit about the Associate Attorney General's presentation to this committee was that there was absolutely no mention made of the activities of the Civil Rights Division or the Antitrust Division. Certainly Members of Congress and others view activities in those two areas the fundamental protection of both civil rights and economic rights. I am extremely discouraged that the enforcement of civil rights or antitrust laws, as it appears to my perception, with your predecessor gone, seem to have a much lower profile in enforcement in those two areas.

Could you assure the committee that both those areas would receive your immediate attention? I am not asking you how you would come out on it but that you, in fact, view enforcement of the civil rights legislation and antitrust legislation on the books as a very important function and part of your job, Mrs. Dinkins.

Mrs. DINKINS. I can assure you of that very easily. I am very committed to law enforcement, and I don't think any area should be overlooked, and I would not overlook the civil rights area or antitrust area.

Senator BIDEN. I am very pleased with the interest of this administration, through the prodding of and the support of the chairman here, to deal with law enforcement, enforcing the laws. But I am a little concerned that we tend to think of enforcing the laws in a somewhat myopic sense. We think of it in terms of the criminal law as it relates to law enforcement, which I am delighted about, but we do not seem to see a similar emphasis placed upon enforcing civil rights laws.

Are you prepared to tell us that that is an equally high priority for you as the number two person in the Justice Department?

Mrs. DINKINS. Yes, sir. I believe the laws whether criminal or civil laws should be enforced, and I would certainly not overlook the enforcement of the civil rights laws.

Senator BIDEN. Have you had an opportunity to look at the decision in the *Groves College* case?

Mrs. DINKINS. I have not looked at that decision.

Senator BIDEN. I will not attempt to pin you down on that now, but it will be one of the very important areas we will have to deal with. There may be disagreement on the committee whether we should take certain issues. They have already been taken. How they will come out is another question.

When Mr. Schmults was there, we were always able to get an answer one way or the other. We did not always like the answer. Many of us are going to be looking to you because you will, in fact, be the de facto person running the Justice Department. We don't have the opportunity to have the Attorney General available to us every time we would like him.

In fairness to the Attorney General, I found in my limited experience—I have only been here for 12 years and four Presidents and the Chairman is much more experienced than I am—but I suspect you have found this in other departments or portions of other departments you have run and in your legal practice that when an associate lawyer and/or employee decides it is time to go, although you may be able to talk him into staying on, the fact is you do not have the same person you had as the person who made the decision they were going. It is human nature. I have never seen it function any different way. So we are going to be looking to you a lot, so I would be very interested in receiving a commitment from you that you will be willing to come back up and discuss with us the Department's position at an appropriate time once you have been involved on the *Grove City* case and other matters relating to civil rights enforcements.

Would you be willing to do that?

Mrs. DINKINS. First, let me say I think Attorney General Smith is very active in the Department. I see no indication that he is not playing the full role he has always played. I certainly intend to make myself available, as Mr. Schmults always was, in dealing with Congress or anyone else and I will look forward to being able to discuss this and other issues in which you have some interest or concern.

Senator BIDEN. You I will cease with this, Mr. Chairman, because I could go on for a long time. I will submit most of my questions in writing.

I see from your biography you were Chairman of the President's Task Force for Legal Equity for Women from 1981 to 1983. Could you share with us what you believe are the most important accomplishments of that task force?

Mrs. DINKINS. The task force was part of the overall legal equity project. It was not a task force given the assignment to write reports or to conduct investigations. It had a more limited function than that. The Civil Rights Division at the Department of Justice was charged with examining the Federal statutes and Federal reg-

ulations to determine whether there was any discrimination on the basis of gender. Once the Civil Rights Division identified any of those types of discrimination, it sent that identification forward to the Cabinet Council on Legal Policy.

Matters that dealt with regulations from that point, once the Cabinet Council decided that they were appropriate for the administration to work on, were to be forwarded to the task force so that we could assure that the individual agencies that would need to change regulations would do so and that that would be done expeditiously and in accordance with what was pointed out to be the problem. That process was not completed by the time I resigned from that chairmanship.

The statutes were identified, and I believe what was identified in that report plus an additional 40 or 50 have been sent to the Hill and are part of Senator Dole's bill, as I recall, and that is pending before the Congress now. By the time I left, the efforts in the regulatory area were much larger and, as I understood it, Civil Rights was not finished and those regulations had not come before the task force

Senator BIDEN. I think it is a really very important area. I don't think we are committed enough downtown or uptown to deal with the issues but, again, I will not belabor the point now with you.

I just look forward to having an opportunity after reading the response to the questions that I will submit, subsequent to your confirmation which I expect will be forthcoming, to be able to discuss in an open-minded way some of these concerns.

The only thing I ask of you is, if you would, in turn, once confirmed be open-minded the other way, too. Let us know what is on your mind. Talk to us. All we Democrats are not all bad. Really and truly, I think Mr. McConnell and others will tell you that the more we talk, the more we get accomplished, and there is a tendency not to do that up here sometimes.

I think you have one serious liability and that is you are exactly 3 years younger than I am and much to young to be in such an important position in the Justice Department. Once I told my constituents when that became an issue in my campaign, I will overcome that disability. I welcome the nomination and look forward to receiving your responses and, if confirmed, working closely with you. You have a big job ahead not with standing your confidence. The Attorney General was active in the early days. I think he is a fine fellow. I think you will find you will have more responsibility, possibly more authority and a greater obligation than most persons have had in the No. 2 slot. If you are confirmed, I wish you well in that endeavor and I thank you, Mr. Chairman.

The CHAIRMAN. I might say that her good looks will overcome the youth question.

Mrs. DINKINS. Thank you, Mr. Chairman.

The CHAIRMAN. I am sure you will be glad to come up and talk to Senator Biden any time he wants you to. He is a very persuasive man. Just hold your ground, hold your ground, stick to your convictions. He is fair, and whether he agrees with you or not, I am sure you will get along fine.

If there are no further questions, the committee stands adjourned.

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[The committee was adjourned at 2:50 p.m., to reconvene subject to the call of the Chair.]

BIOGRAPHY

CAROL E. DINKINS

NOMINEE, DEPUTY ATTORNEY GENERAL, DEPARTMENT OF JUSTICE

Birth: November 9, 1945, Corpus Christi, TX.
Legal residence: Texas.
Marital status: Married to O. Theodore Dinkins, Jr., two children.
Education: 1964-1969—Universerity of Texas, B.S. degree (1968); 1969-1971—University of Houston, J.D. degree.
Bar: 1971—Texas.
Experience: 1971-1973—Associate Professor, University of Houston; 1973-1981—Vinson & Elkins; 1981-1983—Assistant Attorney General, Land & Natural Resources Division, Department of Justice; July 83 to present—Vinson & Elkins,

CONFIRMATION HEARING ON PAUL G. ROSENBLATT

WEDNESDAY, MAY 23, 1984

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to call, at 1:35 p.m., in room SD-226 of the Dirksen Senate Office Building, Hon. Strom Thurmond (chairman of the committee) presiding.

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The CHAIRMAN. The committee will come to order. We are met today to hold a hearing on Paul G. Rosenblatt of Arizona to be U.S. district judge for the district of Arizona.

We have Senator DeConcini here, and before we swear the witness and question him, Senator DeConcini, I know how busy you are—he's a very important man around this capital—and I don't want to detain you, so we will be glad to hear from you now.

STATEMENT OF HON. DENNIS DeCONCINI, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator DECONCINI. Mr. Chairman, thank you very much. You are kind to make reference to my importance. We are privileged to have the chairman of the Judiciary Committee here today. I join with Senator Goldwater in urging the committee's swift approval of Paul G. Rosenblatt for district judge for the District of Arizona.

We have an opportunity in the closing days of this congressional session, to do something very important. That is to bring the Federal district court in Arizona to its full capacity. We are one of the fastest growing States and have a calendar that is extremely burdened, therefore the need is there.

Senator Goldwater's recommendation and the President's choice of Mr. Rosenblatt is excellent. We couldn't find a better candidate for this position. He has the necessary temperament and the background; he has the experience, having served as a superior court judge, and he has experience knowing the problems that Congress goes through, having served as administrative assistant to Representative Sam Steiger some years ago.

It is a real pleasure, Mr. Chairman, not only to introduce to you P.G. Rosenblatt as the judicial nominee, but also as a fellow classmate in law school. He is someone with whom I have had professional relations, social relations, and in whom I have the greatest

confidence that we will be enhancing the bench immensely in the years to come by his nomination.

The CHAIRMAN. Thank you very much, Senator. We appreciate your presence here, and I am sure your testimony will bear great weight with the committee and the entire Senate.

Senator DECONCINI. I will stay for just a minute while Mr. Rosenblatt testifies.

The CHAIRMAN. You may remain, if you wish, or, if you feel it necessary to leave, we will understand.

Senator DECONCINI. Thank you, Mr. Chairman.

The CHAIRMAN. Now, without objection, we will place a statement by Senator Goldwater in the record at this point. Senator Goldwater is tied up in both military construction, military authorizations and intelligence, and said he was sure you would understand, Judge Rosenblatt—but he gives you a fine recommendation.

[Material submitted for the record follows:]

PREPARED STATEMENT OF SENATOR BARRY GOLDWATER

Mr. Chairman and members of the Judiciary Committee: This is one of those days that every one of us in the Senate runs into once in a long, long time, and I thank the lord there are not more of them.

At this moment, I am helping to mark-up the military authorization budget and, also, I am supposed to be doing the same job for the Intelligence Committee. These are probably two of the most important assignments I have this year and there is no way I could absent myself from either one.

It is a sad experience for me because I wanted to be with you in person today and introduce to you, Mr. Paul G. Rosenblatt. Paul has been a friend of mine all of his life and his family long before that. We both call Prescott, AZ, our family home and, because of this, I have had the opportunity to watch him as he developed from a young boy to manhood and into one of the most successful lawyers we have in the State of Arizona. He is above reproach as far as being a moral man is concerned and has one of the best minds I have ever known in the legal profession. Above all, he is respected by everyone in the State of Arizona both in and out of the legal profession. It has been my honor and pleasure to nominate and see confirmed quite a few Federal judges. But, there has never been one that I have known that I feel so close to or feel so proud of and, indeed, one that I feel so confident of about his future success.

Mr. Chairman, I've explained my situation to Paul and I am sure he understands it and I apologize to you and to the committee for not being here in person to present this young man who, I am sure, will become one of the outstanding members of the Federal judiciary.

TESTIMONY OF PAUL G. ROSENBLATT, NOMINEE, U.S. DISTRICT JUDGE, DISTRICT OF ARIZONA

The CHAIRMAN. Now, if you will stand up, judge, to be sworn.

[Judge Rosenblatt stands and raises his right hand.]

Do you swear that the testimony you will give in this hearing will be the truth, the whole truth, and nothing but the truth, so help you God?

Judge ROSENBLATT. I do.

The CHAIRMAN. Now, do you want to introduce your family and friends?

Judge ROSENBLATT. Yes, Mr. Chairman, I have my wife with me, Shannon Rosenblatt. We intended to have some friends here, but, unfortunately, they weren't able to get here. We do have my friends Judy Eisenhower and Terry Emerson of Senator Goldwater's staff

The CHAIRMAN. We have a few questions. Incidentally, I congratulate you on having such an intelligent and charming wife.

Judge ROSENBLATT. Thank you, Mr. Chairman.

The CHAIRMAN. Judge Rosenblatt, you have served on the superior court of the State of Arizona for the county of Yavapai—is that how you pronounce it?

Judge ROSENBLATT. Yes, sir.

The CHAIRMAN. It's an Indian name, I presume. Since 1973, this, I believe, is an Arizona court of original jurisdiction.

Is that similar to the court I was judge on once, a circuit court, the highest trial court in the State?

Judge ROSENBLATT. Yes, sir, it is.

The CHAIRMAN. Judge, I am confident you are very knowledgeable of State laws, because of your experience. I wonder if you foresee any difficulty in the transition from the State court to the Federal district court?

Judge ROSENBLATT. Mr. Chairman, I think the day-by-day aspect of being a Federal district judge will be as comfortable as putting on an old glove. I have certainly been exposed to everything that takes place in a courtroom. Obviously there will be a great amount of attention that will have to be paid to particularly jurisdictional questions, the application of Federal law—such things as that.

But I see no serious difficulty in making the transition.

The CHAIRMAN. Judge, would you tell the committee how you would handle an incident in which counsel for one of the parties in your court was obviously not a skilled litigator and was not prepared to adequately represent the interests of his or her client?

Judge ROSENBLATT. This is a delicate area, Mr. Chairman. First of all, we have to remember that every person is entitled to be represented by counsel of his choice, and so a judge must be very careful in intervening in cases where it may appear that counsel is unprepared or unqualified. I think, however, if the situation were serious enough that I would not hesitate to interrupt the proceedings to admonish counsel; and if the situation were even more serious than that, I would not hesitate to stop the proceedings and refer the lawyer to the State bar association.

The CHAIRMAN. Judge, the courts of today are facing a constant increase in their workload, and it appears that this trend will continue. I often bring this fact to the attention of judicial nominees and ask them if they are willing to work a little harder and put in a little more time in order to reduce this workload as much as possible.

Do you have any comments or recommendations that might assist in stabilizing or decreasing the workload of the courts? Are you willing to work a little harder yourself?

Judge ROSENBLATT. There is no substitute for hard work, Mr. Chairman, and, insofar as the overall case load is concerned, I believe that this is not just a problem confronting the judiciary but must also be considered by the Congress as a part of its obligation under article III of the Constitution.

Clearly, a great many things can be done to lessen the court load in Federal district courts, and as a product incidentally of the State court system, I have confidence in that system, and I feel that perhaps more responsibility can be left to the State courts.

The CHAIRMAN. Judge, in response to a portion of the committee questionnaire concerning judicial activism, I believe you stated: "Aside from violating constitutional balances, the court is ill-equipped to carry out administrative functions, even as they may apply to the judiciary itself, much less when it tries to oversee other institutions' responsibilities."

I was glad to see that you take that position. We have, in my opinion, had too much judicial activism in this country. We have had some district judges who have taken over the running of school districts, even tried to impose taxes, we have had others who have taken over State institutions, hospitals, and schools in my State—and I imagine it's the same in other States—they feel that there is a big Federal arm on them all the time.

And we feel the States should be allowed to run their own institutions; the Federal Government should not intervene, unless it is some very extreme situation.

How do you feel about that?

Judge ROSENBLATT. I have no disagreement with that position.

The CHAIRMAN. I believe you also informed the committee that "I believe the judiciary, particularly the trial courts, should confine itself to grievance resolution. Problem solution is a legislative responsibility, the exercise of which will often be the basis of a grievance requiring court-ordered resolution."

Judge, where, in your view, does a conscientious judge draw the line between judicial decisionmaking and legislative decisionmaking, and what are the criteria that you would consider in resolving whether or not a decision was the type that should be made by a judge as opposed to an elected legislative body?

Judge ROSENBLATT. Obviously we would have to first look to the Constitution of the United States and the various judiciary acts passed by Congress, together with all of the guidelines provided by the U.S. Supreme Court. I believe, in analyzing those provisions and placing those, together with the rare experience that I have had in working in all three branches of Government, the legislative judicial and executive, and at the county, State, and Federal levels, that I would be able to apply the tests so that the distinction could be made.

There is no firm line that shows where the separation of powers begins and ends. It is a matter of feel in a great many cases, but basically the legislative must work the will of the majority in the public interest. The judge must review, enforce, and interpret that law, if properly called upon.

The CHAIRMAN. I notice you were in the Army Reserve for 2 years. Are you still in the Army Reserve?

Judge ROSENBLATT. I'm sorry.

The CHAIRMAN. I observe that from 1951 to 1953 your biography shows you were in the Army Reserve. I am just wondering if you are still in the Army Reserve.

Judge ROSENBLATT. No, sir, I am not.

The CHAIRMAN. You have worked here on the Hill, I have noticed, too.

Judge ROSENBLATT. Yes, Mr. Chairman.

The CHAIRMAN. Five years, administrative assistant to Hon. Sam Steiger. So you are not unfamiliar with the Washington scene.

I don't think I have any other questions. Anything you wish to say in particular?

Judge ROSENBLATT. Not at this time, Mr. Chairman.

The CHAIRMAN. I am just anxious to see us get judges who believe the Constitution says what it means and means what it says, and will restrict themselves to the responsibilities that we feel are theirs under the Constitution and not try to spread their power otherwise. Some people crave more power, which to me, as the good book says: "The greatest among you shall be your servant." And to me that indicates not trying to grasp more power, but to respect the rights of others and do unto others as you would have them do unto you. I have seen some Federal judges try to embarrass witnesses and jurors and attorneys, and I think it's completely unnecessary. And I have been shocked several times at the desire it almost seems to be a tyrant, because a Federal judge has almost unlimited power.

And I am sure that you will not be that kind, but that you will make a good judge. You are highly recommended by both Senators here, and we hope you enjoy your tenure on the bench.

Judge ROSENBLATT. Thank you, Mr. Chairman.

Senator DECONCINI. Thank you, Mr. Chairman.

The CHAIRMAN. We now stand adjourned.

[The committee adjourned at 1:47 p.m.]

BIOGRAPHY

PAUL G. ROSENBLATT

NOMINEE, U.S. DISTRICT JUDGE, DISTRICT OF ARIZONA

Birth: April 4, 1928, Prescot, AZ.

Legal residence: Arizona.

Marital status: Married to Shannon Cookson Rosenblatt, 2 children.

Education: 1946-47—Seattle University; 1947-51—University of Washington; 1955-58—University of Arizona, B.A. degree in 1957; 1960-63—University of Arizona, J.D. degree.

Bar: 1963—Arizona.

Military service: 1951-53—U.S. Army Reserve.

Experience: 1963—Clerk to Judge George Sterling, Superior Court, Maricopa County; 1963-66—Assistant attorney general, State of Arizona; 1967-72—Administrative Assistant to Honorable Sam Steiger, U.S. House of Representatives; 1971-73—Private practice, Prescott, Arizona; 1973 to present—Judge, superior court, Yavapai County, State of Arizona.

CONFIRMATION HEARING ON:

JEAN GALLOWAY BISSELL, DOMINICK L. DiCARLO, JOHN M. DUHE, JR., AND TOM S. LEE

THURSDAY, JUNE 7, 1984

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 8:57 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Strom Thurmond (chairman of the committee) presiding.

Staff present: Robert J. Short, chief investigator.

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The CHAIRMAN. The committee will come to order.

We meet today to hold hearings on certain nominations. I believe the first is for U.S. circuit judge: Jean Galloway Bissell, of South Carolina, to be U.S. circuit judge for the Federal Circuit.

If you will come around, Ms. Bissell, you might hold up your hand and be sworn.

Will the testimony you give in this hearing be the truth, the whole truth and nothing but the truth, so help you God?

Ms. BISSELL. Yes.

The CHAIRMAN. I had the pleasure of recommending Ms. Bissell to the President in nomination to be a U.S. circuit judge for the Federal circuit. I am very pleased today to introduce to the Senate Judiciary Committee Ms. Bissell, who is here in person.

Ms. Bissell is a native of Due West, SC, and a graduate of the University of South Carolina and the University of South Carolina Law School. Ms. Bissell graduated magna cum laude from the University of South Carolina and was elected to Phi Beta Kappa.

While in law school, she served as the associate editor and business manager of the South Carolina Law Review, and was elected to Order of Wig and Robe. Ms. Bissell also graduated magna cum laude from law school.

Ms. Bissell began her law career in 1958 as an associate in the firm of Haynsworth, Perry, Bryant, Marion & Johnstone in Greenville, SC. In 1965 she became a partner in this law firm and served in that capacity for approximately 6 years.

In 1971 she became a partner in the law firm of McKay, Sherrill, Walker, Townsend & Wilkins. From 1976 until the present time, Ms. Bissell has been the general counsel for the South Carolina Na-

tional Corp. and the South Carolina National Bank of Columbia. Incidentally, that is the largest chain bank in South Carolina.

During this period, she has also served as the senior vice president and executive vice president for the South Carolina National Corp. She presently serves in the capacity of vice chairman and chief administrative officer for this organization and has done so since 1981.

Ms. Bissell has participated in a number of legal and civic organizations. The following are but a few of those she has been involved in: Chairman and member of Corporate Counsel Committee, Economics of Practice Section of the American Bar Association; member of Corporate Counsel Committee, Corporation Banking and Tax Section, South Carolina Bar; chairman, Continuing Legal Education Committee of the South Carolina Bar; secretary and member, South Carolina Bar Commission on Continuing Lawyer Competence; fellow, American College of Tax Counsel; member, Greater Columbia Community Relations Council Board; member, South Carolina Public Service Commission Merit Selection Panel; vice president and regional director, American Library Trustees Association; chairman, Fine Arts Committee, Greater Greenville Chamber of Commerce; and secretary and treasurer, Columbia Estate Planning Council.

In addition to her work with these organizations, Ms. Bissell has found time to write such articles as, "Mergers, Consolidations, and Asset Sales" for the South Carolina Law Review; "A Fresh Look at Estate Planning in View of the Pension Reform Legislation" for the Journal of Taxation; and "Malpractice Insurance Coverage for Members of the Estate Planning Team" for the Eleventh Annual Institute of Estate Planning.

Ms. Bissell is well-known and respected for her sound legal judgment, as well as for her dedication to community and civic activities. She possesses the judicial temperament, integrity, and experience required of a nominee for the Federal circuit. I am most pleased she has been nominated for this position and it is my opinion that she will be an asset to the judicial system.

Ms. Bissell, we are very pleased to have you with us this morning.

At this time, without objection, I would like to place in the record a statement by the junior Senator of South Carolina, Senator Ernest Hollings, in behalf of Ms. Bissell. So, both Senators from South Carolina have endorsed her highly.

[Material submitted for the record follows:]

PREPARED STATEMENT OF SENATOR ERNEST F. HOLLINGS

NOMINATION OF JEAN GALLOWAY BISSELL TO THE U.S. CIRCUIT COURT FOR THE FEDERAL CIRCUIT

Mr. Chairman and members of the committee, it is a pleasure that I have this opportunity to join with the distinguished Chairman to introduce a very distinguished attorney and outstanding citizen of South Carolina, Jean Galloway Bissell. She has been nominated by President Reagan to be United States Circuit Court Judge for the Federal Circuit. Not only is Jean the first South Carolinian appointed to this Court, Mr. Chairman, she is, to my knowledge, the first woman South Carolinian appointed to any Federal Court.

Before I comment on Jean's record, accomplishments, and dedication to and involvement in civic affairs, let me take a minute or two to comment on someone who

would be very proud to witness this occasion today, her father the late Bob Galloway. When I first began my career in elected office thirty-five years ago as a member of the South Carolina House of Representatives Bob and I were deskmates. Good fortune certainly smiled on me. Bob Galloway was one of the finest public servants I have ever had the opportunity to serve with. He was particularly helpful to this young lawyer serving in his first term and he was respected by all for his sound judgment. Mr. Chairman, his daughter, Jean Galloway Bissell, has inherited these outstanding qualities exemplified by her father and has, in her own right, earned the respect and admiration of South Carolinians from all walks of life. I share the pride I know her father, and my friend, would display, and I urge that the Committee give prompt approval of her nomination so that the Senate can confirm her appointment without delay.

We in South Carolina are very pleased with this prospective addition to the Federal bench. Jean Bissell follows the very high traditions of excellence our Federal Judiciary exemplifies and to which we in South Carolina have become routinely accustomed. I share the confidence of many South Carolinians that Jean Galloway Bissell will similarly distinguish herself.

The Chairman will have detailed comments to make about Jean's record and credential for this high office. I will not be lengthy in my remarks, but I do wish to take a few minutes to introduce her and outline why she's most qualified for this appointment.

Jean Galloway Bissell was born in Due West, South Carolina on June 9, 1936. Since Saturday is her birthday let me take this opportunity to wish her an early Happy Birthday. She attended Erskine College in her hometown and graduated from the University of South Carolina with a B.S. degree in 1956 and from the University's Law School in 1958. Both of her degrees were awarded magna cum laude. As a law student she was an editor of the law review and Chief Justice of the Order of Wig and Robe which distinguishes her as the number one student in her graduating class. She has practiced with distinguished law firms in Greenville and Columbia and was a partner in both. Beginning in 1976 she has been associated with the South Carolina National Corporation and the South Carolina National Bank in various executive capacities from General Counsel, to Senior Vice President, to Executive Vice President, to Vice Chairman and Chief Administrative Officer, to Director, the position in which she currently serves.

She has involved herself in the activities of all bar associations from the national to the local level. She has been very active in the American Bar Association and served as Chairman and Member of the Corporate Counsel Committee, Economics of Practice Section, to name one activity. She was Chairman of the Continuing Legal Education Committee of the South Carolina Bar. She has served as a Presidential Appointee to the U.S. Circuit Judge Nominating Commission. These are only a few of the professional memberships and activities in which she has participated. The long list contained in her biographical information will give you the full range of her many activities. It's most impressive.

Aside from career and professional activities, Jean has found time to contribute heavily to civic and charitable and community affairs. She has served on numerous Advisory Councils—South Carolina State Library, Erskine College, Columbia College, Furman University and the University of South Carolina. She has been a member of many Boards. Their diversity is indicative of her ability and the respect others have for her talents: Columbia Philharmonic Orchestra; Greater Columbia Community Relations Council; South Carolina Chamber of Commerce; Leadership South Carolina; and, South Carolina State Library Board. The list of Trusteeships and Presidencies is equally impressive. Again I have been selective and you can refer to her biographical information for a complete listing. The point I make is that Jean has been a strong and capable participant in the affairs of her community and her numerous activities reflect the tireless and unselfish nature that those of us who know her find so characteristic. Finally, Jean is married to Gregg C. Bissell. He was a long-time employee of the South Carolina State Tax Commission. He has supported her efforts and has joined her in many of her activities.

Mr. Chairman and members of the committee, let me close my remarks by saving that Jean Galloway Bissell has demonstrated those traits of character, intelligence, professional capacity and scholarship, community involvement and leadership that make her most qualified for appointment to the Court of Appeals for the Federal Circuit. I am confident, as I said, that she will fulfill this responsibility in a most capable manner.

Mr. Chairman, I ask that her biographical information be included with my remarks.

BIOGRAPHICAL INFORMATION

1. Full name (include any former names used). Jean Galloway Bissell, Maiden Name: Jean A. Galloway.

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

Residence: 3102 Keenan Drive, Columbia, S.C. 29201.

Vacation Residence: No. 71 S. Lakeshore Drive, Lake Summit, P.O. Box 401, Tuxedo, N.C. 28784.

Office: South Carolina National Corporation, 1426 Main Street, Columbia, S.C. 29226.

3. Date and place of birth. Due West, S.C., June 9, 1936.

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

Spouse, Gregg C. Bissell, has been retired for more than 5 years. Prior thereto, he was for over 20 years an employee of the South Carolina State Tax Commission.

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

Erskine College, Due West, South Carolina, 1952–54 (Transferred to University of South Carolina).

University of South Carolina, Columbia, South Carolina, 1954–1955.

Awarded Bachelor of Science degree in June, 1956, magna cum laude; University of South Carolina School of Law Columbia, South Carolina, 1955–58. Awarded L.L.B. in 1958, magna cum laude.

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

July 7, 1958 to April 30, 1965; Associate, Haynsworth, Perry, Bryant, Marion & Johnstone, Post Office Box 2048, Greenville, South Carolina 29602.

May 1, 1965 to November 30, 1971, Partner, Haynsworth, Perry, Bryant, Marion & Johnstone, Post Office Box 2048, Greenville, South Carolina 29602.

December 1, 1971 to January 31, 1976; Partner, McKay, Sherrill, Walker, Townsend & Wilkins (now Lumkin & Sherrill), Post Office Box 447, Columbia, South Carolina 29202.

February 1, 1976 to present; General Counsel, South Carolina National Corporation and the South Carolina National Bank, 1426 Main Street, Columbia, South Carolina 29226.

February 1, 1976 to December 15, 1980; Senior Vice President, South Carolina National Corporation.

December 15, 1980 to November 16, 1981; Executive Vice President, South Carolina National Corporation.

November 16, 1981 to present; Vice Chairman and Chief Administrative Officer, South Carolina National Corporation.

April, 1982 to present; Director, South Carolina National Corporation.

1971 to 1983; Shareholder/Officer, State Title Insurance Company.

1971 to present; General Partner, First Richland Investors.

1971 to present; General Partner, Bombay Pipe Dreams Land Company.

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.

University of South Carolina, magna cum laude graduate. Elected to Phi Beta Kappa.

University of South Carolina School of Law, magna cum laude graduate. Associate Editor and Business Manager of South Carolina Law Review (1957–1958). Elected to Order of Wig and Robe (honor society) (Chief Justice, 1958).

Converse College: Awarded L.L.D. in 1976. Award for Distinguished Service, South Carolina Library Association (1973). First Annual Friend of Libraries Award, South Carolina Library Association (1976). Who's Who in America.

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

Member of American Bar Association.

Member of South Carolina Bar.

Member of Richland County Bar Association.

Member of Committee on Corporate Law Department Forums, Section of Corporation, Banking and Business Law of the American Bar Association (1981).

Chairman and Member of Corporate Counsel Committee, Economics of Practice Section of the American Bar Association (1981).

Member of Corporate Counsel Committee, Corporation Banking and Tax Section, South Carolina Bar.

Member of The South Carolina Bar Law School Board, 1979.

Member Southern Bank House Counsel Group.

Member University of South Carolina Law School. Dean Search and Screen Advisory Committee (1979-80).

Chairman, Continuing Legal Education Committee of the South Carolina Bar (1970-76).

Secretary and Member, South Carolina Bar Commission on Continuing Lawyer Competence (1979-82) (South Carolina Supreme Court Appointment).

Member Fourth Circuit Panel—U.S. Circuit Judge. Nominating Commission (First Appointment 1977; Second Appointment 1978) (Presidential Appointment).

Fellow, American College of Tax Counsel.

Member, South Carolina Attorney General's Advisory Committee on Associate Counsel (1983-84).

Member, U.S. District Court for the District of South Carolina Nominating Committee for Federal Magistrate (1984).

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list any other organizations to which you belong, (such as civic, educational, "public interest" law, etc.) which you feel should be considered in connection with your nomination.

Member of the following Advisory Councils:

South Carolina State Library (1971-76); Erskine College (1971-74); Columbia College (1974-78); Furman University (1972-); University of South Carolina President's National Advisory Council (1981-).

Member, Columbia Philharmonic Orchestra Board (1975-78).

Member, Greater Columbia Community Relations Council Board (1976-79).

Member, South Carolina Chamber of Commerce Board (1976-78 and 1980-).

Member, Board of Regents of Leadership South Carolina 1979-81).

Member, South Carolina Public Service Commission Merit Selection Panel (1980-) (Governor of South Carolina Appointment).

Member, South Carolina State Library Board (1981-86).

Member, South Carolina Council on Economic Education Board (1984-87).

Trustee, General Synod of the Associate Reformed Presbyterian Church (1960-70).

Trustee, Greenville County Public Library (1961-71).

Trustee, The Daniel Foundation (1968-).

Trustee, Richland County Public Library (1973-78).

Trustee, Women's Symphony Endowment Fund (1975-78).

Trustee, North Carolina Outward Bound School (1976-81).

Trustee, South Carolina Foundation of Independent Colleges (1979-83).

Trustee, Heathwood Hall Episcopal School (1979-81).

Trustee, Governor's Mansion Foundation (1980-).

Trustee, Providence Hospital Foundation (1982-85).

President, Greenville Estate Planning Council.

Chairman, Trustee Section of South Carolina Library Association (1966-67).

Vice President and Regional Director, American Library Trustees Association (1965-66).

Chairman, First Governor's Conference on Public Libraries.

Chairman, Fine Arts Committee, Greater Greenville Chamber of Commerce.

Treasurer, Richland County Public Library (1974-75).

Chairman, Richland County Public Library (1975-78).

Treasurer, Columbia Estate Planning Council (1975-76).

Secretary, Columbia Estate Planning Council (1976-77).

Vice President, Columbia Estate Planning Council (1977-78).

President, Columbia Estate Planning Council (1978-79).

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission. Give the same information for administrative bodies which require special admission to practice.

South Carolina Surpeme Court—July 22, 1958.

U.S. District Court for the Eastern District of South Carolina—July 23, 1958.

U.S. District Court for the Western District of South Carolina—July 22, 1958.

12. Published Writings: List the titles, publishers and dates of books, articles, reports, or other published material you have written. You may also list any significant speeches which you feel may be of interest to this Committee.

Johnstone, Thomas K., Jr. and Jean A. Galloway, "Mergers, Consolidations, and Asset Sales," *South Carolina Law Review,* Vol. 15, 1963, pp. 415-434.

Bissell, Jean G., "A fresh look at estate planning in view of the pension reform legislation," *The Journal of Taxation,* January, 1975, pp. 47-49.

Bissell, Jean Galloway, "Malpractice Insurance Coverage for Members of the Estate Planning Team," *The Eleventh Annual Institute on Estate Planning,* The University of Miami, 1977.

Bissell, Jean Galloway, "The Shoemaker's Children Have No Shoes," *The Alabama Lawyer,* Vol. 42, No. 4, October, 1981, pp. 618-630.

Bissell, Jean Galloway, "ERISA's Impact on Estate Planning," *Pension and Profit-Sharing Tax Journal,* pp. 224-227.

Bissell, Jean Galloway, "Expansion of the Financial Industry Clones," Presentation to South Carolina Bar, Corporation, Banking and Tax Section.

Bissell, Jean Galloway, "Tax Advantages of Temporary Trusts," Presentation at Seminar Held by Estate Planning Councils of South Carolina.

Bissell, Jean Galloway, "Corporate Fiduciary Pitfalls and Perils," Presentation to Trust Section of Tennessee Bankers Association.

13. Health: What is the present state of your health? List the date of your last physical examination. Good, May, 1984.

Judicial Office (if applicable): 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. N/A.

15. 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.

The CHAIRMAN. Ms. Bissell, you have some members of your family here. Would you like for them to stand and introduce them?

TESTIMONY OF JEAN GALLOWAY BISSELL, NOMINEE, CIRCUIT JUDGE, FEDERAL CIRCUIT

Ms. BISSELL. Thank you.

Senator, my husband, Greg Bissell, is here and I would like for him to stand, please.

[Mr. Bissell stood.]

The CHAIRMAN. We are very pleased to have you with us, Mr. Bissell.

Any other family members or friends you want to introduce?

Ms. BISSELL. No, sir.

The CHAIRMAN. Ms. Bissell, the Court of Appeals for the Federal Circuit is responsible for hearing patent appeals from all Federal district courts. It will hear appeals in suits against the Government for damages or refunds of Federal taxes, appeals from the Court of International Trade, appeals from the Patent and Trademark Office, and other such agency review cases.

This court, needless to say, is an extremely busy and important one. The workload is great and there are only 12 judges to hear cases. Now, what actions will you take as a judge to ensure that the court is current, yet the required quality of appropriate judicial review is maintained?

In other words, they have got a heavy load and they have only 12 judges to carry it.

Ms. BISSELL. Senator, you do that by working until the backlog is reduced. I think in my history of 25 years in the practice of law and working, I have never had more than 2 weeks' vacation in any 1 year, and in the last 18 months I have not had a day of vacation

due to the fact that a job needed to be done and I am willing to do it.

In addition to this, my husband says I am a workaholic.

The CHAIRMAN. I think you are kind of known as a workhorse anyway, are you not?

Ms. BISSELL. Yes, sir.

The CHAIRMAN. That is your reputation, so you do not mind working and you are willing to work hard to try to clear up this docket?

Ms. BISSELL. Yes, sir; I certainly am.

The CHAIRMAN. Ms. Bissell, since 1976 you have been general counsel for the South Carolina National Corp. and the South Carolina National Bank. I believe that is the biggest chain bank in South Carolina, is it not?

Ms. BISSELL. Yes, sir; it is.

The CHAIRMAN. I understand they are merging now with another chain bank in the State, which will make them one of the largest banks in the South, is that correct?

Ms. BISSELL. That is correct.

The CHAIRMAN. You handle the legal business for the bank, I believe.

Ms. BISSELL. Yes, sir.

The CHAIRMAN. At present you also serve as the vice chairman and chief administrative officer for the South Carolina National Corp. Now, Ms. Bissell, how has this experience and background prepared you for the position of circuit judge for the Federal Circuit?

Ms. BISSELL. As chief legal officer for a multibillion dollar corporation, I have had sole, final responsibility for the legal matters, including litigation, for the last 7 years. This, therefore, has made me intimately aware of the judicial system and the absolute need on the part of the parties involved in litigation for the expedient, efficient administration of justice. This is an absolute necessity for the parties.

In addition to this, as chief administrative officer, I have been involved in administering the affairs of this corporation, and this has given me the ability to handle multifaceted things in, I think, an efficient and an effective manner.

The CHAIRMAN. Ms. Bissell, I might ask you this question. How would you resolve a conflict between your own conscience or your own sense of justice and the clear meaning of a statutory or constitutional provision?

Ms. BISSELL. Sir, it would be my responsibility as a judge if I am confirmed to uphold the statute and the Constitution if it is clear on its face. That is my job, and what I personally think is of no import or impact in that situation.

The CHAIRMAN. From your excellent record in law school, having graduated magna cum laude from law school, the various legal articles you have written and the great experience you have had in business and in the law, do you have any hesitancy about accepting the responsibilities of this high position?

Ms. BISSELL. No, sir.

The CHAIRMAN. Without objection, I am going to place in the record at this point an editorial from the largest newspaper in South Carolina, The State, entitled "Reagan Chooses Bissell."

The first paragraph reads:

President Reagan made a fine choice in nominating Ms. Jean Galloway Bissell of Columbia to the U.S. Court of Appeals for the Federal Circuit in Washington, D.C., and we hope the U.S. Senate will confirm her promptly so she will be the first woman from South Carolina to become a Federal judge.

I will not bother to read the rest of it. Without objection, I will place that in the record.

[Material submitted for the record follows:]

[From the State, Columbia, SC, June 4, 1984]

REAGAN CHOOSES BISSELL

President Reagan made a fine choice in nominating Mrs. Jean Galloway Bissell of Columbia to the U.S. Court of Appeals for the Federal Circuit in Washington, D.C.

We hope that the U.S. Senate will confirm her promptly. If so, she will be the first woman from South Carolina to become a federal judge.

The precedent is not the reason for her confirmation, however, she is well qualified. She has practiced business law since she was graduated from the University of South Carolina law school in 1958. In college she was elected to Phi Beta Kappa. She was associated with prestigious law firms in Greenville and Columbia.

Mrs. Bissell is vice president and general counsel for South Carolina National Corp., and executive vice president, general counsel and director of administration for South Carolina National Bank, for which she has worked since 1975.

The court to which she has been nominated is a new one, created two years ago by Congress to hear appeals from cases from federal courts in the Washington area. Included are the U.S. Court of Claims, and the U.S. Court of Customs and Copyright Appeals. There are 11 judges on the court, which is below only the U.S. Supreme Court.

Mrs. Bissell has the professional qualifications, the temperament, the intellect and dedication to the law which outstanding judges possess. She will serve the country well.

The CHAIRMAN. That is a very fine tribute that the largest newspaper in South Carolina paid you, Ms. Bissell. Of course, I already knew about your qualifications and I am not surprised that any paper in our State would write so nicely about you.

Ms. BISSELL. Thank you, sir.

The CHAIRMAN. We are very proud of your accomplishments and I am very pleased to have recommended the first woman in South Carolina to be a Federal judge and to be a judge on the circuit court here for the Federal district.

We wish you well and hope the Senate will confirm you promptly and hope you can take office soon.

Ms. BISSELL. Senator, thank you very much, and I would like to, for the record, thank President Reagan for my nomination, and sincerely thank you personally for submitting my name to the President and for the very expeditious way in which you have handled this hearing. Thank you, sir.

The CHAIRMAN. Well, it is a pleasure to have you here. A woman of your high caliber brings great prestige, I think, to the Federal bench, and we are honored that you have been nominated.

I have had the pleasure of knowing your family. Your father served in the legislature as a house member years ago when I was Governor of the State.

Ms. BISSELL. Yes.

The CHAIRMAN. He was one of the finest men I ever knew, and your record has been outstanding.

Ms. BISSELL. Thank you, sir.

The CHAIRMAN. Good luck in your new service.

I see Senator D'Amato here from New York, and I know how busy Senators are so we will take him. I believe he was the Senator who came in next.

We will now have the U.S. Court of International Trade: Dominick L. DiCarlo, of New York, to be a judge of the U.S. Court of International Trade.

Senator D'Amato, we would be glad to hear from you.

STATEMENT OF HON. ALFONSE D'AMATO, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator D'AMATO. Mr. Chairman, thank you so very much. It is always good to appear before the distinguished chairman of the Judiciary Committee.

Generally, Mr. Chairman, it is traditional for those of us who are privileged to present nominees before this committee to extol their virtues, to indicate how proficient they are in the law, the excellence of their service, the judicial temperament that you are sure the nominee of the President will have, and the leadership he has provided.

In this case, Mr. Chairman, I am sorry that I just simply will not be able to do that because Mr. DiCarlo has set a record of such incredible standards that those words are totally inadequate, and because I thought I would even have him take his breath back for a moment by doing that.

The fact of the matter is I have known Mr. DiCarlo for more than 20 years, and during that period of time, Mr. Chairman, he has distinguished himself as a State legislator in New York, where he was chairman of the Codes Committee during a period of time and offered more legislation dealing with the criminal justice system and the judiciary system in the State of New York that has made sense than any of his predecessors or any of those people who have followed him.

He blazed an incredible record of endurance in the area of law and service of the people of the State of New York, and indeed this Nation. He served as a distinguished assistant U.S. attorney and chief of the Organized Crime and Racketeering Bureau. He has served this Nation, and does serve it, as the Assistant Secretary of State in charge of international narcotics, and, again, has set a record of the highest standards and traditions in Government.

So the usual introductions with respect to those nominees simply is inadequate as it relates to Dominick DiCarlo. Mr. Chairman, I will say briefly that I believe President Reagan has made a magnificent nomination in Dominick DiCarlo to serve in the Federal judiciary and to serve in this important area of the U.S. Court of International Trade.

The CHAIRMAN. I believe this nomination was made on your recommendation, was it not, Senator?

Senator D'AMATO. That recommendation.

The CHAIRMAN. Well, we thank you very much.

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You come highly recommended here by the distinguished Senator from New York and that will bear great weight with the Senate, I am sure.

Senator D'AMATO. Thank you, Mr. Chairman.

The CHAIRMAN. As long as you are here, will you stand up and be sworn?

Do you swear the testimony you give in this hearing will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. DICARLO. I do.

The CHAIRMAN. Now, if you will just step back, we will take these two Senators. They are in a hurry, I know, and we will call you up in just a few minutes.

I see Senator Cochran came in, and now Senator Long has come in. We would be glad for you gentlemen to come up and speak in behalf of your judges. I believe Senator Cochran is here in behalf of Tom S. Lee, to be U.S. district judge for the Southern District of Mississippi.

And Senator Long is here on behalf of John M. Duhe, of Louisiana, to be U.S. district judge for the Western District of Louisiana.

We will take either one of you, whichever one wants to go ahead.

Mr. SHORT. Judge Duhe and Mr. Lee, would you step forward to the table, please?

The CHAIRMAN. You all can have seats by your Senators.

All right. You may proceed.

STATEMENT OF HON. THAD COCHRAN, A U.S. SENATOR FROM THE STATE OF MISSISSIPPI

Senator COCHRAN. Mr. Chairman, thank you very much. It is a real honor and a genuine pleasure for me to present and introduce to the Judiciary Committee my good friend, Tom Lee, from Forest, MS, who has been nominated by the President to serve as U.S. district judge for the Southern District of Mississippi.

Tom Lee grew up in a small town in our State, returned there after college and law school, and has been a true leader in the community and in his county in every good sense of the word.

He has practiced law there for 16 years and during that time he served as county prosecuting attorney. He has served in conspicuous positions of leadership in the community and in his church, helping solve community problems unselfishly and always with a commitment to the betterment of his community.

At the same time, Mr. Chairman, he has distinguished himself as a lawyer. He is professionally respected throughout the State of Mississippi, and I feel that our State is really honored by his acceptance of the President's nomination to be a U.S. district judge.

Mr. Chairman, when he was in college, at Mississippi College he did not make a single grade below an A. He was the outstanding graduate of his college, and went on to the University of Mississippi Law School and again was a stand-out student. He received numerous awards for his academic achievement, and at the same time he was selected by fellow students for positions of leadership.

As an example, he served as chief justice of the student judicial council at Mississippi College, and was selected as president of Omicron Delta Kappa, which is the honorary leadership fraternity.

In every way he is an outstanding individual. He has integrity, character and good judgment. He displays a great deal of commonsense to go with his keen intellect. And I think, Mr. Chairman, if he is confirmed by the Senate, he will serve with great distinction on the Federal bench and reflect credit not only on Mississippi, but on the entire Federal judiciary.

His father was chief justice of the Mississippi Supreme Court and his brother, Roy Noble Lee, who is here today, currently serves on Mississippi's Supreme Court. So as you can see, he comes from a very distinguished family of lawyers and jurists who are quite well respected throughout our State.

Mr. Chairman, I have not the words or ability to adequately describe to you the enthusiasm with which I present this nominee to you. Without reservation, I recommend him to you and hope the committee will confirm him. After you consider his qualifications, I think you will agree, too, that he is one of the finest nominees that the President has submitted to the Senate during his 4 years as President.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator. We are delighted to have you here. The high esteem in which you are held in the Senate, I am sure, will benefit Mr. Lee. You have certainly spoken highly of him. He is evidently a very able, fine lawyer of character and ability, and your fine statement in his behalf will go a long way with the committee and the Senate.

We also have a statement from Senator Stennis in support of Mr. Lee, so we will submit it for the record, without objection.

[Material submitted for the record follows:]

PREPARED STATEMENT OF SENATOR JOHN C. STENNIS

Mr. Chairman, it pleases me very much to have the opportunity to endorse the nomination to Tom S. Lee of Forest, Mississippi to serve as United States District Judge for the Southern District of Mississippi.

Tom Lee is an able and experienced attorney—a courtroom lawyer, a trial practitioner who will make an excellent District Judge. I have known him and members of his family for many years and have followed his career in the law with interest.

It was my privilege to serve as a Circuit Judge in Mississippi at a time when Tom Lee's father, Percy M. Lee, Sr., served with distinction as Circuit Judge in the adjoining district. Judge Lee later served as Chief Justice of the Supreme Court of Mississippi. Tom Lee's brother, Roy Noble Lee, another distinguished lawyer also served as Circuit Judge and is now a member of our Mississippi Supreme Court. Tom Lee comes from good stock, a family of lawyers—all of them good ones—and is himself an excellent lawyer.

Tom Lee has the character, the experience, the ability and the temperament to make an outstanding District Judge, and I fervently believe that the fine qualities which he possesses will enable him to render many years of fine service as one of the District Judges of the Southern District of Mississippi. I support his nomination and urge the Committee to recommend confirmation by the Senate.

Senator COCHRAN. Thank you, Mr. Chairman.

The CHAIRMAN. If you wish to stay, you are welcome to do so. If you wish to leave, you are excused.

Senator COCHRAN. I think I will stay.

The CHAIRMAN. All right.

Senator COCHRAN. Thank you very much for inviting me.

The CHAIRMAN. We are now pleased to have the able, distinguished Senator from Louisiana, my long-time friend, Russell Long, here. Senator, we would be delighted to hear from you.

STATEMENT OF HON. RUSSELL LONG, A U.S. SENATOR FROM THE STATE OF LOUISIANA

Senator LONG. Thank you so much, Mr. Chairman. Mr. Chairman, I will leave immediately after this because the Finance Committee across the hall is meeting on some important legislation in which both I and my State are very much interested.

But first, I want to present my statement, and there will be a similar statement from Senator Johnston because the Appropriations Committee is meeting at this moment, but he might be able to pull away and make the statement personally. In any event, he will have a statement of the same effect.

The CHAIRMAN. Without objection, Senator Johnston's statement will follow your statement in the record.

Senator LONG. Both of us are strongly supporting Judge John Malcolm Duhe, Jr., who is a nominee for the Western District of Louisiana. We recommend him very highly. He is a 1957 graduate of Tulane University Law School. He was editor-in-chief of the law review at Tulane in 1957, and the associate editor in the previous year of 1956. He was also a member of the Order of the Coif.

Upon graduation from Tulane, Judge Duhe returned to his home town of New Iberia, where he practiced law in a highly respected firm, Helm, Simon, Caffery & Duhe. He practiced law in New Iberia until 1978, when he assumed the duties of judge of district E, 16th judicial district court, in Iberia Parish. He has also served as chief judge of this court.

Judge Duhe is a member of the Louisiana and the American Bar Associations, and he has served as president and secretary of the Iberia Parish Bar Association. He is also a member of the Louisiana Association of Defense Counsel.

Judge Duhe has been very active in numerous civic organizations in New Iberia. Because of his distinguished years of service as a judge of the 16th judicial district court of Louisiana, and previously as a practicing lawyer, Judge Malcolm Duhe, Jr., is well qualified to perform the duties of U.S. district judge and both of us strongly urge that you approve his nomination.

[Material submitted for the record follows:]

PREPARED STATEMENT OF SENATOR J. BENNETT JOHNSTON

Mr. Chairman and Members of the Committee: I am very pleased to appear before the Committee today for the purpose of introducing to you John M. Duhe, Jr. of New Iberia, Louisiana, nominee to the U.S. District Court for the Western District of Louisiana.

Mr. Duhe is a 1957 graduate of the Tulane University School of Law. While at Tulane, he served as Associated Editor of the Law Review and a member of the Order of the Coif.

Upon graduation from law school, Mr. Duhe returned to New Iberia to practice law with the firm of Helm, Simon, Caffery and Duhe. In 1978, he withdrew from the firm in order to assume the duties as Judge of the Sixteenth Judicial District Court of Louisiana. Mr. Duhe continues to serve on that Court and has served as its Chief Judge.

Mr. Duhe is a member of the American Bar Association, the Louisiana State Bar Association and a member of the Louisiana Association of Defense Counsel.

Mr. Duhe has been very active in his community as President and member of the board of Iberia Tubercolosis Association. In addition, he has served on several Tulane Law School Alumni Committees, and in 1980 he was selected "outstanding alumnus" of Tulane Law School.

Because of his distinguished career, John Duhe is very well qualified to serve as a Judge to the U.S. District Court for the Western District of Louisiana and I recommend him very highly. I strongly urge you to approve his nomination.

The CHAIRMAN. Senator, we are glad to have you with us.

Mr. Duhe, I want to congratulate you upon being nominated by President Reagan for this high position. I want to congratulate you for being so highly endorsed by the second ranking Senator in the whole U.S. Senate, Senator Russell Long. Only one other Senator has been here longer than he has, I believe—Senator Stennis; I believe I am next in line; and also by Senator Johnston.

We are very pleased to have you, Senator, and you can stay or leave, whatever you wish to do.

Senator LONG. Thank you so much, Senator Thurmond. I have to go.

The CHAIRMAN. Now, without objection, Senator Stennis' statement will follow the statement by the able and distinguished Senator from Mississippi, Senator Thad Cochran.

Mr. Duhe, you might stand up and be sworn. And, Mr. Lee, you stand up and be sworn, too.

Do you swear the testimony you give in this hearing shall be the truth, the whole truth and nothing but the truth, so help you God?

Mr. LEE. I do.

Judge DUHE. I do.

The CHAIRMAN. Mr. DiCarlo, you can come up and have a seat, too; we will get to you in just a minute. I do not think it will take very long to go through these.

Now, Mr. Lee, do you have any family here or friends you want to introduce?

Mr. LEE. Yes, sir. I am happy this morning to present my wife, Norma Ruth; my brother, Judge Roy Noble Lee, and his wife, Sue, and their daughter, Martha Passell. And I am also glad to see two friends from Forest, MS, my home town, who live here in Washington, Jan and Beth Ullman. I am glad for them to be here.

The CHAIRMAN. We are very pleased to have all of you here this morning for this important hearing. I know it is exciting to have a member of the family to be appointed a U.S. district judge, and we are glad to have you here.

Now, Mr. DiCarlo, do you have any family here?

Mr. DICARLO. Yes, Senator. I have my son, Vincent DiCarlo, who works here in Washington as an attorney with the Securities and Exchange Commission.

The CHAIRMAN. That is your son, you say?

Mr. DICARLO. Yes, sir.

The CHAIRMAN. You do not have any other members of your family?

Mr. DICARLO. No, sir.

The CHAIRMAN. Judge Duhe, do you want to introduce any family or friends you have?

Judge DUHE. I am here all alone, Senator. Thank you.

The CHAIRMAN. All right. We will now proceed.

Judge Duhe, you have served as a judge of division E of the 16th judicial district of Louisiana since 1979, I believe.

Judge DUHE. That is correct, Senator.

The CHAIRMAN. This, I believe, is a court with complete civil, criminal, juvenile, probate, and family jurisdiction.

Judge DUHE. We do it all.

The CHAIRMAN. Judge, I am confident that you are very knowledgeable of State laws. Now, I am wondering if you would foresee any difficulty in the transition from the State court system to the Federal district court.

Judge DUHE. Really not, Senator. I practiced law as a trial lawyer for 23 years, and a substantial portion of my trial practice was conducted in the Federal courts, so I am very familiar with the procedures and practices.

Even though I have had obviously no exposure in the Federal courts since I have been on the State bench, I was quite familiar with it before, and really foresee no difficulty.

The CHAIRMAN. Now, Judge, it has been suggested that our prisons turn prisoners into more professional criminals. What, in your opinion, can or should be done to improve the prisoner rehabilitation system?

Judge DUHE. Well, that, of course, is a problem that has plagued all of us in the system for years and I do not know that anyone has a truly satisfactory answer. It has been my personal experience that more emphasis on vocational rehabilitation within the prison system would be very beneficial.

I am convinced that many prisoners return to crime simply because they know no other trade when they are released, and if we could help them learn another trade, we could perhaps alleviate the problem.

The CHAIRMAN. I have often thought about that and I think you have made a very important point. A lot of times people go to prison and they come out and nobody wants to give them a job because they have been in prison. Most of them are not trained or skilled for any particular job.

I have often felt there ought to be an industry, maybe, right beside a prison where they could go and work, and maybe a vocational school to teach them a skill and allow them to work, rather than just sit in prison and rot.

I think we have got to do more along that line at the Federal level and at the State level, too.

Judge DUHE. I certainly concur, Senator.

The CHAIRMAN. Now, Judge, in response to a portion of the committee questionnaire concerning judicial activism you stated, "Judicial restraint does not equate with slavish adherence to the principles of stare decisis."

Judge, what is the proper application of stare decisis, as you see it, in constitutional law? Specifically, what is the duty of a Federal judge when confronted with a case in which one of the precedents of his court clearly conflicts with the Constitution as that judge interprets it?

Judge DUHE. I think the first duty of the Federal judge is to recognize that he is a resolver of disputes and not a political scientist

or a legislator. In many cases, you do not have to get to the constitutional issue if you keep that in mind.

If, however, the constitutional issue must be faced, and if the precedent, as the question states, is a precedent of my own court, I think that my position would be to explain as thoughtfully as I could what my interpretation of the constitutional issue was and to decide the particular controversy based on that interpretation.

If, however, the precedent was from a higher court that reviewed decisions of mine, I think it would be inappropriate for me to render a decision in the particular dispute that was not in harmony with the higher court's determination. But that would not prevent me, hopefully with some thought, from explaining why I thought differently about the constitutional issue.

The CHAIRMAN. Well, again, Judge, I congratulate you on your appointment and we hope you have a pleasant service on the Federal bench.

Judge DUHE. Thank you, Senator.

The CHAIRMAN. And you are now excused, if you wish to leave.

Judge DUHE. Thank you.

The CHAIRMAN. Senator Cochran, do you want to come up and sit with us up on the bench here?

Senator COCHRAN. Thank you, Mr. Chairman. I will just be here with the family members of Judge Lee.

The CHAIRMAN. Mr. Lee, again I congratulate you on your appointment by President Reagan to this position.

TESTIMONY OF TOM S. LEE, NOMINEE, U.S. DISTRICT JUDGE, SOUTHERN DISTRICT OF MISSISSIPPI

Mr. LEE. Thank you, Senator.

The CHAIRMAN. And I again congratulate you on having the fine endorsement of both Senators.

Mr. LEE. Thank you, Senator.

The CHAIRMAN. And I congratulate you upon being recommended for this position by the able and distinguished Senator, Senator Cochran, of whom we are all very proud here in the Senate.

Now, Mr. Lee, you have been a practicing attorney since 1965, I believe. During this time, you served approximately 3 years as youth court judge for Scott County, and as municipal judge for the city of Forest, MS. Do you think this experience will help you in performing the duties of a Federal district court judge, and if so how?

Mr. LEE. Senator, the offices of municipal judge and youth court judge, of course, do not compare with the office of Federal district judge. But, certainly, judicial experience is an asset in preparing one to serve as Federal judge.

All judges, in whatever capacity they serve, are governed by the same standards and ethics, and they should also have a proper judicial temperament. As a municipal judge and youth court judge, I have had the opportunity to hear and evaluate both sides of a case and to develop a perspective and feeling for the administration of justice.

The CHAIRMAN. Mr. Lee, would you give us your opinion on the suggestion that attorneys undergo special training before being allowed to practice in Federal courts?

Mr. LEE. I could answer that question better after being on the Federal bench and having an opportunity to see how the lawyers perform. I have seen a number of lawyers in the courtroom who were young and inexperienced, but after only a few appearances they would become some of the most able and competent lawyers in the Federal system.

The law schools teach Federal procedure and the Federal rules of evidence, and a person who graduates from a law school should be qualified to practice law in the Federal court. In fact, there is not that much difference in the Federal courts and the State courts in Mississippi, inasmuch as Mississippi has basically adopted the Federal rules procedure.

My feeling now is that I will be in favor of granting a lawyer a chance to practice his profession rather than require him to obtain additional schooling before being able to practice in the court.

The CHAIRMAN. Mr. Lee, are there any circumstances where you would consider it appropriate to decide a case on some basis other than one where the intent of the framers of legislation or constitutional provisions can be detected either through the text of a provision or its surrounding legislative history?

Mr. LEE. In a democratic society a Federal judge should bear in mind that the law-making function belongs to Congress and not to the judiciary. Since I believe in the Constitution and the system of separation of powers, the judge should decide issues of law and grievances of the parties before him and should not attempt to legislate.

It is a function of the legislature, as the elected representatives of the people, to make the laws. And even though I might disagree with a particular law, I believe it would be my duty as a judge to apply that law according to its meaning.

If that meaning were ambiguous or uncertain, I would then try to determine the intention of the law-making body through the text and surrounding legislative history.

The CHAIRMAN. Mr. Lee, we are very pleased to have you with us. We hope you have a happy and successful service on the Federal bench, and you are now excused.

Mr. LEE. Senator, may I say for the record that I very much appreciate Senator Cochran's recommending me for this nomination and for his gracious and generous statement this morning; President Reagan for his confidence in nominating me; and Senator Stennis for his statement of support.

I thank you, sir, and the committee for your consideration and for the courtesies that you have extended to me.

The CHAIRMAN. Thank you. You are now excused, if you wish to leave at any time.

Senator Cochran, we are very pleased to have you with us.

Senator COCHRAN. Thank you very much, Mr. Chairman.

The CHAIRMAN. Now we are going to Mr. DiCarlo.

Mr. DiCarlo, the Customs Court Act of 1980 provides for the U.S. Court of International Trade. This court has jurisdiction over any

civil action against the United States arising from Federal laws governing import transactions.

What advantages, in your opinion, does the new court provide over the previous customs court?

TESTIMONY OF DOMINICK L. DiCARLO, NOMINEE, JUDGE, U.S. COURT OF INTERNATIONAL TRADE

Mr. DiCARLO. I think, sir, it was the intent of Congress to consolidate all actions of a similar nature dealing with those transactions in one court. They furthered that objective first by taking out any ambiguity in the law as to whether or not various cases belonged in the district court or in this Court of International Trade. I think removing those ambiguities was a great step forward.

Second, Congress enlarged the jurisdiction of the court, bringing within the court different types of actions which formerly had not been under its jurisdiction. And then Congress completed the change by making this truly an article III court, giving it powers that it never had before, such as rights to issue injunctions, et cetera.

So I think with these added elements, Congress has greatly enlarged the court and given it powers that it did not have.

The CHAIRMAN. Mr. DiCarlo, you have served with the State Department since 1981, I believe, in the capacity of Assistant Secretary of State for International Narcotics Matters, is that correct?

Mr. DiCARLO. That is correct, sir.

The CHAIRMAN. With this background, can you recommend any changes to the Customs Court Act that you feel would improve the new Court of International Trade?

Mr. DiCARLO. Sir, I think being with the State Department has given me a perspective of what goes on overseas.

Perhaps at a later time when I have had some experience with the court, I would be in a much better position to make those recommendations. At this time I think it would be presumptuous of me to make a recommendation. I do not yet have the experience in that court to put together with my experience overseas and make the recommendations at this time.

The CHAIRMAN. As time goes by, if you have any recommendations do not hesitate to make those to us.

Mr. DiCarlo, the phrase "judicial activism" is often used to describe the tendency of judges to make decisions on issues that are not properly within the scope of their authority. What does the phrase "judicial activism" mean to you?

Mr. DiCARLO. Sir, I believe what it has come to mean is as you stated. It is a euphemism for judges exceeding their authority given to them under the Constitution. I think what it should mean is perhaps—well, perhaps illustrated by going back to a question you have asked of the first witness as to how to relieve backlogs and the tremendous workload of the courts.

I think what it should mean is the judges getting down to do the work, deciding cases and rendering their decisions.

The CHAIRMAN. Sometimes I wonder if judges remember that the legislative bodies of the country make the laws—the legislative bodies at the State level and the Congress at the national level—

and that the executive administers and enforces the laws, and the judicial interprets the law. We have those separations and they are checks and balances on each other. If we all would follow that in each of the branches of Government, I think we would probably have less trouble than we do.

I think that is all the questions I have. I want to wish you a successful service on the bench. I hope we can get the Judiciary Committee to act promptly on these nominations so we can get them out.

Mr. DiCARLO. Sir, if it would be proper at this time, I would like to express my thanks to the President for his nomination, to Senator D'Amato for this recommendation, and to the chairman and the committee for the expeditious manner in which they handled these procedures.

The CHAIRMAN. Well, I hope you enjoy your service on the bench.

Now, without objection, I want to have a résumé of each of these four judges placed in the record.

We have placed the names of these judges on the agenda this morning. The Judiciary Committee meets at 10:15 and I am hoping we can get a quorum then, hoping there would be no objection to any of them, and if not they could be approved by the committee today. If there is objection—and any member of the committee can object—we will carry it over at least one week.

So we are going to meet at 10:15, if any of you wish to remain around until then. We will now stand adjourned.

[Whereupon, at 9:38 a.m., the committee was adjourned.]

BIOGRAPHIES

JEAN GALLOWAY BISSEL

NOMINEE, U.S. CIRCUIT JUDGE, FEDERAL CIRCUIT

Birth: June 9, 1936, Due West, S.C.
Legal residence: South Carolina.
Marital status: Married to Gregg Claude Bissell.
Education: 1952-54—Erskine College; 1954-55—University of South Carolina, B.S. degree; 1955-58—University of South Carolina School of Law, L.L.B.
Bar: 1958—South Carolina.
Experience: 1958-65—Haynesworth, Perry, Bryant, Marion & Johnstone Greenville, S.C., associate; 1965-71—Haynsworth, Perry, Bryant, Marion & Johnstone, partner; 1971-76—McKay, Sherrill, Walker, Townsend & Wilkins, Columbia, S.C., partner; 1976 to present—South Carolina National Corporation and The South Carolina National Bank, Columbia, S.C., general counsel; 1976-80—South Carolina National Corporation, senior vice president; 1980-81—South Carolina National Corporation, executive vice president; 1981 to present—South Carolina National Corporation, vice chairman and chief administrative officer.

DOMINICK L. DiCARLO

NOMINEE, JUDGE, U.S. COURT OF INTERNATIONAL TRADE

Birth: March 11, 1928, Brooklyn, NY.
Legal residence: New York.
Marital status: Married to Esther Hansen DiCarlo, 4 children.
Education: 1946—St. John's College, 1948-50—B.A. degree; 1951-53—St. John's University School of Law, LL.B. degree; New York University School of Law, LL.M.
Bar: 1954—New York.
Military service: 1946-48; 1950-51—U.S. Army.

Experience: 1954-57—Allstate Insurance Co., attorney and adjuster; 1956—Association of Casualty & Surety Companies, research attorney (part-time); 1957-58—Private practice; 1957-59—Fidelity & Casualty Co., investigator; 1959-62—Assistant U.S. Attorney, Eastern District of New York; 1962-63—Amideo N. Guzzone, Esq., attorney; 1962-64—New York City Council, counsel to the minority leader; 1963-81—Private practice, 1965-81—New York State Assembly, Assemblyman; 1981 to present—Assistant Secretary of State, Bureau of International Narcotics Matters; 1982 to present—U.S. Representative Commission on Narcotic Drugs, United Nations Economic And Social Council Vienna, Austria.

JOHN M. DUHE, JR.

NOMINEE, U.S. DISTRICT JUDGE, WESTERN DISTRICT OF LOUISIANA

Birth: April 7, 1933, New Iberia, LA.
Legal residence: Louisiana.
Marital status: Divorced, 4 children.
Education: 1951—University of Southwestern Louisiana; 1951-53—Washington & Lee University; 1953-57—Tulane University, BS degree (1955), LL.B. degree (1957).
Bar: 1957—Louisiana.
Experience: 1957-78—Helm, Simon, Caffery & Duhe, New Iberia, LA; 1979 to present—Judge, Division E 16th Judicial District Court of Louisiana.

TOM S. LEE

NOMINEE, U.S. DISTRICT JUDGE, SOUTHERN DISTRICT OF MISSISSIPPI

Birth: April 8, 1941, Jackson, MS.
Legal residence: Mississippi.
Marital status: Married to Norma Robbins Lee, 2 children.
Education: 1959-63—Mississippi College, B.A. degree; 1963-65—University of Mississippi Law School, J.D. degree.
Bar: 1965—Mississippi.
Experience: 1965 to present Lee, Lee & Lee Forest, MS; 1968-72—Scott County Prosecuting Attorney; 1979-82—Youth Court judge, Scott County; 1982—Municipal judge, city of Forest.

CONFIRMATION HEARINGS ON:

ROBERT M. HILL, FRANKLIN S. BILLINGS, JR., RUDI M. BREWSTER, JAMES M. IDEMAN, WILLIAM J. REA, AND PETER K. LEISURE

WEDNESDAY, JUNE 13, 1984

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to call, at 2:09 p.m., in room SD-226 of the Dirksen Senate Office Building, Hon. Strom Thurmond (chairman of the committee) presiding.

Also present: Senator Leahy.

Staff present: Robert J. Short, chief investigator; Allen Spence, investigator; and Joseph Kopka, investigator.

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The CHAIRMAN. The committee will come to order. We are met today to hold hearings on certain nominations. First is Robert M. Hill of Texas to be U.S. circuit judge for the fifth circuit.

Then we have others.

Senator Tower, we will take you first so you can make your statement. I know you want to be excused to get back over to the Senate floor. So you may proceed.

STATEMENT OF HON. JOHN TOWER, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator TOWER. Thank you very much, Mr. Chairman. It is my pleasure to present this afternoon Judge Robert Hill, who has been nominated by the President to the Court of Appeals for the Fifth Circuit. I ask unanimous consent that I may submit a complete statement for the record.

The CHAIRMAN. Without objection, your entire statement will go in the record.

Senator TOWER. Mr. Chairman, I have known Judge Hill for all of his professional life. He was a very distinguished trial lawyer in our State for several years. He has served as Federal district judge for the Northern District of Texas since 1970, is eminently qualified for the circuit bench, and is very widely respected not only by members of the bar but by his fellow jurists. He is qualified in every way to serve in the position for which he is nominated.

I might note, as a further footnote, Mr. Chairman, that his uncle, Joe Hill, the State senator in Texas back in 1948, was a "Dixiecrat" that supported a young fellow by the name of Strom Thurmond for the Presidency of the United States.

The CHAIRMAN. Well, he must be a man of good judgment. [Laughter.]

Senator TOWER. I just thought I'd throw that in, Mr. Chairman, because I didn't think it would hurt anything.

Mr. Chairman, I could of course go on at great length reciting a litany of the achievements of this very public-spirited man, very fine professional man, but I have submitted my statement for the record so as not to detain the committee, but I would urge speedy confirmation. We do have quite a workload in the fifth circuit, and Judge Hill is ready to go to work, and, by virtue of his experience, he won't take much of a breaking-in period.

And we would ask the committee to speedily and expeditiously report his nomination favorably to the Senate.

[Material submitted for the record follows:]

PREPARED STATEMENT OF SENATOR JOHN TOWER

Mr. Chairman, I am pleased and honored to introduce to you today Judge Robert Madden Hill, who has been nominated by the President to the Court of Appeals for the 5th Circuit. Bob Hill is a native of Dallas, where he is well-known and respected. He received his undergraduate and law degrees from the University of Texas at Austin and is a member of the Texas State Bar and the Dallas Bar Association.

I had the pleasure of recommending Bob to the President and the Attorney General in 1970 for the Federal District bench. Having observed him for 14 years, I can say without equivocation that throughout his tenure as a Federal judge, Judge Hill has demonstrated the highest degrees of fairness and adherence to the precepts of our Constitution. Prior to 1970, Bob Hill had already distinguished himself admirably as a trial lawyer during his 20 years of private practice with the Dallas law firms of R.T. Bailey; Caldwell, Baker, Jordon, and Hill; and Woodruff, Hill, Kendall, and Smith.

As a member of the Federal bench, Judge Hill has consistently demonstrated the sort of judicial temperament that has greatly enhanced our Federal judicial system. His integrity, expertise, and intimate knowledge of the law are recognized and respected by his peers and colleagues.

I believe that Judge Hill, if confirmed by the Senate, will bring these same outstanding qualities to the Appellate Court. He has the personal integrity and compassion for his fellow human beings, as well as extensive professional experience that uniquely qualify him for the Court of Appeals. Should he be confirmed, I am confident of his ability to assume this important position.

Mr. Chairman, this nomination signifies the commitment of this Administration to appoint the most impartial and disciplined jurists to our Federal judiciary, and is well in keeping with the tradition of excellence in the 5th Circuit Appellate Court. I believe that Judge Hill can and will fulfill the enormous responsibility of providing an equitable and impartial system of justice, a right guaranteed by our Constitution to all of our citizenry.

Therefore, Mr. Chairman, I am very pleased to endorse the President's nomination of this great jurist and Texan. Further, I recommend without reservation that the nomination of Robert Madden Hill be reported favorably to the Senate for its advice and consent.

The CHAIRMAN. Thank you very much, Senator. With your endorsement here—I am sure you recommended him for this position, President Reagan has appointed him—I congratulate President Reagan on appointing this well-qualified man. He has made a fine success, I am informed, on the district bench and is now being promoted to the circuit bench.

And with your great influence in the Senate, I think he stands a fine chance to be confirmed.

Senator LEAHY. Mr. Chairman, just a moment—I didn't hear Senator Tower's position—did he say he was for him? Is that the point he was leading up to?

Senator TOWER. Very strongly, Senator Leahy.

The CHAIRMAN. Well, Senator Tower, you are now excused. Thank you very much for taking your time here, and we are very pleased to have such an outstanding and esteemed Senator and chairman of the Armed Services Committee to come and appear before this committee.

Senator TOWER. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much. I see Senator Stafford back there. I'm sorry I didn't see you when you came in, Senator.

Senator Stafford, come around. Senator Stafford and Senator Leahy are recommending Judge Billings of Vermont. We are very pleased to have you here, Senator Stafford. Senator Leahy, of course, is a prominent member of this committee whom I depend upon a lot and try to induce him to vote with me, and occasionally it happens. I am very pleased to have him appear here, too.

So you gentlemen may proceed. Senator Leahy, you are a member of the committee—do you want to go first or will you yield to Senator Stafford?

Senator LEAHY. I will yield to my distinguished colleague, Mr. Chairman.

The CHAIRMAN. Senator Stafford is the chairman of the Public Works Committee of the Senate, a very able Senator, and we are very honored to have him here before this committee.

STATEMENT OF HON. ROBERT T. STAFFORD, A U.S. SENATOR FROM THE STATE OF VERMONT

Senator STAFFORD. Thank you very much, Mr. Chairman, for your gracious remarks, and I thank Senator Leahy for yielding for me to first present to you Franklin S. Billings, Jr., who is the chief justice of Vermont's Supreme Court, and the President's nominee to be a member of the U.S. district court bench for the District of Vermont

I have known Justice Billings since the middle 1950's when I had the privilege of serving as Vermont's Lieutenant Governor, at which time Mr. Billings was the secretary of the senate, which meant he not only kept track of what was going on in the senate, but he was in effect the parliamentarian for the senate at that time and kept the Lieutenant Governor, as far as he could, out of trouble.

A little later I became Governor of Vermont, and Mr. Billings at that time became the secretary of civil and military affairs of the State, which is an archaic title for executive secretary to the Governor.

So I have known our chief justice a good many years and have found him to be a very able and public-spirited man.

From 1961 until 1966, he served in the Vermont Legislature, and in 1963 he was elected the speaker of the Vermont house of representatives, where he served until 1966. In 1966 he was appointed

and in 1967 elected to the highest trial bench in Vermont, our superior court, and he served there for a number of years with distinction, until he went to the supreme court in 1975, where he served until January 1, 1983, when he became the chief justice of our supreme court.

Both knowing him personally, knowing his wife, his four children, the fact that he is a native of a town near where I grew up, and his excellent reputation on the bench and bar, and with the general public of Vermont, I without qualification recommend him very highly to be the U.S. district judge.

Mr. Chairman, I urge and hope for his speedy confirmation in that post, since there is a lot of work to be done in Vermont on our U.S. district court bench.

The CHAIRMAN. Senator Stafford, we are very pleased to have you with us, and I am sure the endorsement of you and Senator Leahy both carry great weight here, and he should be confirmed forthwith. We will expedite the nomination all we can.

Senator STAFFORD. Thank you very much, Mr. Chairman.

The CHAIRMAN. It's an honor and a pleasure to have you before this committee, and you may remain or, if you are busy, feel free to leave.

Senator STAFFORD. Thank you, sir.

The CHAIRMAN. Senator Leahy, a distinguished member of this committee, we will now hear from you.

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

Senator LEAHY. Mr. Chairman, as the chairman noted, there are those occasions when the chairman and this member of the committee do join hands and vote together on issues; we have done it in criminal matters, in regulatory reform matters, and I suspect we will do it on this judgeship, too.

I want to concur totally with what Senator Stafford has said. I think it is an extremely good choice, both his recommendation of Justice Billings, and President Reagan's appointment.

I first knew Justice Billings when he was Speaker of the House of Vermont and I was a newly out of law school 24-year-old lawyer just starting practice with a law firm in Burlington, and was told that it would also do me good to learn something about the laws of the State of Vermont, which had some sense of logic to it, if I was going to be practicing under those laws—and I was appointed draftsman for our State legislature, a position actually the appointment to which was really made by the Speaker of the House, being Justice Billings, who called me into his office and said, young man—and at that time I looked young—I had hair back then, Mr. Chairman, it was an interesting phenomenon that I barely remember—but the Speaker brought me in and said, young man, you need to get some experience and the Governor has told me that you are a bright young lawyer, which made me think that he had the wrong person—but he said we are going to give you a chance, and he said go out and draft these laws; you can do it one of two different ways: you can either sort of work around here part time and not accomplish much of anything or you can work day and

night and weekends and maybe people will appreciate you and remember you.

I thanked him very much and told him how much I appreciated getting that job and if I could ever do the same for him, I would. And so therefore, Mr. Chairman, that and the fact that I predict will go down in history as not only one of the finest jurists the State of Vermont has ever had, but one of the finest the country has had. And I strongly, wholeheartedly back Justice Billings.

I did say to your staff, in reviewing his background, that the dozens and dozens, actually hundreds of background reports that I have read—I say this before you in all honesty—I have not read one superior to Justice Billings. It is an extraordinary report and background report; there is not one iota of hesitation on the part of anybody. I know a number of the people who are in there; they range across the political spectrum in our State, they are all distinguished people, and they all unhesitatingly endorsed him. And I have not in my years on this committee read a report that matches that.

The CHAIRMAN. Thank you very much, Senator. We appreciate the fine endorsement that you have given to the nominee here, Judge Billings. And if you wish to come around and sit up here with us, and Senator Stafford—we would be glad to have him come up, if he would care to.

Senator STAFFORD. Thank you very much, Mr. Chairman, but——

The CHAIRMAN. You want to get back to your work, Senator, or do you want to remain longer?

Senator STAFFORD. I have another committee to run, like you.

The CHAIRMAN. Well, I can understand how busy you are, and we appreciate your presence here, and I am sure your recommendation brought about his appointment, and President Reagan it appears has made a good selection, and we want to thank both you and Senator Leahy for your presence and making such laudatory statements about him.

Senator STAFFORD. Thank you, Mr. Chairman.

Senator LEAHY. Mr. Chairman, may I bring Judge Billings over here just to shake hands with you?

The CHAIRMAN. I would be delighted.

[Chairman and nominee shake hands.]

The CHAIRMAN. Senator Wilson of California. I believe you have three nominees here, Senator.

STATEMENT OF HON. PETE WILSON, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator WILSON. Yes, I do, Mr. Chairman.

The CHAIRMAN. Do you want to bring them up with you to the table?

Senator WILSON. Yes, if I may.

The CHAIRMAN. First I believe is Rudi M. Brewster of California to be district judge for the southern district; James M. Ideman of California to be district judge for the central district; and William J. Rea of California to be district judge for the central district.

We would be very pleased to hear from you, Senator Wilson.

Senator WILSON. Thank you very much, Mr. Chairman. I am honored to have this opportunity. I might observe to the nominees that the distinguished chairman of this committee is also a very high-ranking member of the Armed Services Committee, and I mention that, Mr. Chairman, because in addition to their qualifications for this office, while I can't find in their background an uncle who was a "Dixiecrat" who supported the candidate for the office of president some years ago, I do note with great interest, and I think you will, too, that they all have had some distinguished military service. And close to that "Dixiecrat" sympathy, I would point out that Judge Ideman is a distinguished military graduate of an institution which I am sure you are more than familiar with, called the Citadel.

The CHAIRMAN. One of the best in the country.

Senator WILSON. I thought you would have some sympathy for that.

I think he will also find some favor with you because he spent his active duty time, before going to law school and becoming a judge advocate, as a member of the airborne infantry, which is something else you have in common.

Judge Rea was a distinguished naval officer, received a spot promotion to lieutenant commander and was given command of a destroyer, and won eighteen battle stars in World War II.

Mr. Brewster is a captain in the Naval Reserve—he is a naval aviator. And Judge Ideman is also Colonel Ideman.

Now these gentlemen are seeking an opportunity for additional Federal service in a different capacity.

It is with genuine satisfaction, Mr. Chairman—and I will admit, I hope with pardonable and very great and sincere pride—and with anticipation of very good things for the State and the Nation, that I come before this committee to introduce these three distinguished individuals.

The President has selected William J. Rea and James M. Ideman for the Central District of California and Rudi M. Brewster for California's Southern District. All three bring enormous legal talent, skill, experience, and the highest reputation. They will bring these qualifications to the Federal bench in their respective districts after having been graded by their peers in the legal community as the best possible people to serve on the bench.

I am confident that each will reflect credit on himself and the appointing authority.

Because each has a long and distinguished biography, I could not quite do justice to them by picking out really only the highlights of their distinguished careers. Let me tell you why in each case the selection panel which I have asked in both the Central District and in the Southern District for California to interview and to grade judicial candidates, has afforded to each of the nominees the highest possible classification, that of extremely well-qualified. That is because they enjoy, without exception, an unblemished reputation for great professional skill, for the highest demeanor, and for the highest reputation for judicial temperament and good character.

William John Rea has been serving as a judge of the Los Angeles County Superior Court since 1968. His peers honored him in 1982 as the "trial judge of the year." Lawyers in Los Angeles consider

him a "judge's judge," and it is not unusual to hear judges who have been before him say that "his decorum is the best of any judge before whom I have ever practiced." His tenure on the bench has followed almost 20 years of private practice.

James M. Ideman was elected to the Los Angeles Superior Court in 1978. He has become a well-known and very highly regarded administrator and specialist in criminal law. His duties on the bench have been supplemented by important administrative and supervisory responsibilities. His 15 years experience as a deputy district attorney included direct handling of many famous cases, many criminal cases that have become part of the lore of southern California and indeed of the ninth circuit. His extensive military judicial service is also an important component of Judge Ideman's broad legal experience.

Rudi Brewster has practiced law in San Diego for a quarter of a century. And for not quite that long I was the mayor of San Diego—it seemed longer to some people. But, as a result, I had the opportunity to get to know Mr. Brewster both personally and professionally. He has been rewarded for the skill and very high degree of conscientiousness which he has brought to his practice as a trial lawyer by election, in 1978, to the American College of Trial Lawyers, which, as the chairman and the committee are well aware, includes the top 1 percent of trial lawyers across the country.

Mr. Chairman, only because you have before you the full record of these three distinguished candidates, will I not go on at length, at the length which each of them deserves. I will simply submit their biographies and their résumés as part of the official record.

Today I bring you three superbly qualified nominees. They are entirely deserving of the confidence which the President has placed in them, and I would respectfully urge the committee's early and favorable treatment of these nominations so that they can go to their respective benches, where I can assure the chairman they are eagerly awaited. They will be more than pleased to answer your questions, and, indeed, I will as well.

But I will take no more time of the committee. I feel very privileged to be here. And let me say that each today is supported by a handsome family, and they are present in the chamber—and, if I may ask the chair's indulgence, I would ask that first Judge Ideman's family stand. He has friends with him as well.

The CHAIRMAN. Very pleased to have you with us.

Senator WILSON. Next, Mr. Brewster's family.

The CHAIRMAN. Very pleased to have you with us.

Senator WILSON. And, finally, Judge Rea's family

The CHAIRMAN. We are glad to have you all with us.

Senator WILSON. His wife and son are here.

Thank you, Mr. Chairman, I won't go on, simply because I don't feel that I could do justice to these gentlemen. It's hard to capsule these careers in a few minutes—but the committee's time is precious.

[Material submitted for the record follows:]

PREPARED STATEMENT OF SENATOR PETE WILSON

Mr. Chairman: with a fair bit of satisfaction, some sincere pride, and much anticipation of good things for California and the Nation, I come before the committee this afternoon to introduce three distinguished individuals, each of whom has been nominated by the President of the United States for appointment to the Federal bench in California. The President has selected William J. Rea and James M. Ideman for the central district of California and Rudi M. Brewster for California's southern district. All three bring tremendous legal talent, skill, and experience to the Federal bench and were graded by their peers in the legal community as the finest possible people to serve on the bench. Each will reflect credit on himself, the court, and the Federal Judiciary. I recommended these highly seasoned lawyers to President Reagan and want to convey to you my wholehearted support for these appointments.

This committee is aware of my subscription to the concept of judicial qualifications review committees. In each of California's four Federal districts, eminent attorneys and judges review the credentials of prospective Federal judges—individuals who have been recommended to me, expressed their own interest, and have been solicited by my committee members. A state chairman coordinates the findings and sends them to me for consideration. For each of today's nominees, these committees have found them extremely well-qualified. I am proud that the President and officials within both the White House and Department of Justice have concurred in my judgement that these three jurists are among the best legal talents that California has to offer.

William John Rea has been serving as a judge of the Los Angeles County Superior Court since 1968. Hs peers honored him as the "Trial Judge of the Year" in 1982. Lawyers consider him a "Judge's Judge," and it is not unusual to hear that "his decorum is the best I have ever practiced before." His tenure on the bench followed almost 20 years of private prictice.

James M. Ideman was elected to the Los Angeles Superior Court in 1978. His duties on the bench have been supplemented by important administrative and supervisory responsibilities. His 15 years of experience as a deputy district attorney included direct handling of many famous—I should say infamous—criminal cases. His extensive military judicial service is also an important component of Judge Ideman's board legal experience.

Rudi I. Brewster has practiced law in San Diego for a quater of a centary. He has a reputation, in the town of which I was mayor for almost half that time, as one of the area's most respected trial attorneys. Indeed, he was elected in 1978 to the American College of Trial Lawyers, which, as the committee is aware, includes the top one percent of trial lawyers across the country.

Mr. Chairman, I could go on and on with praise and background details of these three impressive legal achievers. However, their biographies or résumés will be part of the official record, and you have conducted an independent review. I am confident that the committee will reach the conclusion that the respective district court will benefit form these appointments.

I appreciate this opportunity to come before you today and encourage the committee to report favorable so the Senate can soon give its advice and consent to these nominations.

[From the Daily Journal, Sept. 1, 1982]

JUDGE WILLIAM J. REA

(By Don J. DeBenedictis)

A couple of years ago, lawyers in the San Fernando Valley worried that Judge William J. Rea might work himself to death.

Rea was the supervising judge of the heavily backlogged Los Angeles Superior Court branch in Van Nuys, a position he'd held since 1971. Along with his administrative duties, he ran the civil master calendar, conducted a few settlement conferences each day, held trials, "and was sort of the back-up to any other judge that needed backing up," he said.

"Bill Rea was just a whirlwind in Van Nuys. He did everything," said a well-known plaintiffs' lawyer in the Valley. "Everybody was afraid he was going to give himself a heart attack." The lawyer recalled more than once seeing the judge at the courthouse at 8 a.m. and again at 7 p.m. on the same day.

"Bill is one of the hardest-working judges I've seen, if not the hardest," added another Van Nuys civil lawyer.

In mid-1980, Rea was relieved of his supervisorial post, and he transferred to a civil trial department at the downtown courthouse. One lawyer in the Valley believes "he went downtown almost to get a break."

But actually the judge misses the hectic pace he used to set for himself. Though he admits he was "really spread pretty thin" in Van Nuys, he enjoyed the job nonetheless. "I miss being supervising judge, where I could make things happen and do things and keep things going the way I like to keep them going," he said.

"I feel that I don't have as much to do here as I did out there. I don't have the responsibilities that I had there of running the calendars and administrative functions that I had to fulfill daily . . . if I had my druthers I would have probably stayed."

UNWRITTEN RULE

Rea left Van Nuys and the supervising position because Superior Court Presiding Judge Richard Schauer asked him to. "I think there is sort of an unwritten rule that judges don't stay on those supervising jobs for more than two or three years," Rea commented, "and I'd already stayed beyond that period of time . . .

"I guess I can't blame them," the judge continued wistfully. "At the time, I didn't understand. But I guess I can understand why they want to give everybody an equal chance for the job."

Rea, who is 62, still works as hard as he can on his present assignment. "I enjoy being busy rather than being non-busy," he explained. "In other words, I like to feel that I'm accomplishing as much as I can accomplish in a given day be going all out."

Last year, he was one of six judges selected to hear settlement conferences full time. In February, he returned to a trial assignment, but he kept a smaller load of settlements to work on. On a typical day, he has two conferences in the morning, a trial during most of the day, and a third settlement conference at the end of the day. Rea also sits as a member of the court's BAJI committee, which writes the widely used Book of Approved Jury Instructions.

However, his frenetic pace does not grow out of a frenetic personality. He speaks softly and slowly, and he sits quietly, gazing out his chambers window as he talks "Well, I'm not the jumpy, flighty type, I guess," he said.

The judge also dismisses the notion that he might be a workaholic "I think I put in a lot of hours, and I work hard when I work," Rea explained, "But when I play, I guess I play hard too."

LOOKS LIKE A JUDGE

Lawyers seem to like the work he does. They even like his gray-haired, bespectacled appearance. For instance, a plaintiffs' personal injury lawyer said, "He lets you try your own case, he puts the jury at ease, and puts the lawyers at ease, and he looks the way a judge should look."

"He's everybody's favorite person. He's a judge's judge," claimed another lawyer from Van Nuys. "He not only looks like a judge, but his decorum is the best I've ever practiced before."

That lawyer also praised Rea's ability to put aside his own conservative views when deciding a lawsuit. A second attorney noted that Rea was selected as the most recent trial judge of the year by the Los Angeles Trial Lawyers Association and is well liked by the plaintiffs' bar, even though he was an insurance defense lawyer in practice himself.

Rea concentrated on defending negligence cases—particularly medical malpractice cases—for 18 years in private practice, first in Los Angeles and later with a Santa Ana firm. A Los Angeles native, he graduated in 1942 from Loyola University, where he won a baseball scholarship.

He had joined the Navy the year before and immediately after graduation left for training. Rea spent most of World War II in the Pacific aboard a destroyer.

After the war, he moved to Denver to study law at the University of Colorado. He had been accepted at USC and Stanford, but his wife-to-be lived in Denver, he said. They remained there a year after he graduated in 1949 while Rea worked for the Census Bureau. Then they moved back to Los Angeles.

PRIVATE PRACTICE

While studying for the bar exam and waiting for the results, Rea worked as an adjuster for the Farmers Insurance Group. When he was admitted to practice in 1951, he went to work for the insurance company's law firm. He stayed, as a trial lawyer, for 14 years.

In 1964, he followed a former partner at the firm into a new partnership in Santa Ana. Among other clients, the Orange County firm represented the company within the Farmers Group that insured hospitals. Rea said that he soon represented nearly all the hospitals in the county and many of the doctors. Therefore, he began to specialize more and more in medical malpractice cases.

Along the way, Rea became active in the American Board of Trial Advocates (ABOTA), a trial bar association begun in Los Angeles with a core membership of defense lawyers. By 1968, he had been elected to serve as the president of both the L.A. chapter and the national organization.

Coincidentally, that same year Gov. Ronald Reagan named Rea to the Los Angeles Superior Court. Although Rea's practice was based in Santa Ana, he had continued to live in Pacific Palisades, near Santa Monica.

So in 1969, he took over the presidency of ABOTA and his spot on the bench. "I don't know if there's any impropriety connected with that," the judge said. "I hope not." Rea argued that by then the association was no longer strictly a defense group.

Today, he said, "it represents the cross-section of the trial bar." He still serves on the group's national executive committee and this year heads the constitution and by-laws committee.

TRIAL BY JURY

One of the guiding principles for which ABOTA was founded, the judge noted, was to defend the jury system. "The reason for our existence, I suppose, is to preserve trial by jury. . . ," he said. "It's not the perfect system, but up to now, in my opinion, the system has certainly protected our citizens and ensured that justice will be done."

Oddly, the state Supreme Court recently reversed Rea in a landmark decision affecting civil jury trials. In *Juarez* v. *Superior Court,* 31 Cal.3d. 759 (1982), the court held that the same nine members of a civil jury do not have to agree on all questions to reach an enforceable verdict. In *Juarez,* Rea said, one juror had voted against finding the defendant negligent, on the one hand, but later—as the jury considered comparative negligence—held the defendant was partially at fault.

Heading ABOTA his first year on the bench was "time-consuming but enjoyable," the judge recalled. He loved the work. His first trial, however, was very difficult.

The case concerned a multi-million-dollar trust, and bringing the file to his courtroom took three trips for his clerks. The lawyers—one of them a retired judge Rea used to appear before—told him it would be a short trial because they intended to submit it to him on the basis of depositions.

"And with that, all their heads disappeared under the counsel table and they came out with stacks of depositions." Rea lifted his hand to the level of his chin to show just how tall those stacks were.

To decide the case, Rea had to rule on 10 questions involving issues including breach of contract, breach of a testamentary trust, residual trusts, and the rule against perpetuities. Since he had limited his practice to negligence cases the previous 18 years, he called the master calendar department to see if he could get a simpler first assignment.

The calendar judge said, "No, you keep that one. It'll make a judge out of you." On appeal, Rea noted proudly, he was reversed only on the rule-against-perpetuities question.

The CHAIRMAN. Thank you very much, Senator Wilson. You are nice to take time and come before the committee personally. You could have just endorsed them, but you have gone beyond the call of duty and come here yourself to speak in behalf of these three fine gentlemen.

I want to tell you gentlemen that you are fortunate to have such an able Senator who stands so well with President Reagan and this administration to recommend you for this position to which you have been appointed.

Senator Wilson hasn't been in the Senate too long, but he has already gained the confidence of the Senate and is held in high esteem by the Members of the Senate, and his recommendation of you and his endorsement of you will carry tremendous weight with this committee and the Senate.

Senator, you may remain longer or you may be excused, whichever you prefer.

Senator WILSON. Thank you very much, Mr. Chairman. My other chairman, Senator Tower, who was here before you, is on the floor, as you know, and he has asked that I join him there.

So if you gentlemen will excuse me.

The CHAIRMAN. If you gentlemen will have a seat back there—we will take you up in the order of appearance on the calendar.

First is Judge Hill. I might just swear in all you judges at one time. Would all of you hold up your hand?

[The following persons are sworn: Judge Hill, Judge Billings, Mr. Brewster, Judge Ideman, Judge Rea, and Judge Leisure:]

Judge Hill, if you will come around, we will take you up first.

Judge, do you have any members of your family here?

TESTIMONY OF ROBERT M. HILL, NOMINEE, U.S. CIRCUIT JUDGE, FIFTH CIRCUIT

Judge HILL. Yes; I do, Senator. I have my mother here, Mrs. Hill, and next to her is my wife, Patricia Hill—she serves in the State house of representatives for the State of Texas.

The CHAIRMAN. Is that your wife or your daughter? [Laughter.]

Judge HILL. No; that's my wife, Senator.

The CHAIRMAN You did like I did, you married a young pretty girl [Laughter.]

Is that her sister?

Judge HILL. No; this is my daughter-in-law next to her, Harriet Hill. Then behind her is my daughter, Alicia Thomas. Then my secretary is here—she came up—Martha Johnston. And I have one daughter and a grandson out in the hall. He got a little unruly a minute ago, and we took him out in the hall.

The CHAIRMAN. I see. Well, we are glad to have you with us—glad to have all of you here.

Judge HILL. Sally Davis is her name.

The CHAIRMAN. Judge, if you don't mind—these Senators are so busy—I see Senator D'Amato just came in. If I could let him make a statement about his judge. Senator D'Amato, come right up.

Senator D'Amato is here in behalf of Peter K. Leisure of New York.

Would you like to say a few words in his behalf, Senator?

STATEMENT OF HON. ALFONSE M. D'AMATO, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator D'AMATO. I certainly would, Mr. Chairman. It's always a great pleasure to come before the distinguished chairman of the Judiciary Committee, a man who has done so much to move this country forward and in seeing to it that the judiciary, its selections and also those statutes and laws that you, Mr. Chairman, have worked on to bring about—some thoughtful consideration of the

problems that we face today in our society, has done so much—and so I am deeply honored and privileged.

And I am deeply honored and privileged to have the opportunity of presenting to this committee a man who has demonstrated a clearcut capacity to deal with the problems and issues that the important district court in the Southern District of New York, Federal district court, deals with. Peter K. Leisure's record, which you have before you, is ample testimony to his judicial background, his character, his integrity, and, most importantly, Mr. Chairman, we find in President Reagan's nominee a man who makes a very real sacrifice in a very realistic way in taking on this most important position. He is giving once again to his Nation, as he has previously in his service to this Government, by way of taking this position; he leaves a distinguished law firm as a senior partner. The economics of this make a very real sacrifice, but one who knows Peter Leisure knows that his love of the law and service to this Nation will always be uppermost in his mind.

And, Mr. Chairman, I commend him to this committee and for your thoughtful and speedy consideration, as I think that President Reagan has made a magnificent recommendation and nomination in Peter K. Leisure.

The CHAIRMAN. Thank you very much, Senator. I want to thank you for coming here in person and recommending this gentleman. And I want to say that your fine prestige in the Senate will go a long way with the committee and the Senate to have him confirmed.

Senator D'Amato is a comparatively new Senator here, too, and he has made a fine record and is held in high esteem. I know he is busy, and so, Senator, if you wish to be excused, you may, or you can stay, if you care to.

Senator D'AMATO. Thank you so very much, Mr. Chairman.

The CHAIRMAN. Now we will call up Judge Hill first. Without objection, we will place the résumé of Judge Hill in the record.

Judge Hill, you've been a U.S. district court judge, I believe, for the Northern District of Texas since 1970.

Judge HILL. That's correct.

The CHAIRMAN. I am certain that during this period you have witnessed a constant increase in the workload of the court.

Judge HILL. I have, sir.

The CHAIRMAN. All concerned parties seem to agree that this increase will probably continue.

Do you have any recommendations that will be helpful to the committee and to the judicial system to stabilize or decrease this workload? Do the judges need to work longer hours, or just what, in your opinion, needs to be done?

Judge HILL. We do work long hours—I can assure you of that.

Our jurisdiction is greatly expanded, Senator, in the last few years, particularly since I have been on the bench. We have a lot more causes of action that are brought before us now due to, well, legislation enacted by Congress, in many instances, and also prisoners' rights cases and habeas corpus and so forth brought before us.

And standing is an issue—sometimes that has been expanded, to a great extent, since I've been on the bench.